

Draft

Personal Injuries
Guidelines

2nd Edition

Adopted by the Judicial Council on the
xx of xxxx 202x

**REVIEW BY THE BOARD OF THE JUDICIAL COUNCIL
OF DRAFT AMENDMENTS TO
THE PERSONAL INJURIES GUIDELINES
PURSUANT TO SECTION 11 (d) OF
THE JUDICIAL COUNCIL ACT 2019**

On the 5th of March 2024, the Personal Injuries Guidelines Committee of the Judicial Council submitted the outcome of its review of the Personal Injuries Guidelines to the Board of the Judicial Council pursuant to Section 18 (2) (b) of the Judicial Council Act 2019 (“the Act”).

That review includes a recommendation for amendments to the guidelines and in accordance with Section 18 (6) the committee submitted a draft of the amendments it recommends. Those amendments include *inter alia*, applying the Harmonised Index of Consumer Prices (HICP) current at the end of February 2024.

On the 21st of October 2024 the Board met and considered those draft amended guidelines. The Board has power pursuant to Section 11 (d) of the Act to modify the draft guidelines.

The Board decided to modify the guidelines in order to reflect the HICP rate applicable at the time of its own consideration of the draft amendments to the guidelines.

Accordingly, the Board has modified the value of awards calculated by the committee at the rate of 15.6% and revised the value of the awards, calculated at the rate of 16.7%.

The amended guidelines which follow are therefore those provided to the Board by the Personal Injuries Guidelines Committee pursuant to Section 18(2)(b), and then subsequently modified by the Board in the terms outlined, pursuant to Section 11 (d) of the Act.

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INTRODUCTION TO THE SECOND EDITION

The 1st Edition of the Personal Injuries Guidelines (“the Guidelines”) was adopted by the Judicial Council under section 7 of the Judicial Council Act 2019 on the 6th March 2021, following the preparation of draft guidelines by the Personal Injuries Guidelines Committee (“the Committee”), established under section 18 of the 2019 Act. Section 18(5) of the 2019 Act provides that the Committee may, from time to time, review the Guidelines and shall, within three years, review the first guidelines, (and at least once thereafter in every three-year period beginning on the completion of the first review). For the purpose of the review, the Committee met on seven occasions, commencing in 2022. Further, members of the Committee met with an economist in relation to changes in the economy since the adoption of the 1st Edition. The Committee conducted a survey of judges in the District, Circuit and High Courts in relation to the experience of judges in operating the Guidelines. Finally, legal advice was taken in respect of the parameters of the review. The 2nd Edition of the Guidelines is, therefore, the result of a review conducted in accordance with the provisions of the 2019 Act.

The Committee’s review of the Guidelines has resulted in a recommendation that the Guidelines be amended and, accordingly, the Committee has prepared draft amendments and submitted them to the Board for its review. The Committee has prepared its review of the Guidelines in accordance with the provisions of s.90(3) of the 2019 Act.

In carrying out its review, the Committee has had regard to two matters in particular. The first is the fact that in the three years since the adoption of the 1st Edition, significant global and national inflation has occurred. The second is the jurisprudence of the Superior Courts that has emerged in the same period regarding the proper approach to the assessment of damages in multiple injuries cases.

The Committee has not found it possible to carry out any meaningful analysis of the quantum of court awards given under the Guidelines to date that might inform this review. This is because the inevitable delay between the commencement of proceedings to which the then new Guidelines applied and their trial has meant that there are very few decisions and certainly not enough to be statistically significant.

In the Committee's Report accompanying the 1st Edition, it explained in detail its methodology in devising the Guidelines. It considered how to approach the figure that would be appropriate for the most serious injuries and concluded that it should be €550,000. In arriving at this figure, the Committee had regard to the advice of economic consultants. Further, the Committee received legal advice that the most comparable jurisdictions to which it should have regard in fixing values were Northern Ireland and England and Wales. This remains the advice in the most recent opinion of counsel.

Accordingly, the Committee considers that in reviewing the Guidelines, the approach adopted to similar periodic reviews in those jurisdictions should be replicated here. This has been to modify values in line with inflation as represented by the Retail Price Index (RPI). The Irish equivalents to the RPI are the Consumer Price Index (CPI) and the Harmonised Index of Consumer Prices (HICP). The advice received from the economic consultants is that the HICP is the most appropriate index to adopt.

In the three years since the adoption of the 1st Edition, the HICP has risen by 15.6%. Accordingly, it is the view of the Committee that an overall increase of 15.6% to the original values is appropriate. The revised figures have been rounded up or down for convenience and ease of use.

Some changes have also been made in the "Use of Guidelines" and "Multiple Injuries" sections of this Introduction to take account of judgments of the Superior Courts delivered since the 1st Edition was adopted.

General Principles

The Committee reiterates the general principles set out in the introduction to the 1st Edition of the Guidelines. Accordingly, to the forefront of the mind of every trial judge when making an award of general damages should be the principles which underlie the court's jurisdiction. Those principles require awards of damages to be fair to all parties and proportionate. Awards must be proportionate to the injury sustained and must also be proportionate when viewed in the context of awards of damages commonly made in cases involving injuries of a greater or lesser magnitude (per Denham J. in *MN v. SM* [2005] IESC 17, and Clarke C.J. in *Morrissey v. HSE* [2020] IESC 6). Important in this regard is the fact that, in these Guidelines, the most devastating and catastrophic of injuries will attract an award of general damages of in or about €642,000.

Use of Guidelines

At the conclusion of every case the trial judge should invite each party to make brief submissions identifying:

- (i) The damages bracket(s) in the Guidelines that most closely correspond with the evidence of injury or injuries,
- (ii) Where within the bracket(s) the relevant injury or injuries fall in terms of severity.

Having made findings of fact regarding the claimant's injury or injuries and, having identified the relevant bracket(s) in the Guidelines, the judge is required to have regard to the Guidelines in arriving at an award that is fair to all parties, and is proportionate. It is acknowledged that certain injuries may straddle or fall between the brackets identified in the Guidelines. If the judge considers that the interests of justice require an award that is outside the range provided by the Guidelines, it is mandatory to state the reasons for departing from the Guidelines.

Multiple Injuries

Assessing general damages in multiple injury cases gives rise to particular challenges. The trial judge is obliged to have regard to the relevant category in the Guidelines that applies to each injury. However, it will rarely be appropriate to simply add categories together, because to do so will usually fail to reflect the fact that the injuries were suffered at the same time. This would most commonly give rise to over-compensation, although in a small minority of cases, under-compensation.

The overriding consideration for the judge in all cases is proportionality. This means that the total award must be proportionate when viewed in the context of both the maximum and equivalent awards available under the Guidelines. To arrive at a just result, the judge must step back from the categories in order to assess the overall impact of all the injuries on the claimant, and place them on the scale in a way that is proportionate. In the majority of cases, achieving proportionality is likely to involve the application of a global discount to the relevant categories. The extent of the discount will vary according to the extent of the overlap of the injuries.

Pre-Existing Condition

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 has been made worse and the duration of any

increased symptoms.

Injuries which do not fall within identified categories within the Guidelines

It is conceivable that courts will encounter claims in respect of injuries which are not included in these Guidelines. This is due to the methodology adopted by the Committee which drew up the 1st Edition of the Guidelines which was based on data assembled from awards of damages made for particular types of injuries in this and other comparable jurisdictions. Where there was either no data or insufficient data in respect of a particular type of injury, it was considered inadvisable to depart from the agreed methodology to propose brackets of damages for such injuries. For this reason, these Guidelines do not include many rarely encountered injuries, such as the loss of an ovary, the severance of a nerve or artery, or female genital mutilation, to name but a few. In any such case the structure established by the Guidelines may nonetheless provide assistance. A court when dealing with a novel or infrequent injury should seek to value the injury by reference to the damages guided for equally significant injuries in the Guidelines, to ensure that the award made will be fair and proportionate within the scheme of damages therein provided for. Finally, the Committee has considered whether it was appropriate to provide for Guidelines in relation to awards of damages made in respect of injuries not specifically covered by the 1st Edition of the Guidelines, but has concluded that no issues have come to the attention of the Committee that require the adoption of any further categories of injuries to those currently included in the Guidelines. Nevertheless, this is an issue that should be kept under review.

12. DERMATITIS AND OTHER SKIN CONDITIONS

Higher awards are likely to be justified where the face is affected. This chapter also includes other skin conditions such as eczema and psoriasis.	
(a) Dermatitis of both hands, with cracking and soreness, affecting employment and domestic capability, possibly with some psychological sequelae, expected to last more than seven years and perhaps indefinitely.	€35,000-€64,200
(b) Rash covering other parts of the body which lasts more than three years and may continue.	€21,000-€40,800
(c) Dermatitis of one or both hands, continuing for a significant period, but settling within two to three years with treatment or use of gloves for specific tasks.	€8,170-€18,700
(d) Itching, irritation of, and/or rashes on one or both hands, but resolving within six months with treatment. A short-lived aggravation of a pre-existing skin condition will also fall within this bracket.	€585-€3,500

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