Opening Remarks to the Joint Oireachtas Committee

Minister of State D’Arcy

CHECK AGAINST DELIVERY

13 June 2019 [2pm-5pm]

10 mins allocated

An Cathaoirleach,

Introduction

I welcome the opportunity to provide an update on the work of the Cost of Insurance Working Group to the Committee. My primary focus in this opening address will be on business insurance.

I am very conscious of the difficulties that the cost and availability of insurance are having on many businesses and voluntary/community groups in this country and can understand the frustration that many people have with the existing position. I believe however that, with the objective evidence provided by the Personal Injuries Commission benchmarking report on the higher than average award levels for soft tissue injuries in this country, we have a solid basis for addressing these difficulties through the enactment of the Judicial Council Bill. I will talk about this in more detail shortly.
Outline of Achievements and Work to Do

The Cost of Insurance Working Group has made it clear from the outset that there is no single policy or legislative “silver bullet” to immediately stem or reverse premium price rises and that some of the necessary reforms will take time to implement. This was also recognised by this Committee in its motor insurance report. The major constraints faced by any Government are twofold:

(i) Award levels are the prerogative of the courts and therefore for constitutional reasons, the judiciary cannot be directed as to the levels that should be applied; and

(ii) Pricing levels are a commercial matter for insurance companies, and are determined based on the risks they are willing to accept. For legal reasons the Government cannot interfere in such matters as this is prohibited by the EU Solvency II Directive.

It was recognised however that there was much the Government could do to improve the general environment within which insurers operate, as well as laying the ground for a more long-term transformation of the insurance market through tackling issues such as award levels. This therefore is the context within which the work of the Cost of Insurance Working Group needs to be considered. In this regard, I believe there has been significant progress in the
implementation of the two Cost of Insurance Working Group Reports. Examples include the following:

- Addressing the personal injuries framework in Ireland through the establishment of the Personal Injuries Commission, and its subsequent two reports, the second of which benchmarked award levels for soft tissue injuries and made recommendations to address gaps that exist between this jurisdiction and others;

- The commencement by the Law Reform Commission of the examination of the possibility of capping awards in respect of some or all categories of personal injuries through legislation;

- Tackling insurance fraud through closer co-operation between An Garda Síochána and the insurance industry on foot of the Fraud Round-table’s work, and the recent decision by the Garda Commissioner to develop a divisional focus on insurance fraud which will be guided by the Garda National Economic Crime Bureau (GNECB) and which will also train Gardaí all over the country on investigating insurance fraud, as well as the recent success under Operation Coatee, which targets insurance-related criminality.
In addition, the Government has made several significant legislative changes which are significant in the insurance reform debate and called for by stakeholders:

- Increasing transparency around the cost of private motor insurance through the establishment of the National Claims Information Database in the Central Bank as well as the Courts Service confirming that it will publish a more detailed breakdown of awards in personal injury cases in its Annual Reports.

- Increasing the effectiveness of the Personal Injuries Assessment Board through the Personal Injuries Assessment Board (Amendment) Act 2019;

- Making it easier for businesses and insurers to challenge cases where fraud or exaggeration is suspected through amendments to Sections 8 and 14 of the Civil Liability and Courts Act 2004;

- Providing certainty to policyholders and insurers through the reform of the Insurance Compensation Fund.

You should also note that I look forward to the finalisation of the CSO’s work regarding a price index for business insurance as well as the Central Bank’s work around potentially extending the scope of the NCID to include employer and public liability insurance – which at this point I think it should do. I will also look at how we can speed up the work related to the development of a functioning fraud database, recognising that data protection concerns must be
addressed before other issues such as the governance or location of such a database can be decided.

I believe that the CIWG actions taken to date have helped create a much more receptive atmosphere to what we are trying to achieve in relation to reform of the insurance and personal injuries litigation area, insofar as there is a much greater understanding of the depth and nature and extent of the underlying problems and a much greater support for what needs to be done to address them.

I also believe that these actions have had a significant impact with regard to private motor insurance (CSO figures from April 2019 show that the price of motor insurance is now 24.4% lower than the July 2016 peak) and I, and my colleagues in Government, are determined to continue working to ensure that these positive pricing trends can be extended to other forms of insurance, including those relevant to businesses.

**Award Levels**

I might now address the issue which I believe is key in the next phase of work of the Cost of Insurance Working Group. I am of the view that bringing the levels of personal injury damages awarded in this country more in line with those awarded in other jurisdictions is the single most essential challenge which must be overcome if there is to be a sustainable reduction in insurance costs. In
this regard, the Personal Injuries Commission has highlighted the significant differential between award levels in this country and England and Wales in particular, and has made a number of recommendations to address this issue, including the establishment of a Judicial Council to compile guidelines for appropriate general damages for various types of personal injury.

I believe that this awards gap needs to be significantly closed and I am working with the Minister for Justice and Equality, Mr Charlie Flanagan TD, to ensure that this happens at the earliest opportunity, through the enactment of the Judicial Council Bill, which completed Committee Stage in the Seanad in April. Since then, the Government has approved the drafting of amendments for Report Stage in the Seanad, which will provide for the establishment of a Personal Injuries Guidelines Committee whose sole purpose will be to develop guidelines for various types of personal injury which will fall to be adopted by the Judicial Council. These amendments are currently subject to formal legal drafting by our colleagues in the Office of the Parliamentary Counsel and I am hopeful that they will be agreed at Report Stage in the Seanad shortly. What will be vital in getting the Bill enacted as soon as possible will be the cooperation of all Members of the Oireachtas, and I know I can count already on support from Members of this Committee.

This, along with the work that the Law Reform Commission has commenced, will hopefully result in the lowering of award levels. If this were to happen, I
would expect the insurance industry to take account of such reductions in their pricing. As you will recall, Justice Nicholas Kearns, the Chairperson of the Personal Injuries Commission (PIC), noted in the foreword of its second report that insurance industry representatives on the PIC repeatedly stated that, as award levels and associated costs account for the bulk of the cost of insurance, if claims costs come down and are maintained at a consistent and predictable level, then premiums will also reduce accordingly.

**Tackling Fraud – Dedicated Garda Unit**

An issue which the Alliance for Insurance Reform continues to call for is the establishment of a dedicated Garda Insurance Fraud unit. However, it is important to clarify that the recommendation from the Cost of Insurance Working Group was to explore the potential for further cooperation between the insurance sector and An Garda Síochána in relation to insurance fraud investigation. While the issue including the UK precedent was explored in the Report and the potential benefits were outlined, no commitment was given on this matter. It was made clear that it was always subject to further examination, and that any decision in relation to this matter was always going to be for the Garda Commissioner.

Since my last appearance before you last year, the Garda Commissioner has made the decision for operational reasons that a divisional focus is preferable to
the establishment of a centralised insurance investigation unit. I understand that this approach is aligned with a general divisional-focused Garda model. It is the intention of the Commissioner that the Garda National Economic Crime Bureau (GNECB) will guide divisions and provide training in the investigation of insurance fraud. I believe it is important to accept the expert view of the Garda Commissioner in this regard and I am confident that this marks a key turning point in how insurance fraud will be investigated by An Garda Síochana in the future.

**Role of Legal and Insurance Sectors**

Aside from what we as a Government or an Oireachtas can achieve, I would now like to turn my attention to two sectors that also have to play an important role in addressing the issues that some businesses are experiencing – the legal profession and the insurance industry. I’ve spoken in the Dáil previously about the frustrations that exist among businesses and other groups regarding these two sectors. In that respect, I met with the Law Society and the Bar Council of Ireland and set out to both my belief that it was vital that they continued to give their public support and commitment to the Personal Injuries Commission’s recommendations. I accept the commitments which both have since made. On the insurance side, I have put it to the industry that they need to provide strong public commitments very soon to reflect savings to be gained from the
recalibration of award levels. In addition, it will be important for them to widen their risk horizons and re-enter segments of the market that they have exited from previously as a measure of good faith that the claims environment should begin to stabilise upon the enactment of the Judicial Council Bill legislation.

Concluding Remarks

In the end, the availability and cost of insurance to some businesses will depend on the consistency and quantum of award levels, and I believe that the Cost of Insurance Working Group structure remains the best means by which to continue to achieve this objective. I also believe that the enactment of the Judicial Council Bill will be an important step forward in this regard, and I hope there will be support in the Houses to enable a speedy conclusion to this process. In this spirit, I intend to work closely with Deputies Doherty and McGrath TD on considering how to progress their respective insurance related Private Members Bills - the Consumer Insurance Contracts Bill 2017 and the Civil Liability and Courts (Amendment) Bill 2019. I believe that this, along with the cumulative effects of the completion of the two Reports’ recommendations, will include increased stability in the pricing of insurance for businesses and a more competitive insurance market overall.

ENDS
Approx 1865 words