LS | Lynch
SOLICITORS

A GUIDE TO PERSONAL INJURIES & LITIGATION

CONTENTS

Introduction

LYNCH SOLICITORS AND LITIGATION

Over the years, we have built our reputation for strength in litigation by providing a sympathetic but objective assessment of clients' problems.

We undertake a wide variety of litigation work including:

- Road Traffic Accidents.
- Slip, Trip and Fall Cases.
- Accident at Work.
- Accident on Private Property.
- Accident in Public Places.
- Medical Negligence.
- Product Liability: Defective products.
- Contract Disputes.
- Property Disputes.
- Private/Public Law Disputes.
- PIAB Injuries Board Applications.
- Defence.
- Fatal Injuries.
- Probate Litigation.
- Workplace Bullying/Stress/RSI.

Litigation can be time consuming, expensive and, sometimes, uneconomical.

You need the services of an established legal practice with a strong litigation team.

We will give you an objective opinion on your legal query from the outset.

We see no benefit to a client in allowing the case to go to trial without a full understanding of the risks and an indication of the likely outcome.

In our experience, many people are fearful of going to court.

People may worry about the risk of losing, the possibility of publicity or the prospect of having to give evidence.

THE TORT OF NEGLIGENCE AND YOUR CASE

If you are to succeed in a negligence claim you, with the assistance of your legal and medical advisors, have to show both negligence and causation.

In other words, you have to show a breach of a duty of care and that such breach caused your accident and your injuries.

In every case, you have the obligation to prove the case and we need to prove this on the balance of probabilities.

In order to do this, you will need medical and other expert reports.

The other party or entity can defend by proving that :

- They complied with the required standard.
- They did not breach the required standard.

- That even though they breached the required standard, this breach did not cause the accident.
- Their breach did not cause your injuries.
- The accident was your own fault.
- You did not take your case in time.

Under the law you are required to issue proceedings within two years of the negligent incident.

You may have more time if you did not know and could not know that you were injured, who injured you or that the injury was due to some fault for which someone is liable.

The fact that you have been injured is not enough in itself to make a case.

If there is a legal liability, the next stop is finding out the extent of your injuries and losses.

The level of compensation is based on two broad classifications: Compensation for pain and suffering or compensation for out of pocket losses.

In negligence cases, out of pocket expenses can be very detailed covering such items as care costs, medical expenses and loss of earnings.

ROAD TRAFFIC ACCIDENTS

IF I HAVE A ROAD TRAFFIC ACCIDENT WHAT SHOULD I DO?

- It is ok to be courteous. Do not get angry at the scene. Remain calm and if the other party is not calm, try to remain in your car.

- It is ok to be concerned for the health and safety of the other motorist. This is not the same as admitting liability for the accident.

- It is also ok to follow up to see how the other person is after the accident - one of the top 3 reasons that people give for making claims is that the other party showed no interest in their wellbeing.

CALL THE GARDAÍ

Call the Gardaí immediately and report the incident. Where the Gardaí do not attend at the scene of the accident, go to the nearest Garda station and ask the Garda at the Station to take details of the accident.

This will be important at a later date if the other party denies that the accident happened or if s/he is uninsured.

WITNESSES

If anyone else saw the accident happen and they have stopped, get their name and address and phone number – you may never have the chance

again and they could be essential in proving that you were not responsible for the collision.

GET THE REGISTRATION NUMBER OF THE OTHER VEHICLE

This is perhaps the most important piece of information. People have often taken insurance details from the other driver only to discover that the insurance was faulty or that there was no insurance.

This may mean that your Solicitor will become involved with the Motor Insurers Bureau of Ireland who deal with uninsured drivers and for them the most important piece of information is generally the registration number.

This can assist them in completing their investigations with greater speed.

TAKE INSURANCE DETAILS

Each driver should exchange insurance details with the other.

Insurance details can be taken down from the disc on the windscreen.

THE DRIVER'S AND OWNER'S NAME AND ADDRESS

Wherever and whenever possible behave politely, but be sure to take information from the other driver.

People are very often shocked after an accident and may take insufficient or inaccurate information from the other driver.

WHAT STEPS SHOULD I TAKE AFTER THE ACCIDENT?

- Protect all evidence: Take photos of the scene – the vehicles involved, debris, damage to the crashed vehicles and road markings.
- Measure and note the position of the vehicles.
- Measure the length of any skid marks.
- Do a detailed statement of how the accident happened.
- Record your injuries.
- Report the accident to your own insurers.
- Record your out of pocket expenses.
- Get an estimate for vehicle repair and car hire.
- If going to Court visit the Court venue before the day of your case.

USEFUL INFORMATION FOR US

We will find this information helpful:

- Full name and address of the driver.
- Full name and address of the vehicle owner, if different.
- Name and address of Insurance Company & Policy number.
- The expiry date of the Policy.
- Photos of scene and cars.
- Contact details of Witnesses.

PRACTICAL STEPS AT THE ACCIDENT

- Stay safe! Bearing in mind weather conditions, falling trees, flooding and overturning trucks, make sure that you and all of the other people involved are out of harm's way so that there will not be any further accidents.

- You should also gather as much information as possible at the scene:
    - Name and Address of the Driver.
    - Name and Address of the owner of the car.
    - Name and Address of Witnesses.
    - Insurance Details.
    - Vehicle registration.
    - Details of the Gardaí in attendance.
- If possible take photographs of the scene, the vehicles, the debris and road markings.

WHAT ARE THE DONT'S!

- Never admit liability at the scene. It is often a condition of insurance that liability is not admitted.
- Do not move the vehicles unless absolutely necessary. Generally, the vehicles should stay as they stopped unless the Gardaí advise otherwise. If it is necessary to move them make sure you obtain photographs of their positions on the road beforehand.
- Never leave the scene of an accident. This is a criminal offence. Braving the recent elements will be necessary! Remain at the scene until the Gardaí have confirmed you can leave.
- Do not get angry! Getting irate at the scene can often serve to make things worse. Stay calm!

AFTER THE INITIAL SHOCK – WHAT'S NEXT?

Inform your insurance company immediately. This should be done even if it is not your fault.

Keep a Note! Write down your account of what happened and how it happened. Don't forget to include details of the road conditions that day.

Make sure to keep all of your receipts for medical expenses and property damage.

Take photographs of your injuries to document them.

Finally, once the storm has settled watch the time! Remember, anyone who has suffered an injury following an accident only has two years to take a claim. If you were involved in an accident that was not your fault and you feel you might be entitled to compensation the time to deal with it is now.

ACCIDENTS AT WORK

TYPES OF ACCIDENTS AT WORK

Although commonly associated with construction industry injuries, accidents can occur at all types of workplaces and may include slips, trips and falls caused through negligence on behalf of the employer.

Over the past number of years, we have dealt with numerous accidents at work ranging from a Client losing a finger at a woodworking premises, a Client suffering a head injury at a meat factory, a client suffering a leg injury after being hit by a forklift at some agricultural premises, a client losing a finger at a garage.

Other examples would include:

- Injuries involving lifting or manual handling.
- Exposure to harmful and dangerous substances.
- Tinnitus, deafness and other hearing problems caused by noise at work.

These are just some of the numerous cases that we have dealt with over the past few years.

WHEN CAN THE EMPLOYER BE NEGLIGENT?

An employer is required by law to take reasonable care for employees' safety. However, the employer's duty is not an unlimited one. The law does not require an employer to ensure, in all circumstances, the safety of employees. They will have discharged the duty of care if they do what a 'reasonable and prudent' employer would have done in the circumstances.

Even where a certain precaution is obvious, in the interest of safety of the employee, there may be factors which would justify the employer not taking that precaution.

It is also not enough for an employee to simply suggest their employer was negligent, they must actually prove they were negligent to receive compensation.

There are two main elements to proving negligence:

- That the act complained was reasonably foreseeable.
- That reasonable care was not taken to prevent the accident.

IS THE TERM 'REASONABLE CARE' DEFINED?

The courts have been very slow to set down any specific definition of 'duty of care'. They have seen it as one which varies with the nature of the employment and the relationship between the employer and employee.

For example, an employer might have to take more care to protect a young inexperienced worker than he would have to take with an experienced employee.

Reported cases have laid down some general guidelines which are useful but which are not exhaustive:

- The employer cannot foresee every risk that may possibly occur
- An employer may be negligent by omission if he has forgotten to do something which a reasonable person would have done in the circumstances.

The courts have tended to look at the duty of care under four basic headings:

- The provision of competent co-workers.
- The provision of a safe place of work.
- The provision of proper equipment.
- The provision of a safe system of work.

MUST YOU REPORT AN ACCIDENT?

Accidents in the workplace should be reported to the employer. The employer should record the details of the incident.

Reporting the accident will help to safeguard social welfare and other rights which may arise as a result of an occupational accident.

An employer is obliged to report any accident that results in an employee missing 3 consecutive days at work (not including the day of the accident) to the Health and Safety Authority.

WHAT ARE EMPLOYERS DUTIES UNDER HEALTH AND SAFETY LAW?

The employer has a duty to ensure the employees' safety, health and welfare at work as far as is reasonably practicable.

To prevent workplace injuries the employer is required, among other things, to:

- Provide and maintain a safe workplace which uses safe plant and equipment.
- Prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration.
- Prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk.
- Provide instruction and training to employees on health and safety.
- Provide protective clothing and equipment to employees.
- Appointing a competent person as the organisation's Safety Officer.
- A risk assessment and to implement measures to protect workers from those risks.
- Emergency plans.

Under the Act the employer must do what is "reasonably practicable".

This is defined as meaning "that an employer has exercised all due care by putting in place the necessary and protective measures, having identified the hazards and assessed the risk to safety and health likely to result in accidents or injury to health at the place of work concerned and where putting place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work".

Therefore, the standard of care is very high on the employer.

WHAT ARE AN EMPLOYEE'S RESPONSIBILITIES?

- Cooperate with your employer.
- Not do anything to place yourself or others at risk.
- To take reasonable care to protect the health and safety of yourself and of other people in the workplace.
- Not to engage in improper behaviour that will endanger yourself or others.
- Not to be under the influence of drink or drugs in the workplace.
- To undergo any reasonable medical or other assessment if requested to do so by the employer.
- To report any defects in the place of work or equipment which might be a danger to health and safety.

RISK ASSESSMENTS AND SAFETY STATEMENTS

Under the Safety, Health and Welfare at Work Act 2005 every employer is required to carry out a risk assessment for the workplace which should identify any hazards present in the workplace, assess the risks arising from such hazards and identify the steps to be taken to deal with any risks.

The employer must also prepare a safety statement which is based on the risk assessment. The statement should also contain the details of people in the workforce who are responsible for safety issues. Employees should be given access to this statement and employers should review it on a regular basis.

The Health and Safety Authority has published guidelines on risk assessments and safety statements.

DOES AN EMPLOYER HAVE TO PROVIDE ANY NECESSARY PROTECTIVE EQUIPMENT?

The employer should tell employees about any risks that require the wearing of protective equipment. The employer should provide protective equipment (such as protective clothing, headgear, footwear, eyewear, gloves) together with training on how to use it, where necessary.

An employee is under a duty to take reasonable care for his/her own safety and to use any protective equipment supplied. The protective equipment should be provided free of charge to employees if it is intended for use at the workplace only.

Usually, employees should be provided with their own personal equipment.

WHAT SHOULD YOU DO IF YOU ARE INJURED AT WORK?

1. Seek medical assistance

It stands to reason that the most important thing is your physical well-being and this takes immediate priority over any considerations for financial compensation down the line.

That said, by immediately getting medical attention from your GP or hospital Accident & Emergency, this may provide evidence which will help prove your injury claim down the line.

2. Report the Incident

If your accident is very serious or you have been significantly traumatised, it may not always be possible to follow procedures but it is

recommended that you inform your immediate superior of the nature of incident as soon as possible.

Your employer is legally required to keep an accident book with a record of all work-related accidents both in case of a compensation claim and to help avoid future workplace accidents.

3. Take Photographs

At the very earliest opportunity following an accident, you should take photographs of the scene if at all possible.

Again, these may be vital evidence for any future claim which may be taken.

4. Get Details of All Witnesses

If there were any witnesses to the accident, be sure to obtain their names, addresses and telephone numbers.

5. Do a Detailed Statement of how the Accident Happened

It is most important that you write down in the fullest detail how the accident happened and what injuries you suffered.

You should set out the time, date and mechanics of the accident and who you believe is responsible and why you feel they are at fault.

It is important that you complete this statement at the earliest date to avoid the possibility of forgetting details over time and include as much detail as you can remember, no matter how trivial.

You have no way of knowing at an early stage what will prove to be important as your case progresses.

IF YOU SUE YOUR EMPLOYER DO YOU LOSE YOUR JOB?

People are often apprehensive about making work injury claims due to the fear of losing their jobs or because they might upset an existing working relationship with their employer.

Although the law protects people who are injured at work from being penalised or threatened with dismissal for making work injury claims, it does not always alleviate the fear of an awkward workplace confrontation on their return, or the potential for being jobless when employment is hard to find.

It is worth remembering that any work injury claims settlement is paid by your employer's public liability insurance company, so you should not be concerned about your fellow employees suffering financially due to making a work injury claim.

WHAT RESPONSIBILITIES DO EMPLOYERS HAVE UNDER COMMON LAW?

Employers have a duty to:

- Provide a safe place of work.
- Provide competent co-workers so that employees are not at risk.
- Provide a safe system of work which is planned and organised.
- Maintain the procedures which are in place.
- Provide instructions, training, equipment and support to employees- many cases arise because employees do not receive adequate training for their jobs.

ACCIDENTS IN A PUBLIC PLACE

WHAT DO YOU DO IF YOU TRIP, SLIP OR FALL IN A PUBLIC PLACE?

REMEMBER THE LOCATION!

It is extremely important to be able to identify precisely where the accident happened. You should ensure that you have some way of pointing out the accident scene to your solicitor and any engineer retained by them to inspect the scene.

SHOULD YOU TAKE PHOTOGRAPHS?

Yes! - protect all evidence

At the very earliest opportunity following an accident, you should take photographs of the scene. This is particularly important if you slip on a wet surface such as spilt milk in a shop.

SHOULD YOU APPROACH WITNESSES WHO MAY HAVE SEEN THE ACCIDENT?

Yes! - get details of all witnesses.

If there were any witnesses to the accident, be sure to obtain their names, addresses and telephone numbers.

WHAT OTHER STEPS SHOULD BE TAKEN AT AN EARLY STAGE?

Write down what happened.

It is most important that you write down in the fullest detail how the accident happened and what injuries you suffered. You should set out the time, date and mechanics of the accident.

You should also write down who you believe is responsible and why.

It is important that you complete this statement at the earliest date - you should include as much detail as you can remember, no matter how trivial. You have no way of knowing at an early stage what will prove to be important as your case progresses.

IF YOU FALL IN A SHOP SHOULD YOU REPORT IT?

Yes!

The fall should immediately be reported to a staff member or the manager. You should also ensure to take their name. This may become very important and will prevent a shop from arguing that the accident did not occur on their premises.

IF YOU HAVE SUFFERED INJURIES WHAT SHOULD YOU DO TO ASSIST IN YOUR LEGAL CASE?

Record Your Injuries.

After the accident - even if it has only been a minor one - you should always see your doctor for a check up.

This is important as a failure to attend your doctor at an early stage may cause difficulty later on. Make sure you tell your doctor that you were involved in an accident and detail all your injuries, both physical and

psychological, no matter how trivial they may seem to you at the time. Make sure that the doctor makes a note of these details.

It is very difficult to remember some months or years after the accident how you felt in the"early days." Buy a diary and keep a record of present symptoms and from then on, record your condition on a regular basis. You should also keep a note of all your medical examinations, when you went, what was said and any medical opinions offered.

In certain circumstances, where a family member dies as a result of a wrongful act of another, an action can be taken against this wrongdoer.

This is called a "Fatal Injury Action" and it most commonly comes about because of medical negligence, accidents in the workplace or road traffic accidents.

FATAL INJURIES ACTIONS

BRINGING A CASE

Only certain people are allowed to bring a case when there has been a fatal injury.

These persons, allowed to bring such a case, are called "statutory dependants" and are in essence the immediate family of the deceased.

Divorced spouses and cohabiting partners are included in the definition of "statutory dependants".

Only one case may be taken for each fatality and all statutory dependants must be named in that single case.

COMPENSATION

There are three types of compensation for a fatal injury claim and all are considered when the total amount of compensation is decided upon.

The first category is for out of pocket expenses resulting from the death, the second is for emotional distress (this is capped at an upper limit) and the third category is compensation for the loss of income and associated benefits caused by the loss of the deceased.

INVESTIGATING DEATHS

An inquest is held in the case of all unnatural deaths.

You should be represented by your solicitor at the inquest as important information about the cause of death may become available from any key witness present.

The inquest is presided over by a Coroner (not a Judge) and there may be a Jury also.

The findings at the inquest may have a significant impact on the potential success of a civil claim.

There may be other types of Inquiries following a fatality also, for example the Health and Safety Authority may hold an inquiry or the Medical Council about fitness to practice.

We as advocate solicitors provide representation at these inquests. Legal representation at an early stage is recommended to ensure full information is collected.

Often, Clients do pursue a civil case after an inquest, as a result of the facts and findings that arise.

This may be against an insurer, a public or corporate body which it appears are responsible for causing the death.

Whilst no allegations concerning liability can be made at an inquest, crucial information can be obtained which can be very useful in a subsequent claim for compensation.

WHEN IS AN INQUEST HELD?

When a death occurs that is unexpected, unnatural, violent or unexplained - the coroner is notified. He or she may decide to ask for a post mortem and may hold an inquest.

An inquest would not normally be held if a post-mortem examination of the body could explain the cause of death. In some deaths inquests are legally required.

WHERE DOES AN INQUEST TAKE PLACE?

This inquest usually takes place in the local courthouse or sometimes, in a hotel room. Many families that have to attend inquests are startled at the 'courtroom-type' scenario, with witnesses, lawyers, juries in some cases and verdicts.

DOES SOMEONE NEED A SOLICITOR FOR AN INQUEST?

We regularly attend and advocate on behalf of bereaved families at coroner's inquests.

We are regularly instructed to represent bereaved families at Inquests following the death of a loved one arising from medical accidents in hospitals, accidents at work, road traffic accidents and unexpected deaths in a hospital. Most of the time that we would be involved in an inquest would be if there was a Civil action in the pipeline or pending.

There is no legal requirement for anyone to have such representation but if the deceased's family has concerns e.g. over the care received while in hospital or how the accident happened, we endeavour to explore these

issues to the best of our abilities within the constraints of the Inquest process.

WHAT DOES AN INQUEST DO?

An inquest is an official, public inquiry, conducted by the coroner and, in some cases, in front of a jury. The purpose of an inquest is to find out who died – when, where, how and in what circumstances.

In advance of the Inquest, the Coroner will receive depositions from the relevant people involved, post mortem reports and medical records, if relevant. The Coroner may call medical or expert witnesses.

Many Clients find it hard to understand that the inquest is a fact-finding exercise – which means it is not to establish blame but rather to establish the circumstances surrounding the death.

At the conclusion of an Inquest, a verdict will be returned by the Coroner in relation to how, when and where the death occurred. The type of verdicts which can be returned include open verdict, misadventure, natural causes, accidental death or in some cases, unlawful killing.

WHEN WOULD A JURY BE REQUIRED FOR AN INQUEST?

A Jury would be empanelled at the Inquest in certain circumstances which are laid down by law. These include where death was due to homicide, or occurred in prison, or resulted from an accident at work, or as a result of a road traffic accident.

A jury is also necessary if a death occurred in circumstances that might be prejudicial to the health or safety of the public or any section of the public.

CAN AN INQUEST RESULT IN RECOMMENDATIONS BEING MADE?

In many cases the Inquest will result in recommendations being made to avoid the reoccurance of similar deaths.

An example of such recommendations was seen in the case of Savita Halappanavar The full Inquest on the death of Savita Halappanavar opened on 8 April 2013 and concluded on 17 April, with the jury returning a unanimous verdict of medical misadventure. The jury also endorsed nine recommendations for fundamental change. Two of the recommendations included:

- That protocols on the management of sepsis along with 'proper training and guidelines for all medical and nursing personnel' should be institute.

- That a protocol for sepsis be written for each individual hospital by its microbiology department and be applied nationally.

DO PEOPLE PURSUE CIVIL ACTIONS AFTER INQUESTS?

Often, Clients do pursue a civil case after an inquest.

This may be against an insurer, a public or corporate body which it appears are responsible for causing the death.

Whilst no allegations concerning liability can be made at an inquest, crucial information can be obtained which can be very useful in a subsequent claim for compensation.

WHO PAYS FOR YOU TO ATTEND AN INQUEST?

Many clients are concerned about the cost of engaging legal representation for an inquest.

A High Court decision has been helpful by finding that in circumstances where the death has been shown to be due to the wrongful act of another, it may be possible in the majority of cases to recover the cost of legal representation at an Inquest in the subsequent civil case.

MEDICAL NEGLIGENCE

INTRODUCTION

Every healthcare professional owes a duty of care to their patients. This not only applies to surgeons, doctors, nurses and midwives but also extends to other medical professionals such as dentists, opticians, audiologists and psychiatrists.

If you, or a family member, have suffered injury while receiving medical care you may be entitled to take a claim for compensation for medical negligence.

The Medical Negligence Team at Lynch Solicitors of John M. Lynch, and Gillian O'Mahony. We have extensive experience in dealing with medical negligence cases, and in representing victims of medical malpractice in the High Court, at public inquiries and compensation tribunals.

We have acted and advised clients in various types of medical negligence cases such as:

- Birth related injuries, such as cerebral palsy;
- Misdiagnosis, such as cancer misdiagnosis;
- Eye injuries as a result of substandard treatment;
- Disabilities caused to limbs as a result of substandard surgical procedures or failure or delay diagnosis of injury;
- Injuries caused as a result of substandard care in provision of prescription medicines;
- Brain injuries as a result of substandard surgical procedure and treatment of care post surgery;

- Injuries caused as a result of contracting infections as a result of clinical negligence, such as MRSA;

- Medical negligence cases for the use of inappropriate surgical techniques and/or faulty or inappropriate surgical equipment or implants, such as the DePuy Hip Implant.

WHAT IS MEDICAL NEGLIGENCE?

Medical negligence is a rapidly expanding area of litigation in Ireland.

Medical Negligence is essentially an act or omission by a health care professional which is below the accepted standard of care and which results in injury or death to a patient.

There are four main steps in proving medical negligence:

1. **Duty of Care** – a legal duty is owed whenever a health care provider or hospital undertakes to treat a patient;
2. **Breach Duty of Care** – it must be shown that the health care provider in question failed to follow the relevant standard of care;
3. **Injury** – the breach of duty must have caused injury and;
4. **Damage** – Regardless of whether or not the health care provider was negligent, there is no basis for a claim in negligence without damage, be it monetary, physical or emotional.

Medical negligence can happen because of:

- **Diagnosis** – i.e. misdiagnosis or delayed diagnosis;
- **Treatment** – i.e. errors in the medical treatment such as incorrect medication, surgical errors, exposure to infection (MRSA etc) or;
- **Disclosure** – i.e. failure to inform the patient of the risks of the treatment of procedure.

WHAT IS THE HARM

Medical negligence cases are very complex because the cause of the harm suffered can be difficult to pinpoint.

In a lot of cases, the person is sick before they ever get to hospital, or they are suffering from a serious underlying condition, such as cancer.

One of the tasks which the solicitor faces is to identify what the outcome would have been if it was not for the negligence of the healthcare professional.

The other side will almost always argue that either the harm caused was a result of the illness the patient had before they ever attended. They often argue that in the case of a mistake in surgery, that the mistake was within the realm of acceptable error.

DAVID AND GOLLIATH

Another difficulty is that medical negligence cases are still David and Goliath type challenges.

They involve you (an individual) taking on the State which has deeper pockets and no empathy with the impact the event has on the individual concerned. They have no emotional stake in the outcome.

OUTSIDE VIEWPOINT

The medical profession in Ireland is a small community. It is often difficult to find suitable experts based in Ireland who will be willing to provide a report which might be used to support a claim in medical negligence.

For this reason, it is usually necessary to retain medical experts based in the UK, and sometimes further afield.

It is regrettable that a patient who suspects that they may have been the victims of medical negligence are put to the additional inconvenience and expense of having to retain a foreign expert.

However, we make this step easier by using one of the experts from our panel with whom we are used to working with.

DO I HAVE A CLAIM IN MEDICAL NEGLIGENCE?

If you, or a family member, have suffered injury due to the actions or inactions of a medical professional you may be entitled to compensation. You will be able to discuss the facts of your situation, in detail, with a member of our medical negligence team.

As experts in the area of medical negligence litigation, we will assess your complaint and assist you in reaching a decision on whether to make the claim or at the very least investigating it further.

WHAT STEPS MUST BE TAKEN TO ESTABLISH A POSSIBLE CASE OR "CAUSE OF ACTION"?

Medical negligence claims, in a similar way to personal injury claims, are made up of a series of hurdles. If you do not clear the first hurdle you cannot move on to the next.

To establish a case in medical negligence we need to take these steps:

- Take up copies of all medical records and check them. In some cases we may even send them to a medical records expert for analysis;
- Write to the doctor, health care professional or institution we believe is responsible for the injuries caused;

- Medical experts specialising in the particular area of medicine involved will then be asked to consider whether or not the treatment received was negligent or sub-standard and if so the extent of the damage it caused.
- If we consider that we have enough evidence to prove a case of medical negligence, then we advise starting court proceedings immediately.
- Clinical negligence cases can be settled by negotiation without the need to proceed to a full trial but they are rarely resolved without starting court action.

TIME LIMITS

WHAT IS THE STATUTE OF LIMITATIONS?

The Statute of Limitations is the length of time a person has to make a claim following an event that gives rise to the claim. Once the specified time has passed a case can no longer be brought.

The logic is simple and grounded in common sense principles: after a certain length of time it is impossible to get accurate evidence – be it witnesses, people's recollection etc and the threat of legal action cannot hang over a person for an indefinite time.

Therefore, the law stepped in with the concept of the Statute of Limitations.

HOW LONG DOES A PERSON HAVE TO TAKE ACTION?

If a person is outside the limitation period, they cannot take an action. For personal injuries claims an injured party has, by and large, two years.

Although the Statute of Limitation for personal injury claims is two years, there is an escape clause where a person has no knowledge that an injury is connected with a wrong committed by someone else or is ignorant of the person to sue.

WHAT DOES THE 'DATE OF KNOWLEDGE' MEAN?

The Statute of Limitations (Amendment) Act 1991 introduced the 'date of knowledge' for personal injury cases. The date of knowledge is applied

when the date the wrong / injury takes place differs from the date the wrong / injury is discovered.

This means that in situations where the injury may not be obvious at first the time limit for actions does not begin until the injured party is aware of the injury.

The date of knowledge has been applied in medical negligence cases; a person who receives a negligent medical procedure may not have knowledge of the injury at first until the injuries cause problems or they become aware that such problems arose as a consequence of such procedures.

The 'date of knowledge' ensures that the time limit does not run out before a person realises they have an injury/action.

TIME LIMITS FOR DIFFERENT AREAS OF LAW

- Tort other than personal injuries – 6 years
- **Contract** – 6 years
- **Will & Estates** – 6 years or 12 years depending on circumstances
- **Land - Adverse possession** – 12 years, or 30 years if the State are taking an action

WHAT HAPPENS IF A CASE INVOLVES DIFFERENT AREAS OF LAW?

The Statute of Limitations is a complex area of law that needs to be checked in each individual case to ensure that you are not out of time to take your case to Court.

Example: A recent case that has illustrated this is DePuy ASR Hip Implant Recall which has a mix of different areas of law – which could include Product Liability and medical negligence and personal injury.

WHAT IF I AM OWED MONEY AND I AM OFFERED PART-PAYMENT, DOES THE 'CLOCK STOP TICKING' ON THE LIMITATION PERIOD AND SHOULD I ACCEPT THE MONEY?

If someone acknowledges a debt this generally stops the clock running out. However, if you accept the payment and it is only a part payment you should ensure that you acknowledge the payment as a part payment only.

WHAT STEPS DOES LYNCH SOLICITORS TAKE IN A A LITIGATION CASE?

PHASE 1: GATHERING INFORMATION

The early months of your case will be largely taken up with the process of gathering all the information we need to ensure that we achieve for you the best possible outcome.

We will note all necessary details regarding the accident and your injury, talk to witnesses, instruct an engineer if necessary to document the accident scene, talk to investigating Garda or any other emergency services that may be of assistance, liaise with your insurance company and begin the process of getting detailed medical reports on your injuries.

At the same time we will be opening communications with the other side, their solicitors and their insurers to ensure that their investigation is also progressing. The efficiency of the other side is just as important as our efficiency here at Lynch Solicitors in ensuring that your case progresses well and while the old saying that you can only do your own job well applies, it does no harm to keep an eye on what the other side are up to.

It helps avoid some of the delays that often hold up cases in their way through the litigation process. Litigation is the general legal term for resolving disputes through the Personal Injuries Assessment Board and the courts – it is the way that personal injury compensation cases are dealt with in Ireland.

PHASE 2: MANAGING YOUR APPLICATION TO THE INJURIES BOARD

In 2004, the Personal Injuries Assessment Board (PIAB) has acted as a filter in all cases involving personal injuries in Ireland. The name has now changed to the Injuries Board.

PIAB was established with the objective of simplifying and making more efficient the whole personal injuries procedure with the dual aim of making the process faster and cheaper for insurance companies.

The Injuries Board does not replace the old Court system, it merely acts as a filter, settling some cases while letting the remainder through to the Court system.

Even before the Injuries Board was introduced, the vast majority of personal injuries cases were settled outside of Court and thankfully this is still the case.

PHASE 3: PREPARING AND ISSUING COURT PROCEEDINGS

If your case is not settled or assessed by the Injuries Board – for whatever reason – we will then commence the court process on your behalf. This process involves taking the information we have on your case and drafting the initiating Court document.

This document varies depending on whether your case is to be dealt with in the Circuit Court or the High Court and this decision is based on the seriousness of your injury.

The difference between the Circuit Court and the High Court, in simple terms, is Circuit Court cases involve damages not in excess in €60,000 and cases involving damages in excess of that are commenced in the High Court.

PHASE 4: PROGRESSING YOUR CASE

Once the initiating document is completed, it is issued by the Court Office and served on the other side or their solicitor. After that, there will be an exchange of a variety of Court documents dealing with the defence that

the other side will rely on in contesting the case, discovery of relevant documents or records and preparation for the hearing of your case.

PHASE 5: SETTLEMENT TALKS

At any time during this process you may be invited to settle your case and usually such settlement meetings take place in Courthouses. You will not have to speak with anyone other than Lynch Solicitors or your Barrister and we will negotiate settlement terms on your behalf.

Any offers that are made by the other side will be explained to you as will any costs that have to be paid by you. You will receive our opinion on the likely outcome of your case and our views on the correct compensation that the Court would give you.

It is also an option to mediate your case rather than go to Court. Mediation is where an independent person is agreed on who will try to get the parties to reach an agreement .

PHASE 6: PREPARING FOR A COURT HEARING

We will prepare documents for the Court. We will try to agree as many aspects of the case with the other side to make the case shorter. We will also make arrangements for the attendance of necessary witnesses such as an engineer, doctors, witnesses to the accident, witnesses to prove your out-of-pocket expenses and any other experts that may be needed to prove different aspects of your case.

We will also prepare you for the hearing by explaining how the hearing will operate, explaining the types of questions that you may be asked, explaining who the various witnesses will be and in general trying to put you at ease.

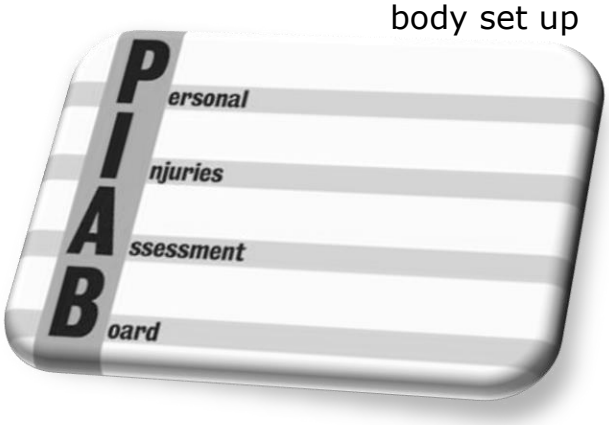
PHASE 7: FINALISING YOUR CASE

When your case has been settled or concluded in Court, there is still a lot of work to be done by us on your behalf. Our first priority is to get your settlement cheque in from the other side and pay this to you without delay. Usually this occurs within three weeks of your case being concluded.

THE INJURIES BOARD – PIAB PROCESS

WHAT IS THE INJURIES BOARD?

The Injuries Board is an independent body set up by law to assess personal injuries claims– be it a road traffic accident, a workplace accident or slip and falls or any other kind of injury before any legal claim can be taken through the Courts.



Because they are independently mandated by law they do not represent someone who is involved in an accident, nor do they deal in any way with attributing blame – they will simply make a determination about what level of compensation (if any) may be appropriate based on the evidence.

WHAT IS THE PIAB PROCESS?

The first step to be taken in any personal injuries case is filling out the PIAB (Personal Injuries Assessment Board) application. This is a form that sets out the information about your injury and the accident that caused it.

We will complete this application at the earliest possible date so that the sorting out of your case will not be delayed.

To complete this PIAB application, we will need at least one medical report from your doctor and this can sometimes take a few months. When we get the medical report, we can send this, with any other necessary paperwork, to PIAB and your application is then logged by them.

PIAB will send the defendant (the person you say was responsible for your injury) a copy of the application and the medical and will ask them if they consent to allow PIAB to put a value on your injury and make an offer.

This process can (and usually does) take 90 days. If the other person refuses to allow the PIAB to deal with the case, that is the end of the PIAB process. PIAB will end their involvement in your case by issuing us with an 'authorisation' which is, in effect, a permission to issue Court proceedings.

If the defendant consents to PIAB assessing your case, PIAB will send you to be examined by a doctor on their panel of doctors. They will also look for details of your out of pocket expenses and loss of earnings if you have suffered such losses.

If there are no psychological or psychiatric injuries, PIAB will decide on a value for the injury and make you an offer.

We will then consider that offer against our knowledge of how similar injuries are valued in the Court system and advise you on whether to accept or reject the offer.

If you decide to accept the offer, then the compensation will be paid and the case is at an end.

If you decide not to accept the offer, PIAB will not make an improved offer. They will issue an authorisation so that the Court proceedings can be issued and the PIAB process is then at an end.

HOW MUCH WILL MY CLAIM BE WORTH?

A key difficulty with valuing personal injuries is that we cannot form a clear opinion on a value until we have a clear picture of your injuries. For this reason, we will usually not be able to offer more than a general guideline on the value of your injury at the beginning.

As time moves on and we get more medical information, that opinion will be revised until we have enough information to value your injury with confidence.

Ultimately, it is up to the Court to fix the value of your claim. Should your case go that far, you should bear in mind that judges can vary greatly in the amount of compensation that they award.

ARE THERE SOME TYPES OF INJURIES THE BOARD WILL NOT CONSIDER?

The Injuries Board is not required to make an assessment if they are of the opinion that it is too complex a matter for them and should be put to the courts directly.

If the injury is wholly or in part psychological, if aggravated damages are being sought or if the claim comes out of surgical treatment then the Board is also not required to make an assessment.

HIDDEN PROBLEMS

Difficulties can arise in even what may seem the most straight forward injury claim so we would always recommend that you would seek legal advice before making any application to the Injuries Board.

ARE SOLICITORS NEEDED OR CAN THE INJURED PARTY DEAL WITH THE INJURIES BOARD DIRECTLY?

Solicitors act for the injured person, not the insurance company and we represent the interests of the injured person alone. If someone suffers an accident or injury through no fault of their own they have a right to a solicitor and to compensation.

The Injuries Board will try to keep claims low – both in numbers and cost so anyone who suffers an injury should contact their solicitor who will put

the best case possible forward for them and ensure they are entitled to an amount of compensation that fully reflects the injury suffered.

HOW LONG DOES IT TAKE?

The Board state that they have significantly reduced the amount of time it takes to resolve a claim from three years to seven or nine months, in most cases.

WHAT HAPPENS IF THE CLAIM IS ALREADY SETTLED AND NEW SYMPTOMS ARISE?

In the majority of cases it can take – at a very minimum – twelve months for symptoms to fully settle down and in a lot of cases the symptoms may take a lot longer, or worse, have permanent effects.

If you accept an assessment of compensation in the months after your accident without the proper advice you risk being hugely under compensated should your symptoms continue or even get worse afterwards.

The assessment process with the Injuries Board is rigid. When a personal injuries claim is taken before the Courts instead, you submit your claim at the outset and can then update details and particulars of the injuries and wrongs before the hearing of the case. The Injuries Board does not allow this.

Once your application is submitted you cannot update or change your claim at a later stage. This is particularly risky where a claim is submitted before your injuries have settled down as the situation can change very quickly leaving the Board assessing what is not really the full extent of your injuries.

FREQUENTLY ASKED QUESTIONS

Here are some questions and answers that frequently arise in cases similar to yours.

Please remember however that any question you have will be welcomed by us.

At Lynch Solicitors, we believe that there is no substitute for personal communication so please contact us.

ARE THERE ANY TIME LIMITS TO BRING A CLAIM?

As a general rule, you have 2 years from the date of the accident to make a claim.

This time can be extended to 2 years from the date that you knew or ought to have known that you suffered an injury caused by an accident.

HOW MUCH COMPENSATION SHOULD I GET?

A key difficulty with valuing personal injuries is that we cannot form a clear opinion on a value until we have a clear prognosis from your doctors.

For this reason, we will usually not be able to offer more than a general guideline on the value of your injury when you first consult us.

As time moves on and we get more medical information, that opinion will be revised until we have enough information to value your injury with any degree of confidence.

Ultimately it is up to the court to fix the value of your claim.

Should your case go that far, you should bear in mind that judges can vary greatly in the amount of compensation that they award.

HOW LONG BEFORE MY CASE WILL BE HEARD?

It will take a certain length of time before a case comes up for hearing in the courts.

The length of time will not start to run until all the paperwork is completed.

It is important to remember that a case cannot be dealt with by a Court until it is ready for hearing.

This is particularly so where the injuries have been severe - it can take time for you to recover.

Until you have recovered sufficiently, or your condition has stabilised, the case should not be heard.

There can be delays due a limited number of judges.

There can also be delays if cases take a long time to hear and that time is not availble for the hearing.

On average cases in the District Court tend to take about 6 months to get to hearing in the Circuit Court, 2 years and in the High Court, 2 or 3 years.

The more complicated the case the longer it can take to get to hearing.

DOES THE CASE HAVE TO GO TO COURT?

As a general rule, the majority of cases we are involved in are settled without going into Court.

We will only recommend settlement if the sum being offered is within a range that we consder is reasonable.

We will advise you fully before you make this decision.

WHAT EXACTLY WILL I BE COMPENSATED FOR?

You will be compensated for your special and general damages.

An award is a payment for all time.

This means that you cannot come back a second time and claim more even if your injuries get worse.

WHAT ARE GENERAL DAMAGES?

General damages are damages payable to a person for their pain and suffering, injury to health, personal inconvenience, up to the day of hearing the case and for pain and suffering into the future.

WHAT ARE SPECIAL DAMAGES?

Special damages are your actual out of pocket expenses as a result of the accident.

These include medical expenses, loss of earnings, travelling expenses, cost of medical care, physiotherapy expenses, pharmaceutical expenses, hospital fees, cost of scans, repairs to car (loss of use and depreciation), loss of clothing and your potential future loss of earnings.

ARE SOCIAL WELFARE PAYMENTS TAKEN IN TO ACCOUNT?

Social welfare payments made to you are deducted from any loss of earnings that are paid to you by your employer.

These include:

- Illness Benefit
- Partial Capacity Benefit
- Injury Benefit
- Incapacity Supplement
- Invalidity Pension
- Disability Allowance

Your employer will then have to refund these social welfare payments to Minister for Social Protection.

THE DIFFERENCE BETWEEN A BARRISTER AND A SOLICITOR

A barrister is a lawyer who specializes in presenting your case (advocacy), usually in the Circuit or High Court.

If we are settling your case we will often ask a barrister to assist in negotiating the settlement.

There are 2 levels of barristers:

- Junior Counsel work in the Circuit Court as advocates. Advocacy is the presentation of a case before the Court.
- Senior Counsel are more senior and experienced. They tend to work in the High and Supreme Courts.

From a practical point of view the barrister argues cases – usually before the higher courts.

The solicitor has direct contact with the general public, has an office open to the public, takes instructions about the case, advises on the law, plans the case and prepares the necessary paper work for the barrister to present in court.

Increasingly solicitors are offering the combined role of preparation and presentation of cases.

Lynch Solicitors offers both advocacy and solicitor services.

WILL THE OTHER SIDE HAVE A P.I.?

It has become common for Defendants or their Insurers to hire private investigators.

These investigators will carry out surveillance on you or may monitor your social media accounts.

They look for evidence to contradict your evidence of the circumstances that gave rise to problem or the extent of your injuries. Increasingly, evidence is being presented in Court of social media accounts or on camera undertaking tasks that contradict their level of disability – people with back injuries limbo dancing!

It is important that we are told accurately how your injury affects you.

Such investigation by the Insurance Company can do no harm to your case once we are in a position to give full and accurate details to the other side.

In any court proceedings, you will be required to swear an affidavit confirming that the particulars of your issue and the injury you have suffered are true and accurate.

THE COURT STRUCTURE

WHAT COURTS DO YOU GO TO?

There are three main courts which a Client could usually be involved in – the **District Court**, the **Circuit Court** and the **High Court**.

WHAT IS THE DIFFERENCE IN THESE THREE COURTS?

In the context of e.g a personal injuries case the difference is based on the amount of money that the Courts can award.

The District Court hears minor criminal matters, small civil claims, liquor licensing, and certain family law applications. The civil jurisdiction is limited to damages not exceeding €15,000.

The Circuit Court is an intermediate level court and is limited to a compensation claim not exceeding €75,000 (€60,000 for claim for damages for personal injuries).

The High Court is the appropriate court to hear cases involving claims for damages in excess of €70,000 (in personal injury €60,000).

IS IT USEFUL FOR A SOMEONE WHO HAS NEVER BEEN TO COURT TO VISIT THE COURT IN ADVANCE OF THEIR CASE?

Yes!

Preparation and experience are two key elements to the successful presentation of any court case, however, experience of court is something very few people have.

This is why it is a good idea to visit the court a month or two before the case and watch how other cases are presented. Visiting a court before your case allows you to see what happens and will help you to be less nervous when your day in court comes.

Courts are public buildings and the public are entitled to sit in on most cases with the main exception of family law matters.

CAN ANYONE GO IN AND VIEW A CASE?

Yes!

There is a public area in the courtroom where people may sit and listen. The public can go into any court unless the case is being held 'in camera', which means in private.

This is to protect the privacy of the people in the court e.g in Family Law cases and cases involving minors

HOW SHOULD SOMEONE BEHAVE IN COURT?

Put your best foot forward - you should remember that the day you attend the Court for your case is the only chance the judge will have to see you and hear your evidence.

It is essential therefore that you create a good impression. You should dress in a manner that shows proper respect for the court and behave in a respectful manner at all times. In giving your evidence you should make sure that the judge can hear you properly and understand what you are saying.

You should answer to the best of your ability any question put to you but remember not to give any hasty or confused replies as these are unlikely to help your case.

DOES A CASE HAVE TO GO TO COURT?

As a general rule, the majority of cases are settled without going into Court. However, they are only settled provided that our Client is agreeable to accepting the figure that is offered in full and final settlement of their claim.

I meet with Clients well in advance of Court and agree with them what would be acceptable if we have settlement talks with the other side.

This means that the Clien

t is not put under pressure to agreeing something on the day due to the strange and stressful environment.

You now also have the option of mediation. This involves agreeing to an independent person who will help the parties settle the case.

COURT PROCEDURE

Court proceedings in all courts require the preparation of documents (called Pleadings) by both parties, which are filed in Court and copies given to the other side.

The purpose of this is for both sides to be fully informed of the basis of the case against them.

It is also of assistance to the Judge in understanding the case that both parties are making.

For example, in the High Court you prepare a Personal Injury Summons and in response the other side will give us a Defence. The Personal Injury Summons sets out the details of your claim. The other side give details of their response to your claim in the Defence.

The documents prepared by both sides are called the Pleadings and similar in both the Circuit and High Court.

THE ADVERSARIAL SYSTEM

Our Courts are based on a "for and against" system.

You, (called the Plaintiff), are the person who takes the action against the other party or entity, who, (called the Defendant), defends it.

When both sides present their case, it is the function of the Judge to decide the issues between the parties.

During the running of the case in Court, both sides' legal advisers may call upon experts.

Such experts assist the Court in deciding on whether or not you have a claim and, if so, the extent of the Plaintiff's injuries.

You should bear in mind that it is the function of the legal advisers on the opposing side to attempt to either wholly or partially discredit you and your witnesses.

This goes to the very root of the adversarial system.

THE DISTRICT COURT

The District Court is the court at the lowest level in the Court system and it is presided over by a District Judge.

A District Judge (addressed as "Judge") is appointed from the ranks of the solicitors' and barristers' professions.

They administer the law in the District Court unaided - that is to say, without the assistance of a Jury or panel of experts.

The practical difference between the various courts is the amount of compensation, which they are entitled to award.

Accordingly, the District Judge would be dealing with the lower end of the civil actions.

If you are not satisfied with how a case is dealt with, you have a right of appeal to the next court up, the Circuit Court.

THE CIRCUIT & HIGH COURT

Circuit & High Court Judge are addressed as "Judge".

The Circuit Court deals with compensation cases upto €60,000 but the High Couret has no limit.

If you are not satisfied with how a case is dealt with in the Circuit Court, you have a right of appeal to the next court up, the High Court.

FIXING A DATE FOR HEARING

All courts have a system for fixing a day when your case is to be heard.

Each court has a queuing system and until such time as you complete all your paperwork, you will not even begin to queue to get a hearing date for your case.

When all the Pleadings are closed (i.e. paperwork finished) we will serve a notice to the Court and the other side that we are ready to join the queue – this usually called a Notice of Trial.

When you reach the top of the queue your case will get a date for hearing - it will be 'listed for hearing'.

The length of time it takes to get to the top of the queue will depend on the number of cases before you and the number of days available to hear civil cases.

In the District Court dates are usually available each month, in the Circuit Court they are usually available up to 4 times a year, and in the High Court dates are available in Dublin daily from January to July and September to December (if they are in a pre-defined list which is agreed every 3 months or so).

The next most significant decider is the amount of cases in the queue waiting for a date, the number of judges available and days available or set aside to hear cases.

This is what makes it very difficult to predict a hearing date.

On your hearing day, the judge may have a number of cases for hearing on that day.

As you might understand, a case can take anything from half an hour to four or five hours to be heard, depending on the issues involved.

Therefore, although a court will list a number of cases for a particular hearing date, there is no guarantee that your case will be heard on the day.

Usually if a case is not heard (or settled on the day) it goes back into the queue.

This is by far the most frustrating part of the court system.

There can be special circumstances where we can apply to a Court to jump the queue – e.g. if a person is very elderly or seriously ill.

When your case gets closer to hearing, we will be happy to discuss the specifics of a hearing date with you.

WHAT IS A TYPICAL DAY IN COURT LIKE FOR SOMEONE WHO FOR EXAMPLE IS IN THE DISTRICT COURT?

- Court begins at 10.30.
- People wait in court foyer for matters to begin when the Judge comes out.
- Once court commences anyone with a case on that day is called into the courtroom.
- Judge comes out onto the Bench.
- A List of all cases which are to be dealt with in the day are called out – in family law initials only are called.
- Each party, through their solicitor or themselves, has to indicate to the court that they are present in court and if the case is read to be heard – the number of cases in the list on most days is more than could be actually possible to be heard.

- Judge expects parties to try and agree matters if possible – if matters are agreed, terms can be written down. The terms are signed off on by the parties and a court order can be made from this.
- Court then indicates what matters it will hear first – usually short matters so what is heard does not always go on the court list for the day.
- Any matters involving the Children and Family Agency (CFA) – childcare matters are usually heard next.
- Contested matters are usually heard last.

COURT DOCUMENTS

HIGH & CIRCUIT COURT

The Circuit Court and High Court share the similar form of doucuments and rules of procedure.

PERSONAL INJURY SUMMONS

The Personal Injuries Summons is a detailed statement of your claim.

This statement will set out details about the parties involved on both sides of the case, the problem/incident, the surrounding circumstances, particulars of the injuries and particulars of the negligence and breach of duty.

It is important that you understand it and that it is accurate and complete.

NOTICE FOR PARTICULARS

If the other side (the Defendant) considers that further information or clarification is needed on your claim, they may send us what is called, a 'Notice for Particulars' .

The questions raised in the Notice for Particulars are restricted to the issues and cannot seek particulars of the evidence to be put before the Court.

The basis for requesting further particulars is that without this information, the Defendant would be unable to draft a 'Defence'.

It is critically important to answer these questions honestly and accurately.

DEFENCE

The information in your Personal Injury Summons may be sufficient to enable the other party or entity (the Defendant) to prepare his answer to your claim – called the 'Defence'.

In the Defence, the Defendant may deny every aspect of your claim, claim that the injury was not caused by them, or claim that the case is not taken on time.

A few standard examples from a defence are:

1. It is denied that the accident occurred as alleged or at all.
2. It is denied that you were injured as alleged or at all.
3. If the alleged accident occurred (which is denied) the accident was caused solely by or alternatively was contributed to by your negligence or breach of duty including statutory duty.

The Defence will then go on to list any possible particular of contributory negligence, such as, failure to exercise due care.

This is in an attempt by the other side to put at least some of the blame for the accident on you.

DISCOVERY

Either party may apply to the Court for an order directing the other party to produce paperwork – this is called , 'Discovery'.

This is a request for all the documents about the incident or injury.

Documents might include, for example;

- GP medical records
- Hospital medical records.
- Consultant medical records.
- Accident report form.
- Training manuals or repair/maintenance logs

It does not include communications between a client and his legal advisers in this case.

NOTICE OF TRIAL

When the Defendant has filed the Defence, you lodge a Notice of Trial with the Court office and on the Defendant.

In the High Court, you must then set the case down for trial by lodging all the paperwork in the Central Office of the High Court.

This is the stage when you join the queue to get a datefor your case to be heard..

THE DISTRICT COURT

CIVIL SUMMONS

This is the document which starts your case in the District Court.

Cases must be brought where the accident happened or where the Defendant or one of the Defendants ordinarily resides or carries on any profession, business or occupation.

For this reason, cases will sometimes have to be brought in a court venue some distance away and may not always be convenient for you, the plaintiff.

NOTICE OF INTENTION TO DEFEND

Whenever a Defendant intends to defend a Civil Summons, we get a notice in writing indicating intention to defend at least four clear days before the day fixed for the hearing.

This notice is sent to the District Court Clerk and to us on your behalf.

This is the stage when you join the queue to get a date to hear your case.

SETTLEMENT OPTIONS

At any time during this process we may try to settle your case.

We will only do so if your injuries have settled and we are clear on the value of your claim.

We usually arrange such settlement meetings in a courthouse.

You will not have to speak with anyone other than your own Legal Team.

We will do the talking for you and negotiate a settlement on your behalf.

We will explain the detail of any offer that is made by the other side.

We will give you our opinion on the likely outcome of your case and our views on the correct compensation that the Court would give you.

Litigation is not an exact science.

However, you can expect that the advice you will be given will include a range of figures that the Court might be expected to award.

In most cases we will advise on fairly specific compensation figures below which we could not recommend settlement.

Of course, if for some reason, you do not wish to accept an offer of compensation, you are perfectly entitled to do so.

Be aware, however, that if you refuse an offer there may be implications for costs.

What does Alternative Dispute Resolution mean?

Before going down the court route, ADR (Alternative Dispute Resolution) should be considered. Basically, alternative dispute resolution is an alternative to litigation / court.

In sensitive matters – in either business or personal life - ADR does not add to the conflict in question, where a Court situation can. It is a less stressful method for the individuals who are already involved in stressful situation.

There are many forms of ADR:

- Structured Negotiation
- Collaborative Law
- Mediation
- Arbitration We will now look at Mediation.

Mediation

Mediation is now a recognised alternative to having a Court resolve a dispute.

This alternative has to be made available to you.

Mediation is a private and confidential dispute resolution process in which an independent and neutral third party, the Mediator, seeks to help the parties to reach a mutually acceptable negotiated agreement.

WHEN DO I MEDIATE?

It is important to understand that mediation is voluntary and confidential and that any agreement is made by the parties and only facilitated by the Mediator by a fully informed client.

It is critical that there be full disclosure of the facts and that you understand the issues in dispute before starting the mediation process.

Once in possession of all the facts about the process of mediation, the issues in dispute and the facts necessary to make a decision, it is entirely a matter for you to agree to mediate.

LAST WORD

You should understand what Mediation is about and how it is works.

You should know that it is a confidential process as a rule.

You do not have to do it, if you do not want to.

You make the agreement, not the Mediator.

Make sure that you have all the facts and advise necessary to make your decision.

Any agreement made is as a rule binding and enforceable.

SOLICITORS' FEES, LEGAL COSTS AND OUTLAYS

HOW WE CHARGE FOR OUR WORK

We charge for our services and also ask you to re-imburse us for any payments payable on your behalf - these legal costs are called our 'fees and outlays'.

Our Bill or Account is usually made up of three elements:

CHARGE or FEES

This first part of the Bill covers the work carried out by us.

It is usually called "The Solicitors Charge" (or sometimes called "Fee").

The Bill includes a statement or description of the work done, such as the number of appointments (often referred to as attendances) between us, phone calls made, letters written, documents drafted etc.

These items of work will not be costed separately but a single fee will be charged.

This fee or charge is normally based on the number of hours spent by the solicitor or other members of staff on the work, multiplied by the hourly rate at which these services are charged.

This charge or fee will also include a value for the solicitor's special skill, care and attention and may include a reflection of the urgency or importance or other aspects of the case or transaction.

DISBURSEMENTS or OUTLAYS

Disbursements (sometimes called "outlays") are "out of pocket" expenses which have been paid by us on your behalf.

For example, in the course of doing the work, we may have to pay various fees for experts' reports, sworn documents, counsel's opinion witness expenses and so on.

All these disbursements will be itemised separately in the Bill.

You usually pay these as they arise, and then try to recover them from the other side at the end of the case.

It is important to know that not all (and not the full amount) of disbursements are recovereable from the other side.

These disbursements are quite separate from the solicitor's charge for the work done on your behalf.

When preparing your Bill we will make adjustments for any disbusements that you have prepaid.

V.A.T.

We must charge V.A.T. at 23 % for our services and this sum will be shown separately.

HOW A SOLICITOR'S CHARGE OR FEE IS CALCULATED

1. The **solicitor**'s skill, labour, specialised knowledge and responsibility.

- **Skill** - The type of work involved in legal transactions varies in difficulty and complexity. Routine or simple matters may be dealt with by a legal executive (i.e. an unqualified but experienced law clerk). More important, complex or difficult transactions will require the attention of an experienced solicitor. Where additional skill is required this will normally be shown in the rate charged per hour.
- **Labour** - This is usually taken to refer to work done by office staff on the transaction such as typing or copying.
- **Specialised Knowledge** - A solicitor is expected to have the knowledge necessary to deal with the types of business which he or she normally transacts. But some transactions call for specialised knowledge which a reasonably competent solicitor would not be

expected to have. In such cases the solicitor may charge more to reflect this factor, much in the way that a private medical specialist will charge a higher fee that that charged by a general practitioner in private practice.

- **Responsibility** - This factor is closely linked with the value of the case involved and the skill and specialised knowledge required of the solicitor. The greater the responsibility the solicitor bears, the more he or she will charge for their services.

2. The complexity, importance, difficulty, rarity or urgency of the **case** or transaction.

- **Complexity** - This matter is closely connected with skill and time. If the facts are complicated, more time will have to be expended and greater skill will be required in dealing with them.
- **Importance** - This factor is closely linked with skill, specialised knowledge and time. Where difficult legal issues are involved the transaction will probably call for the attention of a senior partner who will charge more than a junior solicitor.
- **Rarity** - If a transaction involves issues which rarely arise, the solicitor may be required to engage in research, involving additional time for which the solicitor will charge.
- **Urgency** - If the business requires urgent attention in the interests of the client, or if the client requests that the business be dealt with quickly, the solicitor will take this into account when charging.

3. The **time** spent on the case or transaction.

We record the amount of time spent in work for each client for most types of business. We keep a record of each interview (attendance) with a client, time spent on the phone dealing with the client's business, time spent drafting or studying documents, writing letters, carrying out any

specialist research for the client's business and any consultations the solicitor may have had with other experts.

The rate charged per hour or part of an hour depends on whether the work was done by a senior solicitor or assistant solicitor or legal executive.

WHAT COSTS DO I GET FROM THE OTHER SIDE?

If you win your cases, you are usually paid costs by the other side (the Defendant).

These costs– called 'party and party costs' - are not all of our costs.

You will pay costs – called 'solicitor and client costs' – for all work and disbursemnts not paid by the other side.

NOTE: While party and party costs may be paid by the other side, the primary duty to pay us rests with you.

WARNING: You will be liable to pay all our costs if the other side fails to do so or if you lose your case. (and you will have to pay the other side's legal costs).

GLOSSARY OF LEGAL TERMS

Advice on Proofs A Barrister is sent papers and they advise on what evidence, witnesses and documents should be available at the trial.

Barrister Also called Counsel. A barrister will often be engaged to present your case in court or assist at a settlement.

Brief An extract from a solicitor's file sent to a barrister or expert.

Central Office An office in Dublin that handles all the paperwork for the High Court

Damages Financial compensation paid to a person if successful in an action.

General Damages A sum of money to compensate a person for pain and suffering up to the date of the hearing and for any future pain and suffering.

Special Damages Actual out of pocket expenses (already paid out or which will have to be paid out in the future) as a result of the accident or loss. This would include medical expenses, loss of earnings, travelling expenses, cost of medical care, hospital fees, scans and car repairs.

Defendant A person against whom a case is brought.

Discovery Where the Court orders a person to disclose particular documents that they have relevant to a particular aspect of the case.

Ex Parte An application to a Court by one party in the absence of the other.

Judgment By Default This is where you get a court order because of the failure of the Defendant to do something e.g. judgment by default of appearance, or judgment by default of defence.

Litigation This is the general term to cover the area of law which deals with taking cases to court.

Lodgement Money paid into Court by the other side in satisfaction of your Claim. You must accept this sum unless you consider that it is not enough. If you do not accept the sum and , on the hearing of the case, the Judge agrees that it is enough then you will be penalised by having to pay all costs after the date of Lodgement.

Motion A Court application directing something to be done in your favour which can be either by written notice to the other party or 'ex

parte', e.g. an application asking the Court to order a Defendant to lodge their Defence.

Notice for ParticularsA written request for information about the claim. The Defendant is entitled to ask 'Particulars'. These are questions that will clarify your claim. You can do likewise to clarify the Defendant's defence.

Party / Party Costs* The legal, medical, witness (including expert witness) costs you are entitled to receive from the Defendant as a result of winning your case. Please note that while these costs are ultimately to be paid by the other side, the primary duty to pay us rests with you as a result of engaging our services. For this reason, you will be liable to pay all our fees if the other side fails to do so. *(We would refer you to our authority and retainer.)

Personal Service Engaging a Summons Server to serve a copy of a Court document with someone after showing him/her the original.

Plaintiff You, as the person who takes a case.

Pleadings This is the name for all the documents which have to be used by the Parties in an action. e.g. Summons, Appearance, Statement of Claim, Defence.

Respondent Another name for a Defendant.

Solicitor / Client Costs * Costs which we charge you to cover costs not covered by the other side, e.g. contribution towards professional fee for client work, certain advices, undertakings, client related travelling expenses, etc. *(We would refer you to our authority and retainer.)

Subpoena A document obliging a person to attend Court to give evidence.

Summons Server An individual appointed to serve documents.

Tort A wrong committed by one person on another which gives rise to a claim for compensation e.g.defamation; negligence, trespass, nuisance.

Warning Letter A letter warning a party that unless he deals with the case within say 21 days the other party will seek judgment against him.

Thank you for taking the time to read this booklet.

We hope you found it helpful and that it will act as a reference for you throughout the case.

If you have any questions, or need some clarification, please feel free to talk to us.

Notes

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ATTENTION

The information in this pack is for guidance only and is not intended as legal advice.