

Insurance Ireland Opening Address to the Oireachtas Committee on Justice and Equality

Thank you, Chairman and members of the Committee for the opportunity to address you today. We are very happy to contribute to the Committee's work in considering the issue of access to justice and legal costs.

Insurance Ireland

Insurance Ireland represents the Irish general insurance, health insurance, life assurance, international, reinsurance and captive management sector. We represent 140 companies and our membership is split approximately 50:50 between companies who write insurance for the domestic market and those who sell to the international market from Ireland.

Internationally, Insurance Ireland members export insurance cover to 110 countries throughout the world and have more than 25 million policy holders.

Our members pay out €13 bn in claims and benefits annually and contribute over €1.6 billion to the Irish exchequer each year. Total industry employment is 28,000, both direct and indirect, and 1 in 4 jobs in financial services in Ireland are in insurance.

Context

Before we get into discussion on the practical aspects of the Irish legal system, we feel it is important to provide some context. Legal costs and processes must be seen in the context of the urgent need to reform our cost of claims. We know our average personal injury award for the most frequent awards – soft tissue 'whiplash' – are 4.4 times what they are in the UK. This is a very stark fact and one which cannot continue to be ignored!

The cost of compensation awards is the defining issue in the Irish non-life market, and this has been established by the Personal Injuries Commission and in the policy approach to establishing the Judicial Council.

The need for reform of ancillary costs such as legal fees is equally pressing and the recommended reforms which were set out clearly in the Cost of Insurance Working Group report must be completed as a matter of urgency.

The consideration of legal costs by this Committee must therefore be cognisant of the wider impacts of legal fees and the need for urgent reform of these costs.

The Irish Legal System

In our remarks today we are seeking to provide a perspective from the insurance sector which is both a heavy user of and highly dependent on the Irish legal system. In our evidence before the Committee we will concentrate on the civil justice system which our members interact with daily. On behalf of our policy holders and customers, insurers are seeking four essential qualities when we interact with the legal system which are as follows:

1. **That it is consistent** - by this we mean that predicted outcomes can be repeated in similar settings on numerous occasions.
2. **That it is efficient** - by this we mean that no party to the proceedings spend more than is necessary in terms of time and resources to get to the outcome.
3. **That it is independently reviewed** - by this we mean that the actions and expectations of all participants in the system are reviewed to ensure the legal system is delivering against policy goals.
4. **That it is fair** - by this we mean that the system gives a fair outcome to policy holders and to those who have suffered through no fault of their own.

1. Consistency

Insurance Companies are supporters of the model as operated by the Personal Injuries Assessment Board (PIAB). We support this model because it is consistent with the award levels in the Book of Quantum and there is stability in terms of delivery costs, which were 6.1% in 2018, and an average processing time which was 7.2 months in 2018. Insurers will traditionally accept the determination of PIAB in about 90% of the cases where one is made.

As well as being consistent in both time to deliver and cost of delivery, PIAB is consistent in terms of amounts awarded (for information please see the table in Appendix 1 for PAIB average awards from 2010 to 2018). It should be noted that in addition to awards size PIAB is putting through more cases in 2018 than it did in 2010, although this increase has stabilised from 2014 onwards.

In contrast, litigated cases are adjudicated subject to the facts as presented before the judge on the day the case runs. The variables in such a situation can be as elementary as the relative skill and experience of the legal teams assembled on either side.

The justice system is also suffering from increased demands on capacity. In 2014 across the three courts (District, Circuit and High Courts) 17,763 Personal Injury Cases were filed. In 2018 across the three courts, 22,049 cases were filed.

The average awards for each court also illustrate that cases which are litigated are, for valid reasons, inconsistent in the amounts awarded.

Our view as to how the legal system can be more consistent

- A.** The establishment of the Judicial Council is to be welcomed and the operation of the Personal Insurance Committee of the Council will be vital in reviewing and striking a just quantum for Irish personal injury awards. We believe that it was an error not to have given the Book of Quantum to the Judiciary when it was first introduced in 2004.
- B.** We also believe that a judicial peer review of decisions, in conjunction with training and collective judge led learning will assist in further generating consistency in awards. Much of the legislative basis for this is contained in the Judicial Council Act 2019 which will see the Book of Quantum replaced by Statutory Guidelines on Personal Injuries Awards. These statutory guidelines will result in a system like that which has operated in England, Wales and Northern Ireland.

2. Efficiency

In advocating for this goal, we are striving for a situation whereby no party to the proceedings spend more than is necessary in terms of time and resources to get to the appropriate outcome.

If we look first at time to decision, the Irish legal system does not perform well. According to the World Bank the timing from filing a proceeding in Ireland to enforcement of justice is 650 days - the OECD average is 578 days and only two other EU 27 Countries, Poland and Italy, take longer than Ireland.

For litigated Personal Injury cases Irish insurers typically reserve on the basis that judgement will be delivered between four to six years after the date of an incident. In the UK, insurers typically reserve on the basis that judgement will be delivered between two to four years after the date of an incident.

Time to settle is a key indicator of efficiency in litigated cases as the settlement offered will be on the prevailing injury award levels at the time of judicial decision not the date of the incident, this can involve considerable inflation. The second edition of the Book of Quantum published in 2016 had considerable inflation over the first one published in 2004.

As a direct result of the time to deliver, costs for delivery are also considerable. In our comments here we will rely on two Government reports, the National Competitiveness Council (NCC) Legal Costs Bulletin from 2016 and the Department of Finance Motor Insurance Key Information Report 2017. The NCC Bulletin illustrates that based on CSO data Legal Services prices did not fall for a prolonged period between 2007 and 2015. To illustrate the point the NCC contrasted this with the fall in accounting services .

The Department of Finance Motor Insurance Key Information Report found that for all closed personal injury claims legal and other costs typically accounted for 42% of the compensation amount paid to claimants ii_ In 2016 the average personal injury payments to those involved in motor accidents was €23,600. This would align with the average PIAB motor award of €22,454 for that year.

Our view as to how the legal system can become more Efficient

- A. More active case management to ensure the case once entered is heard as quickly as possible. There is a suspicion that very often seeking leave to adjourn may be utilised as a lever in negotiation.
- B. Agreement on independent medical experts and methodologies of assessment which would decrease the time to reach a judicial determination.
- C. Commencement of the Judicial Council Act finished in the Houses of the Oireachtas in July 2019 and still awaiting commencement by the Minister for Justice.
- D. Seeking to extend the pre-action protocol model from medical negligence cases to personal injury cases.

3. Independent review process

Given the nature of litigation a very narrow understanding of review is often applied. In the past this has been confined to appeals of judicial decisions. It is for this reason that Insurance Ireland supports the role of the Legal Services Regulatory Authority. Specifically, we believe that the authority will be vital in protecting and promoting the interests of consumers and promoting competition in the provision of legal services in the State. The principle of an independent investigation of complaints is to be welcomed.

There is no national aggregate collection of costs as they apply to litigation and this lack of insight makes it difficult to undertake effective analysis of legal costs and in turn public policy is often fragmented and without a frame of reference.

Our view on how to review the performance of the legal system and the associated costs

- A. The establishment of the Legal Services Regulatory Authority is welcome, however the time to become fully operational illustrates the complexity of the task they face. We would like to see the authority actively supported to be self-funded and fulfilling its full mandate as a matter of priority.
- B. Once fully operational we would like to see the Legal Services Regulatory Authority given the mandate to conduct proactive and own initiative thematic reviews and not merely investigate complaints. In so doing the Authority would be acting in line with best international supervisory practice.
- C. We would like to see a national aggregated collection of legal costs as a ratio to compensation payments in civil disputes. In time such an agreed data source will

provide the necessary raw data to evaluate the success or otherwise of public policy in this area.

4. Fairness

The balancing of rights and responsibilities between claimant and policyholder is difficult and at times can lead to the generation of considerable costs. To this end we would support a system which may separate out the issue of damages and liability.

In such a system there may be an increased role for PIAB in determining damages and prior to moving to litigation a form of arbitration being utilised to establish where liability rests. Ideally the arbitration should take place quickly and allow for a speedier conclusion of the matter.

We believe this may be fairer and avoid full litigation. This has been successful in the commercial courts and would mean that only cases where there are irreconcilable differences between parties come before a judge for a full hearing.

Once again Chair, I would like to thank the Committee for the opportunity to come before you this morning and we look forward to answering your questions.

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<http://www.competitiveness.ie/Publications/2019/Cost%20of%20Doing%20Business%202019%20Report.pdf>

ⁱⁱ As an example, if there is an injury compensation payment of €100k to a claimant, there will be, on average, a further payment of €24.9k to cover claimant legal and other costs and €17.2k to pay for insurer legal and other costs. This would result in total payments by the insurer of €142.4k of which the claimant would receive €100k.