

A Review of
The Judicial Council Personal Injury Guidelines

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1 Background

1.1 On 28 April 2020 pursuant to Section 18 of the Judicial Council Act 2019 the Personal Injury Guidelines Committee was established. The Committee was charged with preparing new guidelines for the amounts to be awarded in personal injury cases. Pursuant to Section 19 of the Act, the Committee were obliged to have regard to the following:

- i. The level of damages awarded for personal injuries by Courts in the State;
- ii. The level damages by Courts in such places outside of the State that the Committee or the Board of the Judicial Council considers relevant;
- iii. The principles for the assessment and awarding of damages for personal injuries as determined by the High Court, the Court of Appeal and the Supreme Court;
- iv. Guidelines relating to the classification of personal injuries;
- v. The need for more consistency in the level of damages awarded for personal injuries; and
- vi. Such other factors as the Committee or the Board considers appropriate.

1.2 In preparing the guidelines, the Committee undertook substantial research into the law of damages in personal injury cases both in this jurisdiction and other jurisdictions. They took into account the public concern regarding the level of Court awards in personal injury cases. Notwithstanding the fact that only 0.4% of all personal injury cases actually resulted in an award by the Court, the Committee were mindful that it was the level at which Courts had awarded damages that drove settlements. A difficulty in preparing the guidelines which was encountered by the Committee was that there very few written judgments in personal injury cases which set out the actual injuries sustained, and the level of damages awarded as a result. This is mainly because many such decisions are given by the Circuit Court and are given *ex tempore*. As such, whilst much of the information was somewhat anecdotal, Judges from all jurisdictions were surveyed and asked for their experience.

**Chart 1 - Means by which claims were closed by insurers and indemnifiers
2017-2019 in %**

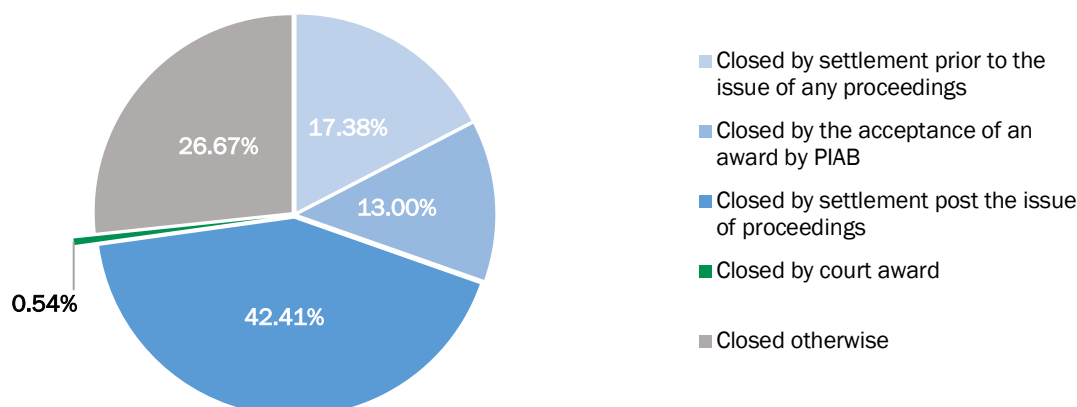


Table 1 - Means by which claims were closed by insurers and indemnifiers 2017-2019

Closed by settlement prior to the issue of any proceedings	10,332
Closed by the acceptance of an award by PIAB	7,729
Closed by settlement post the issue of proceedings	25,208
Closed by court award	318
Closed otherwise	15,850
Total number of cases closed	59,437

- 1.3 The Committee were however eager to point out that insofar as it is alleged that a small percentage of Court awards drive settlement figures, recent jurisprudence in the Court of Appeal had led to significant reductions in many of the awards made by the High Court at first instance. In this regard they pointed to *Hume v. Crosby (2020) IECA242*, *Payne v. Nugent (2015) IECA268* and *Martin v. Dunnes Stores (Dundalk) Limited (2016) IECA85*.
- 1.4 The Committee reported to the Judicial Council with its findings and presented to the 146 Judges in the State its draft Guidelines. These draft Guidelines were then considered by the Judges over a series of Zoom meetings before being formally adopted on Saturday 6 March 2021 by a majority of 83 to 63.

- 1.5 The Minister for Justice brought the Guidelines to Cabinet on Tuesday 9 March 2021, and it is proposed that they will be signed into law with amendments to the Judicial Council Act 2019 and the Personal Injuries Assessment Board Act 2003 being required.
- 1.6 Once signed into law, the Guidelines will apply to all new cases that have not yet been assessed by the Personal Injuries Assessment Board. A Plaintiff who has rejected an award made under the current legislation will still have his / her case assessed in line with the book of quantum as it currently stands. As such, it is important to recognise that the Guidelines will not have retrospective effect.

2. The Committee

2.1 The Judicial Council of Ireland is made up of all members of the Judiciary. The Personal Injuries Guidelines Committee was comprised of the following judges from each jurisdiction, each of whom had had been nominated by the Chief Justice:

- Ms Justice Mary Irvine (Chair), Supreme Court
- Mr Justice Seamus Noonan, Court of Appeal
- Mr Justice Michael McGrath, High Court
- Mr Justice Senan Allen, High Court
- Judge Jacqueline Linnane, Circuit Court
- Judge Sean O'Donnabháin, Circuit Court
- Judge Brian O'Shea, District Court

2.2 At the outset, the Committee stated that they were cognisant of the need to ensure that any Guidelines which were produced were anchored in reality. Furthermore, the Committee was aware that there are many interest groups and individuals who would have had an interest and may wish to have input into the process. The Committee made a decision not to request submissions from any interest group or individual so that it could avoid any sense of lobbying and maintain its own independence at all times.

3. The Process

- 3.1 In determining the levels of general damages to be awarded to Plaintiffs, the Committee placed significant emphasis on the legal principles relating to general damages. In the first instance, consideration was given to the principle of *restitutio in integrum*, the principle that any compensation should place the injured party in the same position they would be in had the wrongdoer's act or omission not occurred. In circumstances where a Plaintiff has suffered financial loss, such as loss of earnings, this principle is easy to apply and ought to be applied with consistency without too much difficulty. However, the principle is far more difficult to implement with regard to damages and is further complicated by the subjective views different plaintiffs might have on the effect an injury had had on their life and indeed subjective views of an individual judge looking at an individual plaintiff.
- 3.2 The Committee placed significant weight on the principle of proportionality. Irish Courts have consistently stated that awards must be proportionate in light of the injuries sustained by the Plaintiff in each individual case but also proportionate to levels of awards made in other cases. In this regard, the principle of proportionality was examined *inter se* and the relationship between awards and cases concerning catastrophic injuries was differentiated from those cases where the injuries could not be considered catastrophic. In Ireland, it is common that the maximum award of general damages for personal injuries is to be reserved for the most catastrophic cases and a cap on such award has been in place for some time. The Committee also considered that awards must be fair to the Plaintiff as well as the Defendant and should be proportionate to the prevailing social conditions. This principle was set out by Denham J. in case of *M.N. v. S.M. (2005) 4IR461*.
- 3.3 The Committee considered the case of *McNamara v. ESB (1975) IR1* in which the Supreme Court set aside an award of £40,000 for general damages in a case where an 11 year old plaintiff had to have one arm amputated above the elbow and the other arm amputated below the elbow due to severe electric shock. In that case, at Page 38, Griffin J. observed:

"However, without in any way attempting to minimise the severity of the injury and the incapacity suffered by him, it cannot be denied that the injuries suffered by the Plaintiff, serious though they are, are not comparable with a case of quadriplegia or a paraplegia: although there have been very many such cases in recent years, in none of them have general damages of £40,000 been awarded".

- 3.4 Similar comments were made by McCarthy J. in *Reddy v. Bates (1983) 1IR141*, a case which a 24 year old plaintiff suffered severe damage to the stem and the upper part of her brain which left her unconscious for upwards of 3 weeks and unaware of her surroundings for an additional 8 weeks. She also developed a rare disease where new bone tissue formed onto existing bones and joints, limiting her movement and requiring surgery. At Page 153 McCarthy J. stated:

“She is, obviously, a rather pathetic young woman who has been grievously injured; she has had to face some 40 or 50 years of life suffering from severe impairment of that enjoyment of life to which she was entitled. She is, however, from being as disabled as a paraplegic or a tetraplegic; there are many things she can do which are quite outside their compass. It may well be that awards of the size that she obtained can be justified in the case of those who sustained such dreadful paralyzing injuries, but such is not the case here.” [check this quotation – something is missing I think]

- 3.5 The principles of proportionality *inter se* were recently affirmed by the Supreme Court by *Morrissey v. HSE and Others (2020) IESC6* where at Paragraph 14.28 Clarke CJ. observed:

“I should say that I have come to that view while considering that the proper approach to the limit for damages for pain and suffering is the one which sees that limit as the appropriate sum to award for the most serious damages. This is therefore the sum by reference to which all less serious damages should be determined on a proportionate basis, having regard to a comparison to the injuries suffered and those which do, in fact, properly qualify for the maximum amount. The point which I have sought to make, however, is that the type of injuries which do not properly qualify for the maximum amount may nonetheless come into different categories..... That consideration applies equally to injuries of the most serious type and, thus, it is appropriate to consider the injuries suffered by Ms Morrissey to be of that more serious type even though they differ in character to other types of injuries which can also properly be characterised as being of the most serious type.”

- 3.6 Having examined the jurisprudence, the Committee were satisfied that two things must be established. Firstly, awards must be proportionate as between each other and secondly that the top level of awards must be reserved to exceptionally calamitous injuries as those plaintiffs must be singularly compensated when compared to those who sustained lesser injuries. The Guidelines have therefore been constructed around the principle of internal proportionality.

- 3.7 In addition to the above, the Committee also considered two other forms of proportionality. The first was that the award must be fair to the plaintiff as well the defendant. In the case of *Synnott v. Quinnsworth (1984) ILRM523* O’Higgins CJ observed that an award of general damages cannot

“be so high so as to constitute a punishment for the infliction of the injury, rather than a reasonable, if imperfect, attempt to compensate the injured”.

- 3.8 The other aspect of proportionality which must be considered as per Denham J. in *N.M. v. S.M.* is that an award must be proportionate to social conditions bearing in mind the common good.

3.9 The Committee were satisfied that in setting bands rather than figures, individual Judges would be in a position to determine an award of general damages based on the pain and suffering of the individual plaintiff's own experience. This has come with a health warning however, that if Courts are too quick to depart from the Guidelines, awards for minor injuries could soon overtake awards for moderate injuries and awards for moderate injuries overtaking those for severe injuries. Thus, proportionality must be considered in setting the width of the brackets as well as the jurisdiction of the Courts to deviate from them.

4. How the figures within the Guidelines were Calculated

- 4.1 As stated above, owing to the fact that the vast majority of awards in personal injury cases in the jurisdiction are made by way of *ex tempore* judgments, it was not possible for the Committee to compile an accurate tabulation of injuries and the associated awards made. Therefore, the Committee approached the calculation of the guidelines from the top down.
- 4.2 With regard to catastrophic injuries, there has been a comprehensive Judicial treatment of awards of general damages and a number of detailed Judgments have been delivered in this area. In the 1984 case of *Synnott*, the Supreme Court reduced an award of £800,000 to £150,000 for a young man who had been rendered quadriplegic as a result of a road traffic accident. The plaintiff was totally dependent on others as a result of the defendant's negligence and was left totally conscious of all that he had lost as a result of the accident. In the course of its Judgment, the Court appeared to be wary of making awards that were too high as they might be seen to amount to a punishment for the infliction of the injury rather than a reasonable effort to compensate the injured party. As a result of this, the sum of IR£150,000 awarded in *Synnott* was subsequently viewed as the starting point for the cap on general damages in catastrophic injury cases. In 2005, the £150,000 limit was increased to €300,000 and in 2009 Quirke J. in the case of *Yun v. MIBI and Others* increased the figure to €500,000 taking into account the social and economic outlook as at that time, although it must be borne in mind that Quirke J actually reduced the figure down due to the fact that Ireland had just entered into a period of severe economic recession in 2008 which he considered was likely to continue for a further 5 years.
- 4.3 The figure of €500,000 was considered most recently by Clarke CJ in the *Morrissey* case discussed at paragraph 3.5 above where the Supreme Court declined to interfere with the award. This being said however, it should be borne in mind that although the Court declined to interfere with the award, the Court did not go so far as to state that €500,000 is the present upper limit for awards of general damages in catastrophic injury cases.
- 4.4 The Committee therefore, had to address this questing in drafting the Guidelines. In doing so, the Committee carried out two exercises. In the first instance, it obtained an expert report pertaining to the current economic situation in the State from Economist, Colm McCarthy. The second step was that the Committee took due regard to awards of general damages that had been made by Courts outside the State. In this regard they considered a European comparison, and this can be seen from the table below.

Table 2 – Awards of general damages in European jurisdictions in catastrophic injury cases in EUR

Country	Lower bracket (if given)	Top bracket
Ireland		€ 500,000.00
Austria		€ 310,000.00
Belgium (QP)		€ 359,152.40
Bulgaria (QP)	€ 204,000.00	€ 382,500.00
England and Wales (QP)	€ 351,153.09	€ 379,100.00
Germany (CP)		€ 800,000.00
Germany (QP)	€ 250,000.00	€ 500,000.00
Latvia	€ 3,000.00	€ 10,000.00
Netherlands		€ 140,000.00
Northern Ireland (QP)	€ 545,335.63	€ 807,253.05
Slovak Republic (cap)		€ 364,680.00
Slovak Republic (CP)	€ 107,900.00	€ 260,000.00
Slovak Republic (QP)		€ 79,014.00
Slovenia (CP)		€ 398,452.00
Slovenia (QP)	€ 325,496.00	€ 395,084.80

4.5 Having considered the situation in Europe and in England and Wales, the Committee came to the view that €500,000 was not out of line with other European countries with a similar standard of living and was, as such, an appropriate figure. However, it should be noted that in the guidelines themselves the band for quadriplegia now stands €400,000 - €550,000, an increase of €50,000 at the top level.

4.6 In assessing general damages involving paralysis such as quadriplegia and paraplegia consideration ought to be given to the following criteria:

- i. Age;
- ii. Life expectancy;
- iii. Extent of residual movement;
- iv. Pain;
- v. Effect on other senses;
- vi. Psychological sequelae, including depression;

- vii. Effect on familial and other relationships;
- viii. Level of independence.

- 4.7 The Committee however, were faced with a far more difficult task in attempting to ascertain the size of awards that should be made in cases involving less serious injuries. In an effort to remedy the lack of data in this area, the Committee sought the assistance of the relevant insurers and indemnifiers who made documentation available to the Committee. In other efforts, the Committee requested all District, Circuit and High Court Judges to examine each case in which they delivered an *ex tempore* judgment and complete a detailed form in which the circumstances and the particulars of the injury and ultimately the award granted were recorded. This process commenced in January of 2020 and ran to 31 July 2020.
- 4.8 The Committee also undertook a comparative exercise as to how Irish awards compare to awards made in other jurisdictions. The Committee engaged a senior counsel Sarah Moorhead SC who recommended that the Committee should look to Northern Ireland, England and Wales as the most suitable comparator countries as both were common law. The committee also looked to civil law jurisdictions and considered personal injury awards in Germany as another European Country and also Singapore.
- 4.9 At the end of this exercise, the Committee had obtained data in respect of 328 cases, where the Irish Court's award was assigned to it together with an assessment by a member of the Committee as to the likely award the case would have received in the other 4 jurisdictions considered.
- 4.10 A leading analytics provider, Verisk, was then asked to carry out a statical analysis of the data in order to determine how Irish awards compare to those in foreign jurisdictions. Having assessed the data it was concluded that Irish awards are about 1.2 - 1.3 times higher than Northern Irish awards and about 2.3 times higher than English and Welsh awards. It transpired that Irish awards were also higher than their German and Singaporean counterparts.
- 4.11 Based on the results of the analysis conducted, the Committee were satisfied that the Guidelines have been set in a manner which is proportionate and fair to both plaintiffs and defendants, which is closely aligned with awards made for similar injuries in comparator jurisdictions but more closely related to the Irish standard of living. The Committee also hope that the Guidelines will promote predictability and consistency in awards of damages.

5. Summary of the Guidelines

5.1 The new guidelines have 12 different categories of injury, each with sub-categories therein. They can be set out as follows:

1. Injuries resulting in foreshortened life expectancy
2. Injuries involving paralysis
3. Head injuries
4. Psychiatric damage
5. Injuries affecting the senses
6. Injuries to internal organs
7. Orthopaedic injuries
8. Chronic pain
9. Facial injuries
10. Non – facial scarring and burns
11. Damage to hair
12. Dermatitis and other skin conditions

5.2 The guidelines themselves also set out the general principles to be applied in making and assessing an award of general damages.

5.2.1. Injuries resulting in the **foreshortening of life expectancy** are considered to be catastrophic cases and as such can attract up to €550,000 in general damages.

5.2.2. Injuries involving **Paralysis** attract general damages in the region of €320,000 - €350,000.

5.2.3. **Severe brain injury** cases are again considered to be catastrophic injuries and will attract damages up to €550,000.

5.2.4. In the **other categories of brain damage**, classed as '*minor brain damage*' or '*head injury*', damages will range from €500 - €400,000. The guidelines set out the various factors to be taken into account when assessing the level of damages and sets out a detailed series of bands taking into account recovery, ongoing impairment and any permanent and lasting conditions.

5.2.5. **Psychiatric damages** will range from €500 - €170,000. At the lower level, the band for minor psychiatric damages is between €500 - €15,000. The guidelines also set out a band for post-traumatic stress disorder ranging from €500 - €120,000 for PTSD. There are 4 bands for PTSD, severe PTSD, serious PTSD, moderate PTSD and minor PTSD. Minor PTSD cases are classified as those that will resolve within a period of 2 years and will attract damages up to €10,000.

5.2.6. Injuries **affecting the senses** will range from €500 for minor injuries up to €500,000 for total blindness and deafness.

- 5.2.7. Injuries to **internal organs** are again set out within a number of different bands starting out at €500 for plural plaques (often associated with exposure to asbestos) up to €210,000 for the most serious injuries including the removal of a lung and / or serious heart damage with serious, prolonged pain and suffering and permanent scarring, physical disability as well as a reduction in life expectancy.
- 5.2.8. The guidelines also consider issues dealing with the male **reproductive system**, the female reproductive system, kidneys, bowel, bladder, spleen and hernia type injuries.
- 5.2.9. Of note is the level of damages for an **uncomplicated, indirect hernia** with no other associated injury or damage. This type of injury will now attract general damages in the region of €4,000 - €12,000.
- 5.2.10. With regard to **minor neck injuries, including whiplash-type injuries**, the level of damages will range from €500 - €12,000. This range within this bracket will take into account injuries where substantial recovery takes place within 1 or 2 years and will also apply to short-term acceleration and / or aspiration of pre-existing conditions.
- 5.2.11. **Moderate neck injuries** will attract general damages in the region of €12,000 - €23,000. This however may increase to €50,000 in more serious, soft tissue injuries such as a wrenching-type injury and disc lesion of the more severe kind.
- 5.2.12. The band for **severe back injuries** will stand at €150,000 - €300,000. The top level being reserved for injuries that are severe but which fall short of paralysis.
- 5.2.13. **Minor back injuries** will attract general damages in the region of €500 - €20,000 and again, detailed guidelines are given in respect of recovery times and whether or not surgery is required.
- 5.2.14. **Shoulder injuries** will start at €500 and will rise to €150,000 for the most severe injuries. At the severe end, injuries such as damage to the brachial plexus nerves that may result in paralysis of the arm, lack of muscle control in the arm, hand or wrist or other symptoms causing significant disability will attract damages from €100,000 – €150,000. At the lower end, soft tissue injuries to the shoulder causing considerable pain but where there has been an almost complete recovery and a simple fracture of the clavicle with a good recovery will range from €500 - €12,000 where recovery takes place within 2 years of the date of the accident.
- 5.2.15. There is a significant band for injuries involving **amputations**. An amputation of both arms at shoulder level will attract the maximum award of general

damages in this category which stands at €475,000. At the lower end of the spectrum in this bracket are below elbow amputation of one arm which will attract general damages of €100,000 - €150,000.

- 5.2.16. A **severe wrist injury** will attract damages of €60,000 - €80,000 where there is a severe or disabling injury resulting in **complete** loss of function in the wrist. A deformity may increase the award, depending on the severity. At the lower-end of the wrist injury scale, damages will start at €500 where a substantial recovery is made within 6 months.
- 5.2.17. Again, there are a number of different brackets for **leg injuries** with the minor category having a lower level for soft tissue injuries, lacerations, cuts, bruises and contusions which will have recovered completely or almost completely will attract damages of €3,000 - €7,500. A simple fracture of a femur with no damage to articular surfaces will attract damages in the region of €12,000 - €20,000.
- 5.2.18. **Knee injuries** will have an upper limit of €110,000 in cases where there has been disruption of the joint, the development of osteo-arthritis, gross ligamentous damage, lengthy treatment, considerable pain and loss of function or an arthroplasty or arthrodesis has taken place or is inevitable. At the lower end of the knee injury bracket, injuries considered are dislocation, torn cartilage, meniscus which results in minor instability, wasting, weakness or other mild future disability damage will range from €500 - €35,000.
- 5.2.19. Section 8 of the guidelines deals with **chronic pain** such as fibromyalgia, chronic pain syndrome, chronic fatigue syndrome, conversion disorders and somatic symptom disorders. Such cases will attract general damages of between €30,000 - €95,000.
- 5.2.20. **Facial injuries** will have an upper level of €200,000 for severe facial scarring resulting in disfigurement dropping to €500 for scars where the effect is minor only.
- 5.2.21. Loss or damage to a Plaintiff's back **teeth** will attract damages of levels between €1,500 - €3,000 per tooth, while loss or serious damage to several front teeth will attract damages to an upper level of €30,000.
- 5.2.22. **Scarring** on the leg, arm or hand with some minor cosmetic deficit will attract damages from €1,000 - €40,000 while a number of different scars on the legs, arms, hands, back or chest which can be considered disfiguring will attract damages in the range of €30,000 - €80,000.
- 5.2.23. **Hair loss** will attract damages of up to €22,000 but less serious cases will start out in a bracket of between €500 - €12,000. This will also apply to cases where hair has been pulled out, leaving bald patches.

5.2.24. **Dermatitis and other skin conditions** will attract damages from €500 - €55,000. At the upper end, injuries envisaged are dermatitis of both hands with cracking and soreness affecting employment and domestic capability. At the lower end, injuries involving itching, irritation of and / or rashes on one or both hands but resolving with 6 months of treatment will be considered at the lower end.

5.3 The above is a very high-level summary of the new guideline and the various brackets contained therein and it should be noted that the guidelines themselves run to 78 pages with multiple brackets and sub brackets under each heading.

5.4 The following table provides a brief comparator of how the figures contained within the new Guidelines compare to those within the Book of Quantum.

Injury	Judicial Council Band	PIAB Band
Foreshortening of life expectancy	up to €550,000	N/A
Paralysis	€320,000 - €550,000	Up to €450,000
Most severe brain damage	up to €550,000	N/A
Other categories of brain damage,	€500 - €400,000	0 - €450,000
Psychiatric damages	€500 - €170,000	N/A
Injuries to the senses	€500 - €500,000	N/A
Internal organs	€500 - €210,000	€13,400 to €93,900
Uncomplicated, indirect hernia	€4,000 - €12,000	€0 to €25,700
Minor neck injuries	€500 - €12,000	€0 to €19,400
Moderate neck injuries	€12,000 - €23,000	€34,000 - €52,000
Injury	Judicial Council Band	PIAB Band
Soft tissue to neck a.k.a. Whiplash type injury	€500 – €50,000	€0 to €52,000
Severe back injuries	€90,000- €140,000	€52,000 - €92,000
Minor back injuries	€500 - €20,000	€0 to €18,400

Fracture of the clavicle with a good recovery	€500 - €12,000	€22,100 to €44,000
Amputation of arm(s) and or leg(s)	€100,000 – €400,000	€0 to €92,900
Wrist injury	€500 - €80,000	€0 to €77,600
Knee Injuries	€500 – €110,000	€0 to €81,600
chronic pain (fibromyalgia etc.)	€30,000 - €95,000.	N/A
Facial injuries (including scarring and disfigurement)	€500 - €200,000	€11,000 to €80,200
Hair loss	€500 - €22,000	N/A
Dermatitis	€500 - €55,000	€0 to €53,700

6. Practice and Procedure Under the new Guidelines

- 6.1 The Personal Injuries Guideline Committee has given direction as to how the Guidelines ought to be used in a Court setting. It is envisaged that at the conclusion of every case the trial Judge should ask Counsel for each party to identify a reference to the dominant injury sustained and the relevant extract from the Guidelines, which most closely matches that, as has been supported by the evidence.
- 6.2 Submissions should then be made by Counsel as to where, within the relevant bracket of damages, the plaintiff's injuries ought to be placed in terms of severity, i.e. top, middle or bottom. Regard is to be had to the evidence, the presence or absence of other or lesser injuries and all other relevant considerations.
- 6.3 The trial Judge, having considered the evidence, should then reach his or her findings of fact concerning the Plaintiff's injury and should then proceed to consider how, in light of those findings and the submissions made by Counsel, the Guidelines should interpret the Court's award.
- 6.4 The obligation on the part of the trial judge to have regard to the Guidelines is no longer discretionary. It is absolute and he or she must consider whether the justice of the case warrants award above the level of damages proposed for that or a similar injury in the Guidelines. If a Judge wishes to depart from the Guidelines, he or she must set out their reasons for so doing.
- 6.5 In assessing cases of multiple injuries, the appropriate approach for the trial Judge is to identify the injury and the bracket of damages which best resembles the most significant of the plaintiff's injuries. The trial Judge should then value that injury and thereafter uplift the value to ensure that the Plaintiff is fairly and justly compensated for all of the additional pain, discomfort and limitations arising from the lesser injury or injuries. Again, it must be borne in mind that for the reasons outlined above, the principle of proportionality must be considered when reaching the overall award of damages.
- 6.6 If a plaintiff has pre-existing conditions, that are aggravated by the injury for which the Court is assessing compensation, the Court should have regard to those pre-existing injuries, only to the extent to which the condition had been exacerbated and the duration of any increased symptomology as a result of the accident the subject matter of the proceedings.
- 6.7 In the unlikely event that the Court has to assess an injury which is not included in the Guidelines, the Committee has suggested that the structure of the Guidelines may provide assistance and the Court should have regard to them by reference to a similar injury based on the significance of the injury and the principle of proportionality.

6.8 The Committee have indicated that awards of damages made in respect of injuries not specifically covered by the guidelines will bear upon the review of the guidelines which is required to take place within 3 years of their adoption by the Council.

7. Adoption of Guidelines and the Effect of Adoption

- 7.1 As stated above, the Guidelines were approved by members of the Judiciary on 6 March 2021 and were subsequently approved by Cabinet on 9 March 2021.
- 7.2 Sections 98 and 99 of the Judicial Council Act 2019 amend section 54 of the Personal Injuries Assessment Board Act 2003 and section 22 of the Civil Liability Act 2004 respectively. Once those sections have been commenced, PIAB will no longer be responsible for publishing and reviewing the Book of Quantum.
- 7.3 The Amendment to Section 22 of the Civil Liability and Courts Act 2004, is understood to be as follows:

The Court shall, in assessing damages in a personal injuries action –
(1) Have regard to the Personal Injuries Guidelines (within the meaning of Section 2 of the Judicial Council Act 2019); and
(2) Where it departs from those guidelines state the reason for such departure in giving its decision

- 7.4 Upon the various amendments being adopted and signed into law, the Guidelines will immediately replace the Book of Quantum, which the Injuries Board has used to assess personal injury awards and to which judges have regard to as things stand. This has the net effect that the existing book of quantum remains in place until such time as the legislation is passed. Thus, cases that are currently being assessed by the Injuries Board, i.e., prior to the commencement of the legislation and / or cases that are already before the Courts will have general damages assessed in accordance with the existing Book of Quantum.
- 7.5 It will therefore likely take in excess of 12 months, if not longer, for the first cases in which the new guidelines are to be used to come before the courts and the true impact of their introduction to be assessed.