

# REPORT ON THE DRAFT GUIDELINES FOR THE ASSESSMENT OF GENERAL DAMAGES IN PERSONAL INJURY CASES

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# BACKGROUND TO THE REPORT AND EXECUTIVE SUMMARY

## A. What was the Committee asked to do?

1. The Personal Injuries Guidelines Committee (“the Committee”) was established by the Judicial Council (“the Council”) on 28th April, 2020 pursuant to section 18 of the Judicial Council Act 2019 (“the Act”).
2. The Act required the Committee, within six months of its establishment, to prepare and submit to the board of the Council (“the Board”), for its review, draft personal injuries guidelines (“the Guidelines”). Whilst not of immediate concern, the Act also requires that the Guidelines, once adopted, be reviewed from time to time. The Act was subsequently amended so that, in light of the complications having arisen on foot of the Covid-19 pandemic, the deadline was extended to the 9th December, 2020.
3. The Act provides that the Guidelines, which are intended to catalogue the general damages that might fairly and justly be awarded by a court in respect of varying types of personal injury, are to be prepared in accordance with section 90 of the Act.
4. Section 90 of the Act requires the Committee, in preparing the Guidelines to have regard to:
  - (i) The level of damages awarded for personal injuries by courts in the State;
  - (ii) The level of damages awarded by courts in such places outside the State as the Committee or the Board considers relevant;
  - (iii) The principles for the assessment and awarding of damages for personal injuries as determined by the High Court, the Court of Appeal and Supreme Court;
  - (iv) Guidelines relating to the classification of personal injuries;
  - (v) The need to promote consistency in the level of damages awarded for personal injuries; and
  - (vi) Such other factors as the Committee or the Board considers appropriate.
5. The Committee has completed its work and now submits the Guidelines contained in Appendix 1 to this report to the Board for its review.
6. Aside from the Guidelines themselves, the Committee has also written this comprehensive accompanying report. It primarily contains the methods, data and conclusions of the research that have informed the drafting of the Guidelines but also discusses the relevant legal principles.

7. Two reasons influenced the Committee in its decision to submit a detailed report such as this. First, as the Guidelines are intended for use internally by the judiciary, this report is intended to explain the Guidelines as well as the work that went into them to those judges who did not sit on the Committee but will be voting as to whether to adopt same.
8. Second, the Committee also hopes that the report will be read by the wider public. The Committee is fully committed to being entirely transparent towards the public regarding the manner in which the Guidelines were compiled, the assessments that were carried out, and the manner in which it intends the judiciary to apply the Guidelines. In light of the frequent press coverage that court awards in personal injury cases attract, a comprehensive treatment of the issue was deemed necessary. At this point, the Committee feels it is important to highlight that the Irish judiciary is the only one of which the Committee is aware that has published a far-reaching report detailing the work that went into preparing the Guidelines for general damages in personal injury cases alongside any guidelines themselves.
9. It is also intended that the report will assist future revisions of the Guidelines. Furthermore, under section 18(11) of the Act, the Committee is required to submit to the Board a report detailing its activities for inclusion in the annual report of the Council. This report is in fulfilment of that requirement.
10. Further, it should be noted that the Committee, for the purposes of preparing the Guidelines, did not engage in consultation with any outside group or person with the exception of the Personal Injuries Assessment Board (“PIAB”). The reason for taking this course of action was twofold. First, to establish what levels of damages are adequate, even in generalised form is a task which the judiciary must perform independently. It cannot be seen to be influenced or lobbied by any interest group. Second, the Act makes clear that compiling the Guidelines was not envisaged to be a consultation-driven exercise. Primarily, the Committee was to have regard to court awards, domestic and foreign, the legal principles applied by Irish courts in personal injuries cases and the need to promote consistency in court awards.

## **B. Executive summary**

12. The Committee has undertaken research into the law of damages in personal injury cases and investigated court awards in Ireland and abroad. It has also reviewed guidelines used by judges in other jurisdictions. On foot of this research, it has unanimously agreed the form and content of the Guidelines as now proposed.

### Form of the Guidelines

13. The Committee decided that a catalogue of injuries is the most accessible and appropriate form for the Guidelines to take. The catalogue now proposed is a list of injuries, ranging from the major to the minor, each of which has assigned to it a range or bracket within which an award should ordinarily fall. In individual cases, where the facts are exceptional and warrant a departure from the guided bracket, the court may depart from the guided bracket, provided that a justification is given for doing so as set out in section 22 of the Civil Liability and Courts Act 2004 (as amended).
14. In drafting the Guidelines, the Committee placed particular emphasis upon those injuries which are litigated frequently, and especially those of up to 5 years' duration. The Guidelines give detailed guidance as to what level of damages should be awarded in these types of cases. However, they also allow for discretion for the judge to take into account the facts of individual cases.

### Level of damages

15. The Guidelines as proposed represent not only a shift in the manner in which general damages are awarded in personal injury cases but also in the level of those damages.
16. In compiling the Guidelines, the Committee sought to devise award brackets which are not only fair to both the claimant and the defendant but also fair and appropriate in light of awards made in other cases, in particular the sum awarded to those claimants who have suffered catastrophic injury.
17. The Committee also carried out research as to how Irish court awards fare when compared to awards made by courts elsewhere, in particular Northern Ireland and England and Wales.
18. Overall, this has resulted in a reduction in damages available in lower and middling injuries, while those suffering catastrophic injuries will receive a modest uplift in their award of general damages.

### Manner in which the Guidelines are to be applied

19. Heretofore, the courts had to have regard to the Book of Quantum when awarding general damages in personal injury cases. Pursuant to section 22 of the Civil Liability and Courts Act 2004 (as amended by section 99 of the Act), the courts will be obliged to have regard to the Guidelines instead of the Book of Quantum once section 99 is commenced. It will be noted that the categories of injuries in the Guidelines are much more detailed than

those which were provided for in the Book of Quantum and this has allowed the Committee to predict with much greater accuracy the bracket of damages within which the award for each particular injury ought ordinarily lie.

20. More important than the reduction in the guided damages is the manner in which the Guidelines are to be applied. There is clear and unambiguous guidance regarding multiple injuries.
21. As a consequence, besides a reduction in the damages available for lower and middling injuries, the Committee also hopes that the improved guidance provided by the Guidelines will have a number of secondary benefits including reducing legal costs. With greater certainty as to what can be recovered for a particular injury, more cases should settle early, a significant benefit to all claimants. And, the increased numbers of early settlements should reduce the legal costs of both claimants and defendants.

## COURT AWARDS AND PUBLIC CONCERN

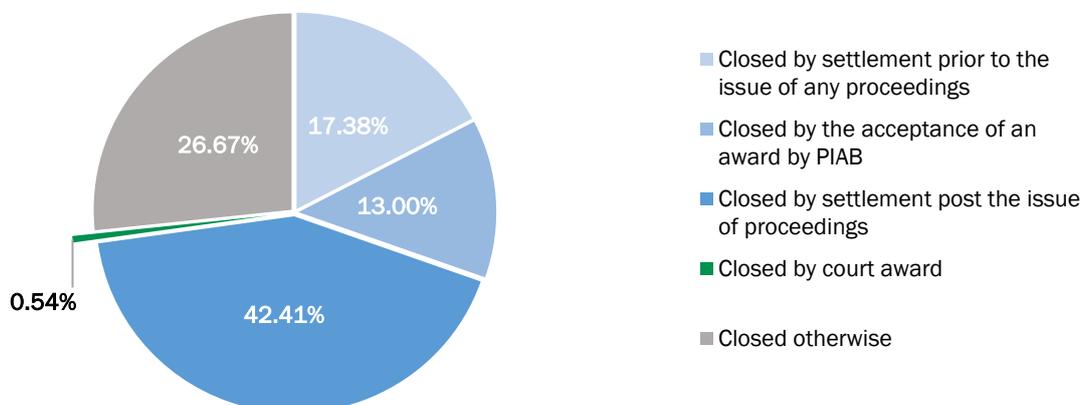
22. Having regard to its obligation to have regard to Section 90 (3)(a)(i) of the Act, the Committee considered itself obliged to obtain all available information concerning awards of damages made by courts in Ireland in contested personal injuries litigation over the period of January 2017 to July 2020.
23. The objective of the Committee in obtaining this information was first, to enable it compare the award of damages made by the court in any given case with any award earlier made by PIAB in relation to the same claim; second, to ascertain whether the award made by the court was one which fell within the parameters of the damages proposed for the injury concerned by the second Book of Quantum; and, third, to compare the award made with the sum guided for similar injuries in a number of comparable jurisdictions. The jurisdictions chosen and the reasons for their selection will be detailed later.
24. Another matter of particular concern for the Committee was the fact that since the publication of the second report of the Personal Injuries Commission (“PIC Report”), it has been claimed that those who suffer soft tissue injuries in Ireland receive court awards that are approximately 4.4 times the amount of damages that would be recovered by a plaintiff with similar injuries in the “United Kingdom” courts. A careful reading of the report shows that the analysis which KPMG was asked to carry out on behalf of the Personal Injuries Commission (“the Commission”) was conducted exclusively on settlement data collated by the industry in Ireland and England and Wales and did not involve any consideration of awards of damages made by the courts.
25. Nonetheless, insofar as it may be claimed that it is the level of awards of damages actually made by the courts that drives the level of settlements, the Committee considered it important to obtain as much hard data as was available concerning all awards of damages made by the courts in personal injury cases in the last three and a half years. Regrettably, while a great deal has been published concerning what is frequently described as “the cost of claims” in reports such as the PIC report and the 2019 and 2020 Central Bank reports concerning motor insurance claims, there is very little available data concerning the level of awards of damages for personal injuries made by the courts in the State, these being the claimed cause of rising insurance costs.
26. The Committee considers that there is little public appreciation of just how few claims for damages for personal injuries ultimately become the subject matter of an award of damages made by a court. Hopefully, the following statistics will place any problem as exists with the size of court awards in context. For simplicity, the Committee looked at the numbers of claims closed or finalised by various means over the 3-year period 2017-2019.

27. The Committee asked all the relevant insurers and indemnifiers<sup>1</sup> to provide it with the following information in respect of each of the years of 2017-2019:
- (i) The number of personal injury claims which it settled with claimants without the involvement of PIAB or the commencement of court proceedings.
  - (ii) The number of personal injuries claims which it settled with claimants as a result of the acceptance of an award made by PIAB.
  - (iii) The number of personal injury claims which it settled with claimants after the issue of court proceedings but before trial.
  - (iv) The number of personal injury claims which resulted in an award of damages made by a court.
28. The first mechanism whereby a claim may be closed is by settlement between claimant and the alleged wrongdoer, or more usually, their indemnifier or insurer. This often occurs before any claim is made or determined by PIAB or the issue of any court proceedings. If this is not achieved, the parties, if eligible, may take the claim to PIAB which then proposes an award.
29. If the award by PIAB is not accepted, the claim may become the subject matter of court proceedings. In addition, all other types of proceedings which do not fall within the remit of PIAB will usually result in the issue of court proceedings. However, only a small percentage of cases instituted in this jurisdiction proceed to a court award, with the greater majority being settled by the parties without court intervention.
30. The following chart and table set out the breakdown of how insurers and indemnifiers who provided data recorded that they had closed their files during the period 2017-2019. Not all insurers record data in a manner which enabled them respond within the five categories requested, so the following is based on 59,437 cases from eight out of the twelve insurers' replies.

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<sup>1</sup> AIG Europe SA, Allianz plc, Aviva Group, AXA Insurance DAC, C oras Iompair  ireann, IPB Insurance Company Limited by Guarantee, FBD Insurance, Liberty Insurance, Motor Insurers' Bureau of Ireland, RSA Insurance Ireland DAC, State Claims Agency, Zurich Ireland.

**Chart 1 - Means by which claims were closed by insurers and indemnifiers 2017-2019 in %**



**Table 1 - Means by which claims were closed by insurers and indemnifiers 2017-2019**

Closed by settlement prior to the issue of any proceedings	10,332
Closed by the acceptance of an award by PIAB	7,729
Closed by settlement post the issue of proceedings	25,208
Closed by court award	318
Closed otherwise	15,850
<b>Total number of cases closed</b>	<b>59,437</b>

31. It is evident from the above statistics that only a very small percentage of claims are determined by a judge and the vast majority of claims are settled by the insurers or indemnifiers.
32. Insofar as it is alleged that it is this small percentage of court awards that drives settlement figures, the Committee would also like to highlight that the jurisprudence of the Court of Appeal in recent years has led to significant reductions in many of the awards made by the High Court at first instance.<sup>2</sup>

<sup>2</sup> See e.g. *McKeown v Crosby* [2020] IECA 242, *Payne v Nugent* [2015] IECA 268, *Nolan v Wirenski* [2016] IECA 56, [2016] 1 IR 461, *Shannon v O’Sullivan* [2016] IECA 93, *Martin v Dunnes Stores (Dundalk) Ltd* [2016] IECA 85.

# LEGAL PRINCIPLES RELATING TO GENERAL DAMAGES

## A. Restitutio in integrum

33. The general rule is that, in compensating a person injured as a result of another's wrongdoing, the court will apply the principle known as *restitutio in integrum*. It means that any compensation should place the injured party back into the same position he or she would have been in had the wrongdoer's act or omission not occurred.
34. This principle is relatively straight-forward to apply where the claimant has suffered a financial loss. For example, where a person has suffered loss of earnings due to a personal injury, the person who has wrongfully caused that injury must pay the equivalent of those lost earnings to the injured party. This restores the injured party's position to what it would have been, but for the wrongdoer's actions.
35. However, *restitutio in integrum* is difficult to apply to general damages, that being the sum designed to compensate an injured party for the pain and suffering sustained as a result of another's wrong. Pain and suffering are unquantifiable in the sense that they cannot easily be expressed in monetary terms. For example, it is not self-evident that a broken nose must attract general damages of, say, €500 as opposed to any other amount. In other words, there is no amount of which it can be said with certainty that it would put the injured party back into the position he or she would have been in had the injury not occurred.
36. Furthermore, due to the fact that pain and suffering are subjective, i.e. one person may feel much greater pain and suffer more from a broken nose than another, the exercise of setting absolute values for general damages in personal injury actions is complicated further.

## B. Proportionality

37. However, to therefore conclude that the assessment of damages for pain and suffering takes place in the absence of any rules would be incorrect. Irish courts have established a number of principles that have guided the assessment of general damages. Most importantly, the courts have stated that awards must be proportionate *inter se*, that is to say that an award must not only be appropriate in light of the injuries sustained by the plaintiff in each individual case but it also needs to be appropriate in light of the levels of awards made in other cases. Awards of damages must also be fair to the plaintiff as well as the defendant and should be proportionate to prevailing social conditions, as was set out by Denham J in *M N v S M* [2005] IESC 17, [2005] 4 IR 461.<sup>3</sup>

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<sup>3</sup> At para. 18.

Proportionality inter se

38. Why awards of general damages must be proportionate *inter se* is best demonstrated by looking at the relationship between awards in cases concerned with catastrophic injuries and those in which the injuries cannot be considered catastrophic. The courts have determined that the maximum award of damages for personal injuries must be reserved for the most catastrophic cases and that less severe injuries must attract a lower award.<sup>4</sup> In fact, in almost all cases that are less than catastrophic the award should be significantly lower as few injuries result in levels of disability and suffering comparable to those in catastrophic injuries. In *McNamara v ESB* [1975] IR 1 (SC) Walsh J, setting aside an award of £40,000 for general damages in a case where an 11-year-old plaintiff had to have one arm amputated above the elbow and the other below the elbow due to severe electric shock, stated at pp. 20-21:

“In *Doherty's Case* I said at p. 287 of the report that it was doubtful “if there can be any more severe bodily injury, which can afflict a person who remains alive, than this condition of permanent quadriplegia. “In that case this Court held the sum of £34,500 to be so excessive as to warrant a new trial for general damages in the case of a man who was 33 years old. Allowing for the fact that that case was decided almost ten years ago and that the value of money has fallen considerably since then, nevertheless it cannot be gainsaid that the injuries suffered by the unfortunate boy in this case, horrible as they were, are not comparable to a condition of permanent quadriplegia. The present plaintiff has a longer expectation of life but, on the other hand, the nature of his injuries, while they will restrict his enjoyment of life considerably, will nevertheless leave him with a far greater capacity to enjoy life than would have been the case if he had suffered injuries which resulted in permanent quadriplegia.”

39. In the same case, Griffin J observed at p. 38:

“... However, without in any way attempting to minimise the severity of the injury and the incapacity suffered by him, it cannot be denied that the injuries suffered by the plaintiff, serious though they are, are not comparable with a case of quadriplegia or paraplegia; although there have been very many such cases in recent years, in none of them have general damages of £40,000 been awarded.”

40. Similar comments were made by McCarthy J in *Reddy v Bates* [1983] 1 IR 141 (SC), a case where a 24-year-old plaintiff suffered severe damage to the brain stem and considerable damage to the upper part of the brain which left her unconscious for upwards of three weeks and unaware of her surroundings for an additional eight weeks. She also developed a rare disease where new bone tissue formed onto existing bones and joints, limiting her movement and requiring surgery. At p. 153 he said:

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<sup>4</sup> See *Reddy v Bates* [1983] 1 IR 141 (SC) and *McNamara v ESB* [1975] IR 1 (SC). See also *Morrissey v HSE and Others* [2020] IESC 6.

“She is, obviously, a rather pathetic young woman who has been grievously injured; she has to face some 40 or 50 years of life suffering from a severe impairment of that enjoyment of life to which she was entitled. She is, however, far from being as disabled as a paraplegic or a tetraplegic; there are many things she can do which are quite outside their compass. It may well be that awards of the size that she obtained can be justified in the case of those who sustain such dreadful paralysing injuries, but such is not the case here.”

41. The fact that awards of general damages in personal injury cases must be proportionate *inter se* was most recently affirmed by the Supreme Court in *Morrissey v HSE and Others* [2020] IESC 6. At para. 14.28 Clarke CJ observed:

“I should say that I have come to that view while considering that the proper approach to the limit for damages for pain and suffering is the one which sees that limit as the appropriate sum to award for the most serious damages. This is therefore the sum by reference to which all less serious damages should be determined on a proportionate basis, having regard to a comparison between the injuries suffered and those which do, in fact, properly qualify for the maximum amount. The point which I have sought to make, however, is that the type of injuries which do properly qualify for the maximum amount may nonetheless come into different categories. While it is not possible to conduct a precise mathematical exercise in deciding whether particular injuries are, for example, half as serious as others, nonetheless it seems to me that respect for the proper calibration of damages for pain and suffering requires that there be an appropriate proportionality between what might be considered to be a generally regarded view of the relative seriousness of the injuries concerned and the amount of any award. But those very same considerations also recognise that it may be possible to regard injuries of very different types as being broadly comparable. That consideration applies equally to injuries of the most serious type and, thus, it is appropriate to consider the injuries suffered by Ms. Morrissey to be of that most serious type, even though they differ in character from other types of injuries which can also properly be characterised as being of the most serious type.”

42. Similarly, in *Payne v Nugent* [2015] IECA 268, Irvine J stated:

“For my part I fear there is a real danger of injustice and unfairness being visited upon many of those who come to litigation seeking compensation if those who suffer modest injuries of the nature described in these proceedings are to receive damages of the nature awarded by the trial judge in this case. If modest injuries of this type are to attract damages of €65,000 the effect of such an approach must be to drive up the awards payable to those who suffer more significantly or what I would describe as middle ranking personal injuries such that a concertina type effect is created at the upper end of the compensation scale. So for example the award of general damages to the person who loses a limb becomes only modestly different to the award made to the quadriplegic or the individual who suffers significant brain damage and in my view that simply cannot be just or fair.”

43. Thus, the courts have firmly established two things. First, although not precisely quantifiable by themselves, awards must be proportionate as between each other. As a consequence, where a top tariff has been set for catastrophic injuries, the brackets for other injuries must be calibrated in relation to the top tariff having regard to the seriousness of the injury they encompass. In the absence of any other objective scale to assess general damages, the importance of fashioning a proportionate scale of awards cannot be overstated.
44. Second, the award bracket for catastrophic injuries must be reserved to exceptionally calamitous injuries, as those plaintiffs must be singularly compensated when compared to those who sustain lesser injuries. The bracket must also be sufficiently distant to all injuries which cannot be considered catastrophic and at the other end of the spectrum of damages considered appropriate to compensate for moderate or minor injuries. As the Committee was obliged pursuant to section 90(3)(b) of the Act to consider the principles determined by the superior courts for the awarding of general damages, the Guidelines have been constructed around an internal proportionality.

Proportionality otherwise

45. The other two forms of proportionality mentioned by Denham J in *M N* are somewhat more opaque. Nevertheless, they must be borne in mind when determining general damages in personal injury cases. First, the award must be fair to the plaintiff as well as the defendant. In *Sinnott v Quinnsworth* [1984] ILRM 523 O'Higgins CJ observed that an award of general damages cannot be "so high as to constitute a punishment for the infliction of the injury, rather than a reasonable, if imperfect, attempt to compensate the injured". Where to draw the line between compensation and punishment is difficult. However, where a general proportionality of awards has been set, it must follow that an award appropriately placed on that scale cannot constitute punishment.
46. Denham J also said that an award must be "proportionate to social conditions, bearing in mind the common good". This will be addressed below in relation to setting the award for catastrophic injuries.

Subjectivity and proportionality

47. Although the principles established by the courts give considerable guidance as to where general damages should be pitched once a top award has been set, they cannot account for the fact that pain and suffering are inherently subjective so that no single definitive amount can adequately compensate every claimant in every case because, as the case may be, there may be particular facts which will warrant the making of a higher or lower award. To address this concern, the Guidelines do not prescribe single amounts for each injury but set out bands within which an award for general damages should fall. Indeed, if there are exceptional circumstances which warrant departure from the bands, the courts have the discretion to so depart. However, the exercise of this discretion must be limited to exceptional cases because the principle of proportionality would otherwise be offended. If courts are too quick to depart from the Guidelines, awards for minor injuries could soon

overtake awards for moderate injuries and moderate those of severe injuries.<sup>5</sup> We have to conclude, therefore, that proportionality also affects the width of brackets as well as the jurisdiction of the courts to deviate from them.

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<sup>5</sup> See e.g. *Payne v Nugent* [2015] IECA 268.

# THE WORK OF THE COMMITTEE

## A. Introduction

48. As set out in chapter 1, it was the task of the Committee to draw up draft Guidelines as to the level of general damages to be awarded in personal injury actions in the State, having regard to the factors set out in section 90 of the Act. The Committee decided that 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, was the clearest and most accessible way of meeting that requirement.
49. A natural starting point would have been to list the awards made by courts in the State for each type of injury and calculate the average so as to provide the Committee with a catalogue of damages. This catalogue could then have been compared to awards made in respect of the same injuries in other jurisdictions after which the Committee would have been in a position to decide whether Irish awards required adjustment.
50. However, there were significant obstacles which prevented the Committee adopting such an approach. First, it was not possible to list Irish awards in that manner. In a small country where only very few personal injury actions become the subject of a court award, there were simply too few cases in the recent or even the not-so-recent past to create such a catalogue. In respect of many different types of injuries there would be simply no recorded award of damages. There would have been nothing remotely close to the amount of data necessary for the Committee to attempt an exercise of this kind.
51. Furthermore, even if there had been enough cases, in light of the manner in which court awards and judgments are recorded, it would have been a Herculean task to ascertain the awards made in each court judgment given the tight time-frame. This is because the vast majority of judgments in personal injury cases are given *ex tempore*, i.e. orally only, and no official written record of them therefore exists. Thus, there would have been little available data for the Committee to work with.
52. As a consequence of these difficulties, the Committee decided that the best way to discharge its obligations was to do the following. First, having regard to the legal principles discussed in chapter 2, the Committee needed to decide the maximum award that would be just and fair in cases involving catastrophic injury. As all other awards need to be proportionate to the pain and suffering endured by a person so injured, this was the logical starting point for a catalogue of damages.
53. Second, the Committee needed to find out what is currently awarded in respect of general damages by the Irish courts in personal injury cases. As just highlighted, it was not feasible to determine what is awarded by the courts in Ireland for each type of injury. But, the Committee nonetheless needed to know, in respect of those cases where it could recover data, the level of damages awarded so that those awards could be compared to awards for like injuries in other jurisdictions.

54. As was just briefly touched upon, and as will be explained in more detail below, this was a difficult task as the data in relation to court awards in the State is not easily available. Also, even though the Commission and other bodies have carried out research into the level of settlements concluded and damages awarded in this country, for the reasons set out below, the Committee decided that it needed to carry out its own research in relation to court awards in personal injury cases.
55. As part of its exercise in relation to domestic awards, the Committee also looked at whether court awards and those made by PIAB differ and also looked at whiplash/soft-tissue awards in particular and investigated how they compare to awards made for like injuries in other jurisdictions.
56. Third, to determine whether and how Irish awards require adjustment, the Committee needed to ascertain the levels of general damages awarded in countries other than Ireland and how they compared to awards of damages in cases of a similar nature in this country.
57. Finally, once the Committee had collected the above data, it would determine what level of damages would be appropriate and how the Guidelines should be set out.
58. The investigations, analyses and conclusions of the Committee are detailed in what follows.

#### **B. Catastrophic injuries**

59. Because of the legal principle that awards need to be proportionate *inter se* (as discussed above), setting the maximum award for the most catastrophic injuries was deemed an important first step by the Committee in assembling the Guidelines. Awards for all other injuries must first and foremost be calibrated to the award made in cases involving catastrophic injury and, as a result, it is this top figure that must first be set.
60. However, determining what an award should be in cases of this kind is not entirely straightforward. The fact that pain and suffering are difficult to translate into monetary terms becomes particularly problematic when setting the upper limit. It being the amount by which all other awards are calibrated, it itself cannot be pitched in relation to any other award. As will be discussed later in this chapter, with the value of general damages not tethered, the courts have turned to the value of money and the state of the economy to determine where the upper limit should be set. This is to prevent any upper limit being out of all proportion with the economic situation pertaining in the State.

#### *Judicial treatment of catastrophic injuries*

61. There has been comprehensive judicial treatment of awards of general damages for catastrophic injuries. The modern authorities in this jurisdiction, insofar as they detail the history of awards of damages for catastrophic injury, commence with the decision of the Supreme Court in *Sinnott*. The plaintiff in that case was a young man who had been injured in a road traffic accident. He was rendered quadriplegic and totally dependent on others as a result of the defendant's negligence. And, he was left totally conscious of all that he

had lost as a result of the accident. In the High Court, the jury awarded him general damages of £800,000, a sum reduced on appeal to £150,000 by the Supreme Court.

62. In the course of his judgment, O’Higgins CJ expressed the following view concerning awards of general damages:

“Unless there are particular circumstances which suggest otherwise, general damages, in a case of this nature, should not exceed a sum in the region of £150,000. I express that view having regard to the contemporary standards and money values and I am conscious that there may be changes and alterations in the future, as there have been in the past.”

63. It would appear from the judgment that the court feared that juries might make awards that would amount to a punishment for the infliction of injury rather than a reasonable effort to compensate the injured party.
64. In his judgment, O’Higgins CJ also stated that in deciding what was fair and reasonable by way of an award of general damages, regard should be had to the facts of the particular case, the social conditions which pertain in our society, ordinary living standards in the country, the general level of incomes and things upon which the plaintiff might reasonably be expected to spend money.
65. There has been much discussion since the decision in *Sinnott* as to whether the figure stated therein was an artificial award designed to keep what is described in Bryan McMahon and William Binchy, *The Law of Torts* (4th edn, Bloomsbury 2013) as the “lid on the cauldron” or whether it was intended to set the quantum of general damages for all cases, big or small, by reference to this top figure of £150,000. Some considered that the £150,000 was an artificial ceiling such that many injuries, even those which could not be considered catastrophic, might nonetheless be compensated with awards of damages in and about that maximum figure. For the purposes of this report and the Guidelines, it is important to note that this view has been dispelled by the Supreme Court in *Morrissey* as set out above.

#### Evolution of the £150,000 figure

66. The £150,000 outer limit for general damages set in *Sinnott* was increased over time in cases such as *Kealy v Minister for Health* [1992] 2 IR (HC) 456 and *M N*. In *M N* Denham J expressed herself satisfied that the equivalent figure in 2005 to the £150,000 limit imposed in *Sinnott* was then in excess of €300,000. Later still, in *Yun v MIBI and Another* [2009] IEHC 318, Quirke J considered expert evidence regarding both the change in economic conditions in Ireland between 1984, when *Sinnott* was decided, and 2009 and the future social and economic outlook as of that time. He found the equivalent value of the 1984 award of £150,000 to be €500,000 in 2009. However, he adjusted that figure downwards to €450,000 to reflect the reduction in wealth and living standards which had commenced in 2008 when Ireland entered into a period of severe economic recession which he considered was likely to continue for a further five years.

67. *Yun* would appear to be the last case in which evidence was called with a view to having the court revisit what should be considered to be a fair and just award in cases of catastrophic injury. More recently Clarke CJ in his judgment in *Morrissey* declined to interfere with an award of €500,000 general damages made by the trial judge in what was undoubtedly a catastrophic injury case. Having regard to the importance to the proposed Guidelines of the sum considered to be a fair and just award of damages in case of catastrophic injury, the Committee could not ignore the fact that the plaintiff in *Morrissey* had not sought to argue that an award of €500,000 was unjustly low for catastrophic injury. Thus, whilst the Supreme Court did not interfere with the High Court award its judgment does not go so far as to state that €500,000 is the present upper limit for awards of general damages in cases of catastrophic injury. And, it is not surprising that the Supreme Court offered no view on the matter given that no evidence was available to warrant any upward adjustment.

*The assessment carried out by the Committee*

68. In light of the fact that a) no evidence was led in *Morrissey* as to whether €500,000 remains a fair and just award of general damages in cases involving catastrophic injury, b) that the economic climate and outlook may have changed materially since *Morrissey* given the Covid-19 pandemic, c) that there was a statutory obligation upon the Committee to comprehensively assess the issue of general damages, including in cases of catastrophic injury and d) that *Yun* was decided over 10 years ago with its assessment therefore having the potential of being out-of-date, the Committee deemed it necessary to revisit the issue of the upper limit in detail.
69. To that end, the Committee carried out two exercises. First, it sought an expert report concerning the current economic situation pertaining in the State so that an assessment, somewhat akin to that carried out by the High Court in *Yun* could be undertaken by the Committee, to determine the present day value of money in light of its value in 2009 when *Yun* was decided. Second, in order to discharge its obligation under the Act to have regard to awards of general damages made by courts outside the State, it sought guidance from European national supreme courts in relation to the level of general damages customarily awarded in catastrophic injury cases in their respective jurisdictions. This was to establish whether the Irish position was out of kilter with awards made elsewhere. The Committee also asked the foreign courts questions on a set of sample cases which will be discussed later in this report.

*Report on the economy*

70. The Committee tasked Colm McCarthy and Associates, a leading firm of economic consultants, to provide an assessment of the economic situation in the State. The Committee provided the consultants with the relevant legal authorities and asked the following three questions:

- 1) What has occurred in the economy since the *Yun* case was heard in 2008?

- 2) Whether the sum of €500,000 (discounted to €450,000) awarded in *Yun* (assuming it correctly reflects the intended uplift of the award in *Sinnott*) “fits” with the sum of €500,000 awarded in *Morrissey* in light of those changes?
- 3) What they considered likely to happen within the economy over the next 5 years and how this might impact on the Committee’s role in guiding the sum to be awarded for catastrophic injury?

#### Question 1

71. To answer this question, the consultants identified two relevant factors: the evolution of price inflation in the State and any changes to the living standard since 2008.
72. To determine the extent of price inflation, the consultants looked at how both the Consumer Price Index (CPI) and the Harmonised Index of Consumer Prices (HICP) have evolved since 2008 in Ireland. Although evidence was led on it in *Yun*, the consultants in their report discounted the implicit deflator of Gross Domestic Product (GDP) as a reliable measure of indexing consumer price inflation. Because any calculation of GDP involves the measure of goods and services exported from Ireland, and therefore not consumed here, it does not measure to what extent prices for goods and services have changed in the State.
73. Having assessed the data available from the Central Statistics Office (CSO), they concluded that, when viewed through either the CPI or the HICP, the consumer price level has barely risen at all and that the rate of inflation has been essentially zero.
74. As for the evolution of living standards in Ireland, the consultants turned to per capita disposable income, an economy-wide measurement relating to the post-tax income from all sources available to Irish households. It, so they observed, corresponds most closely to what people would call “the standard of living” in everyday speech. Again, the authors concluded that there has been little change regarding disposable income per capita in Ireland from 2008-2019. Although there was a decrease from 2011-2015, disposable income has rebounded. The consultants acknowledged that it is difficult to predict what will happen in the remainder of this year, but opined that compared to the levels in 2008, there is likely to be little change.

#### Question 2

75. In light of the assessment carried out for question 1, the consultants concluded that the amount of €500,000 decided in *Yun* does not require adjustment.

#### Question 3

76. On the whole, the consultants concluded that the future outlook for the economy is difficult to determine with any great degree of certainty. This is primarily due to the Covid-19 pandemic but also the unknown economic fallout that will follow the exit of the United Kingdom from the European Union. In particular, the success of present and future

containment measures, as well as the possible creation of an effective vaccine are factors which can currently only be assessed cautiously and without much certainty. Also, the details of any trade relations with the UK will have an impact upon economic outlook.

77. The consultants observed that, although prior to the downturn precipitated by the Covid-19 pandemic, there were only modest expectations for economic growth in advanced economies such as Ireland, events in 2020 have rendered the economic future somewhat uncertain.
78. As question 2 was answered on the assumption that the figure in *Yun* constituted a correct uplift of the £150,000 figure in *Sinnott* and that no fundamental error was made by the judge, the Committee sought and received assurance that there was no error in principle in the *Yun* uplift.

#### European comparison

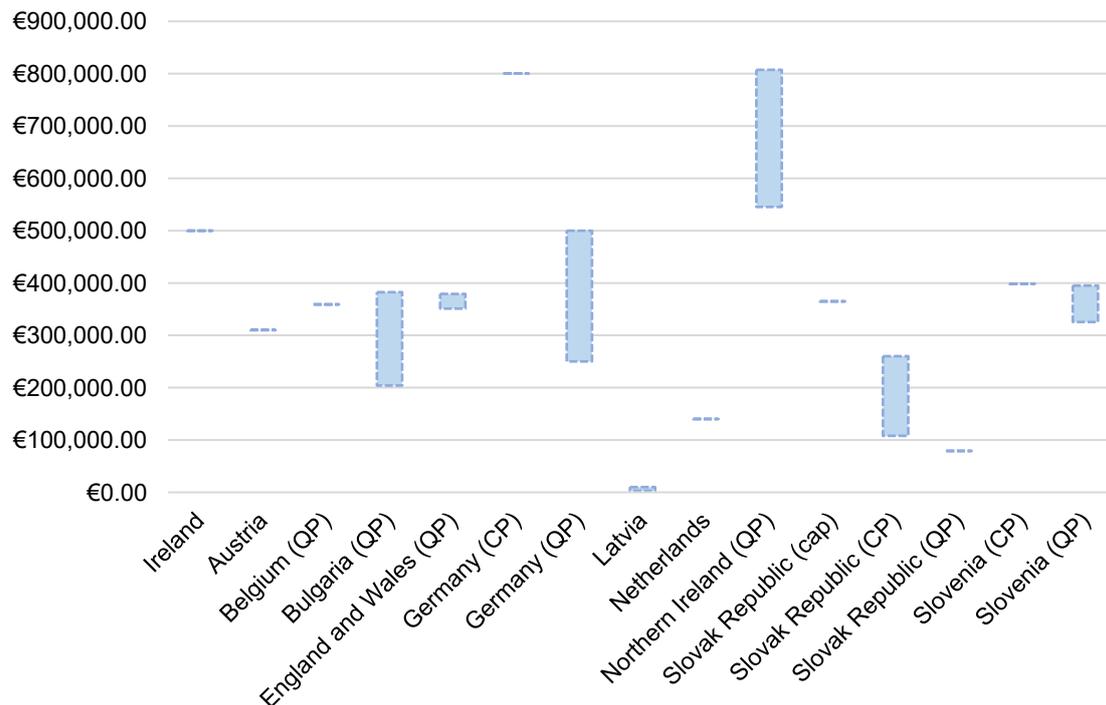
79. The Committee contacted European supreme courts to obtain guidance as to what awards of general damages are made in cases of catastrophic personal injury. In particular, the Committee asked what awards are made in cases where negligence causes quadriplegia or cerebral palsy. Out of the 27 courts contacted, only 9 were in a position to provide a definite answer. This was in addition to the figures from England and Wales and Northern Ireland where their respective guidelines prescribe the awards for injuries of this kind.
80. None of the responses mentioned a legislative cap on damages for pain and suffering. In the Slovak Republic, however, due to the method by which damages for pain and suffering are calculated, there is an implied cap as set out below.
81. In the table below, (QP) stands for quadriplegia and (CP) for cerebral palsy. The figure on the left is the lower boundary of damages for pain and suffering for awards made in cases involving catastrophic injuries and the figure on the right is the upper boundary.

**Table 2 – Awards of general damages in European jurisdictions in catastrophic injury cases in EUR**

Country	Lower bracket (if given)	Top bracket
Ireland		€ 500,000.00
Austria		€ 310,000.00
Belgium (QP)		€ 359,152.40
Bulgaria (QP)	€ 204,000.00	€ 382,500.00
England and Wales (QP)	€ 351,153.09	€ 379,100.00
Germany (CP)		€ 800,000.00

Germany (QP)	€ 250,000.00	€ 500,000.00
Latvia	€ 3,000.00	€ 10,000.00
Netherlands		€ 140,000.00
Northern Ireland (QP)	€ 545,335.63	€ 807,253.05
Slovak Republic (cap)		€ 364,680.00
Slovak Republic (CP)	€ 107,900.00	€ 260,000.00
Slovak Republic (QP)		€ 79,014.00
Slovenia (CP)		€ 398,452.00
Slovenia (QP)	€ 325,496.00	€ 395,084.80

**Chart 2 - Awards of general damages in EU jurisdictions in catastrophic injury cases in EUR**



82. In light of all of the above, the Committee has concluded that, first, awards of general damages in the region of €500,000, for catastrophic injury, that being the sum that has customarily been awarded by Irish courts in such cases in recent years, are not out of alignment with other countries with a similar standard of living to that enjoyed in this State.

Second, in light of the economic analysis, the Committee is also satisfied that the figure of €500,000 remains appropriate.

### C. Domestic Awards, international comparison, PIAB awards and whiplash

83. Although the Committee was aware of the size of the awards customarily made in catastrophic injury cases, it also needed to ascertain the size of awards made in cases of less serious injury in order to provide the Committee with an indication as to whether domestic awards needed to be recalibrated and if so by how much. As part of its investigation into domestic awards, the Committee placed particular emphasis on whiplash/soft-tissue injuries.
84. In establishing the level of domestic awards, the Committee was faced with a number of obstacles, the most significant being the lack of readily available robust data. There was no difficulty ascertaining the size of the award made in all contested cases because the award is recorded in the court order drawn up at the conclusion of every case. The difficulty was in identifying the nature and extent of the injury which led to the award in the absence of a written judgment. In such cases it was not possible to match the award with the injury it was designed to remedy.

#### Why was there limited data available concerning awards of damages?

85. First, as is evident from chapter 2, the overall percentage of cases determined by a judge during the period 2017-2019 was very small (0.54 %). This made it particularly difficult for the Committee to consider how the damages awarded by the courts in the State for injuries of widely varying degrees of severity are to be viewed when compared with damages guided for those injuries in other comparable jurisdictions.
86. Second, of the small number of cases in which awards of damages were made by the courts in the relevant period, there was limited available documentation from which the nature and extent of the injuries corresponding to the award could be accurately gleaned. In particular, there was little data in relation to what can be termed mild and moderate injuries as those most frequently fall within the jurisdiction of the Circuit Court, currently capped at €60,000, where it is the custom that *ex tempore*, i.e. unwritten judgments, are delivered.
87. A similar difficulty was encountered in respect of cases in which modest awards were made in the High Court. Once again this was due to the fact that judges tend to give their decisions *ex tempore* in such instances.

#### Efforts to remedy the lack of data

88. Recognising that there was limited data available in the State in recent years, the Committee assembled the best evidence available by collating and then analysing all written judgments delivered in personal injuries cases in the years 2017-2019.
89. Then, in relation to awards of damages made in cases where there was no written judgment, the Committee sought the documentation it considered would best assist it in determining the nature and extent of the injuries that likely led to the making of those awards. This was done with the assistance of relevant insurers and indemnifiers who made

available the documentation sought by the Committee from which it considered the extent of the claimant's injuries could best be ascertained.

90. The Committee recognises that the information so obtained is not as robust as that extracted from the available written judgments, but failure to procure and consider this slightly less solid evidence would have meant that the Committee could not have made any assessment of awards of damages under the Act. To demonstrate that this is so, it is perhaps worthwhile noting that for the years 2017-2019 less than ten written judgments were delivered in cases in which there was an award of less than €40,000.
91. The Committee wrote to all relevant insurance companies and indemnifiers seeking documentation from which it might broadly identify the nature and severity of the injury that led to the court's award. In all cases considered, the Committee had available to it the most up-to-date medical reports from the respective parties and often commentary, contained in correspondence or reports authored by the defendant's solicitor and/or claims manager, concerning the award made. In total, approximately 700 cases were identified in the course of this process.
92. However, in order to ensure that the data relied upon was as robust as possible, approximately half of the cases were discarded for a variety of reasons. For example, the Committee considered that awards made in respect of claims involving multiple injuries would not be suitable for the type of comparative analysis proposed by the Act. Other cases were excluded because it would not have been possible, from the documentation furnished, to reliably identify the nature and extent of the injury found by the trial judge when making his or her award of damages.
93. In a further effort to obtain as much robust data as possible in relation to the awards of damages made in cases involving minor and moderate injury, in December 2019, all judges sitting in courts of original jurisdiction (District, Circuit and High Court) were requested to adopt a process whereby, at the conclusion of every case in which they delivered an *ex tempore* judgment they would complete a detailed form setting out the circumstances and particulars of the injury and award. These forms, which span the period from January 2020 to 31st July 2020, were forwarded to the Committee and analysed in precisely the same way as the written judgments and other documentation earlier referred to. A sample of such a form can be found in Appendix 2 to this report.
94. Subsequently, a random sample of 271 cases in which no written judgment was available was collected and the files were summarised, as were the written judgments earlier referred to. This resulted in a set of 337 summaries. An example of one such a summary is contained in Appendix 3 to this report. The summaries were compiled by a qualified barrister and were audited by the Committee.

#### The comparative exercise

95. The Committee now had a sample of Irish awards and a description of the injury that gave rise to those awards. This was used to conduct a comparative exercise to determine how

Irish awards compare to awards made in other jurisdictions. As to which countries would lend themselves to valid comparison, the Committee decided to seek expert advice on the matter. It approached Sara Moorhead S.C., a highly experienced personal injuries lawyer who had other extremely valuable experience in that she had previously advised and supported the work of the Commission. Having considered various common law and civil law jurisdictions, Ms. Moorhead recommended that the Committee should look towards Northern Ireland and England and Wales as the most suitable comparator countries. To get a wider picture, the Committee decided to look at additional, albeit subsidiary, comparator countries so that some comparisons could also be made with another EU country and another common law country. To that end, it looked to the awards made in respect of personal injury claims in Germany and Singapore. However, the Committee accepted the advice of Ms. Moorhead that Northern Ireland and England and Wales were of prime importance for comparison purposes, and it is on the awards of damages made in these countries that the Committee has placed most reliance.

96. The Committee then assembled whatever guidance was available in relation to how the courts in the aforementioned countries award general damages in personal injury cases and the level of damages so awarded. In the case of Northern Ireland and England and Wales, written guidelines had been issued by their respective judiciaries. In the case of Germany and Singapore, authoritative guidance was available in tables which listed previous decisions giving a description of the specific injuries and the court award of general damages.
97. The members of the Committee subsequently applied the guidance available for the four jurisdictions to the case summaries earlier mentioned and determined what award each such case would have attracted had it been decided in the foreign jurisdiction. As the members were not able to determine with certainty what a foreign judge would award in some cases, be that because the guidance available from that country did not specify an award for the type of injury in a particular case or because it was not possible to determine the nature of the injuries from the summary, further cases had to be excluded. This left the Committee with a data set of 328 cases.
98. At the end of the exercise each of the 328 cases had not only the award assigned to it by the Irish court, but also an assessment made by a member of the Committee as to the award the case would likely have received if heard in each of the other four jurisdictions. The Committee then asked Verisk, a leading data analytics provider, to carry out a statistical analysis of that data set in order to determine how Irish awards compare to those in the relevant foreign jurisdictions.
99. The statisticians were asked to ascertain whether the Irish court awards in the sample of cases differ to a significant degree from those assigned to the cases under the foreign guidelines. Having assessed the sample as statistically significant, the statisticians concluded that Irish awards are about 1.2 to 1.3 times higher than Northern Irish awards and twice to 2.3 times higher than English and Welsh awards. Irish awards were also significantly higher when compared to Singaporean or German awards.

100. As for whiplash injuries, the report concluded that Irish whiplash awards were 1.2 to 1.3 times higher than Northern Irish whiplash awards and 1.9 to 2.3 times higher than English and Welsh awards.

**Table 3 - Key findings of the comparative exercise**

	Irish average	Comparator average	Ratio range
All awards			
Northern Ireland		€22,263.41	1.20 - 1.30
England and Wales	€27,852.44	€13,159.76	1.98 - 2.25
Whiplash awards			
Northern Ireland		€16,617.56	1.18 - 1.31
England and Wales	€20,648.40	€ 9,842.73	1.91 - 2.28

Other research related to court awards

101. In 2018, the Commission published its final report. Therein, it recommended that guidelines for general damages in personal injury cases be compiled. It also found that damages awarded in Ireland for soft tissue injuries are 4.4 times higher than those in England and Wales. The Committee studied the report in detail and noted that, as its conclusions were based primarily on settlements and not court awards, it could not be regarded as a reliable indicator of the level of such court awards. Having regard to its statutory remit under section 90, the Committee therefore considered it necessary to carry out its own research into how Irish court awards compare to those made elsewhere.

Do court awards deviate from award brackets guided in the Book of Quantum?

102. Pending the commencement of section 99 of the Act, the courts are obliged to have regard to the Book of Quantum when determining how much in general damages they should award in cases involving personal injury.<sup>6</sup> The Book of Quantum, similar to the Guidelines now proposed by the Committee, is a catalogue of damages where individual injuries, ranging from the mild to the severe, were given ranges of damages within which an award made by PIAB or the courts should fall.

<sup>6</sup> Civil Liability and Courts Act 2004 (as originally enacted), section 22.

103. The Committee wanted to know whether awards made by PIAB differ in any significant way from those made by the courts. Unfortunately, the Committee was only able to correlate 22 cases in its sample of cases with PIAB awards. Based upon this low sample size, the statistician concluded that any assessment would not yield statistically significant results. Moreover, given that in all such cases there would have been a significant lapse of time between the PIAB assessment and the court award, the two awards would not have been immediately comparable.

Compiling the Guidelines

104. Having carried out the above research, the Committee considered itself to be in a good position to set down a first draft of the Guidelines.
105. But, before detailing how the Guidelines were assembled, the Committee feels it is necessary to record that it decided not to use the Book of Quantum as a starting point for the preparation of its Guidelines. It made that decision for a number of reasons. First, in the eyes of the Committee, the Book of Quantum did not have the level of detail necessary to allow it discharge its statutory obligations to provide a comprehensive set of personal injury guidelines.
106. Second, there are many injuries covered in the Guidelines which do not appear at all in the Book of Quantum. Third, the Committee felt that there were other factors which may have influenced, particularly the lower brackets in the Book of Quantum which should not appropriately be replicated in the Guidelines. These include, for example, whether the levels set by the Book of Quantum may to some extent factor in legal costs to incentivise settlement. Fourth, the Committee considered that in some instances, the bandwidths were overly wide to give sufficiently clear guidance regarding particular injuries. The view of the Committee therefore was that it should opt for a method of devising more tightly drawn brackets to render the guidance more meaningful.
107. Consequently, the Committee decided to draw up its own parameters and set its own values for the brackets. As for the description of the injuries listed in the catalogue, it had regard to both the Northern Irish guidelines as well as the English and Welsh guidelines but also other schemes such as those in New South Wales to come up with the best possible way of listing and describing individual injuries.
108. Having set out the descriptions, the Committee now needed to find what level of damages was appropriate for each injury. As set out in chapter 3, and similarly to the Book of Quantum and other guidelines, the Committee needed to set a bracket with an upper and lower boundary for each type of injury. As the Committee was aware of the extent to which Irish awards deviate from Northern Irish awards and English awards, it decided to set its values by reference to the Northern Irish and English figures. This meant that initial brackets were calculated to adjust for the fact that Irish awards were out of kilter with those two jurisdictions.

109. Because the Committee needed to have regard to the principle of proportionality, the sum awarded for catastrophic injuries and the fact that a purely mathematical approach might lead to some absurdities, it then reviewed the brackets initially calculated to ensure the awards proposed were proportionate and that there were no inconsistencies. The Committee also had regard to the comments made by Clarke CJ in *Morrissey* with regard to the injuries to be considered catastrophic.
110. In circumstances where the Committee decided to place significant weight on the brackets of damages guided for similar injuries in Northern Ireland and England and Wales, it was critical that in fixing the top figure for catastrophic injury, against which all lesser injuries must be calibrated, the Committee had regard to the fact that the maximum figure for catastrophic injury in Northern Ireland is €800,000 and in England and Wales €380,000. It was in light of these figures and those in the European survey, that the Committee considered that the maximum figure for catastrophic injury in this jurisdiction should be €550,000.
111. Furthermore, having regard to the conclusions in the statistical consultant's report, when deciding what would be a fair and just range of awards for all lesser injuries and in light of the ceiling of €550,000 for catastrophic injury, the Committee once again considered it should pay significant regard to the sums guided for such injuries in the guidelines of Northern Ireland and England and Wales. Having taken such an approach, in general terms it can now be stated that Irish awards of damages, following the introduction of the Guidelines, will lie somewhere between those which would be awarded in Northern Ireland and in England and Wales for the same injuries.
112. Finally, in respect of every injury detailed in the Guidelines, the Committee believes it has proposed brackets of damages designed to ensure that awards made pursuant to the Guidelines will be proportionate and fair to both claimant and defendant and in line with awards made for similar injuries in those comparator countries most closely aligned to Ireland in terms of standard of living. Furthermore, the Guidelines will promote predictability and consistency in awards of damages.

## **APPENDICES**

**A. Appendix 1 – Draft Personal Injuries Guidelines**

**B. Appendix 2 – Personal injuries award summary form**

## Personal Injuries Award Summary

**Court:** Circuit Court

**Date of award:** 21st July 2020

**Date of injury:** 18th September 2015

**General damages to date:** € 25,000

*(please ensure you exclude special damages)  
(damages to be stated on a full liability basis)*

**General damages into the future (if any):** € n/a

**Age when injured:** 19 years.

**Gender:** Male

Female

**Occupation (if any) at date of injury:** Waitress

### Circumstances leading to injury:

*(and, if the event itself was particularly traumatic thus warranting additional damages, please detail.)*

Plaintiff was in the process of polishing wine glasses as part of her job when the stem of a glass broke and punctured her left finger.

### Type of injury/Injuries sustained:

*(State first the most significant injury sustained followed by lesser injuries in order of their significance. E.g. Fracture to L.4, soft tissue injury to neck and sprain to left little finger.)*

Puncture to left finger with glass/foreign body in the wound which required explorative surgery for nerve repair and glass removal. Severe pain. Hypersensitivity to lateral aspect of little finger and scarring.

**With regard to each injury in respect of which compensation was awarded, please detail:**

**(a) The severity and duration of the injury and the attendant symptoms.**

Pain in left hand and finger was severe.

Glass foreign body was in the wound.

Scar is permanent.

Hypersensitivity at the lateral aspect of her little finger persists.

**(b) The nature, extent and duration of any treatment undertaken, and/or the medication prescribed.**

Attended Accident and Emergency and General Practitioner wound was sutured. Referred to St James' Emergency Department where she received antibiotic therapy intravenously and orally and underwent explorative surgery for nerve repair and partial glass removal.

Hospitalised for three days.

**(c) If relevant to the damages awarded, was the plaintiff out of work as a result of their injuries? If so, for how long?**

Yes, six weeks.

**(d) If relevant to the damages awarded, detail the extent to which the injuries sustained impacted on the plaintiff's enjoyment of life and/or sporting or leisure activities**

Was unable to complete the same tasks at work afterwards, still suffers hypersensitivity in the area especially in cold weather.

**Had the plaintiff made a full recovery as of the date of trial?**

No.

**If no, provide the prognosis relevant to your award of damages.**

Permanent scar visible on lateral aspect of little finger with hypersensitivity also persisting.

**Provide any other information relevant to the award of damages made not covered by the answers to questions 4-10 above.**

The medical reports stated that the Plaintiff had a sustained a puncture to her finger with glass foreign body in the wound. Hospitalisation for 3 days was necessary with intravenous and oral antibiotics and surgery for glass removal and nerve repair. She missed 6 weeks of work also. She has a permanent scar and still suffers from sensitivity at the lateral aspect of her left little finger.

Please ensure this Summary is returned either by email to [judicialcouncil@courts.ie](mailto:judicialcouncil@courts.ie) or by post to Ms Mary Murphy, The Judicial Council, Green Street Courthouse, Dublin 7 within 7 days of the making of the award and thank you for your cooperation.

**C. Appendix 3 – Sample case file summary**

Case Number: (redacted)

### **Identifying Information**

Case Information: (redacted)

Plaintiff Profile: 54/55 year old male. He was unemployed at the time of the accident and partaking in a community scheme. He missed 3 weeks of the scheme due to the accident. By 2018, he was in the process of setting up his own furniture business.

### **The Injury**

Details of Injury: On 2nd April 2015, the Plaintiff was a passenger in the First-Named Defendant's vehicle when it collided with another vehicle. He suffered a whiplash soft-tissue injury to the neck, as well as bad sprains to the right shoulder, lower back and right knee.

Impact on the Plaintiff: The Plaintiff's pain has been treated with Nurofen and he has undertaken physiotherapy and a home exercise programme. His injuries subsisted as of his 2017 examination. He followed the course of treatment advised at that time and reported a 50-60% improvement in symptoms by the time of his 2018 examination. Up to that date, he had reported reduced strength in the right shoulder, difficulty with sleeping and difficulty with bending/stooping/managing stairs.

Prognosis: Has retained a full range of movement in the lower back, neck and shoulders. Mild wasting in the shoulder muscles and some pain at end of range movement (related to onset of arthritis). Some mild muscle spasm in the neck. Effusion, crepitus and tenderness in right knee joint. The knee symptoms are caused by the onset of osteoarthritis and have been exacerbated by the accident. By the date of his 2019 examination, when he attended the Defendant's expert, the Plaintiff reported a good overall recovery, aside from some ongoing mild discomfort. In that doctor's view, a full recovery had taken place by the end of 2017 and ongoing symptoms after that date related to arthritis, rather than the accident.

Court's award in General Damages: €30,000.