



# Cúirt Uachtarach na hÉireann Supreme Court of Ireland

*Bridget Delaney*

v

*The Personal Injuries Assessment Board, The Judicial Council, Ireland and the  
Attorney General*

On appeal from: [2022] IEHC 321

Judgment delivered on 9 April 2024

[2024] IESC 10

## Headline

This was a constitutional challenge to the validity of the personal injury guidelines, passed by the Judicial Council, comprising all judges, on 6 March 2021. While a majority of the Court concludes that the power given to the Judicial Council to make guidelines contained in section 7(2)(g) of the Judicial Council Act 2019 (“the 2019 Act”) is unconstitutional in its present form, a majority of the Court also concludes that the validity of the guidelines was confirmed by virtue of the provisions of the Family Leave and Miscellaneous Provisions Act 2021 (“the 2021 Act”) whereby the Oireachtas affirmed the personal injury guidelines which had been approved by the Judicial Council. Judgment as to liability as to the plaintiff’s claim for tripping on a public path, and any damages that may result, should be assessed in court in the ordinary way and having regard to the personal injury guidelines as confirmed by the 2021 Act. While the personal injury guidelines continue to have effect following affirmation in this fashion by the Oireachtas, any further changes to those guidelines will require legislative intervention by the Oireachtas.

## Composition of the Court

Charleton, Hogan, Murray, Collins, Whelan, Faherty, Haughton JJ (Heard on 28 February - 1 March 2023, 13 March 2024).

## Judgments

Charleton, Hogan, Collins, Faherty, Haughton JJ.

## Background to the Appeal

This appeal is a constitutional challenge to the legal basis for the drawing up and passing of the personal injury guidelines, adopted by vote of all judges participating, by the Judicial Council, under the Judicial Council Act 2019, on 6 March 2021. Those were the guidelines “in force” affirmed in the Family Leave and Miscellaneous Provisions Act 2021, the relevant provision having been commenced by Ministerial order on 24 April 2021. These guidelines, the majority hold, substantively affect how judges should determine awards for pain and suffering in the actions to which they apply. The guidelines do not impact on the award of special damages, also known as out-of-pocket expenses, comprising such matters as medical bills, loss of wages or living alterations necessitated by any wrongful injury to a plaintiff.

On 12 April 2019, the appellant, Bridget Delaney, tripped when walking on a public footpath in Dungarvan, Co. Waterford. Liability and contributory negligence are in issue. Her injuries consisted of a grazed knee and an undisplaced fracture of the tip of her right lateral malleolus; typically occurring when an ankle is twisted or rolled. For treatment the appellant had to wear a walker boot for about four weeks and was advised that she would have swelling in her ankle for approximately six to nine months but would have no significant long-term sequelae. An application was made for assessment, as the law requires, to the Personal Injuries Assessment Board (PIAB) on 4 June 2019. The appellant was advised by her own legal advisors that, based on the Book of Quantum which guided injuries coming before a court at the time of the accident, her injuries could attract general damages in the region of €18,000 - €34,000. When PIAB made its assessment, on 14 May 2021, its recommendation was made under the personal injuries guidelines promulgated by the Judicial Council, and then in force. PIAB's recommended figure for her personal injury damages was €3,000.

It was contended that since no assessment has been made by a court, significant reduction in the value of the applicant's claim was due to the fact that the earlier Book of Quantum no longer applied when the appellant's claim was valued by PIAB. The Family Leave and Miscellaneous Provisions Act 2021 was signed by the President on 27 March 2021. Section 30 of the 2021 Act amended section 99 of the Judicial Council Act 2019 and inserted a new section 100 into that legislation and further, by section 31, amended section 20 of the Personal Injuries Assessment Board Act 2003, requiring that in the assessment of personal injuries, when the matter comes to court, judges "have regard to the personal injuries guidelines (within the meaning of that Act) in force" and "where they depart from those guidelines, state the reasons for such departure and include those reasons in the assessment in writing". The relevant sections were signed into law on 24 April 2021: see the Family Leave and Miscellaneous Provisions Act (Part 9) (Commencement) Order 2021, SI 180/2021. Under the legislation, Bridget Delaney was required to apply to PIAB for assessment as to the value of her injuries and that assessment issued on 13 May 2021 by reference to the new guidelines: the amendment being then in force.

### **Issues on this Appeal**

In these proceedings the appellant contended that the guidelines are a form of law; that, as such they constitute an impermissible delegation of legislative power, vested exclusively in the Oireachtas under Article 15.2.1<sup>o</sup> of the Constitution, to the Judicial Council; that the provisions giving legal effect to the guidelines are contrary to Article 35.2 of the Constitution providing for the independence of the judiciary; that giving power to judges to vote on subsidiary legislation having normative effect trenches on the democratic nature of the State guaranteed by Article 5 of the Constitution; that the imposition of the guidelines was impermissibly retrospective in nature in depriving the appellant of vested rights to be assessed under the prior guidelines; and that the provisions of the guidelines that, arguably, reduce the award payable to the appellant are disproportionate and/or irrational and infringe the appellant's property rights, right to bodily integrity and equality.

These various grounds, of which this is a concise summary, were invoked to challenge both the *vires* of the guidelines, the constitutional validity of the provisions pursuant to which the guidelines were adopted, and the provision in the 2021 Act whereby the appellant argued that this did not have the effect of the Oireachtas affirming the guidelines.

In challenging the *vires* of the guidelines it was further contended that the Judicial Council erred in taking into account matters other than the level of damages awarded by the courts to date and, in particular, in having regard to awards in other jurisdictions and in failing to have regard to the

Book of Quantum which guided judges prior to the guidelines and decisions of the Courts on the award of damages other than for the period 2017-2020. It was also contended that the Judicial Council wrongly proceeded on the basis that the purpose of the guidelines was to reduce the level of damages.

### **Decision**

Five judgments are being delivered by the seven members of the Court: those of Charleton J, of Hogan J (with whom Whelan J agrees), of Collins J (with which Charleton and Murray JJ agree), and of Faherty J and of Haughton J. Because of the complexity of the issues raising questions regarding the separation of powers, democratic accountability, delegated legislation, the independence of the judiciary, statutory construction, constitutional construction, the limits of judicial competence, retrospectivity, vested rights, equality, affirmation of secondary legislation by subsequent legislative enactment and the nature of what a guideline is, together with the construction and effect of Article 5, Article 15.2.1<sup>o</sup>, Article 34.1, Article 35.2, Article 40.1 and Article 40.3 of the Constitution there are various differences between the members of the Court on the reasoning as to the issues arising in the case. However, it is useful to clarify as follows:

1. A majority of the Court (Charleton, Murray, Collins, Faherty and Haughton JJ; Hogan and Whelan JJ dissenting) consider that the personal injury guidelines voted into force by the Judicial Council, which comprises all sitting judges, on 6 March 2021 have normative/legal effects. This means that the guidelines are legally binding. Three members of the court (Charleton, Collins and Murray JJ) define the standard thus: the guidelines should only be departed from where there is no reasonable proportion between the guidelines and the award which should otherwise be made.
2. In view of that decision, a majority of the Court (Hogan, Whelan, Faherty and Haughton JJ; Charleton, Murray and Collins JJ dissenting) conclude that section 7(2)(g) of the Judicial Council Act 2019 Act is unconstitutional, in its present form, as being contrary to the independence of the judiciary as guaranteed by Article 35.2 of the Constitution.
3. A majority of the Court (Charleton, Hogan, Murray, Collins, Whelan and Faherty JJ; Haughton J dissenting) consider that the guidelines were subsequently independently ratified by the Oireachtas and given legal effect by the enactment of the Family Leave and Miscellaneous Provisions Act 2021, which entered into force on 24 April 2021. Thus, the personal injury guidelines passed by the Judicial Council on 6 March 2021 are in force as a matter of law and have thereby been given legal effect.
4. A majority of the Court (Charleton, Murray, Collins and Haughton JJ; Hogan, Whelan and Faherty JJ dissenting) consider that the transitory provisions of the 2021 Act are not unconstitutional and that there were no vested property or personal rights in the appellant to have her case adjudicated by the Personal Injuries Assessment Board, or by a court, under any earlier guidelines than those passed by the Judicial Council on 6 March 2021 as confirmed by the provisions of the 2021 Act.

Given the complexity of the issues addressed in the judgments delivered by five members of the Court, it is thus appropriate to indicate the orders which, consequent upon that analysis, the Court proposes to make. Hence, this Court will make:

1. A declaration that section 7(2)(g) of the Judicial Council Act 2019 is unconstitutional in its current form;
2. A declaration that the personal injury guidelines adopted by the Judicial Council on 6 March 2021 were given force of law by virtue of section 30 of the Family Leave and Miscellaneous Provisions Act 2021 and are consequently in force;

3. A declaration that the Personal Injuries Assessment Board, accordingly, acted properly and in accordance with law in applying the personal injuries guidelines to the appellant's application to be assessed as to her pain and suffering in May 2021;
4. An order that, save for the declaration of unconstitutionality in respect of section 7(2)(g) of the 2019 Act and the order for costs. the appeal from the order of the High Court is to be dismissed; and
4. Presumptively, given those orders of the Court, an order that the appellant should be awarded costs as against Ireland and the Attorney General, with the Personal Injuries Assessment Board to abide its own costs.

### **Note**

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

### **Case history**

2 June 2022	[2022] IEHC 321, judgment of the High Court, refusing relief
25 November 2022	Supreme Court Determination [2022] IESCDET 133 grants leave
28 February - 1 March 2023	Supreme Court hearing S:AP:IE:2022:000100
8 March 2024	further written submissions from the parties, excluding PIAB
13 March 2024	further Supreme Court hearing S:AP:IE:2022:000100
9 April 2024	Supreme Court judgment [2024] IESC 10