

Supreme Court confirms Personal Injury Guidelines are Legally Binding

April 2024

The Supreme Court, in *Delaney v The Personal Injuries Assessment Board, the Judicial Council, Ireland and the Attorney General [2024] IESC10*, has upheld the legality of the personal injury guidelines adopted by the Judicial Council on 06 March 2021 ('**Guidelines**'). However, a further finding by the court that the power given to the Judicial Council to make guidelines pursuant to section 7(2) g Judicial Council Act 2019 ('**2019 Act**') is unconstitutional in its present form means that any further changes to the Guidelines will require legislation by the Oireachtas.

Background

In April 2019, the appellant suffered injuries to her leg following a trip and fall on a public footpath. An application for assessment was made to the Personal Injuries Assessment Board ('**PIAB**') on 04 June 2019. At the time of the accident, the Book of Quantum was used to assess damages for injuries. However, when PIAB made its assessment on 14 May 2021, it applied the Guidelines, which were, by then, in force. PIAB recommended a figure of €3,000 for personal injury damages.

The appellant argued that if the Book of Quantum had applied, an award in the region of €18,000 - €34,000 was likely. A constitutional challenge was rejected by the High Court who noted that while the plaintiff had a right to have her damages





assessed in accordance with well-established legal principles, there was no constitutional right that entitled her to a particular sum of money. It also held that the Guidelines did not encroach on judicial independence.

The High Court judgment was appealed to the Supreme Court, who agreed that the case involved issues of importance that warranted a direct appeal to that court.

Supreme Court Decision

A majority of the seven judges who heard the appeal held that the Guidelines are legally binding on the basis that they were independently ratified by the Oireachtas and given legal effect by the enactment of section 30 of Family Leave and Miscellaneous Provisions Act 2021 ('**2021 Act**'). Three judges of the court stipulated that the Guidelines should only be departed from where there is no reasonable proportion between the Guidelines and the award which should otherwise be made.

However, a majority of the Supreme Court did find that the power given to the Judicial Council to make guidelines pursuant to section 7(2)g of the 2019 Act is unconstitutional in its present form on the basis it is contrary to the independence of the judiciary as guaranteed by Article 35.2 of the constitution.

In terms of PIAB's assessment of the appellant's claim, the Supreme Court held that the transitory provisions of the 2021 Act, which enabled PIAB to apply the Guidelines, are constitutional and PIAB acted properly and in accordance with law. The appellant had no vested property or personal rights to have her case adjudicated by PIAB under any earlier guidelines, i.e. the Book of Quantum.

Conclusion

While the Supreme Court finding that the Guidelines are legally binding will ensure there is no disruption to the current

assessment of claims, the judgment will have implications for the adoption of future guidelines. The current mechanism which allowed the Judicial Council to make guidelines is impermissible, so that legislative intervention by the Oireachtas will be required in due course.

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022

New York

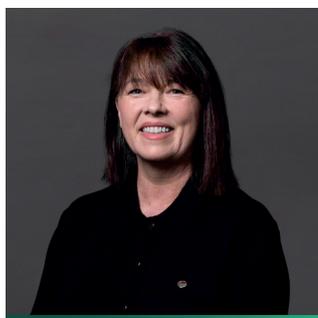
33 Irving Place
New York
NY 10003
United States
Tel: +1 646 770 6080

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006,
Japan
Tel: +813 6860 4885

CONTACT POINTS

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.



Lorna Kennedy
Partner | Dublin

E lorna.kennedy@dilloneustace.ie
T + 353 1 667 0022



Siobhan Lane
Senior Associate | Dublin

E siobhan.lane@dilloneustace.ie
T + 353 1 667 0022



Audrey Burke
Senior Associate | Dublin

E audrey.burke@dilloneustace.ie
T + 353 1 667 0022

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