

# A Guide to Accidents in a Public Place



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## 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 and these are now described in a general way.

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### 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.
- Identify your employer and any other parties who may be responsible for your injury.
- Talk to relevant witnesses.
- Instruct an engineer if necessary to document the accident scene.
- Begin the process of getting detailed medical reports on your injuries.
- Open communications with your employer or other parties who may be responsible, their solicitors and/or their insurers to ensure that their investigation into your injury is also progressing.

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## PHASE 2. MANAGING YOUR APPLICATION TO THE PERSONAL INJURIES ASSESSMENT BOARD

Since 2004, the Personal Injuries Assessment Board (PIAB) has acted as a filter in all cases involving personal injuries in Ireland. 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.

PIAB 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 PIAB was introduced, the vast majority of personal injuries cases were settled outside of court and thankfully that is still the case.

PIAB is still at a very early stage and it is not yet possible to say whether it will be successful in its aims. At Lynch Solicitors our experience to date would suggest that it is only settling a small proportion of cases within a year or so and in the remainder it seems to be making the whole litigation process more time consuming - though that may change.

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## 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 will endeavour to complete this application at the earliest possible date so that the ultimate resolution of your case will not be unduly delayed.

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

Once the medical report is to hand, we can send this together with any other necessary supporting documentation to PIAB and 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. Following this period, if the defendant refuses to allow PIAB to assess your injury, 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.

**NOTE: In most cases relating to accidents at work, the other side will not consent to PIAB assessing the claim and so most accident at work cases must go through the court system.**

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 if you have suffered such losses.

PIAB will then consider the detail of your injury and compare it to a reference book called the Book of Quantum. The Book of Quantum contains guidelines on the appropriate level of damages for different types of injuries. Of particular importance here is that the Book of Quantum does not give any advice on psychological or psychiatric injuries – which are quite common in accident cases – and such cases will therefore not be determined by PIAB. Such cases are given an authorisation so that court proceedings can be issued.

PIAB will then decide on a value for your compensation and make a formal 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 court proceedings can be issued and the PIAB process is then at an end.

**It is important to note that 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. This is explained in greater detail in the costs section of this booklet.**

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### PHASE 3. PREPARING AND ISSUING COURT PROCEEDINGS

If your case is not settled or assessed by PIAB - 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 is dealt with in more detail in chapter 5 of this booklet but in simple terms, Circuit Court cases involve damages not in excess of €38,000. Cases involving damages in excess of that are brought in the High Court.

Having drafted the initiating court document, it may be appropriate to instruct a barrister on your behalf to offer a second opinion to you or in some cases to finalise the initiating court document. We work with a relatively small number of excellent barristers who specialise in personal



injury work. We make our choice of barrister on your behalf based not only on professional skill but also on important personal characteristics such as approachability – call it ‘bed-side manner’ if you like but such considerations are, in our opinion, important. If however, for any reason you are unhappy with our choice of barrister on your behalf, please let us know.

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## 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. Following that, there will be an exchange of a variety of court documents which the other side will rely on in contesting the case, discovery of relevant documents or records, and preparation for the hearing of your case.

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## 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 a courthouse. You will not have to speak with anyone other than a Lynch Solicitors solicitor 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. Litigation is not an exact science however so 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 however we are in a position to advise on fairly specific compensation figures below which we could not recommend settlement. Of course, if for some specific personal reason, you do not wish to accept that advice, you are perfectly entitled to ignore it. After all, you are our client and we will carry out your instructions.

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## PHASE 6. PREPARING FOR THE COURT HEARING

Many cases go right to the steps of the court before they are settled but only a small number go to a full court hearing. Nevertheless, as your solicitors, we must ensure that if your case does go all the way to a hearing, everything is ready to ensure the best possible outcome. We will prepare documents for the court, try to agree as many aspects of the case with the other side to make the case shorter and 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. In our experience, the more you understand how courts work, the better you will be will able to explain your accident and your injuries to the judge.

You will also have consultations with us and your barrister before the case is heard to ensure that all your questions are answered.

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## 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 settlement cheque is your money but it is typically paid to our office and we furnish it to you with a statement of any charges which are not being covered by the other side under two headings: fees and outlays. Usually, a fairly accurate estimate of these charges will have been communicated to you prior to the conclusion of the case. Again, these matters are dealt with in detail in Chapter 8 of this booklet.

## LIST OF ITEMS TO BE ATTENDED TO BY YOU

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

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### PROTECT ALL EVIDENCE

At the very earliest opportunity following an accident, you should take photographs of the scene and any equipment involved.

Workplace's are always changing, many are building sites, many others will be modified soon after an accident because employers will be anxious to remedy any dangers that may cause further injury to you or other employees.

For these reasons, it is vital that you get good photographs taken of the accident scene.

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.

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### GET DETAILS OF ALL WITNESSES

If there were any witnesses to the accident, be sure to obtain their names, addresses and telephone numbers. Talk to them and see if they will talk to us. Some witnesses can be reluctant to get involved – particularly where the case involves their employer - so if there is any reluctance to assist, just give us the details and we will make every effort to put the witness at ease.

If witnesses are reluctant to come to our office you should ask us to go and see them.

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## 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 why you believe your employer and any other 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.

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## RECORD YOUR INJURIES

After the accident - even if it has only been a minor one - you should always see your doctor (not your employer's doctor or "factory doctor") for a check up. This is important. 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.

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 and advise us, so that if necessary, we can obtain a report of that specialist's opinion.

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## RECORD YOUR OUT OF POCKET EXPENSES.

You are going to have out of pocket expenses such as doctor's fees, travelling expenses, pharmacy bills and hospital fees as a result of your accident. *Make sure that you keep all receipts and record all such expenses in your diary.* If you have a loss in wages, furnish our office with your social welfare (PPS) number and any P60's/P45's in your possession, together with a letter from your employer setting out your weekly loss of earnings – both net and gross.

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

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

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## YOU MAY BE FOLLOWED BY A PRIVATE INVESTIGATOR!

It has become common practice for insurance companies / employers to employ private investigators to carry out surveillance on people taking a legal case following an accident.

Usually investigators are hoping to get some video or still footage of you lifting some heavy weights or doing some other strenuous task that they think you might deny being able to do if the case goes to Court. If you are saying that because you have a back or neck injury, you cannot clean windows - they would be delighted to have a photo of you out cleaning your front windows! It is important therefore 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 of the effects of the injury on you.

This issue is all the more important if your case gets to the stage of issuing court proceedings. You will be required to swear an affidavit confirming that the particulars of your accident and the injury you have suffered are true and accurate. We will advise you fully regarding this aspect of your case.

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## THE OTHER SIDE WILL WANT TO HAVE YOU MEDICALLY EXAMINED

The defendant's solicitors may request that you attend a medical examination arranged by them. We will endeavour to secure payment of your expenses from the other side prior to you attending such 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 but is 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 defendant are nevertheless conducted by highly professional doctors who will examine you with an independent and unbiased eye in consultation with your own doctors.

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## 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 with the main exception of family law matters.

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## 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.

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.

Most importantly, **DON'T WORRY!** Before Court, we will explain the process of giving your evidence with you in detail and 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.

## 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.

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## Q. WHAT IS THE DIFFERENCE BETWEEN CIVIL LAW AND CRIMINAL LAW?

A. Civil actions are brought by individuals. People who have suffered a wrong will usually be claiming financial compensation.

Criminal actions are almost always brought by the State and result in the offender being punished as a deterrent.

We are all affected when a crime is committed – a crime is therefore committed against society. A civil wrong may affect all of us but must also be against an identifiable individual or group.

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## Q. WHAT CIVIL COURT WILL MY ACTION BE BROUGHT BEFORE?

A. This depends on the potential value of compensation in your case.

**Warning:** - This does not mean that your case in fact is worth the upper limit of the jurisdiction - e.g. if we take a case in the Circuit Court the maximum which you can be awarded is approximately €38,000 (£30,000) – but this does not mean that the Court could not award less than €6,350 (£5,000).

The District Court is for cases worth less than €6,350 (£5,000).

The Circuit Court goes up to €38,000 (£30,000).



The High Court can award any amount of money.

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## Q. HOW MUCH COMPENSATION SHOULD I RECEIVE?

A. 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 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.

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## Q. HOW LONG BEFORE MY CASE WILL BE HEARD?

A. Most people are aware that it will take a certain length of time before a case comes up for hearing in the courts. These delays are due primarily to the fact that there are only a limited number of judges. Another reason is that some cases are not ready to be heard by the court for a time and this is particularly so where the injuries have been severe - it can take time for the person to recover and until he or she has recovered sufficiently, or their condition has stabilised, the case should not be heard.

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

More complicated cases can take longer.

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**Q. DOES THE CASE HAVE TO GO TO COURT?**

A. As a general rule, the majority of cases are settled without going into Court. However, they are only settled provided that you are agreeable to accepting the figure that is offered in full and final settlement of your claim. We will advise you fully before you make this decision.

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**Q. WHAT EXACTLY WILL I BE COMPENSATED FOR?**

A. You will be compensated for your special and general damages.

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**Q. WHAT ARE GENERAL DAMAGES?**

A. General damages are damages payable to a person for their pain and suffering, injury to health, personal inconvenience, and future suffering.

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**Q. WHAT ARE SPECIAL DAMAGES?**

A. 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.

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.

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## Q. ARE MY SOCIAL WELFARE PAYMENTS TAKEN INTO ACCOUNT IN MY CASE?

A. As a general rule, Social Welfare may not be assessed in calculating damages in personal injuries cases. Nevertheless, as in most other areas of law, there are exceptions to the rule. The main exceptions are as follows;

1. In non-fatal road traffic accidents, the following payments can be taken into account when calculating loss of earnings but only for the first 5 years following the accident in question;
  - Disability Benefit / Allowance including Pay Related Benefit
  - Disability Pension
  
2. In non-fatal accidents at work / employer's liability cases, the following can be taken into account when calculating loss of earnings but only for the first 5 years following the accident in question;
  - Occupational Injury Benefit
  - Disability Benefit / Allowance

### 3. Employment Sick Pay:

One has to be careful where an employee who was involved in an accident is paid by his employer for any period while out of work as a result of the accident. In the case of Civil Servants such sum is usually recoupable from the employee in the event of the employee making a claim against a third party. In other cases, the employee may be obliged to recoup the payments from the third party who caused the accident if the employer so insists.

For this reason, a Plaintiff should ensure that the payment by the employer is claimed as loss of earnings in the proceedings.

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## Q. WHAT IS A BARRISTER?

A. A barrister is a lawyer who specializes in presenting your case – usually in the Circuit or High Court. In the eventuality of the case being settled, he/she may assist in negotiating the settlement.

There are 2 types of barrister.

- Junior Counsel are denoted by the letters B.L. after their names meaning Barrister at Law. Typically these practice in the Circuit Court and are expert in advocacy which is the presentation of a case before the Court.
- Senior Counsel are barristers denoted by the letters S.C. after their names. These are usually more senior and experienced than Junior Counsel. Accordingly these tend to appear before the High and Supreme Courts though in matters of particular complexity they appear before the Circuit Court also.

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## WHAT IS THE DIFFERENCE BETWEEN A BARRISTER AND A SOLICITOR?

A. From the point of view of the general public the barrister is the individual who is seen to wear a wig and gown. From a practical point of view the barrister is the most conspicuously vocal branch of the legal profession who argues cases – usually before the higher courts. The solicitor on the other hand has direct contact with the general public, has an office open to the public, takes instructions about the nature of 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 and we at Lynch Solicitors are at the forefront of these developments.

## THE COURT SYSTEM - CIVIL

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### THE DIFFERENCE BETWEEN CRIMINAL AND CIVIL LAW

The key difference is the involvement of the Garda Siochana. If you are involved in a criminal case the action will be taken by the Gardai. If, however, you are involved in a civil case the action will be taken by private individuals.

In a legal textbook the difference might be explained in terms such as - the criminal law involves a wrong against society while a civil action involves a wrong against an individual. A criminal action involves such things as murder, larceny, and even that bald tyre on your car that you meant to replace last week. A civil action, on the other hand, involves the individual who drove into the side of your car on your trip from Dublin and caused you harm, either to your property, your person or both. The civil action involves your taking him to Court in an effort to oblige him to pay you for the cost of repairing the damage or compensating for your pain and suffering.

Civil and criminal law can coincide such as when the Gardai arrive on the scene of an accident and discover that the same individual who collided with your car was intoxicated or driving dangerously thereby committing a crime against the public at large. The wrong against you personally is the province of the civil law while the wrong against the public at large (the dangerous driving) is the province of the criminal law.

You should be aware that there can be two separate and distinct cases arising out of the same accident - one a prosecution in the District Court ; the other a Civil action in the District Court, Circuit Court or High Court. They are not inter-connected, even though they involve the same facts.

## THE COURT STRUCTURE

### COURT PROCEDURE:

Court proceedings in all courts require the preparation of documents 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 issues between the parties. For example, a High Court Plenary Summons will be supported by a Statement of Claim being made by the Plaintiff and in response the Defendant will furnish a Defence which will contain a denial of the Plaintiff's claim with perhaps reasons for the denial and a counterclaim. The documentation prepared by both sides is called the pleadings.

While pleadings tend to be written according to long standing rules and precedents, the proceedings cannot go outside what is contained in the pleadings and there should be no doubt about the importance of these pleadings. It is therefore vital that we have all the facts that support your case so that we may include them in the pleadings.

For practical purposes there are three courts which you could primarily be involved in - the District Court, the Circuit Court and the High Court.

There are other Courts and Tribunals, which you may be involved with, but for the purpose of this explanation we will limit ourselves to these three Courts.

### 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 and administers 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. In the case of the District Court the maximum award that may be made is €6,350.00. Accordingly, as you can imagine, the District Court and more specifically the District Judge would be dealing with the lower end of the civil actions.

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## THE CIRCUIT COURT:

The next Court up the line is the Circuit Court. This is presided over in civil actions by one Judge - a Circuit Court Judge (addressed as "Judge" or "Your Honour"). The Circuit Court Judge is again drawn from the ranks of solicitors and barristers. The situation in the Circuit Court is similar to the District Court in so far as there is one Judge presiding. All civil claims for compensation in the Circuit Court are greater than €6,350.00 and less than €38,000.00.

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## THE HIGH COURT:

The High Court is again presided over by one Judge - a High Court Judge (addressed as "Judge" or by many as "My Lord" which refers back to the old British administration of justice). High Court Judges are still mostly drawn from the ranks of barristers but solicitors are now being appointed to the High Court bench. In the High Court you will usually have two barristers - one senior counsel and one junior counsel. The difference can be best explained by referring particularly to the terms senior and junior. There is a pecking order within the bar (namely among barristers). Senior counsel are the barristers who have the experience and clients to acquire senior status. Junior counsel on the other hand is anyone from a beginner to a seasoned veteran who, for one reason or another, has decided or is obliged to remain at junior status.

The monetary limit for compensation in the High Court is any sum in excess of €38,000.00, the sky is the limit! I should point out, for the sake of

accuracy, that the relevant upper limits in the three courts does not mean that a court is bound by the lower limit - the District Court has no lower limit; the Circuit Court could award less than €6,350.00; the High Court could award less than €38,000.00 or €6,350.00. However, if this happens, the person bringing the case will be penalised by having to pay some or all of the costs.

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## THE ADVERSARIAL SYSTEM:

The civil action system is based on a “for and against” system. The Plaintiff is the person who takes the action against a defendant who defends it. Both parties are normally represented by legal advisers - solicitor and barrister. 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, these legal advisers may call upon experts to assist the Court in deciding on the extent of the Plaintiff’s injuries and therefore facilitate their assessment of how much the Plaintiff should receive in money for his 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 such expert testimony. This goes to the very root of the adversarial system.

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## 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 for the hearing of your case. When all the pleadings are closed and the Notice of Trial has been served, you will then come into the queue.

You will reach the top of the queue when your case is listed for hearing. This usually involves the court office taking a number of cases and putting them in for hearing before the judge on a particular week. As the courts do not sit every day or even every week, your hearing date will depend very



much on the number of cases ahead of you and the speed with which they are dealt.

Even when your case is fixed for hearing, there is no guarantee that it will be heard on that date. 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 judge will list a number of cases for a particular hearing date, there is no guarantee that your case will be reached unless it is first on the list.

This is by far the least understood part of the court system and we will be happy to take time with you to ensure that all your queries are answered to your satisfaction.

## TYPES OF COURT DOCUMENTS

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### 1. COURT DOCUMENTS - HIGH COURT

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#### PERSONAL INJURIES SUMMONS

The personal Injuries Summons contains a detailed statement of the Plaintiff's claim. This statement will set out details about the parties involved on both sides of the case, the accident, the surrounding circumstances, particulars of the injuries and particulars of the negligence and breach of duty. As already stated, it is important that it is accurate and complete.

Until recently this document was called a Plenary Summons and Statement of Claim.

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#### NOTICE FOR PARTICULARS

If the Defendant considers that he requires further particulars relating to the Plaintiff's claim, he may serve a 'Notice for Particulars' on the Plaintiff.

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

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## DEFENCE

The information contained in the Plenary Summons and the Statement of Claim may be sufficient to enable the Defendant to prepare and file his defence. In his defence, the Defendant may deny every aspect of the Plaintiff's claim and claim that the Plaintiff also contributed to the accident. A few standard excerpts from a typical defence are as follows:

1. It is denied that the alleged accident occurred as alleged or at all.
2. It is denied that the Plaintiff was injured in the manner alleged or at all.
3. It is denied that the Plaintiff suffered the alleged or any personal injuries loss or damage as alleged or at all.
4. Each and every particular of negligence and breach of duty including breach of statutory duty as alleged against the Defendant is denied as if the same were herein set out and traversed seriatim (*denied individually*).
5. If the alleged accident occurred (which is denied) the said accident was caused solely by or alternatively was contributed to by the negligence or breach of duty including statutory duty of the Plaintiff.

The Defence will then go on to list any possible particular of contributory negligence such as failure to exercise care and obey the rules of the road in an attempt to put at least some of the blame for the accident on the Plaintiff.

## DISCOVERY

Any party to a Court action may apply to the Court for an order directing any other party in the action to make discovery on oath of all the documents which are or have been in his possession, power or custody or in the possession power or custody of his solicitor or agent or any other person on his behalf. Documents include any deed, account, book of account, book of account voucher, receipt, letter, memorandum, paper or writing or any copy of extract from any such document or any other document whatsoever relating to the matters in question in the court action. It does not extend to communications between a client and his legal advisers in the particular Court action in question.

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## PLEADINGS CLOSED

When the parties have been provided with all the particulars they require and the defence has been filed, it is said that the pleadings are closed and the case is set down for trial normally before a judge sitting alone. There are certain actions, as in defamation, where a trial is heard before a Judge and jury.

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## 2. COURT DOCUMENTS - CIRCUIT COURT

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### PERSONAL INJURIES SUMMONS

The initiating document in the Circuit Court is the Personal Injuries Summons. As a pleading or court document the Personal Injuries

Summons has been in use in Ireland in one guise or another since the thirteenth Century. It is the document that starts a Circuit Court action and it sets out in detail the claim for personal injuries, negligence and out-of-pocket expenses. Until recently it was called a Civil Bill.

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## APPEARANCE

Within ten days of service of the Civil Bill the Defendant must lodge an Appearance with the County Registrar and send a copy to the Plaintiff or his solicitor. This document tells the court office and us as solicitors for the Plaintiff that the defence is represented by whatever firm of solicitors enter the appearance.

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## NOTICE FOR PARTICULARS

As in the High Court above.

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## DEFENCE

As in the High Court above.

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## DISCOVERY

As in the High Court above..

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## NOTICE OF TRIAL

When the Defendant has filed his Defence, the Plaintiff lodges a Notice of Trial with the County Registrar. This puts your case on a queue for hearing. How soon your case will be heard depends on where it is on the list. Needless to say, we will make every effort to expedite the matter on your behalf and where appropriate, try to settle the case on excellent terms while awaiting a hearing date.

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## 3. COURT DOCUMENTS - DISTRICT COURT

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### CIVIL SUMMONS

This is the initiating document which starts an action in the District Court. For cases involving negligence, It must be issued within two years from the date of the accident.

Civil proceedings 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.

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### NOTICE OF INTENTION TO DEFEND

Whenever a Defendant intends to defend a Civil Summons, he or she sends 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.

## SOLICITORS' FEES, LEGAL COSTS AND OUTLAYS

### BEFORE YOU SEE A SOLICITOR

Once you have selected a solicitor, there are several things you should do before going to see him or her. Firstly, you should make an appointment. This way you will be dealt with when you go to the solicitor's office without wasting a lot of time waiting. Secondly, the more clearly you present your enquiry, the more likely the solicitor will be able to deal with it quickly and effectively. If there are any letters or documents involved, bring them with you. If the facts are complicated or if dates are involved, make a note which you can give to the solicitor. It is also helpful to make a note of the questions you may want to ask the solicitor. If you follow these steps, it will help to keep down the cost as a solicitor basically charges for his or her services according to the amount of time involved - the more time you take through being disorganised, the higher the solicitor's bill.

### HOW A SOLICITOR CHARGES FOR WORK.

A solicitor's bill is usually divided into three parts:

#### 1. Charges

- This first part of the bill covers the work carried out by the solicitor himself and is usually called "the solicitors charge", or "profit costs". The bill should include a reasonable statement or description of the work, such as the number of appointments (often referred to as attendances) between the solicitor and the client, phone calls made in relation to the work, letters written, documents drafted etc. These items will not be costed separately but a lump sum will be charged. The principles on which this sum is calculated are discussed later, but it 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 sum will also include a value for the solicitor's special skill, care and attention and may include a reflection of the urgency or importance of other aspects of the matter.

## 2. Disbursements

Disbursements (sometimes called "outlays") are "out of pocket" expenses which have been paid by the solicitor on behalf of the client. For example, in the course of doing the work, the solicitor may have to pay various fees for experts' reports, sworn documents, counsel's opinion etc. All these disbursements will be itemised separately in the bill. The solicitor pays these fees as they arise, and then recovers them from the client during the course of the case or when the bill is finally settled. These disbursements are quite separate from the solicitor's charge for the work which he or she has done on your behalf.

## 3. V.A.T.

Solicitors must charge V.A.T. at 21 % for their services and this sum will be shown separately.

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## HOW A SOLICITOR'S CHARGE IS CALCULATED

1. This is calculated with reference to the skill, labour, specialised knowledge and responsibility involved on the part of the solicitor.
  - **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 reflected in the rate charged per hour.

- **Labour** - This is usually taken to refer to work done by office staff in relation to 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 property or 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 questions raised.

- **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 expended by the solicitor.

- This is generally the most important factor in the solicitor's charge. Some, but not all, solicitors record the amount of time spent in work for each client in relation to most types of business. This involves keeping 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 relating to 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. Those solicitors who do not keep time records will use their experience to estimate the amount of time spent on each transaction.

### 4. The importance of the matter to the client.

- If a transaction is of particular importance to the client the solicitor may take this into account when charging.
- To repeat, the most important factor in arriving at a figure for the solicitor's charge is usually the time involved. Most transactions, such as drafting a will, administering the estate of a deceased person, or conveyancing, are relatively straightforward, involving few complications. However, difficulties and complications, if they arise, will increase the solicitor's charge. It is, therefore, difficult to indicate the cost of the various transactions, which a client may ask a solicitor to conduct. But a solicitor should be able to give some indication of the cost (exclusive of disbursements and assuming no unforeseen difficulties or complications arise) of any particular transaction before he or she does the work.

Indeed, local solicitor's associations have drawn up guidelines of costs for various routine transactions; these guidelines are based on the average amount of time for the transaction and on there being no complications. Thus a solicitor should at least be able to quote the *minimum* fee for various transactions such as drafting a will, administering an estate or conveyancing in a house purchase or sale. But he will have to add that if anything out of the ordinary arises the charge will have to be increased, and he is therefore unlikely to give you a clear and definite figure.

## GLOSSARY OF LEGAL TERMS

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### ADVICE ON:

#### PROOFS

Counsel are 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.

#### BRIEF

An extract from a solicitor's file sent to a barrister to draft proceedings, appear in court or offer necessary second opinions.

#### CENTRAL OFFICE

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

#### CONTRACT

An agreement enforceable at law.

#### COUNSEL

Barrister

#### DAMAGES

Money compensation paid to a person if successful in an action.

**GENERAL DAMAGES** A general figure which is to compensate a person for pain and suffering since the date of the event / accident and into the future.

**SPECIAL DAMAGES** Actual out of pocket expenses (already paid out or which will have to be paid out in the future) incurred by the person 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 by one party in the absence of the other.

**JUDGMENT BY DEFAULT** This is where a Plaintiff wins an action because of the failure of the Defendant to lodge a pleading 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 Defendant with the Defence in satisfaction of the Plaintiff's Claim. The Plaintiff must accept this sum unless he considers that it is not enough. If, on the hearing of the case, the Judge agrees that it is enough then the Plaintiff is 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 PARTICULARS** A written request for information about the claim. The Defendant is entitled to ask 'Particulars'. These are questions that will clarify the Plaintiff's claim. The Plaintiff does 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

The person who brings an action.

## 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 a solicitor charges directly to the client to cover costs not covered by the other side, e.g. contribution towards professional fee in respect of directly referable 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 Server 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.

In litigation, a solicitor is not permitted to charge fees as a percentage of damages or compensation recovered for the client. We must charge you according to the time we spend on your case.



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**ATTENTION**

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