A Guide to Personal Injuries/Litigation

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This pack is for information purposes only and does not constitute a legal document. It represents the position as and from the date of first publication.

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ROAD TRAFFIC ACCIDENTS

IF I HAVE A ROAD TRAFFIC ACCIDENT WHAT SHOULD I DO?

- It is ok to be courteous. Do not get angry at the scene. Remain calm and if the other party is not calm, try to remain in your car.
- It is ok to be concerned for the health and safety of the other motorist. This is not the same as admitting liability for the accident.
- It is also ok to follow up to see how the other person is after the accident - one of the top 3 reasons that people give for making claims is that the other party showed no interest in their wellbeing.

CALL THE GARDAÍ

Call the Gardaí immediately and report the incident. Where the Gardaí do not attend at the scene of the accident, go to the nearest Garda station and ask the Garda at the Station to take details of the accident.

This will be important at a later date if the other party denies that the accident happened or if s/he is uninsured.

WITNESSES

If anyone else saw the accident happen and they have stopped, get their name and address and phone number – you may never have the chance again and they could be essential in proving that you were not responsible for the collision.

GET THE REGISTRATION NUMBER OF THE OTHER VEHICLE

This is perhaps the most important piece of information. People have often taken insurance details from the other driver only to discover that the insurance was faulty or that there was no insurance.

This may mean that your Solicitor will become involved with the Motor Insurers Bureau of Ireland who deal with uninsured drivers and for them the most important piece of information is generally the registration number since it can assist them in completing their investigations with greater speed.

TAKE INSURANCE DETAILS

Take insurance details which can be readily obtained from the disc on the windscreen. Each driver should exchange insurance details with the other.

THE DRIVER'S AND OWNER'S NAME AND ADDRESS

Wherever and whenever possible behave politely, but be sure to take information from the other driver.

People are very often shocked after an accident and may take insufficient or inaccurate information from the other driver.

WHAT STEPS SHOULD I TAKE AFTER THE ACCIDENT?

- Protect all evidence: Take photos of the scene – the vehicles involved, debris, damage to the crashed vehicles and road markings.
- Measure and note the position of the vehicles
- Measure the length of any skid marks
- Do a detailed statement of how the accident happened
- Record your injuries

- Report the accident to your own insurers
- Record your out of pocket expenses
- Get an estimate for vehicle repair and car hire
- If going to Court visit the Court venue before the day of your case.

USEFUL INFORMATION FOR US

Your Solicitor will find this information helpful:

- Full name and address of the driver
- Full name and address of the owner, if different
- Name and address of Insurance Company & Policy number
- The expiry date of the Policy
- Photos of scene and cars
- Contact details of Witnesses

PRACTICAL STEPS AT THE ACCIDENT

- Stay safe! Bearing in mind weather conditions, falling trees, flooding and overturning trucks, make sure that you and all of the other people involved are out of harm's way so that there will not be any further accidents.
- Exchange contact details with not only the other drivers but anyone who witnessed the accident also.
- You should also gather as much information as possible as the scene:

    - Name and Address of the Driver
    - Name and Address of the owner of the car
    - Name and Address of Witnesses
    - Insurance Details
    - Vehicle registration
    - Details of the Gardaí in attendance

- If you are a bystander or a passer-by unless you can be of assistance you are likely to be more hindrance than help. Provide your details to the drivers at the scene or the Gardaí but do not hang around to see how things pan out.

- If possible take photographs of the scene, the vehicles, the debris and road markings.

WHAT ARE THE DONTS!

- Never admit liability at the scene. It is often a condition of insurance that liability is not admitted.

- Do not move the vehicles unless absolutely necessary. Generally, the vehicles should stay as they stopped unless the Gardaí advise otherwise. If it is necessary to move them make sure you obtain photographs of their positions on the road beforehand.

- Never leave the scene of an accident. This is a criminal offence. Braving the recent elements will be necessary! Remain at the scene until the Gardaí have confirmed you can leave.

- Do not get angry! Getting irate at the scene can often serve to make things worse. Stay calm!

AFTER THE INITIAL SHOCK – WHAT'S NEXT?

Inform your insurance company immediately. This should be done even if it is not your fault.

Keep a Note! Write down your account of what happened and how it happened. Don't forget to include details of the road conditions that day. Make sure to keep all of your receipts for medical expenses and property damage.

Take photographs of your injuries to document them.

Finally, once the storm has settled watch the time! Remember, anyone who has suffered an injury following an accident only has two years to take a claim. If you were involved in an accident that was not your fault and you feel you might be entitled to compensation the time to deal with it is now.

WHAT STEPS DOES LYNCH SOLICITORS TAKE IN A ROAD TRAFFIC ACCIDENT CASE?

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, talk to witnesses, instruct an engineer if necessary to document the accident scene, talk to investigating Garda or any other emergency services that may be of assistance, liase with your insurance company and begin the process of getting detailed medical reports on your injuries.

At the same time we will be opening communications with the other side, their solicitors and their insurers to ensure that their investigation is also progressing. The efficiency of the other side is just as important as our efficiency here at Lynch Solicitors in ensuring that your case progresses well and while the old saying that you can only do your own job well applies, it does no harm to keep an eye on what the other side are up to.

It helps avoid some of the delays that often hold up cases in their way through the litigation process. Litigation is the general legal term for resolving disputes through the Personal Injuries Assessment Board and the courts – it is the way that personal injury compensation cases are dealt with in Ireland.

Phase 2: Managing your application to the Injuries Board

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

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.

The Injuries Board 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 the Injuries Board was introduced, the vast majority of personal injuries cases were settled outside of Court and thankfully this is still the case.

Phase 3: Preparing and Issuing Court Proceedings

If your case is not settled or assessed by the Injuries Board – 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, in simple terms, is Circuit Court cases involve damages not in excess in €60,000 and cases involving damages in excess of that are commenced in the High Court.

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. After that, there will be an exchange of a variety of Court documents dealing with the defence that the other side will rely on in contesting the case, discovery of relevant documents or records and preparation for the hearing of your case.

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 Courthouses. You will not have to speak with anyone other than Lynch Solicitors 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.

Phase 6: Preparing for a Court Hearing

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.

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.

WHAT IS THE INJURIES BOARD PROCESS IN ROAD TRAFFIC ACCIDENTS?

The Injuries Board Process

The first procedural step to be taken in any personal injuries case is the completion of the Injuries Board 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 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 Injuries Board and your application is then logged and acknowledged by them.

The Injuries Board will then send the defendant (the person you say was responsible for causing your injury) a copy of the application and the medical and will ask them if they consent to allow the Injuries Board to put a value on your injury and make an offer.

This process can (and usually does) take 90 days. Following this period, if the defendant refuses to allow the Injuries Board to assess your injury, that is the end of the Injuries Board process.

The Injuries Board will end their involvement in your case by issuing us with an 'authorisation' which is, in effect, a permission to issue Court proceedings.

If the defendant consents to the Injuries Board assessing your case, they 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.

The Injuries Board 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 the Injuries Board. Such cases are given authorisation so that Court proceedings can be issued.

If there are no psychological or psychiatric injuries, the Injuries Board will decide on a value for the injury 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, the Injuries Board will not make an improved offer. They will issue an Authorisation so that the Court proceedings can be issued and the Injuries Board process is then at an end.

HOW MUCH WILL MY CLAIM BE WORTH?

A key difficulty with valuing personal injuries is that we cannot form a clear opinion on a value until we have a clear prognosis for 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.

HOW LONG BEFORE MY CASE WILL BE HEARD?

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 s/he 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.

DOES THE CASE HAVE TO GO TO COURT?

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.

ACCIDENTS AT WORK

WHEN CAN THE EMPLOYER BE NEGLIGENT?

An employer is required by law to take reasonable care for employees' safety. However, the employer's duty is not an unlimited one. The law does not require an employer to ensure, in all circumstances, the safety of employees. They will have discharged the duty of care if they do what

a 'reasonable and prudent' employer would have done in the circumstances.

Even where a certain precaution is obvious, in the interest of safety of the employee, there may be factors which would justify the employer not taking that precaution.

It is also not enough for an employee to simply suggest their employer was negligent, they must actually prove they were negligent to receive compensation.

There are two main elements to proving negligence:

- That the act complained was reasonably foreseeable
- That reasonable care was not taken to prevent the accident

IS THE TERM 'REASONABLE CARE' DEFINED?

The courts have been very slow to set down any specific definition of 'duty of care'. they have seen it as one which varies with the nature of the employment and the relationship between the employer and employee.
For example, an employer might have to take more care to protect a young inexperienced worker than he would have to take with an experienced employee.

Reported cases have laid down some general guidelines which are useful but which are not exhaustive:

- The employer cannot foresee every risk that may possibly occur
- An employer may be negligent by omission if he has forgotten to do something which a reasonable person would have done in the circumstances.

The courts have tended to look at the duty of care under four basic headings:

- The provision of competent co-workers.
- The provision of a safe place of work.
- The provision of proper equipment.

- The provision of a safe system of work.

ARE THERE ANY TIME LIMITS TO BRING A CLAIM?

As a general rule, you have 2 years from the date of the accident to make a claim.

This time can be extended to 2 years from the date that you knew or ought to have known that you suffered an injury caused by your employer.

MUST YOU REPORT AN ACCIDENT?

Accidents in the workplace should be reported to the employer. The employer should record the details of the incident.

Reporting the accident will help to safeguard social welfare and other rights which may arise as a result of an occupational accident.

An employer is obliged to report any accident that results in an employee missing 3 consecutive days at work (not including the day of the accident) to the Health and Safety Authority.

WHAT ARE EMPLOYERS DUTIES UNDER HEALTH AND SAFETY LAW?

The employer has a duty to ensure the employees' safety, health and welfare at work as far as is reasonably practicable.

To prevent workplace injuries the employer is required, among other things, to:

- Provide and maintain a safe workplace which uses safe plant and equipment

- Prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration

- Prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk
- Provide instruction and training to employees on health and safety
- Provide protective clothing and equipment to employees
- Appointing a competent person as the organisation's Safety Officer
- A risk assessment and to implement measures to protect workers from those risks
- Emergency plans
- Cooperate with their employer
- Not do anything to place themselves or others at risk

Under the Act the employer must do what is "reasonably practicable". This is defined as meaning "that an employer has exercised all due care by putting in place the necessary and protective measures, having identified the hazards and assessed the risk to safety and health likely to result in accidents or injury to health at the place of work concerned and where putting place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work".

Therefore, the standard of care is very high on the employer.

WHAT ARE AN EMPLOYEE'S RESPONSIBILITIES?

- To take reasonable care to protect the health and safety of themselves and of other people in the workplace
- Not to engage in improper behaviour that will endanger themselves or others
- Not to be under the influence of drink or drugs in the workplace
- To undergo any reasonable medical or other assessment if requested to do so by the employer
- To report any defects in the place of work or equipment which might be a danger to health and safety

TYPES OF ACCIDENTS AT WORK

Although commonly associated with construction industry injuries, accidents can occur at all types of workplaces and may include slips, trips and falls caused through negligence on behalf of the employer.

Over the past number of years, we have dealt with numerous accidents at work ranging from a Client losing a finger at a woodworking premises, a Client suffering a head injury at a meat factory, a client suffering a leg injury after being hit by a forklift at some agricultural premises, a client losing a finger at a garage.

Other examples would include:

- Injuries involving lifting or manual handling
- Exposure to harmful and dangerous substances
- Tinnitus, deafness and other hearing problems caused by noise at work

These are just some of the numerous cases that we have dealt with over the past few years.

RISK ASSESSMENTS AND SAFETY STATEMENTS

Under the Safety, Health and Welfare at Work Act 2005 every employer is required to carry out a risk assessment for the workplace which should identify any hazards present in the workplace, assess the risks arising from such hazards and identify the steps to be taken to deal with any risks.

The employer must also prepare a safety statement which is based on the risk assessment. The statement should also contain the details of people in the workforce who are responsible for safety issues. Employees should be given access to this statement and employers should review it on a regular basis.

The Health and Safety Authority has published guidelines on risk assessments and safety statements.

DOES AN EMPLOYER HAVE TO PROVIDE ANY NECESSARY PROTECTIVE EQUIPMENT?

The employer should tell employees about any risks that require the wearing of protective equipment. The employer should provide protective equipment (such as protective clothing, headgear, footwear, eyewear, gloves) together with training on how to use it, where necessary.

An employee is under a duty to take reasonable care for his/her own safety and to use any protective equipment supplied. The protective equipment should be provided free of charge to employees if it is intended for use at the workplace only.

Usually, employees should be provided with their own personal equipment.

WHAT SHOULD YOU DO IF YOU ARE INJURED AT WORK?

1. Seek medical assistance

It stands to reason that the most important thing is your physical well-being and this takes immediate priority over any considerations for financial compensation down the line.

That said, by immediately getting medical attention from your GP or hospital Accident & Emergency, this may provide evidence which will help prove your injury claim down the line.

2. Report the incident

If your accident is very serious or you have been significantly traumatised, it may not always be possible to follow procedures but it is recommended that you inform your immediate superior of the nature of incident as soon as possible.

Your employer is legally required to keep an accident book with a record of all work-related accidents both in case of a compensation claim and to help avoid future workplace accidents.

3. Take Photographs

At the very earliest opportunity following an accident, you should take photographs of the scene if at all possible.

Again, these may be vital evidence for any future claim which may be taken.

4. Get Details of All Witnesses

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

5. 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 who you believe is responsible and why you feel they are at fault.

It is important that you complete this statement at the earliest date to avoid the possibility of forgetting details over time and 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.

IF YOU SUE YOUR EMPLOYER DO YOU LOSE YOUR JOB?

People are often apprehensive about making work injury claims due to the fear of losing their jobs or because they might upset an existing working relationship with their employer.

Although the law protects people who are injured at work from being penalised or threatened with dismissal for making work injury claims, it does not always alleviate the fear of an awkward workplace confrontation on their return, or the potential for being jobless when employment is hard to find.

It is worth remembering that any work injury claims settlement is paid by your employer's public liability insurance company, so you should not be

concerned about your fellow employees suffering financially due to making a work injury claim.

WHAT RESPONSIBILITIES DO EMPLOYERS HAVE UNDER COMMON LAW?

Employers have a duty to:

- Provide a safe place of work
- Provide competent co-workers so that employees are not at risk
- Provide a safe system of work which is planned and organised
- Maintain the procedures which are in place.
- Provide instructions, training, equipment and support to employees- many cases arise because employees do not receive adequate training for their jobs

RSI - A COMMON WORKPLACE INJURY?

A common workplace injury can be repetitive strain injury, or RSI, it is an umbrella term used to describe work related musculoskeletal (muscles, tendons, ligaments, cartilage, bone) disorders affecting the neck, shoulder, arm, wrist and hand.

It is often used very loosely to include conditions that are not necessarily related to repetitive strain such as carpal tunnel syndrome or tendonitis (inflamed tendons).

WHAT CAUSES RSI?

The most obvious cause of RSI is repetitive movements, which can cause inflammation of the tendons (the tough tissue that attaches a muscle to bone) of the hand or forearm.

This is particularly true if the movements are carried out in an awkward posture and without suitable rest periods.

If your work involves prolonged periods of handwriting, typing, microscope or other bench work or other repetitive movements of the fingers, hand or arm you are at risk of developing RSI.

If you work with your hands at or above shoulder level, you are prone to developing rotator cuff tendonitis (inflammation of the muscles and tendons around the shoulder joint).

Other risk factors include:

- Poor posture e.g. working with hands above shoulder level
- Handling loads
- Lack of variation in the task performed
- Heavy work load
- Poorly organised workstation
- Maladjusted chairs
- Stress
- Boredom
- Insufficient rest

The risk of RSI increases with age. Studies have also shown that women are more susceptible than men to repetitive strain injuries, as are those who are unfit.

HOW DO I KNOW IF I HAVE RSI?

RSI typically involves the arm, shoulder, neck and/or chest wall. Typical symptoms include:

- An underlying ache in the arm, shoulder or neck before onset of pain
- Pain or discomfort in the area affected (severity varies with emotion, activity and the weather)
- Tightness

- Stiffness
- Numbness Pins and needles
- Difficulty performing the activity that caused the problem
- Difficulty with other activities including housework and leisure pursuits
- Generalised fatigue is common
- Poor sleep patterns

WHAT IS THE LAW ON RSI?

RSI's are preventable workplace injuries. They happen usually for a combination of reasons and because the employer has:

- Failed to organise the task to make sure that the employee has a variety of positions and movements – to mix it up.
- Failed to provide adequate rest periods. If the work is repetitive or involves a lack of variety in the workers posture, the statutory 30-minute meal break and 20-minute rest period may not be adequate.
- Failed to analyse the workspace with an ergonomist.
- Failed to implement or stick to an ergonomics plan.

EXAMPLE - RSI

A local brewery had a machine for putting lids on cans. It had to be loaded manually with stacks of lids. This procedure was carried out by the employee who had to reach up to near full extension with his arm to load each stack.

This procedure was repeated every minute or so, all day long and the employee was not rotated off that machine for several months. He developed a rotator cuff injury to his shoulder.

Through our medical and engineering expert witnesses, Lynch Solicitors were able to establish that the operator could have been spared an injury

if he had been provided with a platform from which to load the machine. His case was successful and he received an award of compensation.

LYNCH SOLICITORS AND ACCIDENTS AT WORK

Over the years, we have built our reputation for strength in litigation by providing a sympathetic but objective assessment of clients' problems.

We undertake a wide variety of litigation work including:

- Road Traffic Accidents
- Slip, Trip and Fall Cases
- Accident at Work
- Accident on Private Property
- Accident in Public Places
- Medical Negligence
- Product Liability: Defective products
- Contract Disputes
- Property Disputes
- Private/Public Law Disputes
- PIAB Injuries Board Applications
- Defence
- Fatal Injuries
- Probate Litigation
- Workplace Bullying/Stress/RSI

Litigation can be time consuming, expensive and, sometimes, uneconomical. You need the services of an established legal practice with a strong litigation team.

We will give you an objective opinion on your legal query from the outset. We see no benefit to a client in allowing the case to go to trial without a full understanding of the risks and an indication of the likely outcome.

In our experience, many people are fearful of going to court. People may worry about the risk of losing, the possibility of publicity or the prospect of having to give evidence.

ACCIDENTS IN A PUBLIC PLACE

WHAT DO YOU DO IF YOU TRIP, SLIP OR FALL IN A PUBLIC PLACE?

Remember the Location!

It is extremely important to be able to identify precisely where the accident happended. You should ensure that you have some way of pointing out the accident scene to your solicitor and any engineer retained by them to inspect the scene.

SHOULD YOU TAKE PHOTOGRAPHS?

Yes! - protect all evidence

At the very earliest opportunity following an accident, you should take photographs of the scene. This is particularly important if you slip on a wet surface such as spilt milk in a shop.

SHOULD YOU APPROACH WITNESSES WHO MAY HAVE SEEN THE ACCIDENT?

Yes! - get details of all witnesses.

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

WHAT OTHER STEPS SHOULD BE TAKEN AT AN EARLY STAGE?

Write down what 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.

You should also write down who you believe is responsible and why.

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.

IF YOU FALL IN A SHOP SHOULD YOU REPORT IT?

Yes!

The fall should immediately be reported to a staff member or the manager. You should also ensure to take their name. This may become very important and will prevent a shop from arguing that the accident did not occur on their premises.

IF YOU HAVE SUFFERED INJURIES WHAT SHOULD YOU DO TO ASSIST IN YOUR LEGAL CASE?

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.

This is important as 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.

In certain circumstances, where a family member dies as a result of a wrongful act of another, an action can be taken against this wrongdoer.

This is called a "Fatal Injury Action" and it most commonly comes about because of medical negligence, accidents in the workplace or road traffic accidents.

FATAL INJURIES ACTIONS

BRINGING A CASE

Only certain people are allowed to bring a case when there has been a fatal injury.

These persons, allowed to bring such a case, are called "statutory dependants" and are in essence the immediate family of the deceased.

Divorced spouses and cohabiting partners are included in the definition of "statutory dependants".

Only one case may be taken for each fatality and all statutory dependants must be named in that single case.

INVESTIGATING DEATHS

An inquest is held in the case of all unnatural deaths.

You should be represented by your solicitor at the inquest as important information about the cause of death may become available from any key witness present.

The inquest is presided over by a Coroner (not a Judge) and there may be a Jury also.

The findings at the inquest may have a significant impact on the potential success of a civil claim.

There may be other types of Inquiries following a fatality also, for example the Health and Safety Authority may hold an inquiry or the Medical Council about fitness to practice.

We as advocate solicitors provide representation at these inquests. Legal representation at an early stage is recommended to ensure full information is collected.

Often, Clients do pursue a civil case after an inquest, as a result of the facts and findings that arise.

This may be against an insurer, a public or corporate body which it appears are responsible for causing the death.

Whilst no allegations concerning liability can be made at an inquest, crucial information can be obtained which can be very useful in a subsequent claim for compensation.

COMPENSATION

There are three types of compensation for a fatal injury claim and all are considered when the total amount of compensation is decided upon.

The first category is for out of pocket expenses resulting from the death, the second is for emotional distress (this is capped at an upper limit) and the third category is compensation for the loss of income and associated benefits caused by the loss of the deceased.

WHEN IS AN INQUEST HELD?

When a death occurs that is unexpected, unnatural, violent or unexplained - the coroner is notified. He or she may decide to ask for a post mortem and may hold an inquest.

An inquest would not normally be held if a post-mortem examination of the body could explain the cause of death. In some deaths inquests are legally required.

WHERE DOES AN INQUEST TAKE PLACE?

This inquest usually takes place in the local courthouse or sometimes, in a hotel room. Many families that have to attend inquests are startled at the 'courtroom-type' scenario, with witnesses, lawyers, juries in some cases and verdicts.

DOES SOMEONE NEED A SOLICITOR FOR AN INQUEST?

We regularly attend and advocate on behalf of bereaved families at coroner's inquests.

We are regularly instructed to represent bereaved families at Inquests following the death of a loved one arising from medical accidents in hospitals, accidents at work, road traffic accidents and unexpected deaths in a hospital. Most of the time that we would be involved in an inquest would be if there was a Civil action in the pipeline or pending.

There is no legal requirement for anyone to have such representation but if the deceased's family has concerns e.g. over the care received while in hospital or how the accident happened, we endeavour to explore these issues to the best of our abilities within the constraints of the Inquest process. Whilst no allegations concerning liability can be made, crucial information can be obtained nonetheless.

WHAT DOES AN INQUEST DO?

An inquest is an official, public inquiry, conducted by the coroner and, in some cases, in front of a jury. The purpose of an inquest is to find out who died – when, where, how and in what circumstances.

In advance of the Inquest, the Coroner will receive depositions from the relevant people involved, post mortem reports and medical records, if relevant. The Coroner may call medical or expert witnesses.

Many Clients find it hard to understand that the inquest is a fact-finding exercise – which means it is not to establish blame but rather to establish the circumstances surrounding the death.

At the conclusion of an Inquest, a verdict will be returned by the Coroner in relation to how, when and where the death occurred. The type of verdicts which can be returned include open verdict, misadventure, natural causes, accidental death or in some cases, unlawful killing.

WHEN WOULD A JURY BE REQUIRED FOR AN INQUEST?

A Jury would be empanelled at the inquest in certain circumstances which are laid down by law. These include where death was due to homicide, or occurred in prison, or resulted from an accident at work, or as a result of a road traffic accident.

A jury is also necessary if a death occurred in circumstances, the continuance or possible recurrence of which might be prejudicial to the health or safety of the public or any section of the public.

CAN AN INQUEST RESULT IN RECOMMENDATIONS BEING MADE?

In many cases the inquest will result in recommendations being made to avoid the reoccurance of similar deaths. An example of such recommendations was seen in the case of Savita Halappanavar The full inquest on the death of Savita Halappanavar opened on 8 April 2013 and concluded on 17 April, with the jury returning a unanimous verdict of medical misadventure. The jury also endorsed nine recommendations for fundamental change. Two of the recommendations included:

- that protocols on the management of sepsis along with 'proper training and guidelines for all medical and nursing personnel' should be instituted;

- that a protocol for sepsis be written for each individual hospital by its microbiology department and be applied nationally

DO PEOPLE PURSUE CIVIL ACTIONS AFTER INQUESTS?

Often, Clients do pursue a civil case after an inquest, and as a result of the facts and findings that arise. This may be against an insurer, a public or corporate body which it appears are responsible for causing the death. Whilst no allegations concerning liability can be made at an inquest, crucial information can be obtained which can be very useful in a subsequent claim for compensation.

WHO PAYS FOR YOU TO ATTEND AN INQUEST?

Many Client's are concerned about the cost of engaging legal representation for an inquest and a recent High Court decision has been helpful by finding that in circumstances where the death has been shown to be due to the wrongful act of another, it may be possible in the majority of cases to recover the cost of legal representation at an Inquest in the subsequent civil case.

TIME LIMITS

WHAT IS THE STATUTE OF LIMITATIONS?

The Statute of Limitations is the length of time a person has to make a claim following an event that gives rise to the claim. Once the specified time has passed an case can no longer be brought.

The logic is simple and grounded in common sense principles: after a certain length of time it is impossible to get accurate evidence – be it witnesses, people's recollection etc and the threat of legal action cannot hang over a person for an indefinite time.

Therefore, the law stepped in with the concept of the Statute of Limitations.

HOW LONG DOES A PERSON HAVE TO TAKE ACTION?

If a person is outside the limitation period, they cannot take an action. For personal injuries claims an injured party has, by and large, two years.

Although the Statute of Limitation for personal injury claims is two years, there is an escape clause where a person has no knowledge that an injury is connected with a wrong committed by someone else or is ignorant of the person to sue.

WHAT DOES THE 'DATE OF KNOWLEDGE' MEAN?

The Statute of Limitations (Amendment) Act 1991 introduced the 'date of knowledge' for personal injury cases. The date of knowledge is applied when the date the wrong / injury takes place differs from the date the wrong / injury is discovered.

This means that in situations where the injury may not be obvious at first the time limit for actions does not begin until the injured party is aware of the injury.

The date of knowledge has been applied in medical negligence cases; aperson who receives a negligent medical procedure may not have knowledge of the injury at first until the injuries cause problems or they become aware that such problems arose as a consequence of such procedures.

The 'date of knowledge' ensures that the time limit does not run out before a person realises they have an injury/action.

WHAT ARE THE TIME LIMITS FOR DIFFERENT AREAS OF LAW?

- **If going after an account** – 6 years
- **Tort other than personal injuries** – 6 years
- **Contract** – 6 years
- **Enforcing an arbitration award** – 6 years
- **Estate** – 6 years or 12 years depending on circumstances

- **Land - Adverse possession** – 12 years, or 30 years if the State are taking an action

- **Unfair dismissal** – 6 months

WHAT HAPPENS IF A CASE INVOLVES DIFFERENT AREAS OF LAW?

The Statute of Limitations is a complex area of law that needs to be checked in each individual case to ensure that you are not out of time to take your case to Court.

Example: A recent case that has illustrated this is DePuy ASR Hip Implant Recall which has a mix of different areas of law – which could include Product Liability and medical negligence and personal injury.

WHAT IF I AM OWED MONEY AND I AM OFFERED PART-PAYMENT, DOES THE 'CLOCK STOP TICKING' ON THE LIMITATION PERIOD AND SHOULD I ACCEPT THE MONEY?

If someone acknowledges a debt this generally stops the clock running out. However, if you accept the payment and it is only a part payment you should ensure that you acknowledge the payment as a part payment only.

GOING TO COURT

WHAT COURTS DO YOU GO TO?

There are three main courts which a Client could usually be involved in – the **District Court**, the **Circuit Court** and the **High Court**.

WHAT IS THE DIFFERENCE IN THESE THREE COURTS?

In the context of e.g a personal injuries case the difference is based on the amount of money that the Courts can award.

The District Court hears minor criminal matters, small civil claims, liquor licensing, and certain family law applications. The civil jurisdiction is limited to damages not exceeding €15,000;

The Circuit Court is an intermediate level court and is limited to a compensation claim not exceeding €75,000 (€60,000 for claim for damages for personal injuries)

The High Court is the appropriate court to hear cases involving claims for damages in excess of €70,000 (in personal injury €60,000)

In Family law it depends on the type of application you have – stand alone applications for access, maintenance, guardianship etc are usually dealt with in the **District Court** but matters such as Judicial Separation and Divorce are usually **Circuit Court** (can be **High Court** if value of the assets is substantial)

WHAT SHOULD SOMEONE CALL A JUDGE?

The correct way for anyone to address a Judge is "Judge"

IS IT USEFUL FOR A SOMEONE WHO HAS NEVER BEEN TO COURT TO VISIT THE COURT IN ADVANCE OF THEIR CASE?

Yes!

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.

CAN ANYONE GO IN AND VIEW A CASE?

Yes!

There is a public area in the courtroom where people may sit and listen. The public can go into any court unless the case is being held 'in camera', which means in private.

This is to protect the privacy of the people in the court e.g in Family Law cases, cases involving minors

IF I AM IN COURT FOR FAMILY LAW THEN WHO IS IN THE COURT?

The Judge, who sits at the front of the court, his assistant who sits in front of him, the solicitors for each party, barristers for each party if they are involved and the parties themselves.

HOW SHOULD SOMEONE BEHAVE IN COURT?

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.

DOES A CASE HAVE TO GO TO COURT?

As a general rule, the majority of cases are settled without going into Court. However, they are only settled provided that our Client is agreeable to accepting the figure that is offered in full and final settlement of their claim.

I always meet with Clients well in advance of Court and agree with them what would be acceptable if settlement talks were entered in to. This means that the Client is not put under pressure to agreeing something on the day due to the strange and stressful environment.

WHAT IS A TYPICAL DAY IN COURT LIKE FOR SOMEONE WHO FOR EXAMPLE IS IN THE DISTRICT COURT?

If matter is Family Law for example:

- Court begins at 10.30,
- People wait in court foyer for matters to begin when the Judge comes out,
- Once court commences anyone with a case on that day is called into the courtroom,
- Judge comes out,
- A List of all cases which are to be dealt with in the day are called out – in family law initial only are called,
- Each party through their solicitor or themselves has to indicate to the court that they are there are whether the case is going on – the number of cases in the list on most days is more than could be actually possible to be heard,

- Judge expects parties to try and agree matters if possible – if matters are agreed terms can be written down and signed off on by the parties, like a contract and a court order can be made from this,

- Court then indicates what matters it will hear first – usually short matters so what is heard does not always go on the court list for the day,

- Any matters involving the CFA – childcare matters are usually heard next,

- Contested matters usually heard last,

DEPUY ASR HIP REPLACEMENT IMPLANT RECALL

INTRODUCTION

On the 26th August 2010 DePuy Orthopaedics Inc. announced a worldwide recall of its ASR Hip Implant, which first came to market in 2003. Over 3,500 patients underwent DePuy hip implant surgeries in fourteen private and sixteen public hospitals in Ireland.

At the end of 2010 it was estimated that the failure rate for the DePuy ASR hip implant stood at 13% after five years. It is now projected that 49% of all DePuy ASR hip implants could fail within six years, so 1,700 people in Ireland alone may require the revision surgery.

WHAT SYMPTOMS ARE PATIENTS OF DEFECTIVE IMPLANTS EXPERIENCING?

Those patients who have been implanted with defective DePuy hip implants may have pain, loss of mobility and in some cases, softtissue injuries to muscles and nerves in the area of their hip.

WHAT IS METALLOSIS/METAL POISONING?

In addition to the mechanical failure of the device, metal poisoning is a serious concern. This is due to the metal on metal contact between the ball and the socket of the implant, which can cause metallosis (body reacts to metal.) Metallosis can cause inflammation around the joint, tissue damage and bone damage.

ARE THERE RISKS ASSOCIATED WITH FURTHER SURGERY FOR PATIENTS?

Many patients require further surgery exposing them to all the risks

associated with such major surgery including infection, adverse reaction to anaesthesia and a loss of opportunity for future hip replacements, a particular concern for the young and more active for whom these DePuy ASR products were specifically marketed.

At a recent DePuy Hip Recall Conference, which Lynch Solicitors hosted, DePuy patients learned that there is a very slow recovery following revision surgery because metal debris stays in the tissues for some time after the metallic joint has been removed and the body can still react creating inflammation.

The pain does, however, seem to improve over time.

WHAT ARE THE LEGAL ISSUES IN THIS SITUATION?

There are a number of legal areas which come in to play and which Lynch Solicitors are taking account of:

- Product Liability – DePuy
- Medical Negligence – Clinician

Another essential aspect for consideration is the Statute of Limitations. Every civil action must start before a specified time. After this time period no action can be brought and so the claim would be "statute barred". The clock is ticking – timing is everything!

If you have been affected by the DePuy hip recall proceedings must be issued as soon as possible to ensure that your case does not become "statute-barred".

WHAT IS HAPPENING WITH THESE DEPUY CASES ABROAD?

In the US progress with the class action, together with the various individual cases, is well underway. The class action itself is being case managed by a specific Judge and the matter is to appear before him again on the 5th April 2011.

Our colleagues in Canada have also advised that they are working in tandem with the US lawyers and proceedings have begun to be issued in the Canadian Courts.

In Australia, a class action, taken on behalf of the 5,000 people who are estimated to have received the DePuy, was issued in the Sydney Federal Court at the end of February 2011.

Closer to home, in the UK, matters appear to be at a relatively advanced stage. Our UK colleagues have advised that a settlement scheme is currently in the process of being negotiated.

Lynch Solicitors act for a considerable number of clients and have established international links in order to offer the best options in the context of information and compensation.

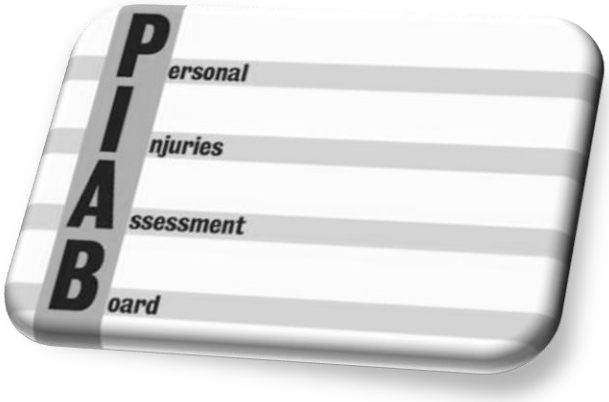
WHAT SHOULD YOU DO NEXT?

We hosted an International DePuy Hip Implant Recall Conference in March 2011. Two UK experts, Mr. David J. Langton, MRCS at University Hospital of North Tees and Dr. Thomas Joyce, at Newcastle University, spoke at the conference and advised patients to seek ultrasound scans and second opinions.

Lynch Solicitors believe that when it comes to the issue of compensation for pain and suffering, DePuy patients need an objective second opinion. With this in mind, we have established links with medical experts in the UK.

THE INJURIES BOARD – PIAB PROCESS

WHAT IS THE INJURIES BOARD?



The Injuries Board is an independent body set up by law to assess personal injuries claims– be it a road traffic accident, a workplace accident or slip and falls or any other kind of injury before any legal claim can be taken through the Courts.

Because they are independently mandated by law they do not represent someone who is involved in an accident, nor do they deal in any way with attributing blame – they will simply make a determination about what level of compensation (if any) may be appropriate based on the evidence.

WHAT IS THE PIAB PROCESS?

The first step to be taken in any personal injuries case is filling out the PIAB (Personal Injuries Assessment Board) application. This is a form that sets out the information about your injury and the accident that caused it.

We will complete this application at the earliest possible date so that the sorting out of your case will not be delayed.

To complete this PIAB application, we will need at least one medical report from your doctor and this can sometimes take a few months. When we get the medical report, we can send this, with any other necessary paperwork, to PIAB and your application is then logged by them.

PIAB will then send the defendant (the person you say was responsible for your injury) a copy of the application and the medical and will ask them if they consent to allow PIAB to put a value on your injury and make an offer.

This process can (and usually does) take 90 days. If the other person refuses to allow the PIAB to deal with the case, 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.

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 look for details of your out of pocket expenses and loss of earnings if you have suffered such losses.

If there are no psychological or psychiatric injuries, PIAB will decide on a value for the injury and make you an 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 the Court proceedings can be issued and the PIAB process is then at an end.

HOW MUCH WILL MY CLAIM BE WORTH?

A key difficulty with valuing personal injuries is that we cannot form a clear opinion on a value until we have a clear picture of your injuries. 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.

ARE THERE SOME TYPES OF INJURIES THE BOARD WILL NOT CONSIDER?

The Injuries Board is not required to make an assessment if they are of the opinion that it is too complex a matter for them and should be put to the courts directly.

If the injury is wholly or in part psychological, if aggravated damages are being sought or if the claim comes out of surgical treatment then the Board is also not required to make an assessment.

HIDDEN PROBLEMS

Difficulties can arise in even what may seem the most straight forward injury claim so we would always recommend that you would seek legal advice before making any application to the Injuries Board.

ARE SOLICITORS NEEDED OR CAN THE INJURED PARTY DEAL WITH THE INJURIES BOARD DIRECTLY?

Solicitors act for the injured person, not the insurance company and we represent the interests of the injured person alone. If someone suffers an accident or injury through no fault of their own they have a right to a solicitor and to compensation.

The Injuries Board will try to keep claims low – both in numbers and cost so anyone who suffers an injury should contact their solicitor who will put the best case possible forward for them and ensure they are entitled to an amount of compensation that fully reflects the injury suffered.

HOW LONG DOES IT TAKE?

The Board state that they have significantly reduced the amount of time it takes to resolve a claim from three years to seven or nine months, in most cases.

WHAT HAPPENS IF THE CLAIM IS ALREADY SETTLED AND NEW SYMPTOMS ARISE?

In the majority of cases it can take – at a very minimum – twelve months for symptoms to fully settle down and in a lot of cases the symptoms may take a lot longer, or worse, have permanent effects.

If you accept an assessment of compensation in the months after your accident without the proper advice you risk being hugely under compensated should your symptoms continue or even get worse afterwards.

The assessment process with the Injuries Board is rigid. When a personal injuries claim is taken before the Courts instead, you submit your claim at the outset and can then update details and particulars of the injuries and

wrongs before the hearing of the case. The Injuries Board does not allow this.

Once your application is submitted that is that and you cannot update or change your claim at a later stage. This is particularly risky where a claim is submitted before your injuries have settled down as the situation can change very quickly leaving the Board assessing what is not really the full extent of your injuries.

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