



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Insurance Reform

Public consultation on
enhancing and reforming the
Personal Injuries Assessment
Board

Submission by Kildare PPN

Public Consultation: Enhancing and reforming PIAB

As set out in the consultation document, the Department of Enterprise, Trade and Employment is specifically seeking views on enhancing and reforming the Personal Injuries Assessment Board (PIAB).

Please include your response to the questions listed below in the space underneath the relevant option, to set out/ explain your views on each. Completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of responses.

Respondents have the opportunity to highlight any issues which would contribute to the objective of enhancing and reforming the role of PIAB at the end of the template.

When responding please indicate whether you are providing views as an individual or representing the views of an organisation.

Respondents are requested to return their completed templates by email to PIABreform@enterprise.gov.ie by the closing date of **17 April 2021**. Hardcopy submissions are not being received at this time due to remote working. Please clearly mark your submission as 'Public Consultation on enhancing and reforming the Personal Injuries Assessment Board (PIAB)

Any queries in relation to the consultation can be directed to PIABreform@enterprise.gov.ie

Name(s):	Grainne Fleming
Organisation:	Kildare PPN
Please briefly describe your interest in enhancing/reforming PIAB:	Public Participation Networks were established in 2014 and allow local authorities to connect with community groups around the country. The PPN is the conduit for all local authorities who wish to benefit from community and voluntary expertise in their area.
Email address:	gfleming@kildareppn.ie
Telephone number:	087 2557508

Submissions or comments are invited in respect of the questions listed below:

1. Potential amendments to section 17 of the PIAB Acts 2003-2019

Question 1 (a)

Do you think there is scope to amend section 17 of the PIAB Acts 2003-2019 to increase the number of claims assessed by PIAB?

Yes. Given the experience and expertise that PIAB has developed in the 16 years since its establishment, it is now the most appropriate forum for the determination of a broader range of personal injury claims. In particular, it is the view of the Kildare PPN that it is well within PIAB's capability at this stage to assess more complex claims, given that insurers' assessors frequently assess such complex claims and insurers and claimants' lawyers settle accordingly.

We fully endorse the amendment of Section 17 of the PIAB Acts so that PIAB will assess claims including:

- Complex claims involving issues such as multiple injuries or pre-existing conditions, currently released to litigation under Section 17(1)(ii)(I)*
- Claims regarding injuries alleged to be sustained consisting wholly or in part of psychological damage, currently released to litigation under Section 17(1)(ii)(II)*
- Claims for injuries requiring a longer time frame, currently released to litigation under Section 17(1)(iii)*
- Claims where a charge imposed by the Board on a respondent has not been paid to it, currently released to litigation under Section 17(3)*

Question 1 (b)

Do you think there is scope to amend other sections of the PIAB Acts to increase the number of claims assessed by PIAB?

n/a

Question 1 (c)

Do you think there are non-legislative changes that could be made to increase the number of claims assessed by PIAB?

Kildare PPN is in favour of PIAB developing a direct communications programme that makes clear to plaintiffs and respondents alike the benefits of settling via PIAB and the potential consequences of non-engagement or rejection of a PIAB assessment.

This is particularly the case in the light of the Central Bank's National Claims Information Database 2nd Private Motor Insurance Report 2020, which made it clear that the average compensation for claims settled for less than €100,000 does not increase appreciably by rejecting the PIAB assessment and proceeding to litigation, while legal costs and the time taken to reach settlement increase dramatically in doing so. It is the view of Kildare PPN

that the primary objective of rejecting PIAB awards for minor injuries and pursuing litigation is to maximise legal fees.

REF: Tables 9 and 11, NCID 2nd Private Motor Report, 2020.

For personal injury claims settled for less than €100,000 in 2015-2019, PIAB compensation settlements averaged €22,357 compared to €23,578 via litigation (a 5% difference). However, legal costs for litigated settlements were 28 times higher at €14,957 compared to €534 via PIAB. Additionally, litigated claims take an average of 4.5 years while settlements via PIAB take only 2.6 years.

<https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/private-motor-insurance-report-2-ncid.pdf?sfvrsn=9>

2. An enhanced role for PIAB

Question 2 (a)

Would a mediation process provided by PIAB bring benefits for claimants and respondents and help increase the number of cases administered through the PIAB system?

Where it would facilitate PIAB settling claims that would otherwise be released to litigation, Kildare PPN would welcome the introduction of mediation as a dispute resolution mechanism within the PIAB process. It would be essential that this would not impose additional delays or costs on claims settled via PIAB other than on cases that would otherwise be released to litigation.

In order for mediation to be effective, it is essential that the plaintiff is present at all times.

If either party refuses to engage in mediation when it is proposed, such refusal should be factored into decisions on costs in any subsequent judgement by the courts.

Question 2 (b)

In what other ways do you think the services provided by PIAB could be enhanced or reformed to incentivise greater use of the PIAB model?

It is a common experience among our members that the case presented to Court varies in material detail to the case that was presented to PIAB.

The service provided by PIAB would be greatly enhanced if litigation were to commence with the exhibition of the PIAB claim, to verify that the same claim is being made in Court. If it is not, then the claim should be sent back to PIAB.

3. Expanding the use and publication of data held by PIAB

Question 3 (a)

Would providing for greater levels of data to be collected and reported on by PIAB be useful in ensuring a fair and predictable insurance system and in areas such as accident prevention?

PIAB is uniquely positioned to provide data that would be of great use to the State, insurers (both current and potential), consumer groups and bodies concerned with health & safety, accident prevention and fraud prevention.

The formulation by the State of public policy around the insurance sector requires good, relevant data. Data can and should have a transformative effect on the analysis and reform of the Irish insurance market. Where reform has been poor, partial or non-existent, it has often been due to the lack of relevant data, which creates a vacuum into which minority vested interests can apply their own interpretation of events.

Equally, data on personal injury accidents and claims would be of real value in analysing and contextualising Ireland's personal injuries from a health and safety and injury prevention perspective as well as facilitating fraud prevention. Such data would also facilitate insurers considering offering cover in Ireland.

Given the role that PIAB plays in the personal injury sector and its mandate under Sections 54 and 86 of the PIAB Act, it is surprising to Kildare PPN that PIAB does not publish more data than it currently does, particularly in areas such as :

- *Claim and settlement patterns. In order for this to be fully effective, data must be collected on all claims, regardless of which channel they are settled in.*
- *Trends in accidents*
- *Trends in injuries*
- *Fraud. Kildare PPN calls on the Department to initiate the transfer of Insurance Ireland's InsuranceLink database into the ownership of PIAB, where it can be developed by PIAB and accessed by parties with a valid fraud prevention and detection function.*

Section 55 of the PIAB Act appears to give considerable scope to the Minister for Enterprise, Trade and Employment to facilitate PIAB in gathering, analysing and publishing data without having to initiate legislation.

The granular data that PIAB could generate would also dovetail well with the macro data now being provided and planned by the Central Bank's National Claims Information Database.

For all of these databases, data protection considerations must be honoured but not allowed to impede real reform where that reform serves the common good, promotes safety or prevents and detects criminality.

Question 3 (b)

Is there scope to use PIAB data for the purposes of fraud detection?

See above regarding the InsuranceLink database.

Question 3 (c)

Would there be a benefit in PIAB being mandated to record details of all personal injury settlements agreed in the State?

It is essential for reasons of public policy, competition, health & safety and fraud prevention that details of all personal injury settlements agreed in the State be recorded, analysed and published.

PIAB is the natural repository for this data, given its founding legislation, its role in the Irish personal injury sector and its experience and expertise in this area.

4. Additional comments

Question 4

Please provide any additional comments you may wish to make to inform the development and direction of policy on enhancing and reforming the role of the Personal Injuries Assessment Board.

1. Kildare PPN would support a review of the composition of the "Personal Injuries Assessment Board" as fundamental to giving greater confidence and trust to communities. It should be reflective of Irish society in the broadest sense.
2. *Kildare PPN believes that this public consultation will be a missed opportunity if it does not consider the development of PIAB into a quasi-judicial body, along the lines of the Workplace Relations Commission, Residential Tenancies Board or An Bord Pleanála.*

While the right of access to the courts must be protected, PIAB now has the experience and expertise necessary to facilitate it in adjudicating on personal injury claims. In addition, the recent adoption of Judicial Guidelines on damages for personal injuries mean that many more cases will be directed towards the District Courts which will present a capacity issue. PIAB is well-placed to adjudicate on such claims, therefore taking pressure off the Courts.

3. *It is imperative that Government seeks to urgently quantify the scale of the "uplift" for additional injuries specified in the new Judicial Guidelines, in order to facilitate the work of PIAB and ensure a consistent approach between PIAB and the courts.*

REF: Page 6, Judicial Council Personal Injuries Guidelines, March 2021.

<https://judicialcouncil.ie/assets/uploads/documents/Personal%20Injuries%20Guidelines.pdf>

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

General Data Protection Regulation

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose limitation;
- Data minimisation;
- Accuracy;
- Storage limitation;
- Integrity and confidentiality;
- Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

22 March 2021