

# Judicial Council Guidelines Adopted in Ireland

March 2021

# Background

Personal injury awards in Ireland are significantly higher than awards in England & Wales, Scotland, and Northern Ireland. The Irish courts are often perceived to be pro-Plaintiff.

Currently injury awards are guided by reference to the Book of Quantum which was last updated in 2016. Rules introduced under Section 22 of the Civil Liability and Courts Act 2004 mandated the courts to consider the Book of Quantum when assessing general damages.

Change was inevitable. There has been a noticeable trend for the Irish Court of Appeal to substantially reduce injury awards, with one of the more notable recent examples being *Emma McKeown v Alan Crosby and Mary Vocella [2020] IECA 242*, in which Judge Noonan reduced the Plaintiff's damages for whiplash from €76,000 to €41,000, noting that:

***"It cannot be fair to either plaintiff or defendant that the value of their case depends on the identity of the trial judge. Personal injury litigation should not be a lottery and plaintiffs and defendants alike are entitled to reasonable consistency and predictability."***



# What will change

The Judicial Council Guidelines (the Guidelines), which have been drafted by a committee of seven judges, chaired by the High Court President, Ms Justice Mary Irvine will replace the Book of Quantum. They could be implemented within a matter of weeks, possibly on 1st April 2021 and will be reviewed every three years.

The Guidelines, which will apply to all cases that have not yet been assessed by the Personal Injuries Assessment Board (PIAB), will substantially reduce injury awards for relatively minor soft tissue injuries.

Awards for catastrophic injuries have been slightly increased, along with awards for some more serious injuries.

Psychiatric injuries are addressed in some detail. This should lead to more psychiatric injury claims being resolved within the Injuries Board, who currently immediately release claims in which the injuries are entirely of a psychiatric nature. This should mean that fewer claims involving psychiatric injuries are litigated, thus avoiding legal costs.

The Guidelines provide more detail than the Book of Quantum, which left more room for judicial discretion. The judiciary will retain some discretion but, they are obliged to have regard to the Guidelines and any departure from them must be addressed within their judgment.



**To illustrate the impact on indemnity spend, we set out the relative figures for soft tissue injury to the neck or back in the tables below.**



### Book of Quantum 2016

Neck	
Minor – substantially recovered	Up to €15,700
Minor – full recovery expected	Up to €19,400
Moderate	€20,400 - €30,200

Back	
Minor – substantially recovered	Up to €14,800
Minor – full recovery expected	Up to €18,400
Moderate	€21,400 - €34,400

### Judicial Council Guidelines 2021

Neck	
Minor – recovery within 6 months	€500 - €3,000
Minor – exacerbation & recovery under 1 year	€3,000 - €6,000
Minor – 1-2 years	€6,000 - €12,000
Moderate – under 5 years	€12,000-€23,000

Back	
Minor – substantial recovery within 6 months	€500 - €3,000
Minor – substantial recovery within 6 months – 1 year	€3,000 - €6,000
Minor –recovery to nuisance level 1-2 years	€6,000 - €12,000
Minor – no surgery recovery 2-5 years	€12,000 - €20,000
Moderate – Injuries to back less severe than those included in higher brackets. These will include injuries causing disturbance of ligaments and muscles causing pain and discomfort, soft tissue injuries resulting in a prolonged exacerbation and/or exacerbation of a pre-existing back conditions, usually by 5yrs or more.	€20,000 - €25,000

**As you will see, awards are likely to bring most claims for minor soft tissue injuries within the Irish District Court jurisdictional limit of €15,000, which attract scale costs, considerably reducing the overall value of the claim.**

**The full Judicial Council Guidelines can be found [here](#)**



# Comment

The impact of the guidelines is unlikely to be evident until the older, post-PIAB cases have progressed through the court system, and given the extent of the backlog due to Covid-19 restrictions, there could be a two-tier system in operation for some time.

There will be considerable interest from all parties involved with litigation in Ireland and in Northern Ireland, where minor soft tissue injuries make up the lion's share of injury claims in both jurisdictions.

Given the whiplash reforms that come into effect in England & Wales on 31 May 2021 and the new Guidelines in Ireland, Northern Ireland is emerging as one of the few jurisdictions where injury awards remain largely unscathed. The Fifth Edition of the Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland, or the Green Book as it is known, was published in February 2019 and it bucked the trend, increasing many injury awards, as we reported in March 2019.

**Could Northern Ireland emerge as the forum of choice where the claimant has a choice of jurisdictions?**

Commenting on the proposals, Eva Bashford, partner stated:

***“Large injury awards and high legal costs have been blamed for the high cost of insurance in Ireland, along with lack of competition as many insurers are reluctant to enter the Irish market. Insurers and businesses will welcome awards being brought into step with other jurisdictions, and the guidelines will provide greater clarity when reserve setting, as at present, awards can vary considerably depending on the judge drawn on the day.”***

Commenting on our work in Northern Ireland, Matthew Fitzpatrick, partner, and Head of our Belfast office, stated:

***“We are keeping a watchful eye on changing plaintiff tactics and behaviours, to ensure that there is no claims inflation through prognosis creep within medical reports, or additional injuries being claimed for to avoid the new Guideline awards. Where we see that happening, we will adopt our robust tactics of thorough investigation and challenge in the appropriate cases to assist our insurer clients in defending unjustified claims.”***



# Key contacts

For more information on the  
Guidelines or their impact,  
please contact Eva or Matthew:



**Matthew Fitzpatrick**  
**Partner & Head of Northern  
Ireland Office**  
02890 912 959  
matthew.fitzpatrick@h-f.co.uk



**Eva Bashford**  
**Partner**  
01614 131 892  
eva.bashford@h-f.co.uk

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