

Injuries board cannot refuse to deal with solicitors

by Vivion Kilfeather

THE Supreme Court has ruled that the Personal Injuries Assessment Board cannot force a person to deal with it directly because everyone has a fundamental right to be represented by a solicitor.

The board has no power under the Personal Injuries Assessment Board Act of 2003 to adopt such a policy and, if claimants choose to hire solicitors, the board must deal with those solicitors, Justice Susan Denham said.

The right to legal representation is "a fundamental right" and, if the Oireachtas intended PIAB to be "a lawyer-free zone", it would have said so, she added.

The board's policy was an interference in the solicitor/client relationship and had no foundation in the 2003 act.

In managing its business, the board was entitled under the 2003 act to keep a claimant informed of the process by, for example, sending the client copies of letters sent by the board to the client's solicitor, the judge added.

The court also noted the

costs of such legal representation would not be paid by the board, but would be deducted from any award it might make to a claimant.

The legislation provides a potential claimant is prohibited from initiating civil proceedings for damages for injuries without having first applied to the board. The board also has no power to award legal costs.

Yesterday, the Supreme Court, with the Chief Justice, Justice John Murray presiding, and sitting with Justice Denham and Justice Fídelema Macken, dismissed the board's appeal against the High Court's upholding of Declan O'Brien's challenge to its policy of dealing directly with clients.

The Law Society had supported the proceedings by Mr O'Brien, a meat factory worker of Summer Road, Tullamore, Co Offaly, arising from his action for damages for injuries allegedly suffered in a workplace accident in November 2001.

Lawyers for Mr O'Brien claimed his right to be represented by a solicitor was breached by the board's actions in seeking to deal directly with him rather than through his solicitor.