

ALLIANCE FOR INCIDENCE DE SUMMARY OVERVIEW OF NEW JUDICIAL GUIDELINES

The new judicial guidelines are a “catalogue of injuries, i.e. listing the injuries from the very minor to the most catastrophic and prescribing brackets as to the level of damages each type of injury should attract” REF: [Guidelines Report](#)

These guidelines will replace the Book of Quantum with the intention of reducing payments of general damages for minor injuries and ultimately reducing the cost of insurance.

The full Guidelines are here: <https://judicialcouncil.ie/assets/uploads/documents/Personal%20Injuries%20Guidelines.pdf>

The Report on the Guidelines by the Personal Injuries Guidelines Committee is here:

<https://judicialcouncil.ie/assets/uploads/documents/Personal%20Injuries%20Guidelines%20Report.pdf>

TIMING OF IMPLEMENTATION

Right now, the old 2016 [Book of Quantum](#) guidelines still apply, but the Government has set up a 2-tier implementation schedule:

- Sometime in April (depending on passage of enabling legislation) the guidelines will apply to all new claims including applications already made to the Personal Injuries Assessment Board (PIAB), except where an assessment has been made.
- The old Book of Quantum will continue to apply where a PIAB assessment has already been made or where the claim has already gone to litigation.

SCOPE OF THE GUIDELINES

The new guidelines cover all the injury types included in the old Book of Quantum, plus new sub-categorisations to include reference to psychological injuries, scarring cases, chronic pain conditions and skin conditions. The levels of injuries within each category are more detailed.

TEMPORAL NATURE OF INJURIES

There is much more emphasis on the recovery time attributed to individual injuries. At the lower end of the scale, it is unlikely that claims will reflect injuries recovered within 0-6 months while overall there is a danger that such rigid timelines will act as a “roadmap for plaintiffs”.

POTENTIAL IMPACT ON COMPENSATION PAYMENTS

The Alliance’s updated analysis of a basket of commonplace minor injuries suggests a reduction of 49% versus the current Book of Quantum guidelines. Reductions taper off for more serious injuries and indeed guidelines have increased substantially for many more serious-to-severe injuries. At the very top of the scale, the cap on general damages for catastrophic injuries has been increased to €550,000.

The early life of the guidelines may well be turbulent due to the 2-tier approach. Ultimately, the robustness and efficacy of these new guidelines will be determined by the extent that they are respected by the Judiciary in court decisions once they apply in the courts.

JURISDICTION

The new guidelines will apply across all settlement channels so over time, it is possible that more claims will be dealt with by direct settlement, by the Personal Injuries Assessment Board and the by District Court, which has jurisdiction on claims up to €15,000.

PROCESS FOR DECIDING WHERE AN INJURY SITS ON THE NEW SCALE

The obligation on the part of the trial judge to have regard to the Guidelines is mandatory. At the conclusion of a case, the judge must ask both sides where they see the dominant injury sitting on the new scale before making his or her decision.

WHEN A JUDGE BREACHES THE GUIDELINES

Where a court departs from the new guidelines, it must state the reasons for such departure in giving its decision ([Sec. 99](#), Judicial Council act 2019). While this will be a written statement in the High Court, it will be 'ex tempore' in the Circuit Court and unlikely to be written.

ASSESSMENT OF DAMAGES FOR MULTIPLE INJURIES

In order to avoid overcompensation, judges must have regard to the "most significant injury" and then "uplift" the damages to take account of other injuries. The level of "uplift" to be applied is not quantified in the Guidelines.

PRE-EXISTING CONDITIONS

"If a claimant has a pre-existing condition that is aggravated by an injury for which the court is assessing compensation, it should have regard only to the extent to which the condition had been made worse and the duration of any increased symptomology" [JC Guidelines](#)

PSYCHIATRIC INJURIES

"Part 4D relates to minor psychiatric damage and has a band of €500 to €15,000. This is noteworthy from a Defendant's perspective in circumstances where it is often the experience that minor soft tissue injury can be allied to minor psychiatric overlay, enhancing the value of lower level claims." (RDJ [article](#))

JUDICIAL VIEWS ON THE AWARDING OF DAMAGES

There are some useful insights into judicial thinking included in the guidelines:

"It is important for judges in all courts to remember that not all damage warrants an award of compensation."

"The assessment of damages for whiplash injuries requires particular care. Allegations of such injuries are easily made and not easily disproved. Medical experts are reliant on the honesty of claimants. The evidence relating to such a claim requires careful scrutiny." The court should avoid simply making a small award to avoid the necessity of determining whether a whiplash injury was sustained at all and if so, the nature and extent of the injury. [Judicial Guidelines](#)

IMPACT ON INSURANCE PREMIUMS

Although the reductions in damages are not at the level we believe is ultimately necessary, our expectation is that all motor and liability insurance policyholders should start to see reductions in their premiums as soon as the new guidelines are implemented, given that premiums are calculated on future risk and that all historic events have already been priced into cover.

Minister of State Sean Fleming has given insurance companies four weeks to provide information about how premiums will reduce as a result of new guidelines.

REVIEW OF THE GUIDELINES

The Government Action Plan on Insurance Reform has committed to "report on the implementation and early impact of the Personal Injury Guidelines and examine relevant policy response" by December of this year and the Alliance expects a comprehensive response to this commitment by the Department of Justice.

Peter Boland, Alliance for Insurance Reform
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