

Briefing Note for Insurers

Developments in Irish Litigation 2026

We are a quarter of the way through 2026, Ireland's litigation and claims environment is undergoing one of the most significant periods of recalibration in over a decade. For insurers, this evolving landscape presents both opportunity and material exposure. A combination of legislative reform, increasingly assertive judicial case management, and gradual shifts in litigation funding structures is reshaping how disputes are conducted, how claims are valued, and how long tail risk is apportioned across the market.

Across construction, medical negligence, personal injury, defamation, third party funding and ESG driven claims, several common threads are emerging. Courts are displaying growing intolerance for delay, inefficiency and tactical litigation conduct. For insurers, this demands sharper reserving discipline, earlier procedural engagement and more precise control through policy drafting.

The most significant procedural shift in the Irish courts in a generation is now firmly in view. The publication of the "General Scheme of the Civil Reform Bill 2025" signals a decisive move away from incremental reform toward a wholesale re-engineering of civil litigation, with a clear emphasis on early issue definition, proportionality and active judicial case management. While the Bill has not yet been introduced into the Oireachtas and is unlikely to commence before late 2026 at the earliest, its influence is already evident in judicial commentary and litigation culture. Once enacted and phased into force, most likely during 2027, it is expected to fundamentally reshape how civil claims are initiated, conducted and resolved across the Irish courts.

This briefing identifies six core areas that will define the litigation and claims landscape for insurers in Ireland for the remainder of 2026.

1. CONSTRUCTION AND INFRASTRUCTURE LITIGATION

The construction sector continues to generate high value, technically complex and multi party disputes, with increasing notifications under professional indemnity, contractors' all risks and D&O policies. Defective works, fire safety non-compliance and latent defect claims, particularly involving residential apartment developments, remain key loss drivers.

Judicial emphasis on efficiency

In *Kirwan v Connors & Ors* [2025] IESC 21, the Supreme Court re-affirmed that excessive delay can justify a strike out for want of prosecution, even in technically complex litigation. The decision reflects a broader judicial intolerance for procedural inertia and reinforces the obligation on plaintiffs to progress construction disputes actively and proportionately. For insurers, this precedent strengthens the basis for challenging stale or poorly prosecuted claims where evidential prejudice can be demonstrated.

Legislative and market trends

Pending measures such as the "Construction Defects Levy Bill 2025", together with continued tightening of "Building Control (Amendment) Regulations", underscore the State's push for accountability in residential construction. Insurers are responding with heightened scrutiny at proposal stage, enhanced disclosure requirements and tighter policy conditions around inspection, certification and regulatory compliance.

Trends for 2026

- Proliferation of multi party actions involving certifiers, engineers and insurers under collateral warranties
- Latent defect and fire safety litigation arising from historic apartment developments
- Greater use of adjudication and mediation under the Construction Contracts Act 2013
- Judicial support for proportionality and active case management

Insurer takeaway: proactive claims management, early expert engagement and evidence preservation will be critical as courts tighten scrutiny around delay and procedural compliance.

2. MEDICAL NEGLIGENCE AND HEALTHCARE LITIGATION

Medical negligence remains one of the largest sources of long tail liability facing both the State and the insurance market. Total estimated outstanding State claims liability stood at approximately €5.35 billion at end 2024, the overwhelming majority of which relates to clinical negligence. While damages paid in clinical negligence claims fell to €210.5 million in 2024 (down from 2023), this reduction reflects the timing of settlements and staged or interim payments, rather than any reduction in claim severity or in the incidence of catastrophic injury.

Legislative developments

The Patient Safety Act 2023 introduced a statutory duty of candour, requiring healthcare providers to make open disclosure of adverse incidents. While this promotes transparency and patient trust, it creates coverage challenges, particularly around admissions, early notifications and indemnity control.

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The Civil Liability (Amendment) Act 2025 introduces a substantive expansion of Ireland's Periodic Payment Order (PPO) regime, extending its availability beyond catastrophic birth injuries to a broader spectrum of long term and life altering harm. By embedding periodic payments as a more routine compensatory mechanism, the Act shifts the balance away from once-off lump sums toward structured, lifelong provision aligned with care needs. This represents a material change for defendants and insurers, requiring careful reassessment of claims valuation, reserving methodology and long tail reinsurance exposure.

Procedural innovation

Two procedural initiatives are reshaping clinical negligence litigation:

1. The High Court Clinical Negligence List, which introduces active case management, early expert exchange and front-loaded evidential timetables to reduce delay and promote earlier resolution.
2. The Specialised Mediation Pilot Scheme, introduced under High Court Practice Direction HC132 and in force since 28 April 2025, is operated by the Courts Service of Ireland in partnership with accredited mediation bodies. Running alongside litigation as part of the new Clinical Negligence List, the scheme embeds mediation within active judicial case management and has achieved settlement rates exceeding 60% in suitable cases, particularly those involving delayed diagnosis and surgical negligence. Dental negligence claims have proven especially amenable to early resolution, benefiting not only from court supported mediation where proceedings issue, but also from the long established Dental Complaints Resolution Service—an independent, voluntary mediation scheme supported by the Dental Council of Ireland and operated by the Irish Dental Association—which continues to divert a significant volume of dental disputes away from litigation and formal regulatory proceedings.

Both initiatives reflect a judicial shift toward earlier, structured resolution and tighter procedural control.

Trends and implications for 2026

- Emergence of claims involving AI assisted diagnostics and telemedicine, raising complex vicarious liability issues
- Jurisdictional and coverage challenges arising from outsourced pathology and laboratory services
- Increased judicial encouragement for specialist mediation prior to trial listing

Insurer takeaway: insurers should normalise early mediation engagement, ensure medical experts are instructed promptly and review policy wording on admissions, settlement authority and PPO triggers.

3. PERSONAL INJURY AND DAMAGES REFORM

Ireland's personal injury system continues to evolve under sustained policy and judicial pressure to improve efficiency and control costs. The Judicial Council Personal Injuries Guidelines (2021) have largely stabilised awards for soft tissue and moderate injuries, contributing to predictability in general damages. Claims volumes within the Injuries Resolution Board (IRB) process have levelled off at approximately 20,000 claims per annum, down from pre-Guidelines averages of c.33,000. The split between claims is steady at 69% for motor, 15% for employers' liability and 12% for public liability claims as per the Personal Injuries Awards Value Report covering January to June 2025.

Recent developments

The Personal Injuries Resolution Board (Amendment) Act 2022 expanded the IRB's remit and empowered it to conduct mediation. Courts have reinforced procedural discipline, emphasising efficiency, proportionality and necessity in discovery and case progression.

Courts are increasingly approving structured settlements and lifetime care damages, especially where PPOs are in play. Indicative trends include:

- High Court clinical negligence settlements exceeding €10–12 million, driven by lifelong care needs
- Higher awards for psychiatric injury where harm is permanent and disabling rather than transient
- Growing judicial preference for hybrid settlements combining lump sums with structured or periodic elements
- Recent IRB data shows that while neck and back injuries remain dominant, psychological injuries now account for approximately 14% of significant injuries, having stabilised after a rapid post-Guidelines increase

Outlook for the remainder of 2026

- Continued convergence between IRB assessments and court awards for moderate injuries
- Expansion of PPO usage beyond traditionally catastrophic categories
- Heightened scrutiny of causation, contributory negligence and medical evidence

Insurer takeaway: consistent reserving discipline, early rehabilitation initiatives and rigorous causation analysis will remain key to cost containment.

4. DEFAMATION REFORM AND REPUTATIONAL EXPOSURE

The Defamation (Amendment) Act 2026 represents the most significant overhaul of Irish defamation law since 2009 and marks a decisive shift in how reputational disputes are litigated.

Key reforms

Knowledge Update

- Abolition of jury trials in High Court defamation actions, replacing juries with judge only determinations to address unpredictability and excess in awards
- Introduction of anti SLAPP protections, empowering courts to dismiss abusive proceedings at an early stage and award costs against plaintiffs engaging in litigation designed to silence public participation
- A new “serious harm” threshold for corporate plaintiffs, typically requiring proof of serious financial loss
- Modernised and clarified defences, including public interest, live broadcast and retail defamation defences
- Enhanced emphasis on corrections, apologies and ADR as proportionate remedies

Judicial trends

Recent decisions reflect a consistent judicial move toward structured, compensatory and proportionate damages in defamation claims, with aggravated awards confined to cases of genuinely exceptional misconduct. High Court decisions including *Leech v Independent News & Media*, *Casey v McMenemy*, *Stillorgan Gas Heating & Plumbing Ltd v Manning and Ganley & Rivada Networks Ltd v CNN* demonstrate a clear resistance to inflationary pressures arising from online publication. While *Higgins v The Irish Times* [2024] IEHC 77 did not concern quantum, it sits within this broader recalibration of High Court defamation jurisprudence.

In practice, judicially assessed awards now commonly fall within the €80,000–€150,000 range, with materially higher awards increasingly exceptional. The Supreme Court’s damages framework in *Higgins v Irish Aviation Authority* continues to anchor proportionality analysis and provides the reference point against which High Court awards are measured.

Emerging risk trends

- Influencer and online content claims crossing over into data protection and privacy
- ESG linked corporate defamation and brand reputation disputes
- Algorithmic republication and social media amplification creating novel exposure pathways
- Recent US litigation, including the 2026 California jury verdicts against Meta and YouTube in *K.G.M. v Meta Platforms Inc & Google LLC*, highlights an international judicial willingness to distinguish platform design liability from speech immunity. While not binding in Ireland, these cases are instructive for insurers assessing emerging digital risk

5. CHAMPERTY, MAINTENANCE AND LITIGATION FUNDING REFORM

Ireland remains cautious but stands at an increasingly visible crossroads on third party litigation funding (TPLF). Two statutory reforms are now on the statute book:

- The Courts and Civil Law (Miscellaneous Provisions) Act 2023 permits third party funding in international commercial arbitration and related proceedings, although these provisions have not yet been commenced.
- The Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 envisages the possibility of funded representative actions if and insofar as third party funding becomes lawful.

Outside these limited contexts, TPLF in civil litigation remains generally prohibited.

Are we any closer to change?

There has been undoubted movement and growing policy interest in reform. In its Consultation Paper, the Law Reform Commission (LRC) acknowledged the evolution of the legal and policy context internationally, noting that many jurisdictions have liberalised their approach to litigation funding. The Commission accepted that Ireland’s position is increasingly anomalous, particularly in complex, high cost litigation.

Irish courts continue to distinguish carefully between:

- profit driven commercial funding, which remains vulnerable to champerty challenges; and
- non-profit or interest aligned funding arrangements, particularly where litigation is aimed at vindicating rights (for example in data protection contexts) rather than generating return

What this means for insurers

Even absent immediate reform, insurers should anticipate:

- attempts to structure claims to avoid champerty exposure
- increased group and collective litigation pressure
- longer case durations where funding issues become contested

Policy wording on control of proceedings and consent to settlement will require close attention.

6. ESG, DATA AND REGULATORY LITIGATION

ESG considerations now permeate almost every category of litigation risk. The Corporate Sustainability Reporting Directive (CSRD), coupled with proposed EU due diligence obligations, increases exposure across liability lines.

Emerging ESG related claims

- Greenwashing litigation under evolving EU consumer and market practice law

Knowledge Update

- Climate accountability claims following Friends of the Irish Environment v Government of Ireland [2020] IESC 49
- Collective data protection and consumer actions under the Representative Actions for Consumers Act 2023
- Personal accountability under the Central Bank (Individual Accountability Framework) Act 2023

Implications for insurers

ESG litigation cuts across tort, contract and statutory duties, creating aggregation and coverage challenges. D&O exposure will increasingly extend to sustainability disclosures, while financial institutions face dual exposure from misrepresentation and investor claims.

Insurers should:

3. Update policy wording to clarify ESG related cover
4. Enhance underwriting scrutiny in high carbon and supply chain exposed sectors
5. Anticipate cross border coordination where claims span multiple jurisdictions

OUTLOOK FOR THE REMAINDER OF 2026

The litigation climate for insurers in 2026 will be defined by discipline, acceleration and accountability. Courts are enforcing tighter procedural standards, legislators are broadening liability frameworks, and funding pressures are reshaping litigation economics. Insurers who anticipate these shifts, through early engagement, robust policy drafting and strategic use of mediation, will be best positioned to manage exposure and retain commercial agility.

Those who do not may find that reform accelerates risk rather than containing it.

If you have any queries on the above briefing, please contact **Lorna McAuliffe**.

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