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Happy Christmas to all our clients

Client Update

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Personal Injuries

Circuit Court approves award of €19,000 for boy's injured clavicle

The Circuit Court has approved a settlement of €19,000 for a boy who injured his clavicle after getting stuck in an electric gate when he was two years old.

The plaintiff in May 2010 was playing outside his home when he put his head between the railings of an electric gate. The gate began to close and dragged the boy's head and shoulders along the ground. Fortunately the boy's father was at hand to remove him from the gate and prevent further injury.

The claim was taken against Tuath Housing Association on the basis that the gates should have been protected by metallic netting to prevent an accident like this from occurring.

Before a person under the age of eighteen ("a minor") can accept an award of compensation it must be approved by the court. This also is

required for any amount awarded by the Injuries Board or settlement agreed between the parties.

This is to ensure that the best interests of the child are protected.

A minor also will not have capacity to take a case themselves but must fight the case through their 'next friend', usually a parent or guardian.

The defendant in this case refused to admit liability. However a settlement for €19,000 was agreed between the parties and brought to the judge for approval.

The judge considered the injuries and noted that the plaintiff, who is now nine years of age, had made a full recovery from the incident.

Once an award is approved by the court the monies do not go to the plaintiff's parents. Instead the defendant is

required to pay the sum into the court office where it will remain and gather interest until the child reaches the age of eighteen.

Rise in Personal Injuries compensation evident from new Book of Quantum

A much-anticipated new edition of the Book of Quantum has been published following recent criticism from the High Court for the failure to update the previous book.

The Book of Quantum sets out the guidelines for compensation awards by categorising different types of injuries.

The new Book of Quantum is the first revision of the 2004 original in the last 12 years. The old edition was considered by many practitioners to be so out-of-date and removed from the

actual awards that it had effectively become obsolete.

A judge is obliged to consider the Book of Quantum when awarding damages to a plaintiff. It is expected that it will become more commonplace for the Judge to ask the presenting barristers to refer to specific figures in the Book of Quantum while giving their closing arguments.

The new edition was compiled from an examination of over 50,000 closed personal injury claims during 2013 and 2014.

A comparison between the two editions is interesting as an indication of the changes in awards over the last decade. Under the new guidelines, a person who receives a fracture to their lower arm will have a recommended figure up to €38,000, which

is an increase of about a third from the previous recommendation.

A minor whiplash or sprain in the neck following a road traffic incident could be awarded up to €15,700, an increase of €1,300. Whiplash injuries have a reputation of being notoriously difficult to disprove in a courtroom.

It is hoped that the revised Book

of Quantum will bring stability to the personal injuries market and ensure fairness when awarding compensation.

It has faced criticism for being a missed opportunity to tackle the rising insurance costs, as the data is merely reflective of recent awards and not benchmarked against other jurisdictions.



Whistle-blower – ‘Protected-Disclosure’

Whistle-blower receives first award of compensation under new legislation

The Protected Disclosures Act 2014 has been in force for two years and has now seen its first award for penalisation of an employee for making a ‘protected disclosure’.

The Labour Court has ordered the nursing home Áras Chois Fharráige to pay a former care assistant €17,500 after she was suspended for raising concerns of elder abuse with Hiqa.

Under the legislation, an employee can seek redress when they are penalised by their employer for making a protected disclosure.

A ‘protected disclosure’ is defined in the Act as being a disclosure of relevant information, which in the reasonable belief of the worker, tends to show one or more relevant wrongdoings which came to the attention of the worker in connection with their employment.

In this case, the employee in March 2014 raised concerns about the treatment of patients at the nursing home

to the Matron. Over the next three months, she contacted Hiqa five times to inform them of her concerns.

Her employer called her to an appraisal meeting in April 2014 and labelled her a “trouble maker”. She was suspended for five months following a disciplinary meeting.

The Labour Court held that the she had been penalised under the Act when she was suspended on pay for almost five months as a consequence of her making a ‘protected disclosure’ by way of her complaints to Hiqa.

The Labour Court found that had she not raised her concerns, she would not have been penalised.

This is the first award being given under the Act in the past two years. Though the legislation did not lead to large amount of claims that was expected, the decision serves as a reminder for employers to put in place effective whistleblowing procedures to mitigate against the risk of such claims.

Defamation:

Facebook defamation award is wake-up call to social media users

The Circuit Court has made a substantial award in compensation to a man who was defamed by a Facebook post.

In awarding the maximum award of €75,000 Judge John O’Hagan warned that users of social media must take responsibility for the statements that they publicise on the internet.

Defamation law does not distinguish between print and online publication, and the judge urged internet users “to be very careful”.

The past number of years has seen a remarkable increase in the amount of defamation proceedings taken as a result of publications on social media.

The case shows how serious the courts are taking online defamation, as well as their willingness to penalise the perpetrators.

Family Law

Enforcing maintenance order in another Member State

A maintenance order obtained in Ireland is enforceable in any Member State.

Though the EU plays a limited role in family law matters, it has introduced regulations to ensure that a court order made in one country may be implemented in another.

This is of benefit to those seeking to enforce a maintenance order against a former partner or spouse residing in another EU country. Under Regulation 44/2001, any person owed money under a maintenance order can enforce it much quicker and cheaper than previously.

It also ensures that Member States share common rules in relation to the applicable law, jurisdiction, enforcement and even standardised documents when it comes to maintenance orders.

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Mr C., Greystones



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