

Review of Section 30 of the Civil Liability and Courts Act 2004

Register of Personal Injuries Actions

Introduction

1. Section 30 of the Civil Liability and Courts Act 2004 provides that the Courts Service shall record in a register certain information relating to personal injuries actions referred to in that Section (set out at Annex below). The Section has not been commenced to date and the Courts Service has not, therefore, established such a register. It is evident from the debate of the 2004 Act as a Bill before the Houses of the Oireachtas that section 30 was considered to be a means of identifying multiple claimants where dishonesty might be involved and that there were some concerns about any overall implication that people may be engaging in something improper in the making of such claims.
2. As reflected in its *Report on the Cost of Motor Insurance* published in January 2017, the Cost of Insurance Working Group heard, during the course of its deliberations, that there was a possible need to review and amend section 30 and to include further information within its remit. As a result the Working Group recommended (Recommendation 27) that the Department of Justice and Equality conduct a review of Section 30 as currently drafted, and of its possible amendment and commencement including in light of the Group's wider proposals in relation to data collection. It was also recommended that a Report be submitted to the Working Group on foot of this review which is now being provided in this document in conjunction with the Courts Service.
3. As part of the recommended review, the Courts Service conducted a Business Case exercise in relation to the possible establishment of a statutory Personal Injuries Register to meet the Service's obligations as would arise under Section 30 of the Civil Liability and Courts Act 2004 if commenced. In conducting this exercise, a number of issues were identified which, it is considered, would either make it inefficient from a Courts Service resource perspective to develop the register at this time or, alternatively, require detailed legal advices or clarity particularly in light of legislative and other developments at both EU and national level in the area of Data Protection. These matters are set out further below.
4. A further over-arching consideration is that the Courts Service is currently developing a business case and scoping documents for the establishment of an electronic Civil Case Management System which would include all civil litigation including personal injuries actions. That system will take some time to develop but would facilitate, in due course, the gathering of data on the various classes of action concerned in a manner that would be more

aligned with and proofed in relation to the modern Data Protection regime which has come into play since section 30 was promulgated.

Courts Service ICT Development

5. In the current circumstances, the establishment of a Personal Injuries Register at this time as a standalone ICT project would be considered wasteful of scarce resources. The Courts Service processes personal injury data across 75 individual databases countrywide. Many of these systems would need to be developed to specifically capture the information required by section 30 even as it currently stands. Once that were done a project to extract and collate the relevant data from across the numerous databases would need to follow.
6. The proposed Civil Case Management System will be a single system to replace the 75 in existence and by its very nature produce the information provided for in Section 30. It is considered that the creation of an interim system at this time would be an unhelpful diversion of resources and have the effect of actually delaying the availability of the comprehensive case management system. That system would facilitate the automated capture of data for a Register along the lines envisioned by section 30 along with a wider range of cost savings and benefits to courts proceedings such as electronic filing for parties to litigation.

Data Protection

7. It is noted from earlier versions of the Civil Liability and Court Bill that the intention was to have a register of all personal injuries claimants available on the internet. Arising out of concerns about privacy, and also what could be described as the perceived reputational issues for a repeat (albeit *bona fide*) plaintiff, the current wording was adopted without reference to the internet. Despite the change which was eventually made to section 30 in the Act, therefore, there are significant concerns around the wording of Section 30 in relation to the protection of a person's data protection rights. From the Courts Service perspective, this manifests in three areas.
 - a. Firstly, the section envisages that the register be provided to such persons as establish a "sufficient interest" in accessing it. While it is no doubt difficult to be prescriptive in the section, it would seem that the section requires reconsideration in this regard to provide more clarity and certainty as to "sufficient interest" and the ensuing onus there would be on the Courts Service to determine it.
 - b. Secondly, the section clearly does provide a statutory basis for persons accessing what would amount to personal data including, for example, a person's "occupation". However, 15 years since enactment, Section

30 will need to be examined in the light of the General Data Protection Regulation (EU) 2016/679 (GDPR) as to its compatibility with the Regulation. Moreover, there has been discussion in the context of the Cost of Insurance Working Group of amending the existing section to require additional details such as a person's PPSN as a "unique identifier". As the Cost of Insurance Working Group has reflected in its January 2017 Report, the PPSN aspect would require careful examination in consultation with the Department for Social Protection and the Data Protection Commissioner.

- c. Thirdly, the data which would populate the register is a court record and therefore the judiciary is the data controller. Whereas there is no reason to believe that this would amount to an impediment to the creation and release of data (subject to the other concerns raised), it does amount to a further issue outside the control of the Courts Service.

Practical Benefit of Section 30

8. From a Courts Service perspective, the practical benefit of Section 30 is also worth reconsidering. The precise intent of the section is not specifically stated but it is assumed to have been the provision of a comprehensive register of all personal injury claimants. In reality, however, it does not achieve this objective in circumstances where the Personal Injuries Assessment Board is the first port of call for claimants (added to the possibility that a claim may be settled by an insurance company in advance of applying to that body).
9. In 2017 the courts saw 21,327 personal injury claims commenced (net of medical negligence claims). PIAB processed 33,114 applications. While this is not a "like with like" comparison, based on those figures and figures in other years, in any given year there are 10,000 cases which do not come before the courts and therefore the Register would not capture that volume of claimants.
10. A further key consideration is the enhanced awareness, enforcement and availability of relevant data that will now be achieved under the range of initiatives being taken in the personal injuries domain including under those key actions undertaken by the Cost of Insurance Working Group. Particular examples include the issue of Guidelines for the reporting of insurance fraud to the Garda Síochána and the recent commencement of the *Central Bank (National Claims Information Database) Act 2018*.

Conclusions

11. In light of the above considerations, it is clear that the development of civil case tracking systems and central databases within the courts system is very much an ongoing project by the Courts Service in the form of the proposed Civil Case Management System. While some progress has been made on an IT front since the roll-out of the Civil Liability and Courts Act 2004, the activation of a Register as required under section 30 remains prohibitive at a technical level. This is considered the case in terms of laboriously having to trawl through the numerous databases currently in play and ensuring they can record the specific data that will then need to be retrieved, and, of diverting scarce resources and time from the ongoing development as a priority of the Civil Case Management System.
12. It is also considered that section 30, as it currently stands, would need a thorough reconsideration in terms of intervening developments that have taken place since 2004 in the areas of the protection of personal data and GDPR. The policies and principles which informed section 30 in its promulgation and were primarily aimed at identifying multiple claimants would now need be reconsidered in terms of the protection of personal data under current standards and could require more than simple legislative amendment. Moreover, there are demands from some stakeholders to include further identifying data in the section 30 register.
13. At the same time, it is recognised that the GDPR aspects of maintaining a Register along the lines of section 30 can be addressed at the required time in an appropriate manner. Article 6.1(c) of the GDPR permits the processing of personal data where “processing is necessary for compliance with a legal obligation to which the controller is subject.” This means that national law can provide for the establishment and maintenance of a register as may be considered necessary and proportionate in the public interest and for the common good. For example, the register of struck-off company directors maintained by the CRO under the Companies Act the need for which has been recognised by the Court of Justice of the European Union in the *Manni* ruling. These are matters that will require considered legal opinion in the event of any commencement or amendment of section 30.
14. In light of the above, it is considered that the activation of a Register as provided for under section 30 of the Civil Liability and Courts Act 2004 is not technically feasible for the Courts Service at the present time and that the collation of the type of data being sought in relation to claimants in personal injuries actions could be better achieved, particularly in terms of GDPR standards and compliance, by appropriate use of the proposed Civil Case Management System when it comes on stream.

Civil Liability and Courts Act 2004

Register of personal injuries actions.

30.—(1) The Courts Service shall, on the commencement of this section, establish and maintain a register of personal injuries actions (in this section referred to as the “register”).

(2) The Courts Service shall enter in the register—

- (a) the name and address of the solicitor for each party to a personal injuries action,
- (b) the name and occupation of each party to a personal injuries action, and
- (c) the address at which he or she ordinarily resides,

as specified in the pleadings relating to the action.

(3) The register shall be made available to such persons as establish to the satisfaction of the Courts Service a sufficient interest in seeking access to it.