

BOYCE KELLY SOLICITORS

STEP BY STEP GUIDE TO THE PERSONAL INJURY CLAIM * PROCESS

Welcome to our step by step guide to the personal injury claims* process in Ireland. We have written this guide to demystify the process for injured people and to provide insights and tips from our years of experience specialising in this area of law.

Step 1 -Do I have a personal injury* claim?

The very first step is to contact one of our specialist personal injury Solicitors* and arrange a no obligation consultation to discuss whether or not you have a claim which is worth pursuing. We will then talk you through the steps involved and advise you on the best way to proceed based on your individual circumstances.

To work out if you have a case, it is necessary for us to establish what injuries you have suffered, whether you have suffered other losses such as loss of earnings and out of pocket expenses. It is not enough that you have been injured. We have to be able to prove that these injuries have been caused by another person or entity and that that person or entity acted in a negligent manner or failed to act to protect you where they had an obligation to do so. It can be difficult to prove this link in certain cases and that is why you should use a specialist personal injury solicitor* as we have many years of experience in knowing how to show that your injuries were caused by the negligence of another person or entity.

Are there any time limits I need to be aware of ?

There are certain limited exceptions but apart from these you have **two years** from the date of your accident to file a claim with the Personal Injuries Board* or to issue legal proceedings. You may have heard of the term to be “statute barred”. This simply means that in the event that you do not file your claim* properly with the Injuries Board or issue legal proceedings within that time period of two years then you will be prevented from taking your case. It goes without saying that it is vitally important that you ensure that your case does not become statute barred. While two years may seem like a considerable period of time, it is our experience that in cases which are not straightforward it can take the vast majority of the two-year period to capture the relevant physical evidence and medical evidence and put together the claim properly to ensure that you are in a position to fully recover the compensation which you are entitled to.

Hot tip: You should start the claims process as early as possible so that your case is not prejudiced. Did you know that the letter of claim now needs to be served on the Defendant within 2 months of the accident?

How do I go about making a claim*?

It may appear to be stating the obvious but it is vitally important at the very outset to identify the correct Defendant (the person responsible for your injuries) with the Injuries Board* and in legal proceedings where they are necessary. In many cases it can be difficult to identify the Defendant. In car accidents* where an unidentified driver leaves the scene of an accident* or where the driver of the other vehicle is uninsured it is necessary to name the MIBI (Motor Insurers Bureau of Ireland) as a Defendant along with the person who was driving the car if they are identifiable.

In most cases it is the insurance company for the Defendant who deals with the claim* through the Injuries Board* process. Where it becomes necessary to issue legal proceedings the insurance company usually nominates a firm of Solicitors to defend the case at that stage. It is important to note that it is the insurance company that makes the decision as regards settling or running cases rather than the Defendant as the insurance company takes over the running of the case from the Defendant as soon as they are notified of the accident.

Hot tip: If you identify the wrong defendant and you don't become aware of your mistake until after the two-year time limit allowed has passed, you may be prevented from suing the correct defendant at that point.

What happens when the accident* is partly my fault?

In cases where you are partly to blame for the accident* then you may be held to be 'contributorily negligent'. What this simply means is that you contributed to your own injuries* and so you cannot recover compensation* for all of your injuries* and losses. This does not mean that you cannot take a claim.*

The law recognises that in certain cases you might contribute to your injuries* but not be the sole cause of the injuries*. What the Court will do where a finding of contributory negligence is made is that they will reduce the level of the award by the percentage to which you are found to be responsible for your own injuries.

Hot tip: For example, if the Court awarded you €25,000 for breaking your ankle on a dancefloor in a night club due to the fact that the floor was wet, you may be found contributorily negligent for wearing inappropriate footwear and have your compensation* amount reduced by 20% in the sum of €5,000. Therefore, your award would be reduced down to €20,000 in such circumstances.

What is the Injuries Board*?

The first port of call for any claim must be with the Injuries Board*. This Board is an independent body which was set up to assess personal injury claims*. Once certain criteria are met, the Board will make an assessment of damages (compensation for your injuries)* based on medical evidence submitted and any receipts available for loss of

earnings, travel expenses, medical expenses etc. It is necessary to submit a medical report with an application to the Injuries Board.*

Hot tip: If you are coming close to the 2 year time limit, you can submit your application form to the Injuries Board* without the medical reports and explain that it is to follow to ensure you are within the time limit allowed.

It is the case that almost all personal injury claims* in Ireland must now be submitted to the Injuries Board* with the exception of medical negligence* cases before you can proceed to Court.

You submit a formal Application to the Injuries Board* with a medical report as referred to above. The Injuries Board will then send an acknowledgement letter notifying you that it has been correctly lodged and you can take it that the time limit of 2 years to take your case is paused once that formal acknowledgement is issued from the Injuries Board.*

The Injuries Board* will then notify the insurance company for the other party of the claim* and forward them a copy of the application. They will then notify the Injuries Board* if they are happy for the Injuries Board* to assess the matter and pay their fee. The Injuries Board* will then proceed to assess the claim. It is important to note that the insurance company does not have to allow the Injuries Board* to assess the claim. They can refuse if they feel the accident* was not their fault and if that is the case then the role of the Injuries Board* is at an end. They will issue what is called an Authorisation and it is up to you to issue legal proceedings through the Court at that point.

Hot Tip

It is vitally important that the application form to the Injuries Board* is very carefully and accurately completed. In particular note the importance of having the correct Defendants named and note that anything outlined in the Application form or medical report submitted may be relied upon in evidence at a later stage. As there is no guarantee that the matter will be assessed successfully or that you will be satisfied with the figure once assessed, it is very important not to rule out the possibility that you may have to issue legal proceedings and therefore it is equally important to make sure that you do not prejudice yourself at any stage in the process. Using a specialist Solicitor in this area will prevent you from making a mistake which may come back to haunt you at a later date.

Although the Injuries Board presents itself as a consumer-friendly process, there are many pitfalls involved in the process and it is a very important to ensure that your rights are protected by using a specialist Personal Injury Solicitor* who understands these pitfalls and can guide you through the process.

How long does the Injuries Board* have to assess my claim*?

The Injuries Board* is obliged to process your claim* within a period of nine months from the date that the Defendant consents to the assessment. They can extend this period for a further six months if necessary.

What we are finding at present is that it is taking about 12 months from the making of the initial application to receive a formal assessment.

How do the Injuries Board assess my claim* ?

They will assess your injuries* taking into account the medical report submitted and what your doctor says in terms of how long it is expected to take you to recover and what your prognosis is. The Board will also take into account any losses suffered by you such as loss of earnings etc. They may require you to attend an independent medical examination using their own doctor. They use their Book of Quantum which sets out categories of injuries* and what each injury* is worth depending on how long recovery is taking, to assess the claim*. They will then put forward a figure which they feel is adequate to compensate* you for the harm suffered and any other losses such as loss of earnings, travel expenses, medical expenses etc. Once you receive the assessment you have 28 days to accept or reject it. the Defendant can also accept or reject the assessment.

How do I know what my case is worth?

It is very important to remember that every case is unique and turns on its own facts and therefore it's impossible, and unwise, to compare your own claim* with someone else's.

Specialist personal injury solicitors* know how to value claims*. We have handled many Injuries Board* assessments and we have settled many claims* We know what your claim* is worth and whether you should accept your assessment from the Injuries Board or reject it and issue legal proceedings.

Unless your case is extremely straightforward and you know that the amount being offered to you is sufficient to compensate you fully, we would advise you to have a specialist Solicitor review your assessment to ensure that it is sufficient.

Hot Tips

The Injuries Board* will not award any legal costs except for limited circumstances where they will at times contribute towards legal costs. The basis which they make the decision as to whether they will contribute to costs or not appears to be very arbitrary and as a consequence in most cases you must pay your legal fees and any non-recoverable outlays out of your awarded sum.

You should not reject an Injuries Board* Assessment unless you are sure you can beat the figure by proceeding through the Courts process. A specialist solicitor can advise you as to whether it is likely you would secure a higher award by going to court or not. If you go to court and you do not beat the figure in the Injuries Board* assessment the Court can award costs against you.

What happens if I want to reject the assessment ?

If you are not satisfied with the assessment that the Injuries Board* has made then the Board issues an Authorisation and the role of the Injuries Board* is at an end.

At this stage, you will need a specialist personal injury solicitor*. We will instruct an experienced personal injuries* specialist Barrister at this point to draft the initial Court document called a Personal Injuries* Summons. This basically sets out your case, for example, how you were injured and the reasons why it is felt that the Defendant is responsible. At this stage, we send all of the relevant documentation to the Barrister to draft the proceedings and they will decide whether or not the proceedings should be issued out of the Circuit Court or the High Court. The Circuit Court will deal with a personal injury* case to the value of €60,000. If it is felt that your case is worth more than €60,000 then the High Court will be the correct jurisdiction for the case to be issued out of. For minor injuries* the District Court can deal with cases up to the value of €15,000.

The other side will then submit a Defence setting out the reasons why they say the accident* was not their fault etc. At times they will seek further information in a document called Notice for Particulars which is a list of questions which we must answer and they will often also seek Discovery of certain categories of documents. There are strict rules around what they are allowed to look for and what they are not allowed to look for.

In some cases, they will have admitted liability (responsibility) for the accident*, and they will state this in the Defence. This case then becomes an ‘assessment only’ case. What this simply means is that parties are only disputing the level of compensation* to be awarded to you and are not disputing the fact that the Defendant is responsible for the injuries.

Hot tip: Many people are understandably anxious about going to court so it is important to be reassured that over 95% of cases settle prior to going to hearing according to figures published by the Central Bank. In the event that you do have to go to court we can assure you that it is not a scary process as you will have your legal team with you at all times.

How long will it take for my case to be heard?

It varies greatly from case to case as to when a case will settle or go to court. We find that where the Defence have admitted responsibility for the accident* they will commence attempting to settle the case at a very early stage as this can keep tier costs down.

While this can be possible in certain straightforward cases, where injuries* are ongoing and are difficult to resolve, we advise clients to wait until they have some certainty on how long it is going to take for them to recover or what the long-term consequences are going to be. It can take just a number of months following the serving of the Personal Injuries Summons to have the case settled and in some cases it can take several years depending on the individual circumstances of the case. The more complex the case the longer it tends to take.

For the cases that do go to Hearing it will be listed for Hearing once everybody is ready for it to proceed and the case will be given a list number.

Your specialist personal injuries Solicitor* will keep you informed of progress and meet you regularly to discuss developments and how to push the case forward and then a date will be fixed to hear the case.

What happens on the day of the hearing?

A further attempt will usually be made to settle the case on the day of Hearing. These talks are an opportunity for the two sides to meet informally and discuss possibly resolving the case. If an offer is made which is felt to be reasonable then this will be put to you and you can decide whether or not you wish to accept it with the advice of your Barrister and Solicitor. We will never pressurise you into accepting or rejecting any offer – our role is to inform and advise you but ultimately the decision is yours to make.

Many of our clients tell us that they are apprehensive about going to court. This is very understandable. Here we breakdown what happens on the day to demystify the process and hopefully make you less apprehensive about the process.

On the morning of the Hearing we will arrange a consultation between you, ourselves and your Barrister to go through the case and usually some form of settlement talks will take place at that stage. We will keep an eye on the list for that day.

Hot tip: Often, the lists are oversubscribed which means your case is not guaranteed to be heard on the day it is listed for. Our clients tell us that this is very frustrating and understandably so, but unfortunately this is the system that we must operate under.

Once the hearing starts, your Barrister will open the case as you are the Plaintiff setting out what the case is about and the extent of your injuries. You will then be asked to give

evidence and explain to the Court what the circumstances of the accident* were and to outline your injuries*, the treatment that you have had to date and how the injuries* still affect you.

Hot tip: You will not, usually, be expected to give evidence in the event that it is an 'assessment only' case meaning that the defence have admitted liability but are not admitting the extent of the injuries*. In such cases it is usual for the medical doctors only to give their evidence and for the Judge to decide which doctor's evidence he prefers as regards the extent of the injuries and how long they are expected to affect you.

At this point, the Defendant's Barrister is given an opportunity to cross-examine you and ask you questions.

The next person to give evidence will be your treating doctor or consultant (there can be more than one). Your Barrister will ask this doctor or doctors' questions first and then the other side are entitled to cross-examine that doctor at that point.

You may have other experts such as engineers and the same format is followed as above until all of your witnesses have given evidence.

Once all of the evidence has been given on behalf of the Plaintiff (you) the defence is allowed the same opportunity to present its case setting out the reasons why they are denying responsibility for the accident and presenting their own witnesses. Once again, your Barrister will be entitled to cross-examine the witnesses presented by the defence.

Once the Judge has heard all of the evidence he/she will give a decision and usually the decision will take the following format:

1. He/she will decide. whose fault the accident* was.
2. In the event that he feels that fault was on the side of the Defendants he will decide the level of damages (amount of compensation) * to be awarded to the Plaintiff and whether or not there is any element of contributory negligence and what percentage that contributory negligence will be. He will also decide who should pay for the costs of taking the case.

Hot tip: It is usual for the costs of the proceedings to follow the decision of the Judge and therefore usually the Defendant insurance company will pay the costs of the Hearing where the Judge finds in favour of the Plaintiff.

How long, on average, does the whole process take?

Every case is unique in terms of the amount of time that it takes from start to finish. A broad rule of thumb is that if your injuries* are straightforward and your period of

recovery and rehabilitation is not long then a case will settle or be heard at a much earlier date. As we have mentioned previously, in the event that the other side are admitting liability (responsibility) then it can be possible to settle a claim* within a reasonably short period of time.

We do not advise settling any claim* until you have a clear indication from your doctor as to how long it is going to take for you to recover from your injuries* and whether there will be any long- term issues. This is because we need to factor in the full extent of your injuries* and their effect on you and your lifestyle and your ability to earn for the remainder of your life to ensure that we secure enough financial compensation for you to fully compensate you for your injuries. For example, some individuals can suffer from long term arthritis as a result of injuries sustained in a road traffic accident and this should be taken into account when settling a case as it is something that will affect an individual for the rest of their lives and may impact on their ability to earn etc.

Our promise to you

We specialise in Personal Injury* cases. We only act for injured* parties so we are ideally placed to give you the best advice possible. We do not act for any defence insurance companies so we will always act in your best interests.

Our only interest is to make sure that you receive the appropriate compensation* for the injuries* that you have suffered as quickly and as effectively as possible with as little stress as possible on your part. We want you to be able to concentrate on your recovery.

We will tell you whether we feel a settlement offer is fair or not but ultimately, we will allow you to make the final decision based on all of the facts being fully informed and being properly advised.

Can you explain how the legal costs system works?

Before we take on any case we advise our clients as to the strength and weaknesses of their claim* and we discuss the possible costs which are involved in taking a personal injuries case.

Hot tip: As we have highlighted above, please note the Injuries Board* do not pay for legal fees except in very limited circumstances and on a very ad hoc basis. We therefore agree with our clients that we deduct our legal fees and any outlays which we have paid out on your behalf from any assessment award that you receive through the Injuries Board* process.

We have a fixed fee for Injuries Board* applications.

In the event that the matter proceeds beyond the Injuries Board* stage and it is necessary to issue Court proceedings, we look to recover the majority of our fees from the other side on the conclusion of your case.

We are fully up front and transparent in terms of the legal fees and costs which are payable and will always agree our fees with you in advance.

***Please note in contentious business a Solicitor may not calculate fees or other charges as a percentage of proportion of any award for settlement.**

What does the term outlay mean?

In a personal injuries* case there are costs and expenses which must be paid out on your behalf during the lifetime of your claim* to progress matters such as medical report costs, MRI scans, expert fees, Injuries Board* application fees, stamp duty, search fees etc. Most of your outlay will be recoverable as part of your costs on the successful conclusion of your case.

We will keep you fully informed of any costs and expenses paid out on your behalf.

We are here to help

Having handled many of these personal injury cases we understand the shock and pain you can be feeling after being involved in an accident which was not your fault. We are here to help you with your personal injury claim* so that you can concentrate on getting better. We pride ourselves on providing an empathetic and transparent client centred service. We look forward to helping you.

If you require further information about personal injury claims please contact Etain Boyce, Boyce Kelly, Solicitors, Main Street, Carrigart, Letterkenny, County Donegal, personal injury* specialist, telephone 0749890190, e-mail info@boycekelly.ie, www.boycekelly.ie.

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