



BROWNE & MURPHY

SOLICITORS

YOUR GUIDE TO
MAKING A PERSONAL
INJURIES CLAIM*

GETTING STARTED – DO I HAVE A CASE?

The first step is to contact one of our experienced personal injuries solicitors and arrange a no obligation consultation. At the initial meeting we will discuss your potential injury claim with you and advise you on the best course of action relevant to your individual circumstances.

To pursue a personal injuries claim it is necessary to show that you have suffered injury, loss and damage caused by the negligent act or omission of another party. Even where you may be partly to blame it may still be possible to pursue a claim for compensation (see below).

TIME LIMITS – WHEN MUST I LODGE A CLAIM?

Legislation places time limits within which various actions under law must be instituted. A failure to file a claim or issue legal proceedings in time may leave an action 'statute barred'. For personal injuries claims, subject to certain limited exceptions, you have only 2 years from the date of your accident to file a claim or issue legal proceedings. It is very important therefore not to delay in seeking legal advice following an accident.

MAKING A CLAIM – SO WHO IS SUED AND WHO DEFENDS THE CLAIM?

Ascertaining the correct defendant in legal proceedings is vitally important and finding the correct defendant is not always a straightforward matter. In some cases there may be more than one potential defendant with a number of insurers involved. There may be a corporate entity involved or an unknown wrongdoer. In motor accident cases involving untraced or uninsured drivers it will be necessary to name the Motor Insurers Bureau of Ireland (MIBI) as a defendant along with the wrongdoer, if known.

Important: it should be noted that in the majority of cases the wrongdoer does not defend the claim. Instead, the wrongdoer's insurance company deals with the claim and when proceedings are issued a solicitor is appointed by the insurer to defend the proceedings or settle the claim.

ALLOCATING BLAME – WHAT IS CONTRIBUTORY NEGLIGENCE?

In some cases, it is not always immediately apparent who is entirely to blame for the accident and the question of contributory negligence may become an issue.

Contributory negligence may arise where there is more than one wrongdoer or where the injured party through his or her own negligence contributed to the injuries. A finding of contributory negligence against you may reduce the level of compensation awarded or, in extreme cases, defeat a claim entirely.

A straightforward example of contributory negligence is where a person injured in a road traffic accident had failed to wear a seat belt. A failure to take sufficient care for one's own safety increasing the risk of injury may give rise to a finding of contributory negligence.

THE INJURIES BOARD PROCESS – HOW DOES IT WORK?

The Injuries Board, formerly the Personal Injuries Assessment Board or PIAB, is an independent body created under statute whose primary function is to assess personal injury claims. The Injuries Board does not look into the merits of a case and there is no requirement for you to appear before the Board.

It makes an assessment of damages based on submitted medical evidence and receipts for allowable expenses, including any certified loss of earnings.

All personal injuries claims in Ireland, with the exception of medical negligence claims, must first be submitted to the Injuries Board for assessment before any court proceedings can issue. The steps involved are as follows:-

1. Take up a medico-legal report from your treating doctor.
2. Submit a formal application with the Injuries Board.
3. Await confirmation that your application has been correctly filed.
4. Once the Injuries Board formally acknowledges that your application has been filed correctly it will notify the other party ('Respondent') and his/her insurer that you have lodged a claim.
5. If the other side are happy for the Injuries Board to deal with the matter it will look to proceed with an assessment of the claim.
6. Unlike the claimant, the respondent can opt out of the Injuries Board process and decline to have the claim assessed. The respondent and/or his insurer have 90 days within which to reply. If the respondent declines to have the matter assessed by the Injuries Board an Authorisation is issued allowing you to institute court proceedings.

Note: It is very important that the application form (Form A) is carefully and accurately completed as it may be relied upon in evidence at a later stage. There are quite a number of sections within the Form, many of which require careful consideration before completing.

HOW LONG DOES THE INJURIES BOARD PROCESS TAKE?

The Injuries Board is obliged to deal with a claim within 9 months from the date the respondent consents to the process. This period may be extended by a further 6 months if necessary.

In our experience it usually takes in or about 9-12 months from making the initial application to receiving a formal Assessment. At that stage it should be apparent as to whether you are recovering satisfactorily from your injuries.

THE INJURIES BOARD ASSESSMENT - WHAT DOES IT MEAN?

If the respondent agrees to the assessment, the Injuries Board will proceed with the claim and assess your injuries taking into account your expected recovery and any rehab required. It will also take into account any special damages or loss of earnings claimed.

The Injuries Board will require you to attend an independent medical examination before delivering a formal assessment of damages. The Injuries Board Assessment is essentially a suggested figure which the Injuries Board believes is adequate to compensate you for the harm suffered and any consequential losses.

It is however open for either party to accept or reject the Assessment.

VALUING THE CLAIM – HOW MUCH IS YOUR CASE WORTH?

The value of a personal injuries case depends on a number of factors. Firstly, each claim is unique and assessed in light of the particular circumstances.

Factors considered include:

- The nature and severity of the injuries sustained and the expected recovery;
- The extent of any consequential losses such as medical treatment and rehabilitation costs;
- Any loss of earnings and other out of pocket expenses; and
- Any other factors such as the age, sex and occupation of the claimant.

Once we have received the formal Injuries Board Assessment we will go through the valuation placed on your claim and advise you as to whether the suggested compensation figure is adequate.

Important Notice: The Injuries Board does not award legal costs, save in limited circumstances where a contribution towards the costs may be made. As a consequence, in most cases your legal fees and any non-recoverable outlays will need to be deducted from the sum awarded.

ISSUING PROCEEDINGS – SO WHAT IS INVOLVED?

If an Authorisation issues allowing you to proceed through the courts we will instruct an experienced personal injuries barrister to draft proceedings on your behalf.

The barrister receives a copy of all your relevant documents and will draft either Circuit Court or High Court proceedings depending on the value of your case. The Circuit Court deals with personal injuries cases valued over €6,350 and up to €38,000. The High Court deals with cases valued in excess of €38,000.

CHILD PLAINTIFFS – WHO MAKES THE CLAIM?

Persons under 18 years of age are described in law as minors or infants. A minor may not make a claim in his or her own name but is instead represented by a 'next friend', usually a parent or guardian.

If the child reaches the age of 18 before the claim is settled, then the proceedings can be amended to reflect the position and he or she may continue the claim in his or her own name at that stage.

The interests of child plaintiffs are protected by the Court and as a consequence any award or settlement made must firstly be approved by the Court before any payment can be made. It should be noted that any compensation received on behalf of the child must be lodged with the Courts Service where the sum is placed on deposit until the minor plaintiff reaches the age of 18.

At that stage an application can be made to the Accountant's Office of the Courts Service for payment out of the monies lodged.

THE DEFENCE – HOW ARE CLAIMS DEFENDED?

In most cases the other party's insurer deals with the claim and instructs a firm of solicitors to defend the action and/or look to settle the claim once proceedings have issued. There is an obligation on the defendant to deliver a personal injuries defence in reply to the proceedings within a specified time and to state in the defence whether liability is admitted.

Note: In some cases, the defendant's insurer may wish to engage the services of a private detective to ascertain if there is any validity to the claim and the injuries suffered. This usually only occurs where there is a strong suspicion of fraud or an exaggerated claim.

SETTING DOWN FOR TRIAL – SO WHEN IS YOUR CASE GOING TO BE HEARD?

There is no hard and fast rule as to how quickly a case might proceed to trial. It may take just a number of months following the initial serving of proceedings or perhaps a few years depending on the individual circumstances, type of injuries and rehabilitation, and the complexities of the case.

When your case is ready for hearing it is set down for trial and receives a list number taking its place on the personal injuries list.

Your personal injuries solicitor will keep you informed of progress in your case and meet with you regularly to discuss developments. When all matters are concluded the parties can agree to have the case 'called on' for hearing and a date is fixed to hear the case.

PRE-TRIAL SETTLEMENT TALKS – WHAT HAPPENS?

The majority of personal injuries cases generally settle and do not go to court. Even where proceedings are issued and a date is fixed to hear the case it is common practice to try and settle the claim in advance of the hearing.

Settlement talks are an opportunity for both sides to meet informally and discuss a possible resolution of the claim. Informal negotiations are then had with the insurance company's solicitor and/or barrister with a view to reaching a compromised settlement.

If a reasonable offer is made it will be put to you and you will be assisted and guided as to the merits or otherwise of the offer. You will not be pressured into accepting an offer and at all times the decision to accept or reject any offer is entirely yours to make.

THE HEARING – WHAT SHOULD YOU EXPECT?

In our experience, over 90% of cases settle and do not wind up in court. However, on occasion it may not be possible to resolve matters in advance of trial and the case proceeds to a hearing before a judge. Your case will be allocated a list number and is fixed for hearing on a specific date. This does not necessarily mean your case will in fact get heard on that particular day as much will depend on where your case is on the list.

In terms of what happens on the day and what you can expect, firstly you will have a consultation with your barrister and solicitor to go through the case. When your case is called the format is generally as follows:-

- Your barrister will open the case briefly explaining to the judge what the case is about and the nature of your injuries
- You will then be called to give evidence and explain first hand to the court the accident circumstances and outline your injuries and treatment to date
- The other side is then given an opportunity to cross-examine you
- Your treating doctors and consultants will then be asked to give evidence and will also be subject to cross-examination as will any other expert witnesses
- Once your case has been presented the defence is then afforded an opportunity to present its own case
- The judge will then give his decision and determine the issue of fault, the level of damages awarded and which side should pay the costs of the proceedings

THE CLAIMS PROCESS – HOW LONG WILL IT ALL TAKE?

This will depend to a greater or lesser extent on the nature of your injuries and your expected recovery and rehabilitation. No two cases are the same. If liability is not in issue, it may be possible to settle your claim within a reasonably short time frame. However, it is our policy not to settle a claim until we have a clear prognosis on your injuries and expected recovery. This may take 12 months or even longer depending on the nature of your injuries and other factors. Our sole aim is to ensure you receive appropriate compensation for your injuries, quickly and effectively with the minimum of stress.

LEGAL COSTS – HOW MUCH WILL IT ALL COST?

At your initial consultation, we shall advise you on the merits of your claim and discuss the potential costs involved in pursuing a personal injuries claim.

It is important to note that the Injuries Board process does not currently make an allowance for legal fees, save in limited circumstances. As a consequence, we will need to deduct our legal fees and outlays from the damages you receive through the Injuries Board process.

To assist our clients we charge a fixed fee for Injuries Board applications with no hidden charges.

If the matter proceeds beyond the Injuries Board stage and it is necessary to issue court proceedings, we shall look to recover the majority of our fees from the other side on the conclusion of your case.

At all times, we shall advise you of any potential costs involved and we employ a policy of transparency when it comes to legal fees and costs.

Please note that if you are unsuccessful in your claim you may be liable for the other party's costs.

PLEASE NOTE

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

DISCHARGING OUTLAY – WHAT DOES THIS MEAN?

In the context of personal injuries litigation outlay refers to the costs and expenses which we may need to pay out on your behalf during the lifetime of your claim to progress matters such as the cost of a medical report and medical treatment, expert fees, Injuries Board application fees, court duty, search fees, etc.

The majority of these outlays are recoverable as part of your costs on the successful conclusion of your case.

At all times you will be informed of any costs and expenses paid out on your behalf.

If you require further information about personal injury claims, please contact:



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