



Moloney & Co.
SOLICITORS

PEOPIL Country Report 2019 - Ireland

from Liam Moloney,
Irish Board Member

CONTINUING FALLOUT FROM THE IRISH PERSONAL INJURIES COMMISSION

The establishment of a Personal Injuries Commission was one of the key recommendations from a report of the Cost of Insurance Working Group approved by the Irish Government in January 2017. The Personal Injuries Commission was chaired by the former President of the Irish High Court, Mr Justice Nicholas Kearns.

The Cost of Insurance working group had previously identified measures that could be introduced in Ireland to help reduce the cost of motor insurance for consumers and businesses. In relation to personal injury claims, the report concluded that:

- Awards for personal injury claims represented a significant component of an insurance company's pricing model
- Soft tissue injury claims represented a large component of personal injury (PI) claims
- Severity and soft tissue claims can be difficult to diagnose
- Approaches that link diagnosis, treatment, prognosis and awards of damages should be examined.

The PIC held its first meeting in February 2017 to investigate some of these issues further. The PIC published two reports. The second and final report of the Commission was published on 18th September 2018 following its consideration by the Irish Government. The second report deals in the main with the benchmarking of Irish personal injury award levels and an examination of alternative compensation models in other jurisdictions.

I met with the Commission along with then AAJ President Kathleen Nastri and Linda Lipsen CEO who gave them their views on the US experience.

The first report of the PIC can be accessed through the following link: <https://dbei.gov.ie/en/Publications/Publication-files/First-Report-of-the-Personal-Injuries-Commission.pdf>

The second report recommended that a Judicial Council draw up guidelines for Judges on the issue of personal injury awards. The Judicial Council Bill is expected to be enacted by the end of this year and it will draw up non-binding guidelines for Judges. It is believed that the new award levels will be benchmarked in line with international standards.

There has been much commentary in Ireland about the issue of fraudulent or exaggerated claims, and the generous nature of our personal injury damages. The insurance lobby have waged a very strong campaign both in the media and amongst politicians to reduce damages awards. As a result the Courts are adopting a much more aggressive approach to fraudulent claims and also claims that lack merit. Insurance companies are also pursuing unsuccessful Claimants for costs. In Ireland, while we have contingency fees if a Claimant is unsuccessful, the Claimant has to pay the costs of the successful party unless there are exceptional circumstances.



IRISH POLITICIAN HAS TO WITHDRAW PERSONAL INJURY CLAIM!

A Government TD (member of Parliament) Maria Bailey became involved in a controversy earlier this year when she had to withdraw a personal injuries claim. Ms Bailey had instituted proceedings against a Dublin hotel alleging that she sustained personal injuries when she was caused to fall from a swing in the hotel's bar in July 2015. Her claim suggested that the swing should have been supervised and her Court papers stated that she was unable to run "at all" for three months after the incident. Ms Bailey insisted that she only wanted her medical expenses covered and was not looking for any extra damages. The claim was initiated in the Dublin Circuit Court where if she was successful in the proceedings, up to €60,000 in personal injury damages could have been awarded to her.

Ms Bailey had no option but to withdraw her case amidst a significant public backlash against her. This added to the public debate over whether such personal injury cases should ever succeed in Ireland or not. It was politically embarrassing also for Fine Gael the ruling party.



INSURERS PROFITS GO UP 1,300 % !

Recently the debate has turned somewhat, in that three leading insurance companies have announced record profits. These are Axa, Allianz and FBD and they represent 50% of the Irish insurance market. Axa made profits of €89m in Ireland in 2018 on a premium income of €770m. This gave it a profit margin of 11.5%.

FBD made profits of €50m in 2018, a margin of 13.4%, and Allianz made €37m in profits, a 7.4% margin. In fact profits jumped by 1,300% in 2017!

The continuing saga of high insurance premiums, whether Irish awards are excessive or not and insurers' high profits continue to dominate the media landscape.

