

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 321

[2021 No. 641 JR]

BETWEEN

BRIDGET DELANEY

APPLICANT

AND

**THE PERSONAL INJURIES ASSESSMENT BOARD, THE JUDICIAL COUNCIL,
IRELAND AND THE ATTORNEY GENERAL**

RESPONDENTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 2nd day of June, 2022

Introduction

1. On 12 April 2019, the applicant fell when walking on a public footpath at Pinewood Estate, Dungarvan, County Waterford. The applicant claimed that the cause of her fall was an unevenness on the surface of the footpath. Her injuries consisted of a grazed knee and an undisplaced fracture of the tip of her right lateral malleolus. By way of treatment the applicant had to wear a walker boot for about four weeks and was advised that she would have swelling in her ankle for approximately six to nine months. According to the applicant's orthopaedic surgeon, apart from the swelling, she would have no significant long term sequelae.

2. As the applicant's fall appeared to be as a result of a defect in the footpath, she consulted her Solicitor. Waterford City and County Council were identified as the local authority responsible and a claim was initiated to the first named respondent, PIAB. The applicant was

advised that, based on the Book of Quantum, her injuries would attract general damages in the region of €18,000 - €34,000. However, when PIAB made its assessment, it was in the sum of €3,000. This significant reduction in the value of the applicant's claim was due to the fact that the Book of Quantum no longer applied, but the Personal Injury Guidelines ("the Guidelines") did.

3. In these proceedings, the applicant challenges the legal basis for the drawing up and passing of the Guidelines. She also maintains that PIAB erred in law in assessing the value of her injuries under the Guidelines and not the Book of Quantum.

General Damages

4. As both the Book of Quantum and the Guidelines concern levels of general damages to be awarded for particular injuries, it is necessary to look at the principles that the Courts have applied in assessing the amount to be awarded.

5. Where a person, such as the applicant, suffers an injury or loss through the wrongful act of another that person is entitled to be awarded a sum of money by way of general damages. The objective of the award of damages is to compensate the injured person for pain and suffering to date and into the future so as to, in as far as money can, put the injured person back into the position they were in prior to being injured. Unfortunately, the more serious the injury the less likely that an award of money will achieve that objective.

6. The principles that a court will apply in awarding general damages have to be clear and be capable of being applied to injuries that range from the minor to the catastrophic. These principles have been stated by the Superior Courts on numerous occasions. In *Nolan v. Wirenski* [2016] 1 I.R. 461, Irvine J. (as she then was) in the Court of Appeal stated: -

“(33) Principle and authority require that awards of damages should be (i) fair to the plaintiff and the defendant; (ii) objectively reasonable in light of the common good and social conditions in the State; and (iii) proportionate within the scheme of awards for

personal injuries generally. This usually means locating the seriousness of the case at an appropriate point somewhere on a scale which includes everything from the most minor to the most serious injuries.”

That the damages that are awarded have to be fair both to the plaintiff and the defendant does not require any comment. However, the principles make specific reference to “*the common good and social conditions*”. This requires comment and analysis. The amount of damages a person, or an indemnifier involved, has to pay to a plaintiff has economic consequences for the wider community. This has been recognised in a number of decisions of the Supreme Court. I refer to the following passage from *Kearney v. McQuillan and North Eastern Health Board (No. 2)* [2012] IESC 43 where Mac Menamin J., having referred to *Sinnott v. Quinsworth Ltd* [1984] I.L.R.M. 523, stated: -

“... It is important in this context to recollect, particularly at this time, those criteria of social conditions and common good. These are not just empty words. The resources of society are finite. Each award of damages for personal injuries in the courts may be reflected in increased insurance costs, taxation, or, perhaps a reduction in some social service. We are living in a time where ordinary people often find it difficult to make ends meet. The weight to be given to each of these factors must always be a consideration in the balance.”

7. The third principle of damages being “proportionate” is particularly relevant to the framing of the Guidelines. What is referred to as the “cap” on general damages is the figure which represents the amount to be awarded to a person who has suffered life changing catastrophic injuries. This amount has varied over the years and is, significantly, influenced by the prevailing economic conditions. This was illustrated in *Yun v. Motor Insurers Bureau of Ireland (MIBI) and Anor* [2009] IEHC 318. In this case, Quirke J. considered expert economic evidence as to the prevailing economic conditions and forecasts. The Court was reviewing the

level of the “cap” which had been set in 1984 in *Sinnott v. Quinsworth*. The evidence indicated that the value of the 1984 cap in 2008 was €500,000. However, taking into account the current and future economic conditions, Quirke J. reduced that sum to €450,000.

8. The “cap” has recently been considered by the Supreme Court in *Morrissey v. HSE and Ors* [2020] IESC 6. Clarke C.J. stated: -

“14.22. First, it must be said that the limit of €450,000 derives from the judgment of Quirke J. in *Yun*, as referred to above. However, it is also clear that the limit is not fixed forever but rather can be reviewed from time to time by reference to prevailing conditions. It is also clear that the limit of €450,000 was fixed at what was, on any view, a time of particular economic depression in this country and was expressly reduced by Quirke J. on that basis from what he would otherwise have regarded as an appropriate limit of €500,000.”

And: -

“14.24....In those circumstances, and having regard to the economic circumstances which prevailed at the time the limit of €450,000 was fixed, it does not seem to me to be unreasonable to place the current limit at €500,000.”

9. As to whether €500,000 is a “limit” or “cap” has been the subject of a number of judicial decisions. Be it one or the other, the sum of €500,000 is of particular significance in that it represents an appropriate award of general damages for catastrophic injuries. It is also significant in the context that damages are “proportionate” so that an award can be calculated on a scale between a very minor injury and a catastrophic injury. A clear benefit of this is that it should result in consistency between awards and make the level at which damages may be awarded for a particular injury more predictable. The more predictable the award the more likely a settlement is, with a reduction in legal costs.

Law Reform Commission

10. On 30 September 2020, the Law Reform Commission (“the LRC”) published a Report entitled: “Capping Damages in Personal Injuries Actions”. In the opening paragraphs of the Report it is stated: -

“The Commission acknowledges that this project is set against a background of considerable debate concerning the cost of motor, employer and public liability insurance, which is outlined in Chapter 1. However, the Commission emphasises that the focus of this project is confined to a narrow question: is it constitutionally permissible, or otherwise desirable, to provide for a legislative model of capping general damages in personal injuries litigation.”

11. The LRC considered a number of legislative models. Of particular relevance to this application was “Model 4”, as it is closest to the model that was actually followed. The model was described as follows: -

“**Model 4** proposes an approach that could be described as being closest to the current position, in that it proposes that the courts should continue to determine the level of awards for general damages through case law, as supplemented by the significant new provisions for Personal Injuries Guidelines under the *Judicial Council Act 2019*. Model 4 is assessed in accordance with the Heaney proportionality test and the Tuohy rationality test. Because Model 4 does not involve a legislative cap on damages in the same sense as Models 1 to 3, it would be less likely that this model would raise concerns in relation to the separation of powers, including the non-delegation doctrine.”

Each of the models were then analysed in terms of proportionality, rationality, right to equality and the separation of powers. The LRC concluded that Model 4 “*will likely resist any constitutional challenge*”. It was also noted: “[i]t is particularly significant with regard to a

proportionality assessment that individual judges will be able to depart from the Guidelines in particular cases, subject to an obligation to state the reasons for why they do so”.

12. The Report from the LRC, though not binding on the Court, is authoritative.

Judicial Council Act 2019 (“the Act of 2019”)

13. The Act of 2019 established the Judicial Council, a body that consists of all the Judges in the State. Initially, the purpose of this legislation was to deal with judicial training/education and the difficult and complex issue of making provision to address judicial misconduct. In these proceedings, we are concerned with the statutory provisions concerning the drawing up and adoption of the Guidelines.

14. The relevant provisions are: -

- Section 7 (2) (g) provides for the adoption of draft personal injuries guidelines prepared and submitted by the Personal Injuries Guidelines Committee to the Board with the modifications (if any) made by the Board. The timeframe of twelve months is specified.
- Section 11 provides that the Board of the Judicial Council shall review draft personal injuries guidelines and amendments by the Personal Injuries Guidelines Committee.
- Section 18 provides for the establishment of a Personal Injuries Guidelines Committee (“the Committee”). The functions of the Committee is to prepare and submit to the Board for its review draft personal injuries guidelines and any amendments in accordance with section 90 of the Act of 2019.
- For the purposes of performing its functions, the Committee is given a number of powers including the provision of documents, consultations with appropriate persons including PIAB, conducting research on damages for personal injuries, and organising conferences, seminars and meetings relevant to these functions.

- Section 19 sets out the membership of the Committee. Judges of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court and the District Court are represented.
- Section 90 is central to this application in that it sets out various matters which the Committee shall have regard to in preparing the Guidelines. I will set out the provisions of s. 90 and consider them later in the judgment.
- Section 99 provides that s. 22 of the Civil Liability and Courts Act 2004 is amended as follows: -

“(1) ... [T]he court shall, in assessing damages in a personal injuries action commenced on or after the date on which section 99 of that Act comes into operation —

- (a) have regard to the personal injuries guidelines (within the meaning of that Act) in force, and
- (b) where it departs from those guidelines, state the reasons for such departure in giving its decision.”

Again, I shall consider this amendment in some detail later in the judgment.

15. It should be noted that a number of the aforesaid provisions are amendments to the Act of 2019, provided for in the Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Records, and Another Matter, Act 2020 and the Family Leave and Miscellaneous Provisions Act 2021.

16. It should also be noted that provision was made in the Act of 2019 for the adoption by the Judicial Council of sentencing Guidelines. Provision was made for how these Guidelines were to be drawn up.

The Guidelines

17. The Guidelines passed by the Judicial Council on 6 March 2021 set out, in considerable detail, a range of damages to be awarded in some twelve categories of injury. Each category of injury is, in turn, subdivided into severe, serious, moderate and minor with monetary ranges attached. I think it is fair to say that the range of injuries covered includes many, if not most, of the types of injury that would come to be assessed by a court.

18. The Guidelines replace the Book of Quantum. It is indisputable that the range and detail of injuries covered by the Guidelines far exceeds that covered by the Book of Quantum. Of significance to this application, the values placed on a considerable number of “mid-range” injuries are reduced from those values for similar injuries in the Book of Quantum. The applicant herein clearly falls into this category. However, having said that, the general statement that the Guidelines have considerably reduced the level of damages has to be treated with some caution given the comparatively limited types of injury provided for in the Book of Quantum.

19. The Guidelines were accompanied by a report from the Committee. This report set out the task given to the Committee by the Act of 2019, the legal principles relating to general damages and how the Committee went about its work and why it obtained relevant advice and information. On the level of damages provided for in the Guidelines, the Committee expressed the following view: -

“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.”

This was a reference to a figure of €550,000, which the Guidelines allowed for in cases of catastrophic injury.

20. I will refer to certain aspects of this report later in the judgment.

Ireland and the Attorney General

21. I will first consider the case being made against Ireland and the Attorney General, the third and fourth named respondents, and then consider the case being made against the Judicial Council, the second named respondent. Should the Guidelines survive this challenge, I will then consider the case made against PIAB, the first named respondent.

22. The case against the third and fourth named respondents is made under a number of headings: -

- i. It is submitted that the Guidelines passed by the Judicial Council are an impermissible delegation of legislation to the Judicial Council in that the Act of 2019 fails to set out “Principles and Policies” for the drawing up of the Guidelines (“Principles and Policies”).
- ii. The provisions of the legislation that give legal effect to the Guidelines are unconstitutional in that they are contrary to the Constitutional provisions that provide for the independence of the judiciary (“Judicial Independence”).
- iii. The imposition of the Guidelines is retrospective in nature in that it deprives the applicant of vested rights (“Retrospection”).
- iv. The provisions of the Guidelines that reduce the award payable to the applicant are disproportionate and/or irrational and infringe the applicant’s property rights, right to bodily integrity and equality under the Constitution (“Proportionality/Rationality”).

“Principles and Policies”

23. Article 15.2.1° of the Constitution provides: -

“The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.”

Given the substantial amount of delegated legislation, this constitutional provision has been considered by the Supreme Court on many occasions. In reviewing these decisions, the starting point is the oft cited passage from the judgment of O’Higgins C.J. in *Cityview Press v. An Chomhairle Oiliuna* [1980] I.R. 381 at p. 399: -

“In the view of this Court, the test is whether that which is challenged as an unauthorised delegation of parliamentary power is more than a mere giving effect to principles and policies which are contained in the statute itself. If it be, then it is not authorised; for such would constitute a purported exercise of legislative power by an authority which is not permitted to do so under the Constitution. On the other hand, if it be within the permitted limits — if the law is laid down in the statute and details only are filled in or completed by the designated Minister or subordinate body — there is no unauthorised delegation of legislative power.”

24. In *Bederev v. Ireland* [2016] 3 I.R. 1 what was at issue was a particular section of the Misuse of Drugs Act, 1977 which permitted the Government, by order, to declare any substance, product or preparation to be a controlled drug for the purposes of the said Act. The plaintiff was charged with an offence of possession of a drug which had been declared to be a controlled drug. In his judgment, Charleton J. stated at p. 53: -

“In *Cityview Press v An Comhairle Oiliuna* [1980] I.R. 381 O’Higgins CJ at p. 398 refers to the ‘obvious attractions’ of subsidiary legislation ‘in view of the complex, intricate and ever-changing situations which confront both the Legislature and the Executive in a modern State’. As Fennelly J emphasised in *Maher v Minister for Agriculture* [2001] 2 I.R. 139, this process is integral to the fabric of legislation. At p. 245 he stated:-

‘An enormous body of subordinate laws is, nonetheless, constantly passed by means of statutory instruments, regulations and orders. This type of delegated

legislation is, by common accord, indispensable for the functioning of the modern state. The necessary regulation of many branches of social and economic activity involves the framing of rules at a level of detail that would inappropriately burden the capacity of the legislature. The evaluation of complex technical problems is better left to the implementing rules. They are not, in their nature such as to involve the concerns and take up the time of the legislature. Furthermore, there is frequently a need for a measure of flexibility and capacity for rapid adjustment to meet changing circumstances.’ ”

25. More recently in *NECI v. Labour Court* [2021] IESC 36 the Supreme Court considered certain provisions of the Industrial Relations (Amendment) Act 2015. In this case, the applicant challenged the validity of a Sectoral Employment Order made under the said Act which purported to regulate the remuneration of electricians working in the construction industry. The Supreme Court set aside a part of the High Court judgment which had held that certain provisions (Chapter 3) of the said 2015 Act were repugnant to Article 15.2.1° of the Constitution. In his judgment, Mac Menamin J. reviewed a number of earlier decisions which had considered this Constitutional provision. Referring to *O’Sullivan v. Sea Fisheries Protection Authority* [2017] 3 I.R. 751 Mac Menamin J. stated: -

“... this court gave further consideration to this question, looking at the same criteria as raised in *Bederev*, but seen in a different way, focusing on the breadth and nature of the choices delegated. O’Donnell J. considered that it would be an error to ‘*scour the statute in an effort to discern detailed guidance for the subordinate body*’ (para. 39). Instead, the judgment in *O’Sullivan* laid emphasis on the concept that the entire concept of subordinate legislation necessarily depends upon decisions being made within a range of options. For this reason, a test asking the question in the negative will often be of assistance. Such a question will enquire whether the area of rule-making authority

delegated is so broad as to constitute a trespass by the delegate, or subordinate, on an area reserved to the Oireachtas. This surely is the ultimate question, based as it is on the words of the Constitution. The judgments in *Bederev* and *O'Sullivan* both acknowledge that there may be areas where a subordinate may engage in a degree of freedom of choice; there may be relatively wide areas which are circumscribed by principles and policies; or a more narrow area which may need a lesser enunciation of principles and policies, because there are only a limited number of outcomes available.”

26. In his conclusions, Mac Menamin J. stated: -

“69. Thus, in this case, an assessment of Chapter 3 must impart suitable weight to each of its provisions in their context. Then the analysis may turn to the context of the legislation, seen as a whole, having regard to the range or scope of the delegation, and to the range of choices vested on a subordinate, or delegate. The questions will then be whether there are sufficient limiting principles and policies so as to confine the area of choice, or does the legislation in question actually trespass on the legislative power? Such assessment must acknowledge the reality of the Constitution as a living document and a continuously operative charter of government, which does not, and cannot, require the Oireachtas to predetermine every choice by a subordinate or delegate. What is necessary, rather, is to lay down basic, discernible rules of conduct or guidelines which the subordinate body must observe.

70. The fact that delegates will necessarily have to make choices is inevitable. Some such choices will depend on expertise. It must be acknowledged that there are some significant areas of decision-making in which the Oireachtas itself would not be the appropriate forum to make choices of the type involved in this case. The question, then, is whether the Oireachtas has set sufficient standards by way of policies or objectives,

so as to ensure what is taking place is regulatory, rather than legislative? The delegated choice may be narrow or broad, but the Constitution will not be interpreted in a manner which would deny the Oireachtas the necessary attributes of a legislature in a democratic society, including a degree of legislative flexibility, provided the exercise of the choice is consistent with the terms of the Constitution itself. Subject to the Constitution, the test must not be understood as one whereby a court should second-guess or express views or judgments on policies which have been made by the Oireachtas. The range of choices may arise from statutory provisions which either give effect to, or reflect, principles or concepts of EU law which have the effect of setting parameters to the scope of the delegated choice.”

27. The relevant section of the Act of 2019 is s. 90. I will set this provision out in full: -

“Personal injuries guidelines

90. (1) Personal injuries guidelines adopted by the Council under *section 7*, including any amendments adopted under that section (in this Act referred to as ‘personal injuries guidelines’) shall contain general guidelines as to the level of damages that may be awarded or assessed in respect of personal injuries and without prejudice to the generality of the foregoing, the guidelines may include guidance on any or all of the following:

- (a) the level of damages for personal injuries generally;
- (b) the level of damages for a particular injury or a particular category of injury;
- (c) the range of damages to be considered for a particular injury or a particular category of injuries;
- (d) where multiple injuries have been suffered by a person, the consideration to be given to the effect of those multiple injuries on the level of damages to be awarded in respect of that person.

(2) The Personal Injuries Guidelines Committee in preparing draft personal injuries guidelines or draft amendments to personal injuries guidelines shall have regard to the matters set out in *subsection (3)* and the Board, in reviewing those draft guidelines or draft amendments, may have regard to such of the matters set out in that subsection as it considers appropriate for the purposes of its review.

(3) The matters referred to in *subsection (2)* are:

(a) the level of damages awarded for personal injuries by—

(i) courts in the State, and

(ii) courts in such places outside the State as the Committee or the Board, as the case may be, considers relevant;

(b) principles for the assessment and award of damages for personal injuries determined by the High Court, the Court of Appeal and the Supreme Court;

(c) guidelines relating to the classification of personal injuries;

(d) the need to promote consistency in the level of damages awarded for personal injuries;

(e) such other factors that the Committee or the Board, as the case may be, considers appropriate including factors that may arise from any records, documents or information received, consultations held, research conducted or conferences, seminars or meetings organised (as referred to in *section 18 (7)*).

28. The applicant submitted that the Act of 2019, in particular s. 90, did not set out the principles and policies for the purposes of drawing up the Guidelines. As to the level of detail required for such principles and policies, reliance was placed on the detailed provisions of the Industrial Relations (Amendment) Act 2015, which were considered in *NECI v. Labour Court*. In that case there were detailed statutory provisions setting out matters which the Labour Court must have regard to in making its recommendations. Reliance was also placed on *Mistretta v.*

United States (1989) 488 U.S. 361. This case concerned the Federal Sentencing Commission which was established to set guidelines for sentencing for federal offences, of which there were many. The detail of the principles and policies referred to in the *Mistretta* case were cited by Denham J. (as she then was) in *Laurentiu v. Minister for Justice* [1999] 4 I.R. 26, as follows: -

“This judgment sets out clearly the policies established by the legislature of the United States. The Supreme Court of the United States applied the ‘intelligible principle’ test and found the delegation to be sufficiently specific and detailed. It found that Congress had requested the Commission to meet three goals which were spelt out. Further, Congress specified four purposes which the delegated authority must pursue, Congress prescribed the tool for the Commission to use and Congress directed the Commission, as a guide, to consider seven specified factors. In addition, Congress set forth eleven factors for the Commission to consider in establishing categories and the Congress also provided detailed guidance about categories of offences and offender characteristics. This case shows modern legislation in the United States of America giving a delegated discretion yet with detailed principles and standards set out by the legislature.”

29. The third and fourth named respondents did not concede that the Guidelines were legislative in nature, but submitted that the provisions of s. 90 were clearly principles and policies.

30. I will now consider the provisions of s. 90 against what is required for the power to make delegated legislation to pass the “principles and policies” test, as is provided for in the authorities which I have referred to.

31. Section 90 (1) sets out what is to be contained in the Guidelines. It was not disputed that the Guidelines cover the matters referred to at s. 90 (1) (a) to (d).

32. Section 90 (2) states that in preparing the Guidelines the Committee shall have regard to matters set out in subsection 3, and the Board may have regard to these matters in reviewing

the draft Guidelines submitted by the Committee. There is a difference in wording here, but I cannot see that it is of any significance.

- 33.** Section 90 (3) sets out the matters which the Committee must have regard to: -
- (a) the level of damages awarded for personal injuries by courts in the State, and courts in such places outside the State as the Committee or the Board, as the case may be, considers relevant;
 - (b) principles for the assessment and award of damages for personal injuries determined by the High Court, the Court of Appeal and the Supreme Court;

Taking (a) and (b) together, the Committee has to look not only at the level of awards but also the basis for such awards. The Committee must look at the “principles” applied by the Superior Courts in the assessment of damages. These principles have been set out clearly in passages in judgments given by the Court of Appeal in *Nolan v. Wirenski* and the Supreme Court in *Kearney v. McQuillan and the North Eastern Health Board* and *Morrissey v. HSE* (see paras. 6 and 8 above).

34. Returning to the principles set out by Mac Menamin J. in *NECI v. The Labour Court*, it seems to me that these statutory provisions lay down “*basic, discernible rules of conduct or guidelines which the subordinate body must observe*”. It follows that the Committee were not at large to develop new principles for the award of damages, nor were they without specific direction and guidance in drawing up the Guidelines.

35. I refer, again, to the judgment given by Fennelly J. in *Maher v. Minister for Agriculture* where he states: -

“The necessary regulation of many branches of social and economic activity involves the framing of rules at a level of detail that would inappropriately burden the capacity of the legislature. The evaluation of complex technical problems is better left to the implementing rules. ...”

Looking at the breadth and detail of the various injuries and their classification in the Guidelines, it is very difficult to see how such should have been drawn up and compiled by members of the Oireachtas.

36. Section 90 (3) (d) refers to the need to promote consistency in the level of damages awarded. It cannot be argued that this was anything other than a “principle and policy”.

37. By reason of the foregoing, I am satisfied that s. 90 of the Act of 2019 set out in sufficient detail the “principles and policies” for the drawing up of the Guidelines. The report of the Committee makes specific reference to the provisions of s. 90 and establishes that these provisions were methodically followed.

Judicial independence

38. Article 35.2 of the Constitution provides: -

“All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.”

39. Prior to the recent legislative changes, the legal position on the Book of Quantum under the Civil Liability and Courts Act 2004 was as follows: -

“22.—(1) The court shall, in assessing damages in a personal injuries action, have regard to the Book of Quantum.

(2) *Subsection (1)* shall not operate to prohibit a court from having regard to matters other than the Book of Quantum when assessing damages in a personal injuries action.

(3) In this section ‘Book of Quantum’ means the Book of Quantum required to be prepared and published by the Personal Injuries Assessment Board under the Act of 2003.”

40. Following the amendment of s. 22, after the passing of the Guidelines by the Judicial Council, the following is now the statutory provision: -

“ 22.—(1) The court shall, in assessing damages in a personal injuries action -

(a) have regard to the personal injuries guidelines (within the meaning of that Act) in force, and

(b) where it departs from those guidelines, state the reasons for such departure in giving its decision.”

So the question arises, does the amendment to s. 22 amount to an interference with judicial independence under the Constitution?

41. It will be noted that under the statutory provisions that applied when the Book of Quantum was current there was no provision that where a court did not have regard to the Book of Quantum reasons had to be given. This might indicate that a court had a “free hand” in not applying the Book of Quantum. This was considered by Noonan J. in *McKeown v. Crosby and Anor* [2020] IECA 242. At p. 15 of the judgment of the Court, Noonan J. stated: -

“31. It seems to me therefore that in cases where the Book of Quantum is clearly relevant, it would assist the court's considerations to hear submissions from the parties about how it should be applied, or perhaps whether it should be applied at all. Recent judgments of this court, such as *Nolan v Wirenski*, have drawn attention to the fact that it is important for trial judges to explain how particular figures for damages are arrived at, since otherwise the appellate court is left in the dark about the trial judge's approach and whether it ought to be regarded as correct or not. The review process on appeal would be greatly assisted by reference to the categorisation and severity of the injury provided for in the Book of Quantum, assuming that to be feasible. If on the other hand the trial judge considers that the Book has no role to play in the particular circumstances of the case, it would be very helpful for the appellate court to know why that is so.”

Whereas Noonan J. is not making it mandatory for a court to give reasons for departing from the Book of Quantum, he is clearly indicating that it is desirable that a trial judge would so do. The practical effect of this is that the legal representatives of both parties should indicate

whether or not, or to what extent, the Book of Quantum applied and the trial judge should give reasons for whatever decision was reached.

42. At the hearing, the applicant in her submissions placed particular emphasis on the fact that s. 22 (2) of the unamended section has been deleted (referred to as the “proviso”). It was submitted that the absence of the proviso in the amended s. 22 undermines judicial independence.

43. The amended s. 22 clearly permits a court to depart from the Guidelines. It does not set out the circumstances under which a court can do so, but states reasons must be given. It seems to me that if reasons are to be given those reasons must be rational, cogent and justifiable. I do not think the absence of the proviso has the effect of limiting the reasons. If a court departs from the Guidelines, it is having regard to matters other than the Guidelines.

44. In its report, the Committee considered the amended s. 22. At para. 47 of its report, the Committee stated: -

“... 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. We have to conclude, therefore, that proportionality also affects width of brackets as well as the jurisdiction of the courts to deviate from them.”

I think this is unduly restrictive and would prefer to rely on the simple wording of s. 22, which states that a court can depart from the Guidelines but must give reasons for doing so.

Retrospection

45. The applicant submits that the enactment into law of the Guidelines amounts to a retrospective interference of certain rights vested in her. These rights consist of the applicant's constitutional rights of property, bodily integrity, and equality. An injured person, such as the applicant, has a right to sue. This can be considered to be a property right. There is nothing in the Act of 2019, or any other legislation amended by reason of the Guidelines, that prevents the applicant, or any other injured persons, from bringing and maintaining proceedings seeking compensation.

46. It is the case that, should the applicant proceed to court, any damages, subject to s.22 of the Act of 2004, will be assessed having regard to the Guidelines and not the Book of Quantum. This, undoubtedly, will mean that the applicant will receive a lesser award than had the Book of Quantum applied. In practical terms, this means an award of €3,000 rather than an award between €18,000 and €34,000. For the applicant to succeed she will have to establish that she had a constitutional right to be awarded a sum between €18,000 and €34,000 under the Book of Quantum current at the time of her accident.

47. In my view, the right which the applicant enjoys is to have her damages assessed in accordance with law, which means the application of the principles already referred to. A court will apply the law as it stands on the date of the assessment. The applicant does not have a right to a particular sum as may be provided for in the Book of Quantum. I believe the applicant makes this submission because there has been a reduction in the relevant level of damages between the Book of Quantum and the Guidelines. If the point had any validity, it would mean that the applicant would have to accept a lesser award of damages had there been an increase in the relevant level of damages between the Book of Quantum and the Guidelines. It would mean that a person who suffered catastrophic injuries after the decision in *Yun v. Motor*

Insurers Bureau of Ireland & Anor, but had their damages assessed after the Guidelines came into force, would only be entitled to receive €450,000 and not €550,000.

48. The application of the well-established principles for the awarding of damages results in the level of damages varying over time. General damages are assessed on the basis of pain and suffering to date (of assessment) and into the future depending, in part, on the prevailing economic conditions, not those on the particular date of the accident.

49. In the course of the applicant's submissions reference was made to *Article 26 of the Constitution and the Health (Amendment) (No. 2) Bill 2004* [2005] 1 I.R. 105. At p. 205 of the judgment, the Court states: -

“In considering that argument, it is of prime importance to consider the extent of the interference with property rights proposed by the Bill. What it proposes is the extinction of the rights in question. All patients, from whom charges have been unlawfully collected, regardless of their circumstances, are simply to be deprived of any right to recover sums lawfully due to them. ...”

This is not the situation here. I cannot see any right the applicant enjoys being extinguished either by the Guidelines or the implementing legislation.

Proportionality/Rationality

50. The applicant submits that the implementation of the Guidelines has resulted in an irrational reduction in the level of damages to which she is entitled. The applicant relies upon *Tuohy v. Courtney* [1994] 3 I.R. 1. This case concerned, in part, a challenge to s. 11 of the Statute of Limitation Act, 1957. In this case the plaintiff found that his claim was statute-barred, even though he had been unaware that he had a cause of action until after the relevant time period had expired. At p. 47, Finlay C.J. stated: -

“The Court is satisfied that in a challenge to the constitutional validity of any statute in the enactment of which the Oireachtas has been engaged in such a balancing function,

[i.e. among rights of different citizens] the role of the courts is not to impose their view of the correct or desirable balance in substitution for the view of the legislature as displayed in their legislation but rather to determine from an objective stance whether the balance contained in the impugned legislation is so contrary to reason and fairness as to constitute an unjust attack on some individual's constitutional rights".

It is clear from the principles that apply to the award of general damages that there is, firstly, the particular interests of the plaintiff and defendant involved and, secondly, the interests of society in general. This was illustrated in *Yun v. Motor Insurers Bureau of Ireland & Anor*. In this case, Quirke J. determined that the figure for the cap should be €500,000. However, this figure was reduced to €450,000, having regard to prevailing and anticipated economic conditions. This was an example of the rights of the individual (the plaintiff) giving way to the rights of the many. I cannot see that the reduction in the amounts that may be awarded under the Guidelines are so "*contrary to reason and fairness as to constitute an unjust attack*" on the applicant's rights.

51. Another test, the "proportionality" test, as referred to in *Heaney v. Ireland* [1994] 3 I.R. 593, was referred to. I do not believe that an application of this test avails the applicant. For there to be a "disproportion", two figures of damages have to be identified. In this case, the first figure is the amount of damages under the Book of Quantum and the second figure is that allowed under the Guidelines. I have already determined that the applicant does not have a right to the figure for damages allowed under the Book of Quantum, so "proportionality" does not arise. In any event, it is the case that a court assessing damages under the Guidelines may depart from the Guidelines on the giving of reasons.

Judicial Council

52. There is something of an overlap in the case the applicant makes against the second named respondent, the Judicial Council; and Ireland and the Attorney General, the third and

fourth named respondents. In her Statement of Grounds, the following seem to be particularly relevant to the Judicial Council: -

“LXI. Accordingly, the matters which the committee and board were entitled or obliged to take into account when preparing and reviewing draft guidelines as provided for in s. 90 (3) of the 2019 Act lacks sufficient detail or direction to the committee or the board to constitute a guiding principle and/or policy for their work and review.

LXII. Further or in the alternative, in choosing to depart from the jurisprudence of the courts in setting the level of damages in personal injury cases, the second named respondent did so otherwise than in accordance with any principles and policies to be discerned in the Act of 2019 and trespassed onto the sole and exclusive legislative function of the Oireachtas contrary to Article 15.2 of An Bunreacht.

LXIII. To the extent that the second named respondent, its committee and board took into account matters other than the level of damages awarded by the courts to date, they took into account immaterial considerations and acted ultra vires.

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LXV. The committee and the board when drafting and approving the Personal Injury Guidelines under the provisions of the 2019 Act, addressed themselves to levels of awards in foreign jurisdiction of their own (independent) choosing and placed reliance on factors contained in s. 90 (3) independently without guidance from the Oireachtas and again without any particular mandate from the Oireachtas to departed (sic) from the body of jurisprudence developed by the courts of this State in assessing damages..”

53. The following were the principal submissions made by the applicant concerning the Judicial Council: -

- i. That permitting members of the judiciary to draw up and vote on guidelines was in breach of the constitutional principle of judicial independence and an

impermissible “intermingling” of the organs of the State under Article 6 of the Constitution.

- ii. The Judicial Council and the Committee in drafting and adopting the Guidelines wrongly proceeded on the basis that the purpose of such was to reduce the level of damages.
- iii. The Judicial Council and the Committee in drafting and adopting the Guidelines unlawfully sought to keep awards of damages within this jurisdiction “in kilter” with awards in other jurisdictions.
- iv. Permitting judges, as members of the Judicial Council, to vote on guidelines that concern awards for a level of damages outside their particular jurisdiction was impermissible.
- v. The Committee erred in failing to have regard to the Book of Quantum and only having regard to decisions of the Courts on the award of damages for the period 2017 – 2020.

I will consider these submissions in turn.

54. Article 35 (2) and (3) of the Constitution provides: -

“2. All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.

3. No judge shall be eligible to be a member of either House of the Oireachtas or to hold any other office or position of emolument.”

In practical terms, this means that judges cannot be involved in politics, national or local, or hold another office or position for which they are paid. There are well-established principles as to when a judge should recuse himself or herself from hearing an action. More recently, the Judicial Council has adopted guidelines concerning judicial conduct and ethics. All of this means that members of the judiciary are particularly suitable to take on non-judicial positions

where strict independence is required. Over the years, judges have chaired tribunals and commissions of inquiry. As Kenny J. stated in *McDonald v. Bord na gCon* [1965] I.R. 217 at p. 230: -

“... new powers and functions may be conferred on Courts and judges although the exercise of these powers and functions is not an administration of justice.”

Mr. Justice Kenny himself in 1973 was the chair of “the Committee on the Price of Building Land” which produced the “Kenny Report”.

55. The framers of the Act of 2019 were clearly conscious that some of the functions and duties of the Judicial Council could be perceived as being an encroachment on judicial independence. Section 93 of the Act of 2019 provides: -

“Independence of court and judicial functions.

93. Nothing in this Act shall be construed as operating to interfere with—

(a) the performance by the courts of their functions, or

(b) the exercise by a judge of his or her judicial functions.”

The applicant sought to rely on the provisions of s. 20 of the Interpretation Act 2005 to the effect that s. 93 was a “definition or other interpretation provision” and, thus, had limited application. I do not accept this submission. It seems to me the wording and effect of s. 93 could not be clearer.

56. Judges are the persons who, with very limited exceptions, assess and award damages for personal injuries in the State. Taking their independence, allied to their professional knowledge and experience, in my view, makes judges particularly suitable to be persons to be asked by the Oireachtas to draw up guidelines for personal injuries.

57. In doing their work, the Committee were clearly conscious of the need to maintain judicial independence. Paragraph 10 of their report states: -

“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. ...”

58. The applicant submitted that the Committee and, by implication, the Judicial Council wrongly proceeded on the basis that the purpose of the Guidelines was to reduce the level of damages. The applicant maintained this was not the intention of the Minister for Justice and Equality and that she was “surprised” when the Guidelines were published. In an affidavit by Michael J. McGrath, Assistant Secretary General in the Department of Finance, it is stated: -

“40. Neither the government nor the Oireachtas sought or directed that the level of awards in personal injury cases be reduced in order to reduce the cost of insurance. In that regard, as I understand it, the enactment of s. 18 of the Judicial Council Act was motivated by a desire to have award levels reviewed based on the factors set out in s. 90 of the Act and to enhance consistency in the levels of awards made. It is important to note that the factors which the Personal Injuries Guidelines Committee should have regard to when preparing draft guidelines, as set out in s. 90, did not include the size of awards in itself, and it was not known prior to the publication of the Guidelines whether they would result in lower or higher awards.”

59. Once again, I refer to the provisions of s. 90 of the Act of 2019 which clearly set out the matters which the Committee must have regard to in preparing the Guidelines. It is not stated, either expressly or impliedly, that the purpose of the exercise was to reduce the level of damages.

60. In its report, the Committee makes specific references to the various steps and decisions it took to comply with the provisions of s. 90 (3) (a) – (e). There is a section entitled “Legal Principles Relating to General Damages”, clearly a reference to s. 90 (3) (b) which states “*principles for the assessment and award of damages for personal injuries*”. The Committee, as it was entitled to do, under s.18 (7) and s. 90 (3) (b) took advice and received reports from economic and legal experts. All this resulted in guidelines that provided for a reduction “*in the damages available for lower and middling injuries*” and an increase in damages for catastrophic injuries.

61. It does not follow that because damages were lowered for significant categories of injuries that the Committee believed they were mandated to do so, no more than the Committee was mandated to increase the award for catastrophic injuries. I am satisfied that the Guidelines were the result of the Committee complying with the criteria specified by the Oireachtas in the Act of 2019.

62. The applicant submitted that there was no legal basis for the Guidelines to be “in kilter” with awards made in other jurisdictions. Again, the provisions of s. 90 undermine this submission. Section 90 (3) (a) makes specific reference to the level of damages awarded for personal injury by courts “*outside the State as the Committee or Board, as the case may be, considers relevant*”. A submission was made that the Act of 2019 ought to set out the criteria for the Committee to decide which courts outside the jurisdiction were or were not “relevant”. In my view, it is not necessary for the Act of 2019 to set out such criteria. I have already referred to the judgment of Mac Menamin J. in *NECI v. Labour Court* where he states: -

“The fact that delegates will necessarily have to make choices is inevitable. Some such choices will depend on expertise. ...”

63. Section 90 (3) (a) directs the Committee to have regard to the award of damages in courts outside the State, as considered relevant. In *Morrissey v. HSE* Clarke C.J. made specific reference to awards of damages in other jurisdictions: -

“14.17. It is also potentially helpful to look at the position in other jurisdictions. In so doing, I am mindful of the fact that it would require more detailed analysis of the precise circumstances in which additional damages for financial loss or cost of case might be awarded in such jurisdictions to enable a true comparison to be made. However, and with that important caveat, it is of some relevance to note the highest level of damages provided for in the guidelines maintained in certain other jurisdictions.”

Clarke C.J. then considered the guidelines for the assessment of general damages in personal injury cases in Northern Ireland and Judicial College Guidelines for the assessment of general damages in personal injuries cases which are referable to England. Clarke C.J. continued: -

“14.19. While it does not appear that there are formal judicial guidelines on damages for injury in Germany, I am aware that awards in respect of severe cerebral palsy have been made in and around the sum of £700,000. It should, however, be noted that in the German system, the award may be adjusted to reflect the degree of culpability found against the defendant.”

64. In preparing the Guidelines, the Committee were fully empowered and, indeed, obliged to look at the level of awards in other jurisdictions. Having done so, the Committee were entitled to consider awards in Irish courts in the context of other jurisdictions, which they considered relevant, and set the levels accordingly.

65. The submission that Judges of the District Court and Circuit Court should not have been permitted to vote on levels of awards that are outside their particular jurisdiction is without any merit. Firstly, the Oireachtas provided in the Act of 2019 that all members of the Judicial Council were to vote on the adoption of the Guidelines. Secondly, though there are different

jurisdictions, the principles applicable to the award of damages are the same at every Court level. Thirdly, as per s. 19 of the Act of 2019, each level of Court had a representative on the Committee.

66. In its report, the Committee obtained all available information concerning awards of damages made by Courts in Ireland and contested personal injuries litigation over the period January 2017 to July 2020. Given its discretion, which I have already referred to, that the Committee adopted such a course could not be considered to be either irrational or unreasonable. In any event, the period 2017-2020 would be the most up to date information available. As far as principles for the award of damages is concerned, the decision in *Morrissey v. HSE* was delivered on 19 March 2020 and, in the course of this decision, Clarke C.J. comprehensively reviewed earlier authorities.

67. On the Book of Quantum, in its report the Committee stated: -

“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.”

It is clear from the foregoing that the Book of Quantum was considered by the Committee and, having considered it, decided not to use it as a starting point. Again, such a decision was lawfully within the discretion of the Committee.

68. By reason of the foregoing, I am satisfied that the applicant is not entitled to the reliefs which she seeks against the Judicial Council, Ireland and the Attorney General. It follows that the Guidelines are lawful and, so, I must now consider the case against the first named respondent, the Personal Injuries Assessment Board.

Personal Injuries Assessment Board (“the Board”)

69. It is firstly necessary to set out the various steps which the applicant took in pursuing her claim before the Board and when they were taken. I will then set out the relevant statutory provisions.

Chronology of events

70. The following is the chronology of events: -

- **12 April 2019** – Applicant suffers personal injuries as a result of falling on a public footpath in County Waterford.
- **4 June 2019** – Applicant makes an application to the Board for the assessment of her claim.
- **5 June 2019/3 September 2019/11 November 2019** – Board seeks medical report from applicant, which was received on 14 November 2019.
- **4 December 2019** – The Board furnishes a notification to Waterford City and County Council seeking confirmation as to whether it consented to the claim being assessed.
- **9 March 2021** – No response having been received from the said Council, the Board proceeds to an assessment of the claim.
- **March/April/May 2020** – As the medical report submitted by the applicant indicated that her symptoms were ongoing, it was necessary for the Board to arrange an independent medical assessment to be carried out. Unfortunately, due to Covid-19 restrictions, this assessment could not be carried out at the time.
- **June 2020** – Medical assessments had recommenced. An examination of the applicant was arranged to take place on 23 November 2020.
- **7 September 2020** – By letter, dated 7 September 2020, the Board notified the applicant’s solicitor as follows: -

“In order to expedite completion of the independent medical report, please remind your client of the importance of bringing their x-rays/MRI scans/reports relevant to the injury to the examination. Failure to bring the x-rays/MRI scans/reports to the examination will cause unnecessary delay in completing the medical report and finalising the claim.”

- **23 November 2020** – The x-rays in relation to the applicant’s injury were not made available to the independent medical expert.
- **26 November 2020** – As a result of ongoing delays from the Covid-19 restrictions, the applicant’s solicitors were informed that it might not be able to assess the claim within a period of nine months from 2 March 2020 and, in that event, it intended to assess the claim by 31 May 2021.
- **4 December 2020** – The medical expert instructed by the Board forwarded his medical report to the Board, but he had not had sight of the applicant’s x-rays.
- **10 December 2020** – The Board informed the applicant’s solicitors that their medical expert had examined the applicant and had requested sight of the x-rays. The Board requested the applicant’s solicitors to arrange for the x-rays to be forwarded to the Board.
- **15 December 2020** – The Board repeated its request for the applicant’s x-rays to be forwarded.
- **6 January 2021** – The x-rays had still not been forwarded and the Board, referring to earlier correspondence, stated that the Board awaited hearing from the applicant’s solicitors “*in order to expedite matters*”.
- **11 January 2021** – The applicant’s solicitors informed the Board that they had written to University Hospital Waterford and requested a copy of the applicant’s x-rays.

- **2 February 2021/22 February 2021** – The Board, again, seeks access to the applicant’s x-rays.
- **16 March 2021/1 April 2021** – The Board again seeks applicant’s x-rays.
- **7 April 2021** – The applicant’s solicitors request the issuing of an authorisation within seven days. In response, the Board repeated its request for the applicant’s x-rays.
- **13 April 2021** – The applicant’s solicitors furnish a copy of the x-ray disc received from University Hospital Waterford to the Board.
- **19 April 2021** – The x-ray disc, received on 14 April 2021, was forwarded to the Board’s medical expert under cover of letter dated 19 April 2021.
- **24 April 2021** – Having considered the x-rays, the Board’s medical expert furnished to the Board an addendum to his report.
- **13 May 2021** – The claim of the applicant was assessed by the Board.
- **14 May 2021** – Notice of assessment was served on the applicant.

71. Looking at the above chronology, it is clear that the Board was seeking to expedite its assessment of the applicant’s claim but that the delay was as a result of the applicant’s x-rays not being forwarded. The Board sought the x-rays on 10 December 2020, but they were not furnished until 13 April 2021.

Statutory provisions

72. The procedures for the assessment of claims by the Board are set out in the Personal Injuries Assessment Board Act 2003 (“the Act of 2003”). Chapter 1 is entitled: “**Mandatory Applications for Assessment**”.

73. Section 11 (1) provides: -

“A claimant shall make an application under this section to the Board for an assessment to be made under *section 20* of his or her relevant claim.”

74. Chapter 2 of the Act of 2003 is entitled: “**Procedure for Assessment**”. Section 20 (1) provides: -

“In this section ‘assessment’, in relation to a relevant claim, means an assessment of the amount of damages the claimant is entitled to in respect of the claim on the assumption that the respondent or respondents are fully liable to the claimant in respect of the claim.”

Following the adoption of the Guidelines, the following amendment was made to s. 20: -

“(5) In making, on or after the date of coming into operation of section 99 of the Judicial Council Act 2019, an assessment in relation to a relevant claim of the amount of damages for personal injuries the claimant is entitled to, assessors shall—

(a) have regard to the personal injuries guidelines (within the meaning of that Act) in force, and

(b) where they depart from those guidelines, state the reasons for such departure and include those reasons in the assessment in writing under *section 30(1)*.”

Section 99 of the Act of 2019 came into operation on 24 April 2021.

Consideration of statutory provisions

75. The applicant maintains that the Board ought to have assessed her injury using the Book of Quantum. When the assessment was made on 13 May 2021 the above amendment to the Act of 2003 directed the Board to make assessments having regard to the Guidelines. This means that, according to the applicant, the assessment should have been made as of 4 June 2019, the date the applicant made her application to the Board. In effect, if this submission is correct, there would be no distinction between an “application” and an “assessment”. I am satisfied this is not correct for the following reasons: -

(a) Section 11 refers to an application “... *for an assessment*”. There is clearly a distinction between the two. What occurred on 4 June 2019 was an “application” not an “assessment”.

(b) I have set out above the provisions of s. 20 (1). An “assessment” means “*the amount of damages the claimant is entitled to in respect of the claim*”. This figure can only be arrived at after the assessor(s) assessing the claim have the relevant information.

In this case, the applicant’s x-rays. These were only furnished on 13 April 2021.

I am satisfied that this interpretation of “assessment” under the Act of 2003 is correct having regard to other provisions in the Act: -

Section 21 (1) provides: -

“The assessors shall make their assessment by reference to the information, records or other documents required or authorised by this Act to be furnished to them; ...”

Section 24 of the Act provides that the assessors may request a claimant (the applicant) to submit to a medical examination. This occurred in this case.

Section 25 (2) provides: -

“If a respondent fails to comply with a request (to furnish information), the assessors shall proceed to make the assessment as best they may in the absence of the information ..”

76. In the applicant’s case, as I have already referred to, the x-rays were furnished on 13 April 2021. Having furnished those x-rays, it was appropriate for the Board to seek an addendum to the medical report from their retained expert. This was furnished to the Board on 24 April 2021, the date when the Guidelines came into effect, for the making of an “assessment”. Having received the addendum, the assessors were entitled to a period of time to consider their assessment. This was done on 13 May 2021.

77. The Board is created and governed by Statute. By reason of the foregoing, I reach the conclusion that in making its assessment on 13 May 2021 the Board was obliged to follow the provisions of s. 20 (5) and make the assessment of the applicant's claim under the Guidelines and not the Book of Quantum. The applicant had no statutory entitlement for her claim to be assessed under the Book of Quantum, nor, as per my judgment in this case, did she have any constitutional or legal right to such.

78. The applicant also had a number of complaints against the Board concerning lack of fair procedures. The applicant claims she ought to have been afforded an opportunity to make submissions to the Board as to why it should depart from the Guidelines. I think it is fair to say that the applicant's case on this was very much secondary to the principal complaint, which I have dealt with above. Further, there was also a suggestion that the Board was under some type of duty to inform the applicant of the impending implementation of the Guidelines.

79. The provisions of S.I. 140 of 2019 (Personal Injuries Assessment Board Rules, 2019) set out, in some detail, the requirement for an "application" under the Act of 2003. 3 (1) (c) (v) provides that an application shall be accompanied by the following document: -

"any other document that the claimant considers relevant to the claim."

The above provision is very broadly worded and could include a professional view that in a particular case the Guidelines ought not to be followed. Thus, the applicant had every opportunity to make a full case to the Board for the purposes of her assessment. Also, I do not believe that the Board were under a duty to inform the applicant as to when the Guidelines would become operative.

80. By reason of the foregoing, I am satisfied that the Board acted correctly and lawfully in accordance with the Act of 2003 and S.I. No. 140 of 2019 in assessing the applicant's claim on 13 May 2021. I therefore refuse the reliefs sought.

Summary

81. The following are my principal findings in these proceedings: -

- (i) There are clear well established principles for the awarding of general damages. These principles provide that the level of damages is not only a matter between a plaintiff and a defendant, but also for society in general. Economic, social and commercial conditions have to be taken into account in fixing levels of awards.
- (ii) Section 90 of the Judicial Council Act 2019 sets out clearly the principles and policies that were to be applied and followed by the Committee in drawing up the Guidelines.
- (iii) In drawing up the Guidelines the Committee methodically followed the principles and policies as directed by the Oireachtas in the said Act. The Committee also took expert advice, both economic and legal, as was provided for.
- (iv) The Committee was not mandated to reduce the level of awards for less serious injuries no more than it was mandated to increase the level of awards for catastrophic injuries. The reduction of awards in the Guidelines was a result of the Committee applying the provisions of the Act of 2019, as it was obliged to do.
- (v) The Committee was entitled to fix levels of awards having regard the level of awards in other jurisdictions. Both the Act of 2019 and the Supreme Court provided for this.
- (vi) The statutory requirement that a court in assessing damages in a personal injuries action shall have regard to the Guidelines is not an encroachment on judicial independence as there is provision for a court to depart from the

Guidelines on giving reasons. These reasons have to be rational, cogent and justifiable.

- (vii) Judicial independence, together with expertise and experience in the awarding of damages, meant the judiciary was an appropriate body to draft and adopt the Guidelines. The Act of 2019 also made specific provision to preserve judicial independence (s. 93).
- (viii) The applicant's constitutional rights of property, bodily integrity and equality do not encompass a right to a particular sum of damages but, rather, a right to have her damages assessed in accordance with well-established legal principles. The effect of the application of these principles is that the level of damages varies over time.
- (ix) In assessing her claim, the Personal Injuries Assessment Board acted in accordance with the relevant provisions of the Personal Injuries Assessment Board Act 2003 (as amended).

Conclusion

82. The applicant is not entitled to any of the reliefs which she seeks. As to the issue of costs, I propose to list these proceedings for mention on 30 June 2022. Should the parties wish to make written submissions on costs, I will direct that these submissions be filed no later than 24 June 2022.