



A GUIDE TO ROAD TRAFFIC ACCIDENT CLAIMS



TABLE OF CONTENTS

INTRODUCTION

THE TORT OF NEGLIGENCE AND YOUR CASE 3

AN OVERVIEW OF YOUR CASE 5

PHASE 1. GATHERING INFORMATION 5

PHASE 2. MANAGING YOUR APPLICATION TO PIAB..... 5

THE PIAB PROCESS 6

PHASE 3. PREPARING AND ISSUING COURT PROCEEDINGS 8

PHASE 4. PROGRESSING YOUR CASE 9

PHASE 5. SETTLEMENT OPTIONS 9

WHEN DO I MEDIATE? 10

PHASE 6. PREPARING FOR THE COURT HEARING 11

PHASE 7. FINALISING YOUR CASE..... 12

LIST OF ITEMS TO BE ATTENDED TO BY YOU 14

REPORT IT TO THE GARDAI 14

GET THE OTHER PERSON'S INSURANCE DETAILS 15

REPORT TO YOUR OWN INSURERS..... 15

PROTECT EVIDENCE – TAKE A PICTURE..... 15

GET DETAILS OF WITNESSES..... 16

TALK TO THEM AND SEE IF THEY WILL TALK TO US. 16

RECORD YOUR INJURIES 17

GET AN ESTIMATE FOR REPAIRS 18

OTHER SIDE MAY REQUEST A MEDICAL EXAMINATION..... 19

VISIT THE COURT VENUE 19

PUT YOUR BEST FOOT FORWARD.....	20
FREQUENTLY ASKED QUESTIONS	21
HOW MUCH COMPENSATION SHOULD I GET?.....	21
HOW LONG BEFORE MY CASE WILL BE HEARD?.....	22
DOES THE CASE HAVE TO GO TO COURT?	22
WHAT EXACTLY WILL I BE COMPENSATED FOR?	23
WHAT ARE GENERAL DAMAGES?	23
WHAT ARE SPECIAL DAMAGES?.....	23
ARE SOCIAL WELFARE PAYMENTS TAKEN IN TO ACCOUNT?	24
The difference between a barrister and a solicitor?.....	24
WILL THE OTHER SIDE HAVE A PRIVATE INVESTIGATOR?	25
THE COURT STRUCTURE	27
COURT PROCEDURE	27
THE DISTRICT COURT	28
THE CIRCUIT & HIGH COURT	28
COURT DOCUMENTS	30
HIGH & CIRCUIT COURT	30
THE DISTRICT COURT	33
SOLICITORS’ FEES, LEGAL COSTS AND OUTLAYS	34
HOW WE CHARGE FOR OUR WORK	34
HOW A SOLICITOR’S CHARGE OR FEE IS CALCULATED.....	35
WHAT COSTS DO I GET FROM THE OTHER SIDE?	37
GLOSSARY OF LEGAL TERMS	39

Introduction

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.

Road traffic accidents often involve:

- Failure to keep a safe distance from vehicles ahead.
- Failure to keep a proper lookout.
- Failure to stop within the limits of your vision.
- Failure to have regard for pedestrians.
- Failure to have regard for cyclists.
- Failure to yield or stop at a junction
- Failure to comply with signals at traffic lights
- Failure to sound one's horn where appropriate

In order to prove your case, 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 step 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 and 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.

AN OVERVIEW OF YOUR CASE

From the time that you instruct Lynch Solicitors as your solicitors, we will set about the task of preparing your case. Your case will go through several phases.

PHASE 1. GATHERING INFORMATION

The early months of your case will be largely taken up with the process of gathering all the information.

- We will record all necessary details about the accident and your injury.
- Identify any parties who may be responsible for your injury.
- Talk to witnesses.
- Instruct an engineer, if necessary, to inspect the accident scene.
- Begin the process of getting medical reports.
- Open communications with parties who may be responsible, their solicitors or insurers.

PHASE 2. MANAGING YOUR APPLICATION TO PIAB

In 2004, the Personal Injuries Assessment Board (PIAB) was set up to assess personal injuries claims.

It was established with the objective of simplifying and making more cost effective the personal injuries process.

PIAB does not replace the old Court system, it merely acts as a initial assessment process.

It values the level of compensation in most cases while letting the remainder through to the Court system.

It does not assess liability – i.e. it assumes that the person has a claim.

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

You are not obliged to accept a PIAB assessment.

THE PIAB PROCESS

The first procedural step to be taken in any personal injuries case is the completion of the PIAB application.

This is a form that sets out the essential information about your injury and the event that caused it.

We try to complete this application at the earliest possible date.

This ensures the ultimate resolution of your case will not be unduly delayed.

In order to complete this PIAB application, we will usually need a medical report from your doctor and this can sometimes take a few months.

Once the medical report is to hand, we can send this together with any other necessary supporting documents to PIAB.

Your application is then logged and acknowledged by them.

PIAB will then send the defendant (the person you say was responsible for causing your injury) a copy of the application and your medical report.

PIAB will ask them if they consent to allow PIAB to assess your injury.

This process can (and usually does) take 90 days.

If the defendant refuses to allow PIAB to assess your injury, that may be the end of the PIAB process.

PIAB will end their involvement in your case by issuing us with an 'Authorisation'. This 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 seek certified details of your out of pocket expenses and loss of earnings.

PIAB will refer to a reference book of compensation figures, called the Book of Quantum, to assess your claim.

The Book of Quantum has guidelines on the appropriate level of damages for different types of injuries.

NOTE: The Book of Quantum does not give any indication of the value of psychological or psychiatric injuries. These are quite common in accident cases. Such cases are usually given an authorisation so that Court proceedings can be issued.

PIAB will then decide on a value for your claim and make a formal offer. We will consider that offer against our knowledge of how similar injuries are valued in the Court system. We 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 Court proceedings can be issued and the PIAB process is then at an end.

NOTE: PIAB does not pay costs. In most cases they will only contribute about €250 towards the cost of one medical report. This means that our fees will have to be paid in their entirety from the damages that you receive.

PHASE 3. PREPARING AND ISSUING COURT PROCEEDINGS

If your case is not settled or assessed by PIAB - for whatever reason - we will then start the Court process on your behalf.

This process involves taking the information we have on your case and drafting the Court documents.

The documents vary depending on whether your case is to be dealt in the District, Circuit or High Court.

The choice of Court is based on the seriousness of your injury.

Cases with compensation less than €15,000 are in the District Court.

The Circuit Court deals with compensation between €16,000 and €60,000.

Cases with compensation in excess of €60,000 are taken in the High Court.

There is no limit to the award of compensation in the High Court.

Note: - A Court cannot give more than the maximum but can give less than the minimum. - e.g. if you take a case in the Circuit Court you cannot be awarded more than €60,000 and you can be awarded less than €15,000.

Warning: If you get less than the minimum, this has negative implications for costs.

PHASE 4. PROGRESSING YOUR CASE

Once the first document which sets out your claim is completed, it is sent to the Court Office. We then send it to the other side or their solicitor.

Following that, there will be an exchange of a variety of Court documents to put all the paperwork in place to hear the case.

All these documents set out your case and the answer by the other side to your case.

These documents (called Pleadings) are essential and need to be accurate.

If either you or the other party fails to complete a document, either party can ask the Judge to order them to provide the document.

PHASE 5. 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.

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 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.

PHASE 6. PREPARING FOR THE COURT HEARING

Most cases settle before the day the case is due to be heard by the Judge.

Other cases go right to the day of the Court before they are settled.

Only a small number go into the Court to be heard by the Judge.

Nevertheless, as your solicitors, we must make sure that if your case does go all the way to a hearing, everything is ready to get the best possible outcome.

Having filed all the paperwork, we will try to agree as many aspects of the case with the other side. This should make the hearing of the case more time and cost efficient.

We will make arrangements for the attendance of witnesses - such as doctors, consultants, expert witnesses: actuaries, rehabilitation consultants, occupational therapists, witnesses to the accident, witnesses to prove your out-of-pocket expenses.

We will also prepare you for the hearing.

We explain how the hearing will run, for example, where you sit, who asks what questions, what role the judge has in the hearing, and who the various witnesses will be.

In our experience, the more you understand how courts work, the better you will be able to explain your experience and your injuries to the Judge. You will also have meetings with us before the case is heard to ensure that all your questions are answered.

We usually use the services of a Barrister at a settlement or at a hearing of a case. Their job will be to ask the questions at the hearing and assist in running the case on the day.

PHASE 7. FINALISING YOUR CASE

When your case has been settled or decided upon by a Court, there is more work to be done by us.

Our first priority is to get your compensation cheque .

Usually this happens within 10 weeks of your case being settled or heard.

The compensation cheque will be paid to our office.

Before we pay you the compensation money, we will give you a statement of account.

If you win your case, the other side have to pay a contribution towards your costs which are called, party and party costs.

In the statement of account, we will only be able to give you an estimate of any fees or outlays payable by you and any outlays refundable by the other side.

The reason for the estimate , is that it can take a number of months to agree party and party costs with the other side.

Accordingly, it is not always possible to give you a final statement of fees and outlays when we get the compensation monies.

We will pay you the compensation monies less any estimated items on the statement of account.

When we agree the contribution for fees and outlays with the other side, we will give you a final account.

We will pay you any balance owing.

LIST OF ITEMS TO BE ATTENDED TO BY YOU

There are many steps that you can and should take to help us prepare your case.

You should buy a diary and use it to record everything about your claim – how the accident happened, how you feel day by day, medical visits and expenses.

You should record everything as it happens.

You can also use all the benefits of modern technology to help you – such as apps for your smart phone or other device.

REPORT IT TO THE GARDAI

You are obliged by law to report all road traffic accidents.

Gardai will usually only fully investigate an accident where there are injuries.

This does not mean that they will not attend the scene but they may not take measurements or make a sketch.

However, in most instances the investigating Garda, if contacted early enough, will be of assistance.

If the Gardai investigate the accident, find out the name of the investigating Garda and what station he is from.

You should immediately take photographs of the scene of the accident, the vehicles in the accident and also measure the road - you should include any skid marks in both your measurements and your photographs.

GET THE OTHER PERSON'S INSURANCE DETAILS

Anyone involved in a Road Traffic Accident is obliged by law to exchange names and Insurance details.

You also should make sure you get these details about the driver (and owner, if different) of the car. You should also get details of the registration number of the other vehicle.

If there is any doubt about the real identity of the other person report the matter to the Gardai, they will investigate it further.

Under the present law which obliges people to put an insurance disc on their windscreen there should be no difficulty in getting the other parties insurers - you just simply read the details off his windscreen.

REPORT TO YOUR OWN INSURERS

If you are the driver or owner of a vehicle you should inform your own Insurance Company immediately, even if you consider that it was not your fault.

The Insurance Company will ask you to complete an accident report form for their file.

Failure to report the accident to your insurer could mean that your Insurance Company would not cover you at a later date should someone make a claim against you.

Should you need assistance in completing the form we will be happy to help.

Make sure that you give us a copy of your completed claims form.

PROTECT EVIDENCE – TAKE A PICTURE

You should also arrange to have photographs taken of any visible injuries you have suffered - this provides a useful historical record when at a later date many of the physical scars of an injury will have healed.

Your smart phone is a very useful way to do this.

It is also a good idea to have photographs taken of both the scene of the accident and of the damage to your vehicle and also the other person's vehicle.

You need evidence as to what the place looked like at the time of the accident and this must be done immediately.

GET DETAILS OF WITNESSES

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

TALK TO THEM AND SEE IF THEY WILL TALK TO US.

If witnesses are reluctant to make a statement or to come to our office you should let us know.

Do A Statement Of How The Accident Happened

At an early stage, 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 why you believe another party is at fault.

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.

We are happy to give you our pre-prepared forms that may help you in completing your statement.

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.

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.”

Use your diary or add an app to your smart phone.

Keep a record of present symptoms and from then on, record your condition on a regular basis.

Sometimes an injury is exclusively psychological. Sleeping difficulties, headaches, problems coping with simple everyday situations, constant tiredness, loss of memory, nightmares or flashbacks to the accident are all common symptoms after a frightening accident.

If any of these symptoms affect you, you should bring them to our attention and to the attention of your doctor immediately.

If your doctor suggests referring you to a specialist for an opinion on any aspect of your injuries, you should go ahead with the referral at the earliest possible date.

Advise us, so that we can get a report of that specialist's opinion.

GET AN ESTIMATE FOR REPAIRS

If your car has been damaged as a result of the accident you need to establish whether or not the car is a write off or whether it is repairable.

Bring it to a garage to find out the repair cost in comparison to the pre-accident value of the car – if the pre-accident value is less than the repair cost, the car will be written off and you will be allowed the pre-accident value less the scrap or salvage value of the car.

If the car is repairable you are entitled to depreciation @ 10% of the pre-accident repair figure in addition to the repair cost. You are also entitled to hire an alternative vehicle while your car is being repaired and, if it is undriveable, for the period of time that it is undriveable.

Even if you do not hire a car, you may be able to claim a sum of money for the loss of use of your car – i.e. the inconvenience of being without it.

You should be careful in this as you are only entitled to a reasonable amount for car hire – usually three weeks for a write off and two weeks for a repair.

We can arrange to have your car assessed by the other party's Insurers and/or by your own Assessor.

Record Out Of Pocket Expenses.

You may have out of pocket expenses such as doctor's fees, travelling expenses, pharmacy bills and hospital fees after your accident.

If you have a loss in wages, give us your social welfare (PPS) number and any P60's/P45's.

We will also need a letter from your employer setting out your weekly loss of earnings – both net and gross.

You should use your accident diary or app to record details of all these expenses.

You should keep copies of all invoices or receipts received – you could use your diary or app for this also.

OTHER SIDE MAY REQUEST A MEDICAL EXAMINATION

The solicitors on the other side may request that you attend a medical examination arranged by them.

We will try to secure payment of your expenses from the other side before you go to these medicals.

Prior to attending any medical you may wish to discuss with us the format of the medical and what questions you are obliged to answer.

As a general rule, the other side's doctor is not entitled to enquire into how the accident happened. They are simply entitled to enquire into particulars of the injuries that you received as a result of the accident.

Make sure that you give the doctor details of all injuries – no matter how trivial.

You should note that you are entitled to have someone present with you at these medical examinations if you feel the support would be beneficial.

Medical examinations for the other side are by and large conducted by highly professional doctors who will examine you with an independent and unbiased eye in consultation with your own doctors.

VISIT THE COURT VENUE

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 except for family law matters.

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 (and especially questions from the Judge).

Remember not to give any hasty or confused replies as these are unlikely to help your case.

We would strongly recommend that you bring along someone to give you moral support on the day such as a member of your family or a good friend.

If any aspect of the Court process is causing you concern, please let us know so that we can take steps to minimise your anxiety.

Most importantly, **DON'T WORRY!**

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.

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 a 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 also be delays due a limited number of judges.

If a case is going to take a long time to hear and that time is not available for the hearing, the case can be delayed.

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 consider 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.

The distinction between these two arms of the legal profession is blurring with the passage of time. 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 PRIVATE INVESTIGATOR?

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 surveillance footage or social media accounts showing a person 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

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 Court 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.

COURT DOCUMENTS

HIGH & CIRCUIT COURT

The Circuit Court and High Court share the similar form of documents 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 date for 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.

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:

1. 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.

2. 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 recoverable 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 disbursements that you have prepaid.

3. 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 than 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 disbursements 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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