

Supreme Court ruling inflicts some more damage on Injuries Board



BUSINESS OPINION

JOHN McMANUS

THE ONGOING war of attrition between the legal profession and the Personal Injuries Assessment Board (PIAB) took another turn before the Christmas break.

The PIAB – or the Injuries Board as it is now known – lost its appeal against the ruling by the High Court in 2005 that it was not entitled to pursue its policy of dealing directly with clients and not through their solicitors.

The Supreme Court upheld the original High Court ruling that the PIAB's policy breached clients' rights to legal representation.

Although the original case on which the appeal was based was taken by a private individual, it was supported by the Law Society. The outcome must have been the source of some pleasure, for the Law Society is no particular friend of the PIAB, having set out to strangle it at birth.

As one of the Supreme Court judges noted, the case was in some respects merely a dispute between the Law Society and the PIAB.

Set up in 2004, the board has the express purpose of reducing the cost of personal injuries claims and, given that the main cost – outside of the actual awards themselves – are legal fees, the two bodies were never going to see eye to eye.

The board's original plan was to

try and cut out solicitors entirely and thus their fees, but this proved impossible following the 2005 High Court ruling. It is not necessarily a bad thing, particularly when difficult cases are involved.

The Supreme Court judges listed several examples of how the lack of legal representation might put someone going through the PIAB process at a disadvantage.

They included issues such as the application of the statute of limitations, difficulties with medical reports and the not insignificant challenge that some people would find in dealing with a State agency such as the PIAB.

Fundamentally, however, the Supreme Court is talking about the exceptions rather than the rule.

While this is ample justification for its ruling that the PIAB must let people use solicitors if they want to, it is not the same as endorsing the current practice whereby about 90 per cent of claimants process their claim through a solicitors.

They do so at their own expense, because the PIAB does not pay legal costs unless someone who rejects a PIAB award is successful in the courts and gets awarded a higher amount.

It is very unlikely that 90 per cent of the personal injuries cases that occur in Ireland every year are of the nature of those which the Supreme Court gave as

examples where a legal representation was needed.

Even with the best will in the world, it is hard to imagine that even 50 per cent of them fall into the category where getting legal advice was prudent but ultimately unnecessary.

It follows then that a large number of solicitors are carrying out a large amount of unnecessary work for a large amount of money.

Most of this comes directly out of the insurance awards that result from most personal injury actions, thus exerts upward pressure on expectations and thus awards and premiums. It cuts to the very heart of the reason for establish the PIAB, which was to bring down the cost of insurance.

However, there is a sting in the tail of the Supreme Court judgment which could be interpreted as the Supreme Court acknowledging that there is an issue here that should be addressed.

Ms Justice Susan Denham said in her judgment that even if the PIAB must deal with a client's solicitor, there is nothing to stop them copying all correspondence to the client directly.

This is the opposite of the PIAB's original practice – and a source of great annoyance to the legal profession – of corresponding directly with clients and copying solicitors.

However it would have the same effects in terms of bringing transparency to the process and, more importantly, letting clients see exactly what their solicitors are doing, or not doing, for their money.

In a scenario where legal representation is necessary and fairly priced, it is hard to see any negative consequences of clients seeing correspondence.

In a scenario where a solicitor is in reality adding no value and quite possibly delaying the processing of a claim, it can only be good thing.

In the worst case, where an unscrupulous solicitor may simply be profiteering, the board would be doing a service.

The PIAB should not wait to be told a second time to implement this practice.

It will obviously add to the administrative costs of the organisation, but they can surely be justified in terms of the board's

wider mandate.

There will, of course, be an upsurge in calls to solicitors' offices from clients wondering why correspondence has not be replied to, or medical reports not forwarded and the like.

Dealing with this will put a burden on the solicitors, but surely any efficient service-orientated solicitor who is really earning their fee has nothing to fear.