THE COURT OF APPEAL - UNAPPROVED

Court of Appeal Record Number: 2022/212
Neutral Citation Number [2023] IECA 245

Whelan J.
Haughton J.
Binchy J.

BETWEEN/

TARA WOLFE

APPELLANT/
APPLICANT

- AND –

PERSONAL INJURIES ASSESMENT BOARD

RESPONDENT/
RESPONDENT

-AND-

MATER MISERICORDIAE HOSPITAL

NOTICE PARTY/
NOTICE PARTY

JUDGMENT of Mr. Justice Binchy delivered on the 9th day of October 2023

1. This appeal is brought by the appellant from the judgment of the High Court (O'Regan J.) delivered on 17th June 2022, and the subsequent order of O'Regan J. made on 26th July 2022, whereby the Judge refused the application of the appellant to quash a

decision made by the respondent on 25th June 2021 in respect of the appellant's claim for personal injuries made against the notice party, in connection with injuries allegedly sustained by the appellant in her place of work (being the premises of the notice party) on 26th December 2018.

Background

2. The appellant, who is a catering assistant, claimed that on 26th December 2018 she suffered injuries at work when cleaning a heavy oven which fell on top of her. She claims that she suffered injuries to her left shoulder, lower back and right leg. She consulted a solicitor, who, on 20th February 2020 made an application on her behalf to the respondent for an assessment of damages pursuant to s.11 of the Personal Injuries Assessment Board Act 2003 (the "Act of 2003"). On 25th June 2021, the respondent delivered an assessment of the appellant's claim (the "Assessment"), pursuant to which it assessed general damages in respect of the injuries sustained by the appellant in the sum of €11,000. The Assessment, which is addressed to the solicitors for the appellant, provided, in material part, as follows:

> "The assessment has been made with reference to the Personal Injury Guidelines adopted by the Judicial Council under s.7 of the Judicial Council Act 2019 (" the 2019 Act ") on 6th March 2021.
>
> In making an assessment the assessors considered the dominant/most significant injury sustained and the relevant damages (in the Guidelines) having regard to the medical and other evidence available. The assessors also considered where appropriate the presence or absence of other lesser injuries. The assessors considered the range and severity of other injuries and the additional pain, discomfort and limitations arising from the claimant's lesser injury/injuries. The assessors having regard to the Guidelines have considered an uplift if appropriate.
>
> Having regard to the Guidelines the assessors considered the dominant injury as:

Dominant Injury	Back
Severity category	Minor
Sub-category	Substantial recovery 1-2 years

Assessment Details

General damages (pain and suffering)		€11,000
Dominant injury	€11,000	
Special damages as detailed below (loss and expenses incurred)		€575.00
Total amount of assessment		€11,575
Fees and other expenses necessarily incurred		€537,000
Application Fee	€45.00	
Medical Report Fees	€492.00	
Other Fees and expenses	0	
Overall Total		€12,112

We enclose a formal notice prepared in accordance with s.30(2) of the Personal Injuries Assessment Board Act, 2003. We also attach a copy of the independent medical reports commissioned by the Board in this matter.

As you will see from the notice, Tara Wolfe has 28 days from the date of service of the notice within which to state to the Board in writing whether she accepts the assessment. If Ms. Wolfe does not accept the assessment within 28 days she will be deemed to have rejected the assessment. Twenty one days has been afforded to the respondent to accept or reject the assessment.

If both Ms. Wolfe and the respondent agree to accept the assessment, we will issue an "order to pay". This order to pay has the same status as a court decree.

In the event that Ms. Wolfe and/or the respondent do not accept the assessment, we will issue an "authorisation" which will permit Ms. Wolfe to pursue this case through the court system.

Please confirm in writing within 28 from receipt of this letter whether Tara Wolfe wishes to accept or reject the assessment as set out above."

3. The appellant was informed by her solicitor, Mr. John Rogers, that he had difficulty in advising her whether or not to accept the Assessment owing to the absence of sufficient reasons as to how the sum of €11,000 had been calculated. On 14th July 2021, Mr. Rogers wrote to the respondent, stating, *inter alia*, that "*… the reasons provided in the assessment are entirely inadequate, and are not in accordance with the Guidelines and the principles governing an award of damages at law. The assessment is, accordingly, in breach of section 20 of the 2003 Act, as well as being in breach of the constitutional principles of fair procedures and natural justice*." The letter went on to say that the failure to give reasons causes the appellant prejudice in circumstances where she is obliged under the 2003 Act to accept or reject the assessment within 28 days, failing which she would have to issue proceedings to recover compensation for her injuries, which proceedings would expose the appellant to the risk of an adverse costs order. Mr. Rogers further stated that he was unable to advise the appellant as to the adequacy of the assessment on account of the absence of proper reasons. The letter invited the respondent to withdraw the Assessment within 7 days, and to issue a "proper" assessment in accordance with the Guidelines and the Act of 2003 within a further period of 28 days.

4. While the respondent replied to the solicitors for the appellant by letter dated 27th July, 2021, by that that time the appellant and her solicitors had, on 22nd July 2021, already

sworn affidavits grounding an application for judicial review. In any case, the respondent did not accede to the appellant's demands, and in reply to Mr. Rogers' letter asserted that the Assessment was in compliance with the Guidelines and the Act of 2003.

The Proceedings

5. By notice of motion dated 29th July 2021, the appellant sought the following orders:

1) "*An order of certiorari quashing the assessment of the respondent dated 25th June 2021 in respect of the applicant's claim for personal injuries under claim number EL0220202040252 (being an assessment in writing purportedly made pursuant to ss. 20 and 30(1) of the Personal Injuries Assessment Board Act 2003, ("the 2003 Act");*

2) *An order remitting the assessment back to the respondent, for an assessment to be provided that is having all necessary details;*

3) *A declaration that in making an assessment pursuant to ss. 20(4) and (5) of the 2003 Act, and in fulfilment of the respondent's obligation to have regard to the personal injuries guidelines ("the Guidelines") as adopted by the judicial council under s.7 of the Judicial Council Act 2019 ("the 2019 Act") in s.20(5)(a) of the 2003 Act, the respondent must:*

(a) provide reasons in writing based on its use and application of the guidelines, in accordance with the express terms of the Guidelines themselves; and/or

(b) provide an assessment which records in writing how the specific headline principles of the Guidelines (such as "dominant injury", "multiple injuries" and "pre-existing condition") were applied, by reference to the medical evidence available and otherwise, in accordance with the express terms of the Guidelines themselves.

4) Costs."

6. The notice of motion was grounded upon the statement of grounds required to ground an application for judicial review, the affidavit of the appellant, by which the appellant verified the statement of grounds, and the affidavit of the appellant's solicitor, Mr. John Rogers, sworn on 22nd July 2021.

7. In his affidavit, Mr. Rogers avers, at para. 7 thereof that:

"The reasons provided in the assessment are entirely inadequate. I am, frankly, not in a position to advise the applicant how the figure of €11,000 has been arrived at, by reference to the medical, and other evidence available and the specific matters expressly set out in the Guidelines."

8. At para. 8 of his affidavit, Mr. Rogers sets out at sub paras (a) – (i) matters which he avers are not addressed in the Assessment. Before setting these out, it should be noted that Mr. Rogers erroneously refers in this affidavit to the appellant's dominant injury as being an injury to her neck, rather than her back. Mr. Rogers corrects this in a later affidavit. That caveat noted, paras 8 (a) –(i) of Mr. Rogers' affidavit read as follows:

"*(a) How the finding of fact that the back injury was the dominant injury was arrived at (by reference to the medical evidence or otherwise). This is surprising, as there were multiple injuries in this case, and the applicant is of the view that her neck is the dominant injury;*

(b) How the finding of fact that the severity category of that injury was "minor" was arrived at by reference to the specific provisions of the Guidelines in that regard and the matters to be taken into account for a categorisation as "minor" or "moderate" (see for example p.31 in respect of back injuries and p.29 in respect of neck injuries);

(c) How the presence of other injuries (lesser or otherwise) or any other relevant considerations were taken into account. Again, this is surprising, as there were multiple injuries in this case;

(d) How it was determined that the sub-category of injury was "substantial recovery 1-2 years". Again, this is very surprising, as there was specific medical evidence that in fact the recovery was at least three years post-accident;

(e) How the Guidelines generally impacted the level of general damages assessed;

(f) What, if any, "uplift" was given in circumstances where the claimant suffered multiple injuries, and how those multiple injuries were taken into account (if at all).

(g) How any regard was had to the fact that the Claimant had a pre-existing condition (she had prior low back pain).

(h) Considerations affecting the level of the award including: (i) age; (ii) nature, severity and duration of injury and consequential symptoms such as pain; (iii) extent of required medical intervention and/or treatment; (iv) presence or risk of degenerative changes; (v) impact upon work; (vi) interference with quality of life and leisure activities; (vii) effect on personal relationships; (viii) psychological sequelae including depression; (ix) prognosis.

(i) How reference was made to the specific provisions of the Guidelines which deal with back and neck injuries on pages 28-32 thereof, or how those provisions were applied."

9. At para. 9, Mr. Rogers says there were no reasons at all given in the Assessment, other than a mere assertion that the Assessment was made with reference to the Guidelines, followed by a statement that five different sets of considerations were considered, but those

considerations are not available or apparent. Mr. Rogers says that it is almost impossible to advise the appellant whether or not she should accept the Assessment without proper reasons being provided. In particular, he avers that it is extremely difficult to advise the appellant if she might receive a better result in court, and accordingly the appellant cannot make an informed decision as to whether or not to accept or reject the Assessment by reference to the Guidelines. This places the appellant at risk of an adverse costs order, in the event that she should reject the Assessment and thereafter receive a lesser award from a court.

10. The same matters are relied upon by the appellant in the statement of grounds. It is also claimed in the statement of grounds that the Guidelines mandate a much more sophisticated and detailed level of analysis than that set forth in the Assessment, as well as the provision of detailed reasons. Reliance is placed in particular upon pp. 5 and 6 and onwards of the Guidelines, wherein, *inter alia*, reference is made to s.99 of the 2019 Act which amends s.22 of the Civil Liability and Courts Act 2004 so as to require a court in assessing damages in personal injuries actions to have regard to the Guidelines, and where departing from the Guidelines, to state the reasons for doing so. While these provisions are directed at a court in its assessment of damages, it is claimed that the respondent is subject to the same obligations. The following extract from the Guidelines is quoted and relied upon by the appellant in the statement of grounds:

> *"**General principles***
>
> *To the forefront to the mind of every trial judge when making an award of general damages should be the principles which underlie the Court's jurisdiction. Those principles require awards of damages to be fair and reasonable to both claimant and defendant. Awards must be proportionate to the injuries sustained and must also be proportionate when viewed in the context of awards of damages commonly made in*

cases involving injuries of a greater or lesser magnitude (per Denham J. in M.N. v. S.M. [2005] IESC 17 and Clarke C.J. in Morrissey v. HSE [2020] IESC 6). Important in this regard is the fact that in these Guidelines the most devastating and catastrophic of injuries will attract an award of general damages of in or about €550,000.

Use of Guidelines

At the conclusion of every case the trial judge should ask each party to identify, by reference to the dominant injury sustained, the relevant damages bracket in the Guidelines which most closely matches that supported by the evidence. Brief submissions should also be made as to where, within the relevant bracket of damages, the claimant's injuries should be located in terms of severity i.e. top, middle or bottom, having regard to the evidence, the presence or absence of other lesser injuries and all relevant considerations. Having considered the evidence in a careful and sensitive manner the trial judge should reach his or her findings of fact concerning the claimant's injury and should then proceed to consider how, in light of those findings and the submissions made, the Guidelines should impact on the Court's award. The obligation on the part of the trial judge to have regard to the Guidelines is mandatory as is his or her obligation, should he or she consider that the justice of the case warrants an award above the level of damages proposed for that or a similar injury in the Guidelines, to state his or her reasons for so departing.

Multiple injuries

The assessment of general damages in cases involving multiple injuries gives rise to special difficulty given that in these Guidelines each injury is valued separately. The principal difficulty stems from the fact that there will usually be a temporal overlap in the injuries sustained such that if each injury was to be valued separately the

claimant would be overcompensated to the point that the award would be unjust to the defendant and disproportionate when compared with other awards commonly made for other greater or lesser injuries. Each injury will, of course, cause additional pain and suffering which must be reflected in the award, but the question is how to ensure that the award will be just in light of the overlap of the injuries. In a case of multiple injuries, the appropriate approach for the trial judge is, where possible, to identify the injury and the bracket of damages within the Guidelines that best resembles the most significant of the claimant's injuries. The trial judge should then value that injury and thereafter uplift the value to ensure that the claimant is fairly and justly compensated for all of the additional pain, discomfort and limitations arising from their lesser injury/injuries. It is of the utmost importance that the overall award of damages made in a case involving multiple injuries should be proportionate and just when considered in light of the severity of other injuries which attract an equivalent award under the Guidelines.

Pre-existing condition

If a claimant has a pre-existing condition that is aggravated by an injury for which the court is assessing compensation, it should have regard only to the extent to which the condition had been made worse and the duration of any increased symptomology."

11. It is claimed that the Guidelines provide for a detailed analysis by reference to medical and other evidence available and the provision of detailed reasons for any award, but the respondent failed to conduct any such analysis and provide detailed reasons in the case of the appellant.

12. The statement of grounds then proceeds to refer to the same matters referred to and relied upon by Mr. Rogers in his affidavit as set out at para. 8 above, and refers also to the

same prejudice allegedly suffered by the appellant as a consequence of the alleged failure of the respondent to provide sufficiently detailed reasons for the Assessment.

13. Thereafter, the application proceeded on notice to the respondent, and the respondents delivered a statement of opposition on 9th December 2021. The respondent also delivered three affidavits in support of its statement of opposition.

Statement of opposition

14. In its statement of opposition, the respondent denies that there are any inadequacies in the reasons for the Assessment or in the information which it communicated to the appellant in connection with the Assessment or in the manner in which her claim was assessed, or in the basis for the figures assessed.

15. The respondent denies that it failed to set out the considerations to which the assessors had regard in arriving at the Assessment, and it is further denied that no detail or reasons were provided as to how those considerations were applied by reference to the Guidelines.

16. It is further denied that no reasons or information were provided as to how and why the assessors considered the dominant injury to be the appellant's back and why such injury was categorised as minor. The respondent denies that no detail or reasons were provided as to how the considerations to which the assessors had regard were applied by reference to the medical and other evidence available and/or the Guidelines.

17. The respondent denies that the Guidelines mandate the provision of detailed reasons in respect of the assessment of claims by the respondent, and/or that the assessors did not assess the claim of the appellant in accordance with their obligations. It is also denied that the Assessment is not in accordance with the Guidelines.

18. The respondent pleads that it is a stranger to the allegations made that the appellant's solicitors are unable to advise the appellant as to whether or not the Assessment has been

properly and fairly arrived at or is adequate. Similarly, the respondent pleads that it is a stranger to the allegation that the solicitors for the appellant are unable to advise other claimants as to whether assessments of the respondent were properly and fairly arrived at, or are adequate. The respondent further pleads that if it is the case that the solicitors for the appellant are unable to advise the appellant as aforesaid, that this is not the result of any inadequacy in the Assessment, or the reasons provided therefor.

19. Insofar as the appellant has pleaded that the alleged inadequacy of reasons or explanation for the Assessment hampers her ability to make an informed decision as to whether or not to accept the Assessment, thereby exposing her to an increased risk of an adverse costs order in the event that she should issue proceedings against the notice party, it is pleaded that these allegations are premature and provide no basis for any of the reliefs sought. Furthermore, it is denied that any such costs order would be the result of the alleged or any acts or omissions on the part of the respondent.

Affidavits sworn on behalf of the respondent

20. The respondent initially delivered three affidavits in reply to the affidavits of the appellant and Mr. Rogers. Two of these affidavits were sworn by the assessors responsible for the Assessment, namely Ms. Suzanne Hill and Mr. Nick Morgan. Unsurprisingly, these affidavits are substantially the same in content. The deponents describe the general procedure for the carrying out of assessments and then proceed to address the Assessment specifically.

21. Each of Ms. Hill and Mr. Morgan explain that claims are all assessed by a committee of at least two statutory assessors. Where two assessors form different opinions in a given case, there is a procedure to refer the assessment to a third assessor. In her affidavit, Ms. Hill explains how claims involving more than one injury are addressed. At para. 11 of her affidavit she avers, *inter alia*,:

"If there is more than one injury, the claim can be assessed by reference to a dominant injury, if the opinion is formed that the injuries flow from each other, such as a soft tissue injury to the cervical spine that causes neck pain and referred pain to the shoulder. The dominant injury in that case would be the injury to the neck, and the fact that there was a lesser injury to the shoulder would be taken into account when locating the claim in terms of severity – at the top, middle or bottom of the appropriate bracket. A claim can also be assessed as a dominant injury where the secondary injury while unrelated to the dominant injury, is a very minor injury. In either of these cases, the dominant injury is agreed on and the appropriate bracket within the Guidelines is located. Many of the brackets have subcategories based on the period to "substantial recovery". Once the appropriate bracket is agreed, it is then determined where within the bracket the injury should be placed having regard to the presence or absence of other lesser injuries, and all relevant considerations."

22. At para. 12 of her affidavit, Ms. Hill explains an alternative basis for assessment cases involving more than one injury:

"12. The assessors can also assess a claim by reference to multiple injuries, as defined in the Guidelines. In that case, the assessors will agree on what is the "most significant" of the claimant's injuries by reference to the medical evidence. Once the most significant injury has been selected, the assessors then identify the bracket of damages that best resembles the most significant of the claimant's injuries and value that injury. Once that is done, the other injuries are considered and an uplift is applied based on the severity of those other injuries and the additional pain, discomfort and limitations arising from the lesser injuries."

23. Both Ms. Hill and Mr. Morgan depose as to a meeting they had (remotely) to discuss the claim of the appellant. Each of them describes in their respective affidavits the documentation that they had reviewed in advance of this meeting. This comprised:

> *"(1) The claim form – Form A;(2) A medical report from Dr. Cian McDermott of 17th December 2019 (Consultant in Emergency medicine with the Notice Party, whom the appellant attended);*
>
> *(3) An independent medical report procured by the respondent from Dr. James Lee dated 5th November 2020;*
>
> *(4) An independent medical report from a Consultant Orthopaedic Surgeon, a Mr. Mark Quinn, dated 27th April 2021*(also procured by the respondent);
>
> *(5) Particulars of special damages;*
>
> *(6) The Guidelines."*

24. Both Ms. Hill and Mr. Morgan were of the opinion that the appellant was suffering from a back injury that fell into the category described as "minor back injuries" in the Guidelines. This view was formed because the appellant had been diagnosed with a soft tissue injury to her back from which, according to the report of Mr. Quinn, she had made a substantial recovery within two years. Mr. Morgan in his affidavit refers to an additional statement by Mr. Quinn that the appellant's prognosis is very good and he expected her to make a full recovery by three years (post-accident).

25. While the appellant had suffered lesser injuries to her shoulder and thigh, both Ms. Hill and Mr. Morgan aver that they were of the opinion that, for the purposes of the Guidelines, her back injury was her "dominant injury". Ms. Hill and Mr. Morgan were agreed that since the thigh injury was a secondary separate injury of a very minor nature, and the shoulder injury flowed from the back injury, it was appropriate to treat the back injury as a "dominant injury" and to take the other injuries into account when placing the

injury within its appropriate bracket as provided for by the Guidelines. Ms. Hill quotes from what she considers to be the relevant bracket of the Guidelines, being the bracket entitled "*Minor Back Injuries*" as follows:

> *"Where a substantial recovery or a recovery to nuisance level takes place without surgery within one to two years. This bracket will also apply to short term acceleration and/or exacerbation injuries lasting between one and two years. €6,000 - €12,000."*

26. Ms. Hill explains the approach thus taken to the claim of the appellant at para. 20 as follows:

> *"This is in line with the approach of the Board to the assessment of such injuries having regard to the Guidelines. If it was felt that injuries were very separate and distinct in their own right, then the approach would be as set out in the Guidelines – to place the most significant injury in its appropriate bracket without considering the other injury/injuries and then apply a modest uplift for the secondary injury/injuries."*

27. In his affidavit, Mr. Morgan describes the approach taken to the assessment in broadly similar terms. However, he also states that regard was had to the fact that the appellant had a number of other medical complaints referred to in the medical reports including a pre-existing back injury. In addition, Mr. Morgan expressly states that since the claim was assessed by reference to a dominant injury, the lesser injuries were taken into account "and uplift did not apply". Both Ms. Hill and Mr. Morgan state that they considered whether or not the depart from the Guidelines, and determined that it was not necessary to do so. They formed the view that the appropriate level of damages was €11,000 being a sum that was fair, reasonable and proportionate to the injuries sustained.

28. The third affidavit sworn on behalf of the respondent was sworn by Mr. Maurice Priestley, Director of Operations of the respondent. In a lengthy affidavit, Mr. Priestley

provides, firstly, an overview of the process following the making of an application to the respondent. He addresses the publication and adoption of the Guidelines in March 2021, and then proceeds to compare the Guidelines with its precursor, the Book of Quantum, observing that the latter did not provide the same granular detail as is now provided for in the Guidelines for the purpose of assessing claims. He avers that an assessment conducted by reference to the Book of Quantum resulted in a simple statement of the amount awarded in respect of general and special damages. He gives examples of assessments made under the previous regime.

29. Mr. Priestley then proceeds to consider in some detail the application made by the appellant, and continues with a detailed analysis of the letter of 25th June 2021 from the respondent to the appellant. Thereafter, he addresses the allegations that the respondent provided no or inadequate reasons for the Assessment. He claims that the reasons are apparent from the letter from the respondent to the appellant of 25th June 2021, the notice of assessment attached thereto, the Guidelines, the medical reports, and all other documentation available to the respondent when assessing the claim of the appellant which comprised documents and correspondence furnished to the respondent by or on behalf of the appellant herself in connection with her application. Mr. Priestley avers that the manner in which the sum of €11,000 was arrived at in respect of general damages is apparent from all of the aforementioned documentation.

30. Mr. Priestley addresses the claim made by Mr. Rogers that it is impossible to advise the appellant, on the basis of the reasons given, whether she should accept or reject the Assessment. Mr. Priestley avers that it is unclear why Mr. Rogers claims this to be so. In short, the position taken by Mr. Priestley in response to the complaints of Mr. Rogers is that the Assessment itself, taken in combination with the other documentation referred to

above provided more than sufficient information to the appellant and her solicitors in order for them to understand the basis of the calculation of the award.

31. In response to the averment of Mr. Rogers that it is unclear what, if any, uplift was given in respect of the lesser injuries, Mr. Priestley avers that:

> *"As appears from the letter dated 25th June 2021 from the Board, the assessors identified the applicant's back injury as the "dominant injury". It follows therefore that no question of any uplift arose and, instead, the assessors had regard to lesser injuries in determining the appropriate assessment."*

32. Mr Priestley exhibits to his affidavit the entire file of the appellant. Included amongst the documents exhibited is a document entitled: "Agreed Digital Submission Form". This document appears to be an internal document. It comprises a single page and it identifies the claimant and the notice party and provides a breakdown of the Assessment. In this breakdown is stated that the "dominant/most significant injury" is assessed at €11,000, and uplift is assessed at €0.00.

33. Mr. Rogers replied to the affidavit of Mr. Priestley, by way of a further affidavit sworn on 12th January 2022. This gave rise to a further affidavit from Mr. Priestley in reply, sworn on 17th February 2022, and Mr. Rogers swore a further affidavit in reply on 3rd March 2022. Nothing very much turns on these affidavits. The central point made by Mr. Rogers is that the Guidelines have "ushered in" an entirely new regime which, by comparison with the old Book of Quantum, is very detailed and specific. Indeed, this appears to be common ground. As a result, Mr. Rogers asserts that it is insufficient for the respondent to say in an assessment that the assessors simply "considered" certain issues without detailing their considerations and how they arrived at conclusions, and without setting out reasons for the award by reference to the matters specifically referred to in the Guidelines. Mr. Rogers avers that there are no reasons at all given in the Assessment other

than a mere assertion that it was made with reference to the Guidelines, followed by a statement that five different sets of considerations were considered, but none of those "considerations" are available – it is simply stated that there have been "considerations".

34. In response to this, Mr. Priestley agrees that the Guidelines are very detailed and specific, and he argues that for this very reason, an assessment made pursuant to the Guidelines is necessarily more informative than assessments made under the Book of Quantum. Mr. Priestley places great emphasis on Mr. Rogers' experience in representing many clients over the years whose claims were assessed by reference to the Book of Quantum, and avers that Mr. Rogers did not appear to have any difficulty in advising those clients whether or not to accept assessments made under that regime. Mr. Priestley goes into a surprising amount of detail regarding cases handled by Mr. Rogers' firm in order to demonstrate this point. Mr. Priestley repeats the argument made in his previous affidavit that the reasons for the Assessment can be ascertained from the letter of the respondent of 25th June 2021 to the appellant (i.e. the Assessment itself), the Guidelines and the other documentation available to both Mr. Rogers and the appellant, and that insofar as Mr. Rogers or the appellant wished to ascertain the reasons for the Assessment, they were in a position to do so.

35. Mr. Priestley also expresses a concern that the implications of a requirement to provide more detailed or elaborate reasons in respect of the Assessment, and the assessment of claims generally would be serious. He expresses the opinion that it would not be possible for assessors to complete as many assessments as they currently do within the applicable legislative timeframes on the basis of existing resources. He avers that a requirement to provide more detailed or elaborate reasons may have the consequence that the Board would be unable to fulfil its duty to assess claims within the prescribed nine-month period, and that ultimately more claims would be released into the court system.

36. In reply to this last averment, Mr. Rogers avers that in his opinion, if more detailed reasons were provided, it would result in fewer rejections of assessments and less claims being released into the courts.

Issues paper

37. Pursuant to an order of the High Court (Meenan J.) of 8th December 2021, the parties agreed upon an issues paper which identified the following matters to be determined by the High Court in these proceedings:

"*(1) Whether the terms of the Personal Injuries Guidelines adopted by the Judicial Council under s.7 of the Judicial Council Act 2019 (the "Guidelines") required the Personal Injuries Assessment Board (the "Board") to provide reasons in writing based on its use and application of the Guidelines in assessing the claim of the applicant pursuant to the Personal Injuries Assessment Board Act, 2003 (the "2003 Act") and, if so, whether adequate reasons were provided in accordance with law.*

(2) Whether on the basis of the answers to the issues set out above:

(a) The assessment of the Board in respect of the claim of the applicant should be quashed; and

(b) The claim of the applicant should be remitted to the Board for the making of a determination in accordance with law."

Judgment of the High Court

38. Having summarised the issues at the outset of her judgment, the trial judge noted that following upon argument as to the necessity to cross examine the applicant and her solicitor in relation to the assertions made by them as to the inadequacy of reasons provided (for the Assessment), in circumstances where there is affidavit evidence on behalf of the

respondent to the effect that the reasons provided by the respondent were adequate, the parties had agreed the following:

> *"....that it is an objective question of law as to whether adequate reasons were provided in respect of the assessment made by the Board on 24th June 2021 and that the assertions/views referred to in the passages in the affidavits on both sides on the issue as to whether adequate reasons were provided in respect of the assessment made by the Board on 24th June 2021 are not relevant to the determination of this issue in the case."*

39. The trial judge noted that the appellant accepted that there is nothing in the Guidelines that mandates the provision of reasons in relation to the application of the Guidelines by the respondent, and that there is no statutory provision by which reasons are mandated. Therefore, the trial judge observed, the application falls to be assessed in accordance with the general constitutional principles of fair procedures and the provision of reasons, in accordance with established jurisprudence.

40. The trial judge next proceeded to analyse the relevant legislative provisions. She noted that s.20(5)(b) of the Act of 2003 requires the respondent to have regard to the Guidelines, and when departing from the Guidelines in making an assessment, to state the reasons for doing so. The trial judge noted that in this case it is agreed that no reason for departing from the Guidelines was set out either in the Assessment or in the accompanying letter of 25th June 2021.

41. At para. 19, the trial judge referred to the section of the Guidelines headed "Use of Guidelines" which she observed clearly applies to the courts as opposed to the respondent, referring as it does to obligations of the trial judge at the conclusion of every case, and the application of the Guidelines in light of the findings of fact as found by the trial judge.

42. At para. 20, the trial judge discusses the content of the Guidelines under the heading of "Multiple Injuries", noting that the Guidelines state that the appropriate approach for the trial judge is, where possible, to identify the injury and bracket of damages within the Guidelines that best resembles the most significant of the claimant's injuries, and the trial judge should then value that injury and thereafter uplift the value to ensure that the claimant is fairly and justly compensated.

43. The trial judge then reviewed the documents accompanying the Assessment. She agreed with the submission of the appellant that some of the text in the letter of 25th June 2021 is generic. She referred to the medical reports available to the respondent in carrying out the Assessment. She noted that in his report of 17th December 2019, Dr. McDermott had opined that there was no aggravation of an existing condition, that the appellant's back was normal but symptoms were ongoing, and an MRI was taken of her back to investigate ongoing pain. She noted that by reason of the ongoing symptomology, the respondent commissioned a report from Dr. Lee who recorded the appellant's [initial] complaints as being soft tissue injuries to the lower back, left shoulder and right thigh. The injury to the right thigh had resolved within two weeks, but the appellant was still complaining of lower back pain and her shoulder was still occasionally painful. Dr. Lee recommended a specialist orthopaedic opinion be obtained because of the continuing lower back pain.

44. The trial judge then referred to the report provided by Mr. Quinn, Consultant Orthopaedic Surgeon at the request of the respondent. Mr. Quinn noted that the appellant had ongoing pain and stiffness in her lower back and mild discomfort when lying on her left shoulder. Mr. Quinn expressed the opinion that the appellant had made a substantial recovery by two years post injury, and he expected her to make a full recovery within three years. The trial judge noted that Mr. Quinn identified the injuries in order of dominance and severity, with the appellant's lower back soft tissue injury classified as moderate, and

her left shoulder soft tissue injury classified as mild. The trial judge also noted that Mr. Quinn had identified a pre-existing lower back injury which was asymptomatic at the date of the accident.

45. The trial judge then went on the consider the jurisprudence relevant to the need to give reasons for administrative decisions. She noted that the parties did not differ substantially on the relevant jurisprudence. The trial judge referred to the decision of Kelly J. (as he then was) in the High Court in *Deerland Construction v. Aquaculture Licences Appeals Board* [2008] IEHC 289. In that case, Kelly J. had referred, with approval, to the case of *South Buckinghamshire District Council v. Porter (No.2)* [2004] 1 WLR 1953 wherein it was stated:

> *"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision…"*

46. The trial judge noted that, in *Deerland*, Kelly J. reaffirmed his own decision in *Mulholland v. An Bord Pleanála* [2006] IEHC 310 [2006] ILRM 287 in which he stated that the reasons given for an administrative decision should be sufficient to:

> (1) Give the necessary information to the applicant to consider whether there is a reasonable chance of success in an appeal or a judicial review application;
>
> (2) arm the applicant for the hearing; and,
>
> (3) know if the decision maker has directed his mind adequately to the issues.

47. The trial judge then proceeded to consider several other judgments in which the requirement for administrative bodies to give reasons has fallen for consideration,

including, the judgment of the High Court (Ryan J.) in *Plewa and Giniewicz v. Personal Injuries Assessment Board* [2010] IEHC 516, the judgment of the High Court (Charleton J.) in *E.M.I. Records (Ireland) Ltd v Data Protection Commissioner* [2012] IEHC 264, the judgment of Clarke C.J. in *Connelly v. An Bord Pleanála* [2018] IESC 31 and the judgment of MacMenamin J. (in the Supreme Court) in *Náisiúnta Leictreach Contraitheoir Eireann (NECI) v. The Labour Court, Minister for Business, Enterprise and Innovation, Ireland and the Attorney General* [2021] IESC 36, [2021] 2 ILRM. The trial judge concluded her analysis of the jurisprudence with the following passage from the judgment of MacMenamin J. in *NECI*, in which, she observed, he summarised the principles applicable to the duty to give reasons:

> *"The questions applicable in this case, are, therefore;*
>
> *(a) Could the parties know, in general terms, why the recommendation was made?*
>
> *(b) Did the parties have enough information to consider whether they could, or should, seek to avail of judicial review?*
>
> *(c) Were the reasons provided in the recommendation and report such as to allow a court hearing the decision to actually engage properly in such an appeal, or judicial review?*
>
> *(d) Could other persons or bodies concerned, or potentially affected by the matters in issue, know the reasons why the Labour Court reached its conclusions on the contents of a projected SEO, bearing in mind that it would foreseeably have the force of law, and be applicable across the electrical contracting sector?*"

48. The trial judge also considered the decision of the Supreme Court in *O'Brien v Personal Injuries Assessment Board* [2008] IESC 71. It will be recalled that that case was not of course concerned with the adequacy of reasons for an administrative decision, but rather with the entitlement of a person advancing a claim for damages for personal injuries

through the respondent to engage legal representation in connection with that application. The trial judge noted that in her judgment, Macken J. found that the nature of the scheme administered by the respondent was sufficiently similar to court proceedings to justify legal representation, and that the outcome for claimants is one of considerable significance.

49. At this juncture it may be helpful to observe that, at the hearing of this appeal, the parties were not critical of the trial judge's analysis of the relevant jurisprudence. As will become apparent, the appellant's criticism of the trial judge centres around her application of the relevant principles to be found in the authorities referred to above, and in particular in her conclusion that the reasons provided by the respondent for the Assessment were adequate.

50. Having referred to the relevant authorities, the trial judge then summarised the submissions of the parties. In broad terms, the appellant contended that the reasons provided for the Assessment were inadequate and insufficient to enable the appellant to know whether or not she should appeal or pursue judicial review. It was submitted that, while the appellant was not seeking a discursive text on the relevant reasons, nonetheless the Assessment did not accord with the kind of comprehensive analysis which it was submitted are required by the Guidelines. In particular, it was submitted that there are no reasons in the Assessment to indicate on what basis the dominant injury was identified, why it was classified as minor, and the existence, if any, of an uplift in respect of minor injuries. It was submitted that it was unclear if the minor injuries sustained by the appellant were taken into account at all, or whether or not the pre-existing injury was considered.

51. The respondent submitted that the reasons given for the Assessment were adequate, that there was sufficient information provided to enable the appellant to accept or reject the Assessment, and that the appellant was provided with all relevant documents which, taken together, would enable the appellant to know in general terms the basis of the Assessment.

52. In her conclusion, the trial judge noted that the application for *certiorari* was grounded upon the *"non-statutory requirement to give reasons, the nature of the process as a whole, and the information available to the applicant and the extent of the reasons actually furnished."* At para. 49, the trial judge held:

> *"An objective observer, having all necessary details (aside from the general generic statements made in the letter of 25 June 2021), would be informed that:*
>
> *(i) The dominant injury was the back injury;*
>
> *(ii) Because reference was made to dominant injury that there was more than one injury;*
>
> *(iii) That the category of injury was determined as minor; and*
>
> *(iv) The sub-category was substantial recovery one to two years."*
>
> *By reason of these details an objective observer would then be able to review the relevant page of the Guidelines which would contain the further details identified by the respondent as being relevant in the instant matter."*

53. The trial judge concluded that having regard to all of the information provided to the appellant, and the nature of the process – which involved only a single issue i.e. the assessment of damages, and the fact that the decision of the respondent is not binding and that there is no *statutory* obligation to state reasons, an objective observer would be aware in general terms of the reasons for the Assessment. The trial judge rejected an argument advanced on behalf of the appellant that more detailed reasons were required having regard to s. 51A of the Act of 2003, which, subject to certain conditions, provides that where a claimant has rejected an assessment, but it has been accepted by the respondent to the application, and a Court subsequently awards the claimant less than the amount assessed by the respondent, then the Court may in its discretion order the claimant to pay all or a portion of the costs incurred by the defendant in the proceedings. The trial judge considered

the effect of this provision to be no different from either a *Calderbank* type of letter or a lodgement made in satisfaction of a claim. Accordingly, the trial judge refused the reliefs sought.

Notice of Appeal and submissions of the appellant

54. The appellant advances two grounds of appeal, although the first ground of appeal is broken down into numerous component parts. By the first ground of appeal, the appellant maintains that the trial judge erred in holding that the Assessment contained adequate reasons based upon the jurisprudence on the obligations to give reasons for an administrative decision. That is stated by way of a general opening paragraph, which then proceeds to state that the appellant relies on *"the following matters"* in particular. In the detailed particulars that follow it is pleaded that the trial judge made an error of law in failing to address at all the *ex post facto* reasoning provided by the respondent in its replying affidavits. By these particulars, the appellant pleads that the trial judge made an error of law in failing to address in her judgment the fact that the respondent explained for the first time in its replying affidavits that it deploys two distinct methods for assessing claims involving multiple injuries. The first of these is described as the *"dominant injury"* approach, being the one deployed by the respondent in these proceedings. It is claimed it is apparent from the affidavits sworn on behalf of the respondent that this methodology is used when the respondent identifies a dominant injury with other injuries that "flow from" the dominant injury or that are otherwise very minor. Using this methodology, the respondent will identify, by reference to the Guidelines, the appropriate bracket within which the dominant injury falls, and will take into account the other lesser injuries in concluding which is the most appropriate bracket for the dominant injury.

55. In the second approach, which the appellant describes as the *"significant injury"* approach, the respondent identifies the *"most significant injury"* sustained by a claimant.

The value of that injury is then assessed by reference to the appropriate bracket in the Guidelines, and, having done that, a separate uplift is provided for the other injuries sustained.

56. In her Notice of Appeal, the appellant pleads that this distinction between *"dominant injury"* and *"most significant injury"* as two alternative bases for assessment of damages is not provided for in the Guidelines. It is pleaded that it was only in the replying affidavits delivered in these proceedings that the respondent made it clear that no separate uplift was given for the appellant's injuries to her shoulder and thigh. Furthermore, it is not explained how, in assessing the claim on a *"dominant injury"* basis, the assessors *"took into account"* the appellant's injuries to her shoulder and thigh.

57. The appellant pleads that the trial judge failed to take any of the foregoing matters into account in her judgment and erred in failing to do so.

58. The above constitutes the first ground of appeal. The second ground of appeal is that the trial judge erred in holding that there was no difference between the potential prejudice to the appellant in not having adequate reasons for the Assessment (where a rejection of the Assessment exposes the appellant to an adverse costs order pursuant to s.51A of the Act of 2003 if she fails to secure a greater award in court proceedings) and the potential prejudice to a litigant to whom a *"without prejudice as to costs"* offer is made, or in whose case a lodgement is made. In the latter case, litigation is already in being, whereas in the case of the appellant (and all other persons advancing claims to the respondent under the Act of 2003) the entire purpose of the mandatory statutory procedure is to avoid litigation, with all attendant costs risks.

Respondent's Notice and Submissions

59. In its respondent's Notice, the respondent pleads, firstly, that the *"matters"* relied upon by the appellant in the first ground of her Notice of Appeal do not properly arise in

this appeal or in the proceedings. The respondent pleads that the matters that are particularised in the appellant's first ground of appeal all relate to a new argument that the respondent's approach to assessment of damages in cases of multiple injuries is based upon a mistaken interpretation of the Guidelines, specifically that in cases of multiple injuries the respondent may assess damages on the basis of either one of two methodologies, i.e. on the basis of a *"dominant"* injury, while *"taking into account"* lesser injuries, or alternatively on the basis of the "*most significant injury*", with an uplift being applied for lesser injuries. The respondent submits that this argument was advanced, for the first time, by the appellant in reply to the respondent in the High Court and that it is not pleaded by the appellant in her statement of grounds. Insofar as the appellant might argue that she could not have known of this interpretation of the Guidelines until the delivery of the respondent's affidavits, it is submitted that it was incumbent upon the appellant, following receipt of those affidavits, to apply to amend her statement of grounds so as to include this as an additional ground upon which relief is claimed. Not having done so, the appellant cannot now rely on these matters on appeal. Accordingly, the respondent pleads, the appeal should be dismissed *in limine*, as there is no other substantive ground of appeal pleaded. Specifically, there is no ground of appeal that the reasons for the Assessment are otherwise inadequate.

60. In its submissions on this point, the respondent relies upon *AP v. DPP* [2011] IESC 2 [2011] 1 IR 729 and *Keegan v. Garda Síochána Ombudsman Commission* [2015] IESC 68. It is submitted that these cases make it plain that a party to judicial review may only rely upon grounds raised in the statement of grounds/statement of opposition. The respondent relies upon a number of passages from each of these authorities, but just one will suffice for present purposes, being an extract from the judgment of Murray C.J. in *AP v. DPP* wherein he observed:

"It is incumbent on the parties to judicial review to assist the High Court, and consequentially this Court on appeal, by ensuring that grounds for judicial review are stated clearly and precisely and that any additional grounds, subsequent to leave being granted, are raised only after an appropriate order has been applied for and obtained."

61. In any case, it is submitted that even if this ground of appeal is allowed, the reasons advanced by the respondent for the Assessment meet the criteria for adequacy of reasons as laid down by the Superior Courts in numerous authorities in recent times. As with the appellant, the respondent relies upon *Connelly v. An Bord Pleanála* [2018] IESC 31 [2018] 2 ILRM and in particular the following passages at 10.1- 10.3 of the judgment of Clarke C.J. in which he held:

"10.1 *As noted earlier, the general duty to give reasons does not involve a box ticking exercise. It will rarely be sufficient to set out, in almost standard form, a generic description of the legal test or principles by reference to which the decision is to be made, to state that that test has been applied, and simply to go on to say that a particular decision has been made. While it has often been said that a decision maker is not required to give a discursive determination along the lines of what might be expected in a superior court judgment, it is equally true that the reasoning cannot be so anodyne that it is impossible to determine why the decision went one way or the other.*

10.2 ...Decision makers are normally afforded a significant margin of appreciation within the parameters of the legal framework within which a particular decision has to be taken. Courts will not second guess sustainable conclusions of fact. As noted earlier, many decisions involve the exercise of a broad judgment and here again the courts will not second guess the decision maker on whom the law has conferred the

power to make the decision in question. Giving an explanation as to why the decision maker has concluded one way or the other does not affect the position. What may, however, lead to a successful challenge is if a court concludes that it is not possible either for interested parties or, indeed, the court itself, to know why the decision fell the way it did.

10.3 There is a middle ground between the sort of broad discursive consideration which might be found in the judgment of a court, on the one hand, and an entirely perfunctory statement that, having regard to a series of factors taken into account, the decision goes one way or the other. There is at least an obligation on the part of decision makers to move into that middle ground, although precisely how far will depend on the nature of the questions which the decision maker had to answer before coming to a conclusion."

62. In submitting that the Assessment was adequately reasoned , the respondent also relies upon authorities which caution against requiring administrative bodies to provide unnecessarily detailed reasons for their decisions. The respondent refers to the decision of O'Donnell J. (as he then was) in *YY v. Minister for Justice & Equality* [2017] IESC 61, where, at para. 80, he stated that a Court should *"be astute to avoid the type of over-refined scrutiny which seeks to hold civil servants preparing decisions to the more exacting standards sometimes, although not always, achieved by judgments of the Superior Courts"*. The respondent submits that the nature of the process before the respondent, the involvement of the appellant and her solicitors in that process and the documentation and information relating to the Assessment which are available to both the appellant and her solicitors all lead to a conclusion that the reasons provided for the Assessment are adequate. Noting that it is common ground that reasons for the Assessment may be gathered not just

from the Assessment itself, but also from documents incorporated in the letter notifying the appellant of the Assessment, the respondent submits that the reasons for the Assessment are clearly ascertainable from all of those documents (which were available to the appellant) taken together.

63. More specifically, the respondent submits, the Assessment identified the appellant's *"dominant injury"* as being the injury to her back, and that the relevant sub-category (in the Guidelines) in relation to her injury was *"substantial recovery within one – two years"*. This description of the appellant's back injury is apparent from the report of Mr. Quinn, which was available to the appellant.

64. The description of the appellant's back injury aligns with a back injury of the kind addressed at pp. 30 and 31 of the Guidelines wherein damages in the range of €6,000 - €12,000 are provided for back injuries within this category. While the appellant points out that Mr. Quinn had indicated her recovery within three years (from the date of the accident) and suggests that her injuries might therefore be more appropriately evaluated by reference to the next most serious category of injuries to the back i.e. where substantial recovery, without surgery, takes place within two to five years in which damages are indicated in the range of (€12,000 - €20,000), the respondent submits that Mr. Quinn's report makes it clear that the appellant had made a substantial recovery "*by two years post injury*" , and therefore the respondent located the appellant's injuries within appropriate category for such injuries as provided for in the Guidelines

65. All of the above, the respondent contends, is clear from the Assessment, the medical reports accompanying the Assessment and the Guidelines. As to the *"lesser"* injuries, the respondent submits that it is clear from the Assessment that the respondent took account of those injuries in assessing damages for the dominant injury i.e. the appellant's back injury. The respondent submits that since it was confirmed in the Assessment that it was made

with reference to the Guidelines, then it follows that the considerations set out at s.7B of the Guidelines under the heading *"Back Injuries"* were taken into account. The respondent submits that the trial judge correctly concluded that, having referred to a *"dominant injury"* the respondent *"by definition"* was aware that the appellant had other injuries. Furthermore, the respondent submits that it is apparent from the Assessment itself that the appellant's other *"lesser"* injuries were taken into account. The respondent submits that the appellant was provided with sufficient information to know in general terms why the Assessment was made, and to decide whether or not to accept or reject the Assessment or to challenge it by way of judicial review. This meets the test in *Connelly*. While the appellant submits that she is not seeking a *"broad discursive assessment"*, the respondent submits that it is plain that that is what the appellant seeks, but the respondent is not required to provide such an assessment. For all of the foregoing reasons, the respondent submits that the trial judge correctly determined that there:

> *"was ample evidence before the* [respondent] *to come to a rational conclusion on the dominant injury being the lower back injury, that the category of that injury was minor, that the sub-category was substantially recovered within one to two years and that, armed with all of that information, "an objective observer would then be able to review the relevant pages of the Guidelines" and come to a conclusion as to whether or not to accept the Assessment."*

Discussion and Conclusions

66. It is first necessary to address what is and is not properly before the Court in this appeal. This is in light of the respondent's submission that the appeal should be dismissed *in limine*. There are two limbs to this submission: firstly it is said that the issue as to the respondent's approach to the assessment of multiple injuries forms no part of the appellant's pleaded case, and was not argued in the Court below. Secondly, the respondent

submits there is no other substantive issue raised by the appellant's Notice of Appeal. In particular, it submitted that it is not pleaded in the Notice of Appeal that the trial judge erred in failing to hold that the reasons given by the respondent for the Assessment were inadequate.

The respondent's approach to assessment of damages in cases of multiple injuries.

67. In the affidavits sworn on behalf of the respondent, the deponents between them describe in considerable detail the general approach of the respondent to multiple injuries and the specific application of that approach in the case of the appellant. The affidavits describe how, having regard to its interpretation of the Guidelines, the respondent will consider a case involving multiple injuries on the basis of one or other of two approaches which, the respondent submits, are alternative approaches prescribed by the Guidelines for conducting assessments in such cases (see paras. 20-27 above).

68. The appellant, at the hearing of the appeal, argued that this interpretation of the respondent of the Guidelines is mistaken, and submits that there is only one approach to assessment of multiple injuries prescribed by the Guidelines, that being the approach specifically described in the Guidelines under the heading of *"Multiple Injuries"*. The appellant argued that the alternative approach contended for by the respondent, i.e., the *"dominant injury"* approach, which the respondent contends is provided for in the Guidelines under the heading of *"Use of Guidelines"*, is not an alternative approach to the assessment of multiple injuries by the respondent, but rather constitutes no more than advisory directions to a trial judge to be followed at the conclusion of the evidence in personal injury cases. The respondent, however, submits that the appellant is not entitled to make this argument at all, because, it is submitted, this is not a ground relied upon by the appellant in her statement of grounds and no application was made to amend her statement of grounds following upon the delivery of the affidavits of the respondent. In

this regard, as already mentioned above, the respondent relies upon a well established line of authority, including *AP v. DPP* [2011] IESC 2, *Keegan v. An Garda Síochána Ombudsman Commission* [2015] IESC 68 and the more recent authority of a judgment of Baker J. in the Supreme Court in *John Casey v. Minister for Housing, Planning and Local Government & Ors.* [2021] IESC 42, delivered on 16 July 2021. For present purposes, it is sufficient to refer only to one of these decisions, namely *Keegan*.

69. The central issue in *Keegan* concerned the interpretation and inter-relationship of certain sections of the Garda Síochána Act, 2005, and specifically sections 87, 88 and 102 thereof. While an investigation of a complaint concerning the conduct of the applicant in that case had been deemed inadmissible by the respondent pursuant to s.87 of the 2005 Act (by reason of being out of time) the respondent nonetheless decided to initiate an investigation under a different provision of the 2005 Act, i.e. s.102. The applicant sought judicial review on a number of grounds including that such investigation was precluded by s.88(1)(c), which provided that the respondent would take no further action on foot of a complaint having determined it to be inadmissible under s.87; in other words the respondent did not have jurisdiction to take any further action against the applicant (including under s.102) having ruled that the complaint against him was inadmissible. The trial judge rejected that ground, but held in favour of the applicant on what was described by O'Donnell J. (as he then was) in the Supreme Court as a variation of that ground. At paras. 40-42 of his judgment, O'Donnell J. held:

> *"40. First, the ground upon which he decided the case was simply not pleaded. The only issue before this Court in this regard was the ground added by order of the Supreme Court of the 1st of May 2012, namely:*

> *'The respondent having determined pursuant to s.87 of the Act of 2005 that the complaint of David Seavers was inadmissible, has no jurisdiction by virtue of s.88 of the Act to take any further action against the appellant.' (para. 10)*

It is apparent, that this is entirely an issue of law: it depends upon the true interpretation of s.88(1)(c). It is as held in A.P. v. Director of Public Prosecutions [2011] 1 I.R. 729 ('A.P. v. DPP'), that, in the words of Murray C.J.:

> *'It is incumbent on the parties to judicial review to assist the High Court, and consequentially this court on appeal, by ensuring that grounds for judicial review are stated clearly and precisely and that any additional grounds, subsequent to leave being granted, are raised only after an appropriate order has been applied for and obtained.' (para. 10)*

41. The ground upon which the High Court decided this case was not pleaded, and does not appear to have been argued. It might of course be said that it is not very distant from the point upon which leave was granted. Instead of s.88(1)(c) posing an absolute bar to further investigation under s.102, it may be said that on the High Court's approach, s.67 imposes a discretionary bar on further investigation under s.102 after a ruling of the inadmissibility under s.88. However, it is a logically distinct point. Whereas the ground of appeal was entirely a matter of law, this one is one which mixes law and fact.

42. It is not merely a procedural complaint that the ground upon which the case was decided was not one upon which leave was sought or indeed granted nor was there an appropriate amendment. The purpose of pleadings is to define the issues between the parties, so that each party should know what matters are in issue so as to marshal

their evidence on it, and so that the Court may limit evidence to matters which are only relevant to those issues between the parties, and so discovery and other intrusive interlocutory procedures limited to those matters truly in issue between the parties. This is particularly important in judicial review, which is a powerful weapon of review of administrative action. But administrative action is intended to be taken in the public interest, and the commencement of judicial review proceedings may have a chilling effect on that activity, until the issue is resolved one way or another. Because of the impact of such proceedings, it is necessary to obtain leave of the court before commencing proceedings. It is important therefore that the precise issues in respect of which leave is obtained should be known with clarity from the outset. This also contributes to efficiency so that judicial review is a speedy remedy."

70. It is not in dispute that the appellant makes no reference to nor challenges the respondent's interpretation of the Guidelines in its approach to multiple injuries in her statement of grounds. This is hardly surprising as she would not have been aware of the approach taken by the respondent to the interpretation of the Guidelines until the respondent delivered the replying affidavits of Mr. Priestly, Ms. Hill and Mr. Morgan in these proceedings. However, if having received those affidavits, the appellant wished to challenge the Assessment on the grounds that the respondent is in error in its interpretation of the Guidelines, and specifically that the respondent is in error in interpreting the Guidelines as offering two alternative approaches to the assessment of damages in multiple injuries cases, then the appellant could have, and should have, applied to amend her statement of grounds. While it is true to say that counsel for the appellant did refer to this issue in the High Court, this was by way of replying submissions only. Accordingly, the respondent had no opportunity to address the argument in its submissions, and on no

analysis can it be said that this issue was one that was pleaded and argued in the Court below.

71. Moreover, counsel for the respondent submitted that, far from seeking to amend the statement of grounds to argue that the respondent was in error in taking what was referred to at the hearing of this appeal as its "dual methodology" approach, counsel for the appellant had submitted to the trial judge that she ought have no regard at all to the *"ex post facto"* reasoning set forth in the affidavits of the respondent. In effect, the Court was urged to ignore the very affidavit evidence upon which the appellant now seeks to rely to argue that the respondent erred in its interpretation of the Guidelines.

72. Against that background, it is unsurprising that the trial judge did not address this issue in her judgment. Not only was the trial judge not in error in not doing so, she was correct not to do so.

73. Moreover, if the appellant wished to pursue this new line of argument on appeal, it was necessary for her to apply to this Court for leave to do so. The principle that an appellate Court should not entertain arguments not made in the Court below is well established and needs no detailed discussion here, in circumstances where no application was made to the Court to permit the argument to be advanced. This principle has been the subject of detailed consideration in the Supreme Court in recent years in both *Lough Swilly Shellfish Growers Co-operative Society limited & Anor. v. Bradley & Anor.* [2013] IESC 16; [2013] 1 I.R. 227 and *Allied Irish Banks Plc v. Ennis* [2021] IESC 12. While it was made clear in *Lough Swilly* that the rule is not an inflexible one, it is equally clear that the general rule is that new arguments may not be made on appeal save with the leave of the Court.

74. It follows from the above that in the absence of an application to amend her statement of grounds, and further, in the absence of any application for leave to advance a new argument on appeal, this limb of the first ground of appeal is inadmissible.

Does the Notice of Appeal plead inadequacy of reasons ?

75. It is next necessary to address the second limb of the respondent's argument that the appeal should be dismissed *in limine*. The respondent submits that if the Court holds in its favour on the first limb (as I have done above) the Court should dismiss the appeal *in limine* because there is no stand-alone ground of appeal that is based upon inadequacy of reasons *simpliciter*. The first ground of appeal, it is submitted, is entirely directed to the appellant's argument regarding the respondent's allegedly erroneous interpretation of the Guidelines as regards the approach to be taken in the assessment of damages in cases of multiple injuries, and the second ground of appeal cannot by itself provide any basis for granting any of the reliefs claimed by the appellant on appeal. It will be recalled that the second ground of appeal in the appellant's Notice of Appeal is that the trial judge erred in failing to distinguish between, on the one hand, the kind of costs prejudice the appellant might suffer if she failed to recover more in Court proceedings than by way of the Assessment, and on the other hand the kind of costs prejudice that may arise in legal proceedings generally by reason of a litigant failing to achieve more than a lodgement or a sum offered by way of *Calderbank* letter.

76. I agree with the respondent that the second ground of appeal does not raise an issue which, in and of itself could give rise to the reliefs sought. If the reasons given for the Assessment are adequate, then the fact that the trial judge may have erred as alleged in the second ground of appeal (if that be so) is immaterial.

77. On a close analysis of the first ground of appeal however, it is apparent that the submission that adequacy of reasons is not raised by this ground is misconceived. The opening paragraph of the first ground of appeal is in the following terms:

> *"The learned trial judge erred in holding that the PIAB assessment dated 25 June 2021 (which assessed the damages due to the applicant in her claim for personal injuries in the sum of €11,000) contained adequate reasons, based on the jurisprudence on the obligation to give reason for an administrative action. The applicant relies on the following matters in particular…"*

78. Firstly, it is apparent that there is a general plea that the trial judge erred in holding that the Assessment contained adequate reasons. Secondly, while the matters which are particularised over the next two pages refer for the most part, to matters that make up what the appellant describes as the *"ex post facto"* reasoning provided by the respondent in its replying affidavits, and in particular what is referred to in the first ground of appeal as the *"two distinct methods or bases for assessing claims for multiple injuries"*, a close examination of the Notice of Appeal and comparison with the statement of grounds reveals that some of the matters that are particularised in this ground of appeal clearly overlap with matters relied upon by the appellant in her statement of grounds, and relate to the reasons given for the Assessment, and not just to the methodology of the respondent for assessing claims in cases of multiple injuries Specifically, two of the matters referred to towards the very end of the first ground of appeal, being those set out in paras (iv) and (v), while also referred to in the replying affidavits of the respondent, overlap substantially with paras. 12(c) and (f) of the statement of grounds. Paras (iv) and (v) of the Notice of Appeal state:

> *"Further, in the PIAB assessment itself in this case:*
>
> *(iv) Nowhere is it explained how, in assessing the claim on a "dominant injury" basis, the assessors "took into account" the applicant's injuries to*

her shoulder and thigh, in deciding where to place the dominant injury to her back in terms of severity in the bracket of damages for the dominant injury only.

(v) It was only in the replying affidavits that PIAB made clear that no separate uplift was given for the applicant's injuries to her shoulder and thigh.

The learned judge failed to take any of the foregoing matters into account in her judgment, and accordingly erred in holding that the PIAB assessment dated 25 June 2021 (which assessed the damages due to the applicant in her claim for personal injuries in the sum of €11,000) contained adequate reasons, based on the jurisprudence on the obligation to give reasons for an administrative decision."

79. In paras. 12(c) and (f) of the statement of grounds it is pleaded:

"*12. In summary, none of the following are set out or made apparent in the assessment provided by the Respondent dated 25th June 2021:*

(c) How the presence of other injuries (lesser or otherwise) or any other relevant considerations were taken into account.

(f) What, if any, "uplift" was given in circumstances where the claimant suffered multiple injuries, and how those multiple injuries were taken into account (if at all)."

80. Thus, it is clear that in her statement of grounds, the appellant pleaded that there are inadequate reasons provided in the Assessment in relation to the treatment of the appellant's multiple injuries and specifically how lesser injuries were *"taken into account"* and whether or not any *"uplift"* was included in the award of €11,000. While paras. (iv) and (v) of the Notice of Appeal by their wording implicitly cross refer to the affidavits sworn on behalf of the respondent, and therefore at first glance appear to relate to the methodology of the respondent in assessment of damages in cases of multiple injuries, it is

nonetheless clear that they also substantially overlap with issues that are raised by the appellant in the statement of grounds, and that by these sub-grounds of appeal it is asserted that the trial judge erred in holding that the Assessment contained adequate reasons in relation to these same matters. That being the case, I am satisfied that the Notice of Appeal does raise issues as to adequacy of reasons provided by the respondent in the Assessment that were also raised by the statement of grounds, and it is therefore necessary to consider whether or not the reasons provided by the respondent in the Assessment (and all documents on which the Assessment is based) meet the standards laid down by the authorities.

Were the reasons provided for the Assessment adequate ?

81. As to the principles applicable to the consideration of the adequacy of reasons for administrative decisions, although there was some difference in emphasis between the parties, there was no significant divergence of views in their submissions as to the applicable principles. While several authorities were referred to and relied upon by both parties, it is unnecessary to look any further than the judgment of MacMenamin J. in *Náisiúnta Leictreach Contraitheoir Eireann (NECI) v the Labour Court, Minister for Business, Enterprise and Innovation, Ireland and the Attorney General* [2021] IESC 36, [2021] 2 ILRM. In that case MacMenamin J. conducted a review of recent authorities concerning the legal principles applicable to the duty to give reasons. At para. 147 he said:

> *"147 . In Connelly v. An Bord Pleanála [2018] ILRM 453, this Court held that it was possible to identify two separate, but closely related, requirements regarding the adequacy of any reasons given by a decision-maker. First, any person affected by a*

decision should at least be entitled to know, in general terms, why the decision was made. Second, a person was entitled to have enough information to consider whether they can or should seek to avail of any appeal, or to bring a judicial review of a decision. The court held that the reasons provided must be such as to allow a court hearing an appeal, or reviewing a decision, to actually engage properly in such an appeal or review. The court went on to explain that it may be possible that the reasons for a decision might be derived in a variety of ways, either from a range of documents, or from the context of the decision, or some other fashion. But this was subject to the overall concern that the reasons must actually be ascertainable and capable of being determined."

82. The appellant submits that neither the Assessment nor any of the documentation upon which it was based and which was also available to the appellant, explains how the appellant's injuries to her shoulder and thigh were *"taken into account"* by the Assessment, or what, if any *"uplift"* was incorporated in the award. It is submitted that the language used in the Assessment is generic or *"boiler plate"* language and that it sheds no light on these issues. While an uplift is referred to in the Assessment, there is nothing to indicate if it was in fact applied. Nor, it is submitted, is there anything in the Assessment to indicate where, in the scale of damages provided for within the category in which the respondent located the appellant's injuries, the dominant injury is located before any regard is had to the *"lesser injuries"*. In a nutshell, the appellant's position may be summarised as being that she has no way of knowing the basis upon which the respondent arrived at the figure of €11,000 for general damages, in circumstances where she sustained multiple injuries and no breakdown of any kind has been provided by the respondent as between what is described in the Assessment as her dominant injury, and her "lesser" injuries. Accordingly, the appellant submits, the trial judge erred in her conclusion that an objective

observer would be aware from the Assessment, the medical evidence, the Guidelines and all other relevant information of the reasons for the Assessment amount.

83. The appellant further submits that it is essential for a person making a claim to the respondent to have a clear understanding of the basis upon which an assessment amount has been calculated by the respondent. This is essential because, if the appellant rejects the Assessment, and proceeds to court but fails to receive a greater award from a court, then the appellant may be found liable to discharge the costs of the defendant in those court proceedings. The Assessment, the appellant submits, does not explain how the award has been computed by reference to the Guidelines and the medical evidence, and is too perfunctory to enable the appellant to arrive at an informed decision as to whether or not to accept it. In his submissions to the Court, counsel for the appellant emphasised that the appellant does not seek to impose upon the respondent an obligation to provide a discursive or lengthy assessment. However, counsel submitted that the Assessment should, in summary terms, explain how the award has been computed by reference to the considerations set out in the Guidelines.

84. Both parties rely on *Connelly*, and each of them cited paras. 10.1 – 10.3 of his judgment (reproduced at para.61 above) in their submissions.

85. The appellant contends that the Assessment is a perfunctory statement of the kind described by Clarke at para.10.3 , and that while the appellant may know the matters that were taken into account by the respondent in arriving at the Assessment, she has no way of knowing how the Assessment was calculated.

86. The respondent on the other hand contends that the trial judge was correct in concluding that, having regard to all of the information available, to the nature of the decision and the participation of the appellant in the process, the appellant had sufficient information to know the basis upon which the award was calculated, and therefore to make

a decision as to whether or not to accept the award. As the trial judge observed, it is clear from the medical reports that the appellant's dominant injury was the injury to her lower back. The report of Mr. Quinn identifies her injuries, in order of dominance and severity as being:

(1) Lower back soft tissue injury (moderate) and

(2) Left shoulder soft tissue injury (mild).

87. Mr. Quinn states that the appellant had made a substantial recovery by two years post injury, and expected her to make a full recovery by three years. Referring then to the Guidelines, the appellant should identify the approach to be taken under the section headed "Use of Guidelines" and then proceed to the part of the Guidelines where minor back injuries are addressed. The respondent submits that it is clear that paragraph (ii) of this section applies to the appellant. This provides:

> *"Where a substantial recovery or a recovery to nuisance level takes place without surgery within one or two years. This bracket will also apply to short term acceleration and/or exacerbation injuries lasting between one and two years*: €6,000 - €12,000".

88. The respondent contends that, as the trial judge observed, it is apparent from the use of the expression *"dominant injury"* in the Assessment, that the respondent was aware and took into account the appellant's other injuries, because the appellant was awarded the sum of €11,000, being at the very upper end of this bracket of damages. Accordingly, the appellant had sufficient information to understand the reasoning of the respondent in awarding the appellant the sum of €11,000. The respondent also relies upon the decision of Clarke C.J. in *Connelly* in which he said (at para. 5.3) that the type of reasons which may be necessary will depend upon the type of decision which is being made. The

respondent contends that in making assessments it is engaged in the kind of decision making that, in the words of Clarke C.J. at paras. 5.2 – 5.3 of *Connelly, "involve much broader considerations, involving general concepts, and often, to a greater or lesser extent, a degree of judgment or margin of appreciation on the part of the decision maker".* In effect, the respondent submits that it should not be required to give detailed reasons for making assessments of general damages and that to impose such a requirement would be unnecessarily onerous and hamper the respondent in the efficient discharge of its functions. It is sufficient if claimants, such as the appellant in this case, who participate in the process leading to the making of an award, are provided with reasons, which taken together with all other documentation, including medical reports and the Guidelines, afford a reasonable explanation in general terms for the calculation of the award. The respondent relied upon the following statement cited by Murphy J. in *Ní Eilí v. EPA* [1999] IESC 64 (being a statement originally made by O'Flaherty J. in *Faulkner v Minister for Industry and Commerce* [1997] ELR 107) :

> *"[The courts] do no service to the public in general if [they] subject every decision of every administrative tribunal to minute analysis."*

Conclusion

89. Since I have already held that it is not open to the appellant to argue, for the first time on appeal, that the respondent is in error in its view that the Guidelines provide that damages in multiple injuries cases may be assessed on one of two alternative bases, it follows that this argument does not now fall for determination . However, it is appropriate to mention that in a recent judgment of another division of this court, in the case of *Zaganczyk v John Pettit Wexford Unlimited* [2023] IECA 223, Noonan J. considered the correct approach to the assessment of damages in multiple injuries cases, in the course of which he considered, with approval, the judgments of Coffey J. in the High Court in

Lipinski (a minor) v Whelan [2022] IEHC 452, and Murphy J. (also in the High Court) *McHugh v Ferol* [2023] IEHC 132. However, the question of whether or not the Guidelines provide for two alternative approaches to assessment of damages in such cases did not fall for consideration in any of those cases, and that specific issue remains for determination in an appropriate case.

90. I turn now to address the adequacy of the reasons for the Assessment. While in other contexts the importance of having adequate reasons for an administrative decision has been said to be to assist a person in deciding whether or not to pursue any available appeal, or alternatively to consider whether he or she has a reasonable chance of succeeding in judicially reviewing the relevant decision, the context of assessments made by the respondent is somewhat different to, if no less significant than many other administrative decisions. A person in receipt of an assessment from the respondent has an important decision to make, within a period of 28 days from the date of the assessment. As Macken J. observed in *O'Brien*, *"the Act is intended to ensure the successful operation of a formal statutory mechanism for the final disposal of genuine, proper, ordinary civil actions for personal injury, traditionally disposed of by court proceedings. It is intended, because it is mandatory for them, to apply to all claimants. It is intended by the act that the respondent to a claim will engage in the process. It is intended by the very nature of the scheme, to reach a stage where the assessment figure notified to the parties will be accepted by both.…*"

91. If, having given the matter due consideration, a claimant considers that the assessment of damages of the respondent is insufficient, and elects to issue proceedings, then, by reason of s.51A of the Act of 2003, the claimant is on the hazard for the legal costs incurred by the defendant in those proceedings, from their time of issue, even though the claimant may subsequently be entirely successful in the proceedings. This is a significant

distinction between personal injury litigation and other forms of litigation. While it is true, as the trial judge said, that the hazard posed is similar to that posed by a lodgement or a where a *Calderbank* letter has been tendered, the distinction drawn by the appellant between s.51A of the Act of 2003 and those strategic steps generally available to litigants is an important one. The whole impetus behind the Act of 2003 was the curtailment of legal costs in personal injury claims, if not the outright avoidance of costs by claimants who elect to process claims without legal assistance. Since both the respondent and the courts are obliged to have regard to the Guidelines, it follows that if a claimant can be satisfied that the respondent has done so, then he or she may be unwise to reject the assessment of the respondent and assume the costs risks associated with proceedings by reason of s.51A.

92. The basis of the calculation of an assessment by the respondent is therefore a matter of critical importance to a claimant, and claimants are entitled to be given information sufficient to understand the basis of its calculation of general damages without having to resort to guesswork. While the degree of explanation required may vary depending on the complexity of the injuries, the respondent is entitled in all cases to rely upon the medical reports provided to it and obtained by it in the course of processing a claim as well as the Guidelines themselves as forming an integral part of the rationale for an assessment, without having to regurgitate large tracts of any of those documents in the body of an assessment. That said, it should be reasonably clear to a claimant reading an assessment in the light of all other relevant documentation on what basis the respondent has arrived at the assessment of general damages - or to borrow the words of MacMenamin J. in *NECI*, a claimant "*should at least be entitled to know in general terms, why the decision was made"*.

93. In this case, if the appellant had suffered only the injury to her back, there could be no doubt but that the Assessment read together with the medical reports and the Guidelines would constitute a sufficiently reasoned decision. The appellant would see the very brief

description of her injury in the body of the Assessment, and the placement of the injury by the respondent within what it considers to be the relevant category (which is concerned with the kind of injury suffered) and the relevant sub-category (which is concerned with the period of recovery) of the Guidelines. In turn she could compare the more detailed description of her injury in the medical reports with the relevant category and sub-category within the Guidelines in order to be satisfied that the respondent had correctly and fairly located her injury within the relevant category and sub-category. In these circumstances the appellant would have had ample information at her disposal to understand in a general way the basis of the Assessment, and upon which to make a decision to accept or reject it.

94. However, the fact that the appellant suffered other injuries complicates this exercise, even if none of the injuries are serious. Moreover, as we shall see, the fact that the appellant's back injury could be considered, in terms of value, to be straddling two different sub-categories complicates matters further.

95. It is clear that the respondent had regard both to the medical reports and to the Guidelines, and that it treated the appellant's back injury as her "*dominant*" or "*most significant injury*". I agree with the trial judge that it follows from that that the respondent was aware of the appellant's "lesser" injuries. However, the statement in the Assessment that "*the assessors also considered where appropriate the presence or absence of other lesser injuries*" and that "*the assessors considered the range and severity of other injuries and the additional pain, discomfort and limitations arising from the claimant's lesser injury/injuries*" are, as the trial judge herself said, generic. They provide no information at all to the appellant as to how the appellant's lesser injuries were taken into account or, more particularly, how much, if any, of the Assessment amount relates to those injuries.

96. It bears observation that, as far as the appellant's back injury is concerned, the next sub-category above the sub-category in which the appellant's injury was placed by the

respondent in making the Assessment is sub-category (i) in which the recovery period is described as follows:

> "*Where a substantial recovery without surgery takes place within two to five years*: €12,000 - €20,000."

97. If the appellant were to refer to the report of Mr. Quinn, she would see that he records that she has made substantial recovery from her back injury within two years, and that he expects her to have made a complete recovery by three years from the date of the accident. It is apparent therefore that, without reference to the lesser injuries, the appellant's dominant injury would, depending on the views of the assessors (or a trial judge) place her on the margins of two adjoining sub-categories of damages. While it is obviously a matter for the respondent to decide within which sub-category the appellant's injuries are most appropriately placed, the fact is that without any reference at all to "lesser injuries" a minor back injury has a value of up to €12,000, and in this case, the appellant's back injury by itself might justify an award in that amount, although it must be stressed that is obviously a matter for the respondent. However, in circumstances where the appellant had other, lesser injuries, it is impossible for her to know or even to surmise how or on what basis those lesser injuries have been taken into account in the Assessment. This needed to be stated.

98. In this regard, there are in fact only two options. Either the respondent has considered the lesser injuries to be so minor and inconsequential as not to merit any additional compensation over and above that assessed for her back injury, or the respondent has, in taking the lesser injuries into account, assessed general damages in a larger amount (at the higher end of the sub-category in which the respondent considers the claimant's dominant injury is most appropriately located) than it would have done if there had not been lesser injuries. It is clear from the affidavits of both Ms. Hill and Mr. Morgan that the latter

approach was followed in the case of the appellant. At para. 21 of her affidavit Ms. Hill avers: *"We agreed that due to the presence of other injuries and having considered all the factors referenced at 7B of the Guidelines (i) to (ix) (as noted above) that it was appropriate to place the applicant in the top portion of that bracket*". At para. 11 of his affidavit Mr. Morgan avers: " *We agreed that the injury should be assessed at the top end of the bracket for an injury of that type (€6000-€12,000) having regard in particular to all the medical evidence and to allow for the lesser injuries."*

99. While Mr. Morgan expressly avers later in the same paragraph that "*As the Applicant's claim was assessed by reference to a dominant injury , the lesser injuries were taken into account and an uplift did not apply",* it is clear that in taking the lesser injuries into account, the respondent placed the appellant at the higher end of the relevant bracket than it would have done had the lesser injuries not been present. This, in my judgment, is just another way of saying it applied an uplift to the award to reflect the lesser injuries, so that in this sense at least it is difficult to see any practical difference between the "dominant injury " approach and the "most significant injury" approach, both of which the respondent claims are envisaged by the Guidelines. But the important point is that the appellant had no way of knowing what sum, if any, has been allowed to reflect the lesser injuries in the Assessment. Beyond any doubt, this inhibits her capacity to arrive at an informed decision as to whether or not to accept the Assessment, even if the sums involved in this case are not very substantial in the overall scheme of the Guidelines.

100. The provision of information to indicate in what manner, or more specifically in what amount, the appellant's lesser injuries are reflected in the award, would not have necessitated a detailed or discursive decision. The respondent's fears in this regard are, in my view, entirely unfounded. This necessary information could have been provided with one simple sentence stating that the appellant's "Dominant injury" was assessed at

[whatever amount the respondent considered appropriate], but that taking into account the impact of the appellant's additional but lesser injuries, general damages are assessed at €11,000, thus enabling the appellant to deduce the amount of the uplift, Alternatively, separate figures could be given in respect of the uplift, and an overall figure for general damages given. Either way, the claimant would then know what uplift of general damages has been assessed and would then have been enabled to make an informed decision as to whether or not to accept the Assessment, or take the risk of rejecting it and issuing proceedings instead

101. I consider that the conclusion of the trial judge, that an "objective observer" would be aware of the reasons for the Assessment having regard to all information that was available to the appellant, was erroneous. The objective observer could have had no way of knowing how the appellant's lesser injuries were "taken into account". For the reasons discussed above, this information was required by the appellant in order to make an informed decision as to whether or not to accept the Assessment. It follows that the appeal should be allowed.

102. As to the appropriate remedy, I consider that the remedy that most logically follows from the above conclusion is one substantially in the terms of paras. (1) and (2) of the notice of motion, quashing the Assessment and referring the matter back to the respondent for re-consideration and for the provision of reasons that are adequate to explain the assessment of general damages having regard to all of the injuries sustained by the appellant. I do not consider an order in terms of para. 3 of the notice of motion appropriate as such an order could have the effect of requiring the respondent to provide a detailed and discursive assessment, which is both unnecessary and undesirable.

103. As to costs, since the appellant has been entirely successful with her appeal, my provisional view is that she is entitled to an order requiring the respondent to discharge all

of the costs incurred by her both in this Court and in the Court below. If the respondent wishes to contend for a different order, then it may, within 21 days from delivery of this judgment, request a hearing in order to make submissions as to why the Court ought to make a different order. In that event however, if the Court remains of the view that it is appropriate to make an order in the terms of the provisional order indicated above, then the respondent may be held responsible also for any additional costs incurred by the appellant in connection with the additional hearing.

104. Since this judgment is being delivered electronically, Whelan J. and Haughton J. have authorised me to indicate here their agreement with it.