APPROVED **[2022] IEHC 428**

THE HIGH COURT

2022 No. 7 PIR

IN THE MATTER OF SECTION 35 OF THE PERSONAL INJURIES ASSESSMENT BOARD ACT 2003

BETWEEN

RICHARD GRIMES

(ON BEHALF OF THE STATUTORY DEPENDANTS OF THE LATE ALISON GRIMES)

APPLICANT

AND

JOHN O'DOWD

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 29 July 2022

INTRODUCTION

1. This matter comes before the High Court by way of an application to approve an assessment of damages made by the Personal Injuries Assessment Board. The assessment has been made in respect of a fatal injuries claim arising out of a road

traffic accident. The claim has been brought by the widower of the deceased, on his own behalf and on behalf of all of the statutory dependants.

2. One of the statutory dependants, a daughter of the deceased, has not yet reached the age of eighteen years and is thus a minor or infant in the eyes of the law. Accordingly, the PIAB assessment will not become binding unless and until it has been approved by the court. The requirement for court approval is intended to safeguard the interests of the minor dependant.

3. The unusual feature of the present case is that the court is being invited *to disapprove* the PIAB assessment, notwithstanding that the applicant himself has formally accepted the assessment. The applicant considers that the amount of damages assessed is too low, but rather than reject the PIAB assessment himself, he seeks instead to have the court refuse to approve the assessment. This is done in an attempt to avoid the adverse costs implications which would otherwise arise in the event that the damages recovered in subsequent legal proceedings are less than the amount now available under the PIAB assessment.

STATUTORY FRAMEWORK

4. Part IV of the Civil Liability Act 1961 creates a right of action where the death of a person is caused by the wrongful act of another. Only one action for damages may be brought against the same person in respect of the death, and the action shall be for the benefit of all of the statutory dependants (as defined). Relevantly, this class includes the spouse and children of the deceased. An action of this type is usually referred to by the shorthand a "*fatal injuries action*" or a "*fatal injuries claim*".

5. It should be explained that, under Section 49 of the Civil Liability Act 1961 and an implementing Ministerial Order, the aggregate amount of damages which can be recovered for "*mental distress*" in a fatal injuries claim is currently capped at €35,000. The combined total of damages awarded to individual dependants for mental distress resulting from the death cannot exceed this amount. This head of damages is referred to in some of the case law as the "*solatium*".

6. In most instances, it is a necessary first step to the pursuit of a fatal injuries claim that the claimant make an application to the Personal Injuries Assessment Board ("***PIAB***") for an assessment of damages. This procedural step must be completed prior to the institution of any legal proceedings. There are a number of exceptions to this requirement: it does not apply, for example, in cases of alleged medical negligence.

7. The requirement to apply for an assessment of damages is provided for under the Personal Injuries Assessment Board Act 2003 ("***PIAB Act 2003***"). Importantly, the legislation prescribes that a PIAB assessment can only ever become legally binding in circumstances where both the claimant and the respondent have accepted that assessment. The legislation does not purport to introduce a coercive jurisdiction, whereby the parties are obliged to submit to an adjudication on damages by PIAB. Rather, either party is fully entitled to reject the PIAB assessment.

8. (For completeness, it should be explained that a respondent may be *deemed* to have accepted the PIAB assessment in certain circumstances, but this does not detract from the principle that the parties are not obliged to submit to an adjudication by PIAB).

9. The outcome, in any particular case, of an application for an assessment of damages will, therefore, depend on the attitude of the claimant and the respondent. If either party rejects the amount of damages as assessed by PIAB, then the claimant will be authorised to bring legal proceedings and to pursue their claim before the courts. Similarly, if PIAB decides, in the exercise of its statutory discretion, not to make an assessment of damages in the particular case, the claimant will, again, be authorised to bring legal proceedings.

10. The other potential outcome, of course, is that both the claimant and respondent might decide to accept an assessment of damages made by PIAB. In such a scenario, the assessment will become binding on the parties and the respondent may thereafter be subject to an "*order to pay*" (as defined). This is subject to the proviso, however, that in certain circumstances it will be necessary first to obtain court approval of the assessment of damages.

11. The circumstances in which court approval is required are prescribed as follows under Section 35(1) and (2) of the PIAB Act 2003:

> "35.—(1) This section applies to a relevant claim where—
>
> (a) a next friend or the committee of a minor or a person of unsound mind is acting on behalf of the minor or person in respect of the claim, or
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> (b) the claim relates to a proposed action for damages under section 48 of [the Civil Liability Act 1961],
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> and the next friend, committee or, as the case may be, the person proposing to bring that action for damages accepts, subject to the assessment being approved under this section, the assessment made under section 20 of the relevant claim.
>
> (2) Where any enactment or rule of court requires any settlement of a relevant claim to which this section applies to be approved by the court then that

> enactment or rule of court shall apply, with the necessary modifications, to the assessment referred to in subsection (1) as if proceedings had been brought in relation to the claim, and the court shall have jurisdiction to approve the assessment accordingly on application in that behalf being made by the next friend, committee or other person referred to in that subsection."

12. The combined effect of these two subsections is to ensure consistency of approach to the protection of vulnerable persons as between (i) the assessment of damages procedure under the PIAB Act 2003, and (ii) legal proceedings before the courts.

13. To elaborate: the approval of the court is required in order for a proposed settlement of legal proceedings, which involve a vulnerable person, to be effective and enforceable. For example, Order 22, rule 10 of the Rules of the Superior Courts provides that no settlement of proceedings, in which damages are claimed by or on behalf of an infant or a person of unsound mind, is valid without the approval of the court. The requirement for court approval is intended to ensure that the interests of vulnerable persons, such as a minor or a person of unsound mind, are properly protected in the settlement of proceedings. The court is in a position to provide a neutral assessment of the value of the claim and of the reasonableness of the settlement figure, having regard to issues such as any risk on liability. The requirement for court approval also constitutes a safeguard against possible error on the part of the legal advisors acting on behalf of the vulnerable person.

14. The same safeguards apply to the assessment of damages procedure, by virtue of Section 35 of the PIAB Act 2003. The operation of the section is somewhat opaque. In order to determine whether court approval is required for a PIAB assessment, it is necessary to consider whether court approval would have been

required for the settlement of legal proceedings arising out of the same claim. This involves consideration of what would have happened if, counterfactually, the claim for damages had not concluded with the parties accepting the PIAB assessment, but had instead been pursued by way of legal proceedings. If court approval would have been required before an offer of settlement in those hypothetical legal proceedings could become effective, then court approval is equally required for the PIAB assessment. This creates an exact symmetry between those claims which are to be resolved by the acceptance of a PIAB assessment and those which are to be resolved by an offer of settlement following the bringing of legal proceedings.

15. Put otherwise, Section 35 of the PIAB Act 2003 does not itself prescribe the circumstances in which court approval for a PIAB assessment is necessary. Rather, it provides that if court approval would have been required before an offer of settlement in hypothetical legal proceedings arising out of the same claim could become effective, then court approval is equally required for the PIAB assessment. It is necessary, therefore, to look beyond the wording of Section 35 in order to determine whether court approval is required.

16. On the facts of the present case, one of the statutory dependants, namely, the younger daughter of the deceased, has not yet reached her age of majority. Were the fatal injuries claim to be resolved by legal proceedings (rather than at an earlier stage, i.e. by the acceptance of a PIAB assessment), then court approval would have been required to the extent that any proposed settlement of those legal proceedings affected the position of that daughter. It follows, therefore, that court approval is required before the acceptance of the PIAB assessment can become binding.

17. Importantly, court approval is only required where the representative claimant *accepts* the PIAB assessment. A claimant who wishes to *reject* the PIAB assessment is entitled to do so unilaterally, i.e. without any application for court approval. In such a scenario, an authorisation will issue which will then allow the claimant to institute legal proceedings.

18. There are, however, certain costs implications for a claimant who does not accept a PIAB assessment, which has been accepted by the respondent, and then fails to "*beat*" the amount of that assessment in subsequent legal proceedings. In such a scenario, the following costs rules apply under Section 51A of the PIAB Act 2003:

    (a). If the amount of damages (if any) awarded on foot of, or accepted in settlement of, the legal proceedings does not exceed the amount of the PIAB assessment, then no award of costs nor any other order providing for payment of costs may be made in favour of the claimant;

    (b). If the amount of damages (if any) awarded on foot of the legal proceedings does not exceed the amount of the PIAB assessment, then the court may, in its discretion, order the claimant to pay all or a portion of the costs of the defendant or defendants.

19. As appears, a claimant who fails to recover in legal proceedings more than that which had been available under the PIAB assessment is not only precluded from recouping the costs of the legal proceedings, but is also on hazard of having to pay the other side's costs. The rationale underlying these costs rules is, presumably, that the legal proceedings proved to be unnecessary: in circumstances where the *respondent* to the claim had accepted the PIAB

assessment, the claimant could have recovered this amount without having to institute legal proceedings.

20. Section 51A of the PIAB Act 2003 is only triggered where a claimant has not accepted the PIAB assessment. If, conversely, a claimant *accepts* the assessment, subject to court approval, and the court ultimately determines not to approve the assessment, then any legal proceedings instituted by the claimant thereafter are subject to the normal costs rules. These are to be found, principally, under the Civil Liability and Courts Act 2004; Part 11 of the Legal Services Regulation Act 2015; and the recast Order 99 of the Rules of the Superior Courts.

21. Put otherwise, a claimant is shielded from the special costs rules where responsibility for the PIAB assessment not becoming binding on the parties resides with the court and not with the claimant him or herself. Of course, this shield is only available where court approval is actually required under Section 35 of the PIAB Act 2003.

22. As explained below, the applicant in the present case—rather than simply exercise his right to reject the PIAB assessment himself—seeks to bring about a result whereby the assessment is not approved by the court, and he is thereby shielded from the special costs rules.

PROCEDURAL HISTORY

23. The present case arises out of the tragic death of Alison Grimes ("***the deceased***") in a road traffic accident on 17 September 2019. The deceased has been survived by her husband, Richard Grimes ("***the applicant***"), and her two daughters. The younger of the two daughters has not yet reached her age of majority,

i.e. eighteen years of age, and is thus a minor or infant in the eyes of the law ("***the minor daughter***").

24. The applicant is pursuing a fatal injuries claim on his own behalf and on behalf of all of the statutory dependants (as defined for the purposes of the Civil Liability Act 1961). As required under the PIAB Act 2003, the applicant made a claim for an assessment of damages.

25. On 6 January 2022, PIAB issued an assessment in the amount of €303,750 (plus measured fees and expenses). Relevantly, this included a sum for loss of financial dependency and domestic services with a capital value of €260,000. The basis upon which this figure has been calculated is explained in an actuarial report which accompanies the assessment.

26. The capital value of the financial loss suffered by the applicant and the minor daughter, respectively, has been calculated as follows:

The Applicant / Surviving Spouse		
Financial Loss	€106,605	
Services until daughter is 18 years	€49,000	
Services thereafter	€103,800	
Total		€259,405
Minor Daughter		
Financial loss	€19,845	
OVERALL TOTAL		€279,250

27. A discount has then been applied to the overall total to reflect the principles in *Reddy v. Bates* [1983] I.R. 141, [1984] I.L.R.M. 197. The final figure allowed under the PIAB assessment for loss of financial dependency is €260,000.

28. The actuarial report distinguishes between the loss of the deceased's income and the loss of the domestic services which she had provided to her spouse and

daughter. It is the capital value attributed to this head of loss which is disputed by the applicant. As appears from the summary above, a sum of approximately €150,000 has been assessed under this head of loss. This has been calculated on the basis of the domestic services provided by the deceased having a notional value of €200 per week until the daughter reaches the age of eighteen years, and €100 thereafter. The applicant had commissioned an actuarial report which suggests that the appropriate value should be €400 and €250, respectively.

29. The notice to claimant (dated 6 January 2022) under Section 30 of the PIAB Act 2003 (as amended) was received by the applicant's solicitors on 13 January 2022. Section 30(2) allows for a 28 day period from service of the notice within which to accept the assessment made by PIAB. On 8 February 2022, in correspondence to both PIAB and the respondent it was made clear that the applicant was not satisfied with the assessment, but was accepting it for the purpose of seeking the court's directions in circumstances where one of the statutory dependants is a minor.

30. The application pursuant to Section 35 of the PIAB Act 2003 came before the court on 27 June 2022. The matter was adjourned to allow for the filing of written legal submissions. Those submissions were elaborated upon at a short hearing on 19 July 2022.

31. In brief, the applicant invites the court not to approve the PIAB assessment on the grounds that the damages assessed for loss of domestic services are too low. The reason that the applicant has made an application under Section 35 of the PIAB Act 2003, rather than simply reject the assessment himself as is his statutory right, is that he seeks to avoid the special costs rules which would otherwise apply under Section 51A.

DISCUSSION

32. This matter has been brought before the High Court by way of an application for approval pursuant to Section 35 of the PIAB Act 2003. The application is brought by the representative claimant and has been made *ex parte* as prescribed under Order 22, rule 11 of the Rules of the Superior Courts.

33. Counsel has sought to characterise the application as akin to an application for directions. In particular, it is said that notwithstanding that the applicant, *qua* representative claimant, has formally accepted the PIAB assessment, he is nevertheless entitled to make submissions to the effect that the amount assessed is inadequate and that the court should refuse to approve that assessment.

34. With respect, this characterisation does not accurately reflect the nature of the application. It is a condition precedent to an application under the section that the claimant must have *accepted* the PIAB assessment. This reflects the underlying principle of the PIAB Act 2003 that an assessment of damages will only ever become binding where both parties accept the assessment. The Act does not purport to put in place a parallel process of adjudication which restricts the constitutional right to litigate a claim for personal injuries. Either party is entitled to insist on their day in court. It is only where both parties have submitted to jurisdiction under the Act, by accepting the PIAB assessment, that same can become legally binding upon them.

35. A claimant who chooses to make an application for approval thus comes before the court as a person who has agreed to accept, in satisfaction of their claim, the amount of damages as per the PIAB assessment. This is contingent on court approval in certain cases. Crucially, however, in the context of a fatal injuries

claim, court approval is not normally intended to protect the position of the representative claimant. This is because the representative claimant will, almost always, be an adult with full legal capacity. As such, they are entitled to decide for themselves whether they wish to accept those aspects of the PIAB assessment which are referable to the loss resulting to them personally. Court approval will only be required in respect of the PIAB assessment insofar as it affects the interests of statutory dependants other than the representative claimant and those dependants are either dissenting or missing, if adults, or lacking legal capacity.

36. A typical example is where the deceased has been survived by a number of grandchildren, none of whom had been financially dependent on the deceased. In such a scenario, any claim on the part of the grandchildren is confined to a right to be considered for a share of the statutory *solatium* of €35,000. On an application under Section 35 of the PIAB Act 2003, the court will only be concerned with the division of the *solatium* and not with the amounts attributed for loss of financial dependency to adult dependants with full legal capacity. See, for example, *Noonan v. Electricity Supply Board* [2022] IEHC 374.

37. It would not be open to a representative claimant, under the guise of seeking approval for the PIAB assessment insofar as it affects the interests of the minor grandchildren, to invite the court to reject the assessment on the grounds that it does not adequately compensate the loss suffered by the representative claimant personally.

38. In the present case, the aspect of the PIAB assessment which is disputed by the applicant is the amount attributed to the loss of domestic services. The actuarial report prepared on behalf of the applicant characterises the loss of domestic services as a loss suffered by the applicant personally, indicating that the

damages under this head are attributable to him rather than to his daughter. This characterisation reflects the reality that the cost of replacing the domestic services will be borne by the father, notwithstanding that in many instances it will be the daughter who benefits from the services, e.g. child care.

39. More broadly, this reflects the approach taken by the State to the payment of the social protection benefit known as "*child benefit*": this is paid directly to the parents rather than to the intended beneficiaries, i.e. the children. This is because it is assumed, correctly, that the parents will expend the monies received on items for their children.

40. Given that not all aspects of a PIAB assessment will be subject to court approval, it is necessary to consider whether the disputed amount in the present case requires to be approved. An argument can certainly be made to the effect that as the burden of the loss of domestic services falls on the surviving spouse, the decision as to whether to accept a particular amount in respect of this head of loss is one for the surviving spouse alone and does not require court approval.

41. Put otherwise, it is arguable that this head of loss falls to be treated in the same manner as the loss of financial dependency arising from the loss of the deceased's income. On this argument, court approval is not required and a representative claimant who has accepted the PIAB assessment will be bound by same insofar as it relates to loss of domestic services.

42. In order to decide whether court approval is required for this aspect of the PIAB assessment, it is appropriate to consider the matter from first principles. The proper approach to be taken to the assessment of damages in a fatal injuries claim has been summarised as follows in *Cooney v. Health Services Executive* [2021] IEHC 754 (at paragraphs 32 to 34):

> "The Supreme Court has emphasised in *O'Sullivan v. Córas Iompair Éireann* [1978] I.R. 409 (at page 421) that the statutory right of action is given to the dependants as individuals, so that each of them is entitled to be compensated for the loss resulting to him or her personally. Put otherwise, the legislation does not provide for what might be described informally as a "*class action*", whereby a global sum would be awarded to the statutory dependants as a class.
>
> In the event that a claim for a wrongful death comes on for full hearing, the court must assess the individual damages which each of the statutory dependants is to be awarded. The individual damages must be proportionate to the injury resulting to the particular dependant from the deceased's death. The damages are to be based on the reasonable expectation of the pecuniary benefit which would have accrued to the particular dependant but for the wrongful death of the deceased. See *Davoren v. Health Service Executive* [2016] IECA 39 (at paragraphs 28 to 30).
>
> The individual damages payable to any particular dependant will be informed by their connection with the deceased. For example, in the case of a minor child claiming for the wrongful death of a parent, the damages would seek to compensate for the loss of direct financial support provided by the deceased parent, and for the loss of what are quaintly described in the case law as "*domestic services*". The deceased parent might not only have been providing financial support, e.g. paying for accommodation, food, education and other necessities, but may also have been providing care and support. For example, the deceased parent may have been responsible for minding a pre-school child at home. An attempt will have to be made to put a monetary value on the loss of such child minding, e.g. to assess what the cost of employing a professional child minder, to provide a level of care and support equivalent to that previously provided by the deceased parent, might be. See, generally, A. Barr, *Damages in Fatal Injury Actions — Selected Issues* (2011) 16(2) Bar Review 36."

43. The principal purpose of the requirement for court approval in the case of a minor dependant is to protect the interests of the minor. This has been explained as follows in *Wolohan v. McDonnell* [2020] IEHC 149, [2020] 1 I.R. 394, [2020] 2 I.L.R.M. 483 (at paragraph 39):

> "The requirement for court approval is intended to ensure that the interests of the infant are protected. Not only does the infant not have legal capacity to enter into a binding settlement themselves, in some instances there may be the risk of a conflict of interest between the infant and the next friend acting on their behalf. If, for example, the next friend has their own claim for personal injuries arising out of the same incident, and the defendant seeks to settle both claims for an overall sum, the next friend might be tempted to have a greater share of the pot apportioned to their own claim at the expense of the infant's claim."

44. The same principles, with necessary modifications, apply to the approval of a PIAB assessment: see *Noonan v. Electricity Supply Board* [2022] IEHC 574 (at paragraphs 16 to 20).

45. The governing principle to be applied is whether the minor dependant's interests are affected, and this entails a broader analysis than simply ascertaining to whom the damages under a particular head of loss are to be paid. If the amount assessed in respect of the loss of domestic services is intended, for example, to cover the costs incurred by the surviving spouse in securing alternative child care, then court approval might be required. The interests of the minor dependant could be adversely affected were too small an amount to be accepted in satisfaction of this aspect of a fatal injuries claim. The interests of the child might be better served by pursuing the fatal injuries claim by way of legal proceedings, in the expectation that the damages awarded would exceed those assessed by PIAB. Of course, in deciding whether to approve the PIAB assessment, it will be appropriate to have regard to any risk in terms of liability or causation. The notional full value of the claim may have to be discounted to reflect such risk.

46. On the facts of the present case, the interests of the minor daughter are, potentially at least, affected by the level of damages assessed for loss of domestic services. As is apparent from the two competing actuarial reports, the claim for

loss of domestic services is referable, in part, to the replacement cost of child care. In each report, the notional weekly replacement cost is revised downwards once the daughter reaches the age of eighteen years to reflect her lessening need for care and support.

47. The link between the sum ultimately recovered for loss of domestic services by the applicant and the welfare of the minor daughter is apparent. The damages for loss of domestic services will be paid to the applicant, but a significant proportion of that figure is intended for the provision of services to the minor daughter. If the sum awarded is too low, this will have an impact on the services to be provided to the minor daughter and thus will affect her interests. As the minor daughter has an interest in the sum awarded for loss of domestic services, court approval is required for this aspect of the PIAB assessment.

48. This court does not, as yet, have sufficient evidence before it to allow it to make an informed decision on whether or not to approve the PIAB assessment. The discrepancy between the capital value for loss of domestic services assessed by PIAB and that contended for on behalf of the applicant flows from a fundamental difference in approach to the notional weekly replacement cost. The PIAB assessment is predicated on the domestic services having a notional value of €200 per week until the minor daughter reaches the age of eighteen years, and €100 thereafter. Conversely, the actuarial report prepared on behalf of the applicant suggests that these figures should be €400 and €250, respectively. Neither actuarial report provides any explanation as to why these figures have been chosen.

49. Accordingly, the application for approval will be adjourned until 10 October 2022 to allow the applicant to adduce further evidence explaining the basis on

which these figures have been estimated. The court should also be addressed on whether there is any risk on liability or causation.

IS THERE AN ANALOGY WITH CIVIL LIABILITY ACT 1961?

50. Counsel sought to draw an analogy between the type of application which can be made under Section 63 of the Civil Liability Act 1961 and those under Section 35 of the PIAB Act 2003. The former section reads as follows:

> "63.— (1) Where a sum of money has been lodged in court by the defendant in an action for a wrong in which the plaintiff is an infant, an application may be made to the judge by the plaintiff to decide whether that sum of money should be accepted or the action should go to trial and—
>
> (a) if, on any such application, the judge decides that the action should go to trial, and
>
> (b) an amount by way of damages is awarded to the plaintiff which does not exceed the sum so lodged,
>
> then, notwithstanding any rule of court or practice to the contrary, the costs in the action shall be at the discretion of the judge."

51. Counsel drew attention to the judgment of the Supreme Court in *Bourke v. Córas Iompair Éireann* [1967] I.R. 319. There, the Supreme Court emphasised that there is no requirement that an application under Section 63 of the Civil Liability Act 1961 may only be made where the next friend is *recommending* the acceptance of the lodgment. See pages 320/21 of the reported judgment as follows:

> "[…] It has to be borne in mind that the section is enacted in ease, and for the protection of, the interests of an infant plaintiff. Applications under the section are not limited in any way. There is no requirement that the plaintiff's counsel shall approve acceptance of the lodgment, or that the infant plaintiff or next friend shall approve. It may readily be inferred that various situations might arise—counsel approving and the plaintiff disapproving, or the reverse; or

> both together approving or disapproving. One can increase the number of likely situations if one adds the views of the next friend. What emerges is that s. 63 is a kind of pre-trial provision for the assistance of infant plaintiffs. Heretofore an infant plaintiff, who proceeded to trial and failed to recover damages in excess of the lodgment, stood in grave peril of being ordered to pay the costs of the trial. Now the infant plaintiff can have an objective consideration of the position before trial and a decision whether he should accept or go to trial. The section clearly contemplates that the judge's ruling will be binding—whether it requires acceptance or requires that the action should go to trial, as the case may be."

52. Whereas there are some similarities between the two procedures, there are a number of crucial distinctions. First, an application may only be made under Section 35 of the PIAB Act 2003 where the applicant has *accepted* the PIAB assessment. This has, as explained at paragraphs 34 *et seq*. above, certain legal consequences. There may be some aspects of the PIAB assessment which cannot be challenged by the applicant because they are not subject to court approval. Secondly, the applicant, by accepting the PIAB assessment, has forgone their right to litigate: if the court approves the assessment, no legal proceedings may be brought in respect of the claim. Thirdly, the procedure under the Civil Liability Act 1961 would appear, on its face, to be confined to proceedings where a minor is the named plaintiff. It does not seem to apply where, as in a fatal injuries claim, the proceedings have been taken by an adult statutory dependant in a representative capacity.

CONCLUSION AND FORM OF ORDER

53. An application for court approval of a PIAB assessment in the context of a fatal injuries claim may only be brought where the following conditions are met. First, the representative claimant must have accepted the PIAB assessment.

Secondly, there must be some aspect of the PIAB assessment which is subject to court approval. This will occur most often where one of the statutory dependants is a minor. It will also occur where an adult statutory dependant objects to the acceptance of the PIAB assessment or where it has not been possible to notify all of the adult statutory dependants affected.

54. The fact that the representative claimant has accepted the PIAB assessment may have the consequence that he or she is bound by those aspects of same which are referable to the loss resulting to them personally.

55. The representative claimant and his or her counsel are expected to put before the court relevant information to assist it in reaching its decision on whether or not to approve the PIAB assessment. In certain circumstances, this may entail counsel indicating that he or she does not recommend approval. It is, however, a matter for the court alone to decide whether or not to approve the PIAB assessment.

56. The special costs rules under Section 51A of PIAB Act 2003 are only triggered where a claimant has not accepted the PIAB assessment. If, conversely, a claimant *accepts* the assessment, subject to court approval, and the court ultimately determines not to approve the assessment, then any legal proceedings instituted by the claimant thereafter are subject to the normal costs rules. These are to be found, principally, under the Civil Liability and Courts Act 2004; Part 11 of the Legal Services Regulation Act 2015; and the recast Order 99 of the Rules of the Superior Courts.

57. The application for approval pursuant to Section 35 of the PIAB Act 2003 will be adjourned until 10 October 2022 at 11.00 o'clock to allow the applicant to adduce further evidence explaining the basis on which the claim for loss of

domestic services has been estimated. The court should also be addressed on whether there is any risk on liability or causation.

Appearances on ex parte application

Stephen Lanigan O'Keeffe, SC and David Bulbulia for the applicant, instructed by Staines Law