

PERSONAL INJURY LITIGATION GUIDE *IN IRELAND*

PERSONAL
INJURY
LAW

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◉ What Is A Personal Injury Claim?

Firstly, it is important to establish what a personal injury claim is. A personal injury claim allows for an individual to take legal action if they suffered an injury due to the negligent actions of another person. A personal injury claim covers a wide range of human behaviors ranging from motor traffic accidents to employer liability.

According to the Personal Injuries Assessment Board Act 2003, all personal injury claims except medical negligence should be processed through the Personal Injuries Assessment Board.

This picture attached below illustrates a collision between a bicycle and a car. This may result in a personal injury claim being brought if an injury, loss, or damage occurred to one of individuals involved.



► What Is The Personal Injury Assessment Board?

The Personal Injury Assessment Board is a government body that has authority to evaluate personal injury claims and hand out compensation. This board was launched to assist the civil courts in reducing workload and to aid citizens with the costly routes of the courts.

In 2020, out of 26,009 applications, 8, 578 awards were given out. It took 9 months to process these applications. In total €206.31m was awarded.

Statistics from the PIAB

Motor

70%

PL

17%

EL

13%

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019
Motor	77%	75%	75%	75%	75%	75%	72%	70%	70%
Public Liability (PL)	15%	17%	17%	17%	17%	17%	18%	18%	17%
Employers Liability (EL)	8%	7%	8%	8%	8%	9%	10%	12%	13%

Breakdown Of Total No. Of Awards

2020 statistics

► Step By Step Guidelines For A Personal Injury Claim

STEP 1:

Firstly, you will need to meet with a solicitor. Your solicitor will guide you through the steps for a potential claim. During your consultation, they will establish if a duty of care was owed to you during the time of the injury/accident. This means a legally recognized obligation is on the defendant (the person you are bringing your claim against) to have a certain standard of care to protect others. Secondly, they would establish if the defendant failed to comply with the standard of care. Next, they must prove a sufficiently close causal connection between the conduct and resulting injury to the plaintiff. Lastly, loss, injury, or damage to you must have occurred.

This picture illustrates a client having a consultation with her solicitor regarding a personal injury claim. It is important to meet with your solicitor as you can trust them overtime with your case.

► How Long Do I Have To Claim For Personal Injury?

Understandably, your injuries may stop you from acting straight away. However, you should make a claim as soon as possible due to the fact time may run out. Under the Civil Liabilities and Courts Act 2004, you have 2 years from the date of the accident to pursue a claim with the Personal Injuries Board. This suggests claims made after the 2 years will be invalid.

Despite this, there are exceptions for kids (under 18), people who do not discover their injury/injuries straight away, people who cannot identify the respondent and people suffering from a disability. If a child is injured, they may let their guardian or parent pursue the claim for them. Also, they may wait till they turn eighteen to pursue the claim themselves. A letter must be given to the Injuries Board explaining your limitation and they will give you a letter back conforming that time will be stopped and restarted.

Important Point

A claim letter should be given to the respondent within 2 months of the accident

STEP 2:

You or your solicitor will send an application to PIAB. From this point onwards you will be identified as a claimant. An application online to the PIAB costs €45. An application by the post will cost €90. Additionally, you will be charged for a medical report from your doctor/GP will be.

The parties or party you are bringing the claim against will be identified as the respondent. It is important to identify the right respondent. Once you have identified all parties involved, you need to get a medical report from your GP/Doctor. The medical report will contain the type of injury sustained, the degree of harm suffered, improvement, deterioration of the condition and a plan for recovery. If you have a solicitor, they will execute this task for you.

For a PIAB application to be completed, the following information will be sufficient.

- 1 Address, names, and contact information of witnesses (if any).
- 2 Photographs of the area, accident, vehicle, items, and any injuries sustained.
- 3 Contact information of the respondent.
- 4 Medical report
- 5 Name of Gardai station and the names of Gardai that dealt with your report.
- 6 Receipts of loss of wages or any other form of income such as social welfare payments.
- 7 Future loss of earnings
- 8 Additional costs spent due to the injury (medical treatment, travel expenses etc.)

◉ What Happens If I Contribute To The Injury?

When you contribute to your injury, you may be held to be contributory negligent. This means that you will not receive the full amount of compensation. However, you will receive damages in proportion with your degree of fault. An instance of this is not wearing your seatbelt during a collision.

The below picture illustrates a potential injury where one party may be contributory negligent. If the car continues to turn and crashes into the motorcycle and injures themselves, the courts may see this as being contributory negligent.



STEP 3:

Once your application is received by the PIAB, the respondent in the case will be informed of your claim. The PIAB has nine months to report back to you from the date that the respondent consented to the evaluation. This can be spread out to 6months as a last resort. The respondent can consent to having the claim examined. In a situation where the respondent does not consent with the investigation, you can take the claim to court.

If the respondent consents, the PIAB will suggest a certain amount of compensation to be paid out. If agreed by both parties, a cheque will be given by the respondent, and the claim is settled. Despite this, the sum of compensation does not have to be accepted. You will have 28 days to come to a decision. If either party does not agree on the number, then your case will go to

court. You have 6 months to file court proceedings. There is no requirement to have a solicitor however, it is best advised as they are specialized in that area, and you will receive the best chance at winning. When the PIAB is presented with your application, they will inform the respondents insurance company of the claim. If the insurance company is satisfied to proceed, they will inform the PIAB. If they are not satisfied to proceed, the assessment will not continue. An authorization will be filed and at this stage it is your choice if you want to go to court.

► How Long Will The Procedure Be?

1. The degree of harm suffered
2. The type of insurance company
 - Backlog of cases may suggest the insurance company could take longer than expected
3. Documents that need to be gathered
 - Your doctor or Gardai may have a backlog of reports to issue and considering the severity of both jobs it may take a longer than expected.

The PIAB in assessing damages, will have regard to the Book of Quantum. However, new guidelines for personal injuries awards will apply from 24th April 2021 onwards. These rules decreased how much General damages are worth with only serious injuries being awarded more than €60,000. These will be processed in the High Court.

Compensation amounts:

The District Court can provide maximum €15,000.

The Circuit Court can provide €15,000 to €60,000.

The High Court can provide €60,000 to an unlimited sum.

STEP 4:

WHAT HAPPENS IF I DO NOT CONSENT TO THE ASSESSMENT FROM THE PIAB?

In the circumstances where you do not consent to the PIAB assessment, your solicitor may instruct a barrister to your case if it goes to the higher courts. They will get all obtain all documents and draft a personal injuries summons. This sets out the details of your case.

Depending on the type of injury sustained, degree of harm, your barrister's/solicitor's opinion on a success rate, and your compensation expectation your barrister/solicitor will decide if the case will be brought in the High Court or Circuit Court. From this point onwards you will be identified as the plaintiff.

The respondent will be identified as the defendant. If needed, more medical reports may be introduced. Despite this, your case may be settled by negotiations in the meantime. Also, mediation may be used as the High Court may order it with the consent of both parties.

STEP 5:

WHAT IS THE COURT PROCEDURE FOR A PERSONAL INJURY CLAIM?

As going to court is a stressful and worrying process, your solicitor will ensure that you know the following court procedure: This will make your hearing easier and less stressful.

On the day of the hearing, there will be a chance to close your case as both parties will meet and discuss to settle. It is up to you if you want to agree or disagree with their offer. You will also meet with your solicitor and barrister to go through your case. If you do not accept their offer, your hearing will go ahead as planned.

Important Point

If the defendant admits their part early, the case will be closed early. However, some injuries are complex and difficult to settle so it may take several years to settle.

A hearing number will be issued to you. As this is a crucial time in your life, your solicitor will keep in constant contact with you by meetings and phone calls. Once your solicitor is notified of a date for court, they will inform you immediately.

Your barrister/solicitor will begin by opening your case as you brought the case to the court. They will lay out vital details such as the degree of harm suffered, the type of injury, improvement or not improving.

Once they are done, you will give your side of the incident, how the incident affected you in the past, in the future, any medicine prescribed, and treatment given. Also, doctors may give evidence. Your Barrister will supply questions to your doctor first. After some responses, the defendant's side will cross examine your doctor. Also, the defendant may ask your doctor their own set of questions.

The defendant has an opportunity to give their side of the situation and their barrister will cross examine you. All other witnesses will give a statement and will be given a supply of questions be answered. Next, the defendant will follow the same procedure you went through regarding witnesses and cross examination.

Upon all evidence being given to the courts, the trial judge will decide who is liable. Firstly, the judge will see if there was any sign of the Plaintiff contributing to their negligence. If so, damages will be awarded in proportion to their fault in the accident. If degree of fault cannot be established, the judge will impose equal fault on both parties. Also, the judge will decide who will pay the legal costs

► Legal Costs:

As a client, you will face legal fees and additional costs. As mentioned above, the PIAB application is 45 euro, and you will be charged for gardai and medical reports. Your solicitor will inform you of all potential costs before you consent to anything. If you are successful in your claim, the defendant will pay your legal costs as well as the sum of money owed to you. Despite this, you must pay your own witnesses. If you are not successful in your claim, you must pay your own legal costs.

