

Court rules PIAB not entitled to refuse to deal with clients' solicitors

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THE SUPREME Court has unanimously ruled the Personal Injuries Assessment Board (PIAB) is not entitled to pursue a policy of dealing directly with clients rather than through their solicitors.

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, Ms 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 PIAB policy was an interference in the solicitor/client relationship and had no foundation in the 2003 Act.

In managing its business, PIAB 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 PIAB 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 board was established in April 2004 to reduce the costs of personal injury claims. The legislation means 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 or expenses.

Yesterday, the three-judge Supreme Court, with the Chief Justice, Mr Justice John Murray presiding, and sitting with Ms Justice Denham and Ms Justice Fidelma Macken, dismissed PIAB'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 PIAB's actions in seeking to deal directly with him rather than through his authorised solicitor, Denis Boland, of Newbridge, Co Kildare.

In the High Court in 2005, Mr Justice John MacMenamin ruled the right to legal representation and the lawyer/client relationship existed in the common good, helped guarantee "equality of arms" in litigation and various types of adversarial processes, and helped maintain fairness between the strong and the weak.

He said the board had no power under the PIAB Act to adopt the policy complained of and had failed to show its interference with the lawyer/client relationship was necessary, expedient or incidental to its functions.

Upholding those findings, Ms Justice Macken said it was difficult to imagine a civil action before PIAB, save the most minor, as not having significant consequences, including legal consequences, for the parties involved. Claims may cover injuries not just arising from minor wrongs but also from difficult or complex events.

While agreeing the case was in some respects merely a dispute between PIAB and the Law Society, the judge said it was important to note it arose from an actual civil action for personal injuries by Mr O'Brien, who argued he was entitled to have his solicitor represent him.

While she accepted much of PIAB's role involved assessing what were described by counsel for PIAB as "easy claims", she said "easy claims" were not as evident as suggested. In Mr O'Brien's case, issues of a difficult legal nature relating to the imminent expiry of the legal time limits for the bringing of the case arose.

The judge said the board was unable to point to anything in the PIAB Act to indicate an intention, express or implied, on the part of the Oireachtas to exclude a claimant from being legally represented in dealing with the board.

Subject to those findings, the judge added PIAB is entitled to prescribe the terms of the authorisation (of claimants in favour of solicitors acting for them) which it considered acceptable and appropriate as part of its power to manage its functions.

The board's opinion on what it considered reasonable or necessary for the purposes of administering its scheme should be accorded considerable respect.