

PERSONAL INJURIES ASSESSMENT BOARD

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Dr Paul Gorecki,
Director,
Competition Authority,
14 Parnell Square,
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20th April 2005

Dear Dr Gorecki,

The PIAB has a limited input to the various issues identified in your report of 24th February 2005. Theoretically, it might be said that the Board's only role relates to the cost/benefit analysis which we will be required to undertake of pre- and post-PIAB litigation costs. In that context, we are interested in your findings on taxation that regardless of the complexity of a case or the amount of work undertaken, that 90% of solicitors' instruction fees are a base of €7,300 plus 9% of the amount awarded and 80% of barristers' fees are a base of €930 plus 1.8% of the award. These amounts are, of course, in addition to any solicitor-and-own-client fee levied on the claimant. The standard PIAB charges of €850 to respondents and the refundable €50 to claimants will obviously compare very favourably to that benchmark.

However, we recognise the concerns expressed that claimants are not awarded any costs in our assessment system - although we have noted a fixed fee of €399 being offered by some solicitors which seems a considerable improvement for consumers. But we are far from assured that all clients are securing such deals, nor that claimants know in advance their potential costs liability. If such information were available to consumers they would be more empowered to make the decision whether they wish to employ an advisor as provided for under S7.1 of the PIAB Act 2004.

The Authority has highlighted the obligations on solicitors to provide an estimate of costs at first consultation, or as soon as possible thereafter, but it is clear from your study that there is less than adequate compliance with S68 of the Solicitors (Amendment) Act 1994. You may be aware that a July 2004 report from the Committee on Court Practice & Procedure, chaired by Mrs Justice Susan Denham, reflected similar concerns. A more recent report from the Regulatory Taskforce of the Law Society raises doubts as to whether the Society has the power to audit members to ensure such compliance.

For those reasons, we would support the Authority's proposals 27 to 29 on advance information regarding likely fees to clients of both solicitors and barristers.

We would go further and propose that included in the prescribed information would be a duty on the solicitor to advise a client that it is not obligatory to have legal representation - for example, in straightforward probate and in PIAB applications. Prior to the recent decision of *McMenamin J in O'Brien v PIAB* when we could contact all claimants direct, a number of callers to our Service Centre reported being told by legal advisors that it was necessary to be represented by a solicitor. Many claimants, on being given the choice, undertook to proceed personally without incurring that avoidable cost. Experience to date indicates that while claimants have the option of incurring the expense of lawyers for whose costs no award is made, many claimants chose to deal direct with PIAB and have progressed their assessments without difficulty.

So that consumers can be free to choose whether to use a solicitor, and to ease switching between service providers, we would support proposal number 40 that the Law Society amend its professional Code of Conduct to require solicitors to waive their lien which gives the solicitor a right to retain the file of papers pending payment from the client.

To be clear, we are not denying the valuable role of lawyers where there are disputed legal issues or where a person freely chooses to have an agent undertake a task. What we advocate is advance transmission of transparent information enabling consumers to make informed choices to select or reject the service offered. Access to justice requires not only that legal advice is sound but that it is provided in a cost effective and client responsive manner. Annual expenditure of over €1.1bl on legal services in Ireland also has a significant impact on the economy as a whole.

Regulation is less than useless without enforcement. We would, therefore, support the establishment of an Independent Legal Services Commission outlined in proposal number one. PIAB is acutely aware of the conflicts of interest presented by the regulatory and representation roles both being held by the Law Society, as indeed have been outlined in your report.

So far we have primarily concentrated on concerns for claimants. Litigation overheads are also significant for defendants. In that context, we would support proposals 11 and 12 that employed barristers should be allowed rights of audience and that clients should be allowed greater direct access to members of the Law Library. The latter proposal would also be of benefit to claimants as the only advice they may require is whether a settlement offer, or PIAB award, is an adequate reflection of their compensation entitlements.

The other proposals in your report relate to issues that are largely outside the objectives of the PIAB so we do not propose to comment. We look forward to the implementation of the various reforms and also hope that you will be able to provide us with data to assist in completion of our cost/benefit analysis in due course.

Yours Sincerely,

Chairperson