Periodic Payments in Catastrophic Injury Cases – A welcome development for Insurers

Legislation allowing the Irish courts to make Periodic Payment Orders ("PPOs") has been almost eight years in the making. They were first called for in the 2010 Report of the High Court Working Group on Medical Negligence and Periodic Payments. That Report concluded that Lump Sum Payments were “inadequate and inappropriate” and that they tasked the courts with the impossible role of providing “fair and just compensation” where life expectancy is uncertain or disputed. Judicial criticism also followed in the 2015 judgment of Irvine J. in Gill Russell (a minor) v. H.S.E,\(^1\) in which she labelled the practice of lump sum payments a “…fundamentally flawed and unjust system”.

The key provisions

The court may make a PPO to a plaintiff who has suffered a catastrophic injury only. The backbone of the provisions dealing with the functioning of PPOs is set out in s.51I of the 2017 Bill. In summary PPOs can be made to cover a plaintiff’s future medical treatment, future care, provision of assistive technology and future loss of earnings. It is clear from the wording of the 2017 Bill that the making of a PPO will be non-mandatory and therefore the merits of a PPO may have to be debated on a case-by-case basis and will very much depend on the circumstances of the individual plaintiff. Section 51I (2) provides that the court shall have regard to the preferences of not only the plaintiff but also of the defendant, with regard to the implementation or not of the PPO. Insurers may therefore be in a position to make submissions to the court if there are situations where are PPO would be unsuitable.

The 2017 Bill also introduces what is termed a “stepped payment” in s.51I (4). This allows the plaintiff to apply for an adjustment to the PPO for significant life changing events, such as the plaintiff turning 18 and the plaintiff entering

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\(^1\) [2015] IECA 236
third level education. From the insurer’s perspective, this will inevitably lead to a greater administrative burden to ensure that the PPO is adjusted in line with the terms of the PPO.

The 2017 Bill also provides that the PPO will be adjusted in line with the Harmonised Index of Consumer Prices ("HICP") as published by the Central Statistics Office. For insurers it should help negate unrealistically high payments having to be made in the event of drastic economic changes. It also offers insurers the potential to predict possible fluctuations in the PPO based on past and present trends in the HICP, something which is particularly important in light of Brexit and the economic uncertainty it may bring to the Irish insurance market.

Conclusion

Overall the introduction of PPOs should be welcomed as it should give more certainty to plaintiffs, defendants, insurers and the courts alike. It should facilitate realistic payments in line with economic changes, through indexation and “stepped payments”. From insurers’ perspective, there may be a need to implement more sophisticated IT software/systems in order to manage PPOs, increase vigilance and ensure accurate changes in payments are implemented annually. In the short-term this may lead to increased administrative costs for insurers but in the long-term this should be offset by a reduction in overpayments. Our view is that the 2017 Bill is likely to be commenced in its current form and should not see any further significant amendments. As matters stand there has been no indication from the Government as to when the 2017 Bill will be commenced but we will update you once there is any timeframe provided.

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