

# ALLIANCE FOR INSURANCE REFORM

The logo for the Alliance for Insurance Reform features two stylized, curved lines above the text. The top line is yellow and the bottom line is green, both curving upwards from left to right.

Submission to the Special Committee on Covid-19 Response regarding  
SMEs and the hospitality sector

**Wednesday, 24th June 2020**

## THANK YOU

We thank the Special Committee on Covid-19 Response for the opportunity to make this submission.

## PREPARED BY:

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## EXECUTIVE SUMMARY

The issue of insurance costs has been an existential one for SMEs in Ireland since 2015. As a result of the slow rate of meaningful progress on the issue, Irish SMEs have been particularly vulnerable to the impact of Covid-19 since it emerged.

Additional Covid-19 related insurance issues have compounded the situation.

In essence, unless insurance reform is urgently addressed, it will not be possible for the Irish economy to recover through SMEs.

The Alliance has carried out a [survey](#) to gauge the impact of Covid-19 related insurance issues.

Headlines figures from the research include:

- 96% of those who have made business interruption claims have not had success
- 60% of forbearance claims have not yet been granted or granted in any meaningful way
- 55% of policyholders are concerned about COVID19 related personal injury claims
- Insurance premiums continue to rise on average despite huge ongoing reductions in economic and social activity

Insurers have engaged in an almost blanket refusal to deal with business interruption claims despite clear wording in many cases. We would ask that:

- The FSPO waive the 40-day internal appeal process and mediation option on business interruption cases, fast track legally binding decisions and publish those decisions
- The Central Bank (CBI) initiate a test case similar to that being conducted by the [Financial Conduct Authority](#) in the UK, to resolve contractual uncertainty around the wording of BI policies.
- The Central Bank seek to broker a deal on business interruption such as those being brokered in other jurisdictions.
- The Central Bank to seek certification from the CEOs of insurers operating in Ireland as to their handling of business interruption claims.

The response of insurers to requests for forbearance has been patchy, compounded by the attitude of underwriters based in the UK and elsewhere. We ask that:

- The Department of Finance and the Central Bank take a more hands-on approach to this issue so that insurers operating in Ireland, regardless of where they are headquartered, acknowledge the difficulties their customers are in right now and respond accordingly with meaningful forbearance concessions.
- That the Department and the CBI audit the form and quantum of those responses.

55% of respondents to our survey are concerned about Covid19-related personal injury claims in the future. Already our national response to Covid-19 has at times been paralysed by the fear of personal injury claims. The nation cannot allow a Covid19 claims industry to develop.

The State must either immediately indemnify SMEs against Covid-19 related personal injury claims and the associated legal fees, exclude Covid-19 from any element of liability for employers and occupiers in Ireland or at a EU level or:

- Urgently review and re-balance the “common duty of care” so that occupiers are required to take a duty of care that is reasonable, practical and proportionate but not absolute, ignoring personal responsibility
- Cut unfair general damages to reflect international norms and ensure that legitimate minor injuries attract modest damages. The Alliance expects general damages for minor injuries to be dramatically reduced along the lines of the [Fair Book of Quantum](#) published by ISME
- Fully resource a dedicated Garda Insurance Fraud Unit as part of the fight against fraudulent and exaggerated claims
- Provide detailed, sector-specific, reasonable and practical Covid19 guidelines to each SME sector

Equally, insurers must vigorously contest opportunistic or exaggerated claims and the Judiciary must be seen to apply a balanced duty of care so that where there is no negligence there is no claim.

The Alliance for Insurance Reform was particularly disappointed and frustrated with the last-minute dropping of the proposed cabinet subcommittee on insurance reform from the final Programme for Government document, “Our Shared Future” and asks that the incoming Government reconsider this decision given the centrality of the issue to our economic recovery.

We request that the Department of Finance ask brokers and underwriters to provide alternative arrangements for financing large premium payments given that finance companies are expected to decline such arrangements in the near future.

In order to give basic consumer protection to policyholders, the Consumer Insurance Contracts Act 2019 must be commenced by the incoming Government without further delay.

We also urge this Committee to consider what happens next time there is a pandemic.

## 1. INTRODUCTION AND OVERVIEW

1.1 The Alliance for Insurance Reform brings together 38 representative bodies from the SME, community, charity, sports and arts sectors across Ireland, representing over 46,000 members, 690,000 employees, 499,000 volunteers and 374,000 students in highlighting the negative impact of persistently high premiums and calling for real reforms that will quickly reduce liability and motor insurance premiums to affordable levels and keep them that way.

1.2 Our membership includes many organisations involved in or directly engaged with Ireland's hospitality and tourism sector, such as AOIFE, the CRCI, CTTC, IAAT, IHF, ISACS, Ireland Active, Irish Caravanning and Camping Council, Irish Showmans Guild, LVA, PALI, RAI and VFI. Full details of our membership are attached at Appendix 1.

1.3 For the purposes of this submission, we will interpret 'SMEs' to include small and medium enterprises in the hospitality sector and all other sectors including social enterprises. We will also on occasion refer to the broader voluntary and community sectors where specific issues have a broader societal impact as well as being relevant to SMEs.

1.4 The issue of insurance costs has been an existential one for SMEs since 2015; and before then for sectors vulnerable to motor insurance costs. As a result of the slow pace of meaningful progress on the issue, Irish SMEs have been particularly vulnerable to the impact of Covid-19 since it emerged.

1.5 Additional Covid-19 related insurance issues have compounded the situation.

1.6 In essence, unless insurance reform is urgently addressed, it will not be possible for the Irish economy to recover through SMEs. Equally it must be noted that it will not be possible for the wider fabric of Irish society to recover through community and voluntary groups, charities and sports and cultural organisations unless insurance reform is sorted.

## 2. RESEARCH

2.1 The Alliance has carried out a [survey](#)<sup>1</sup> to gauge the impact of Covid-19 related insurance issues. The survey was carried out among Alliance members between Friday 29<sup>th</sup> May and Sunday 7<sup>th</sup> June 2020. There were 2,095 respondents spread primarily across the Hospitality, Motor & Transport, Leisure, Retail, Not-For-Profit, Healthcare, Arts & Entertainment and Manufacturing sectors.

2.2 Insurance in the context of this survey refers primarily to Public Liability, Employer Liability and Business Interruption insurance.

2.3 The results clearly illustrate that the grip the insurance crisis has on Irish society for years has been magnified by the Covid19 pandemic.

Headlines figures from the research include:

- 96% of those who have made business interruption claims have not had success
- 60% of forbearance claims have not yet been granted or granted in any meaningful way
- 55% of policyholders are concerned about COVID19 related personal injury claims
- Insurance premiums continue to rise despite huge ongoing reductions in economic and social activity

2.4 We will reference additional insights from the Survey under the appropriate headings later in this Submission.

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NOTE: <sup>1</sup> Responses to open-ended questions have been excluded from the Survey results for data protection reasons.

### 3. BUSINESS INTERRUPTION

3.1 Business interruption (BI) insurance is insurance coverage that replaces business income lost in a disaster. Business interruption insurance is not sold as a separate policy but is either added to a property/casualty policy or included in a comprehensive package policy as an add-on or extension.

Our Survey showed that only 33% of respondents have made a BI claim. Of these:

- 63% have already been refused by insurers
- 33% are awaiting a decision
- The balance of 4% have a claim 'With a Loss Assessor/Solicitor' or 'waiting to see what the government and insurance companies will come up with'

3.2 Given these numbers, it is highly unlikely that business interruption claims present an existential threat to the insurance industry. Rather, we view the industry's approach to this issue as one of profit maximisation.

3.3 From our examination of the business interruption sections of insurance policies, it is clear that there is no such thing as a 'standard' policy and so the cover offered by individual policies varies hugely. Where an organisation has business interruption insurance it is either:

- 1) **Covered** for business interruption caused by Covid19 under clauses such as Infectious or Notifiable Diseases, Denial/Prevention of Access, Loss of Attraction or Public Authority Clauses.
- 2) **Not covered** because BI cover only relates to destruction of or actual physical damage to the insured property with those terms being clearly limited in the policy wording. No policy has been seen which specifically excludes pandemics.
- 3) The situation is **ambiguous**, in which case insurers and the courts are obliged to resolve the ambiguity in favour of the policyholder as confirmed by the [Central Bank](#) on March 27<sup>th</sup>.

3.4 We fully acknowledge that not every BI policy covers the current circumstances. However for businesses with a clear case, the payment of a business interruption claim may well be the difference between survival and liquidation. But it would appear that insurers are happy to 'tough it out' through the courts or other avenues of appeal, on the basis that policyholders will run out of money or go into liquidation before a case is concluded. This is an appalling approach, focused on profit maximisation and likely to force the cost of these claims on to the state in terms of grant-aid or unemployment benefit.

3.5 Elements of this approach by insurers have included:

- An almost blanket refusal by insurers to deal with BI claims despite clear wording in many cases
- Extensive delays by insurers in responding to the initial claim notifications
- When a refusal of claim is ultimately issued the insurers deny that it is their 'Final Response'
- Insurers are delaying for the maximum 40 business days permitted by CBI/FSPO to produce a 'Final Response Letter'
- The 'Final Response Letter' often attempts to retrospectively import words into the contract
- Insurers making convoluted arguments beyond the comprehension of most consumers
- Insurers ignoring the CBI letter to insurers of 27 March which stated that "where a claim can be made because a business has closed as a result of a Government direction due to contagious or infectious disease, the Central Bank is of the view that that the recent

Government advice to close a business in the context of COVID-19 should be treated as a direction.”

- Insurers are placing impossible burdens of proof on policyholders for evidence of C-19

3.6 The Minister for Finance has made a statement on this issue on [17<sup>th</sup> April](#) in which he expressed “Concern that some insurers have adopted a ‘blanket’ rejection of all business interruption claims. Failure to pay certain policies in the context of the industry clarifications reinforced the Minister’s view that some insurers were doing the industry significant reputational damage and were not treating customers fairly.”

3.7 However in a conference call with us on 17<sup>th</sup> June, the Minister expressed the view that he does not have the right to demand action from insurers on business interruption and that this situation raises issues that are best dealt with by our regulators.

3.8 Where an enterprise’s turnover is under €3m in the last financial year, policyholders can submit a complaint to the Financial Services and Pensions Ombudsman (FSPO) who will use either mediation and/or a process leading to a legally binding decision. There are no fees levied by FSPO for investigating and resolving a complaint. We are aware that a number of complaints have already been made in this regard to the Ombudsman (numbering 7 in our Survey).

3.9 We welcome the fact that the Ombudsman has established a ‘fast track system’ for BI claims. However, we would again urge that he waives the requirement for a 40 day wait to secure a ‘Final Response Letter’ from insurers, as is his legal right, when the record indicates that insurers are only exploiting this as a delaying tactic. Equally, we would ask him to use his discretion to skip the mediation phase in his process and move straight to determining a legally binding decision. Our information indicates that no insurer to date has agreed to mediation which is the resolution mechanism which is normally the most successful in FSPO disputes according to published statistics.

3.10 For enterprises with a turnover over €3m, resolution is through either arbitration or the courts with costs and timelines roughly the same. Alternatively, parties can voluntarily agree to submit their dispute to mediation but in the experience of our members this has proven to be impossible so far. This overall process is not designed to address the urgency of the current situation and so we have asked the central Bank to intervene aggressively on behalf of policyholders. General statements such as that on March 27<sup>th</sup> are not enough. We have asked the Central Bank to:

- Initiate a [test case](#) similar to that being conducted by the Financial Conduct Authority in the UK, to resolve contractual uncertainty around the wording of test BI policies.
- Seek to broker a deal such as those being brokered in other jurisdictions. For example *“In Germany, the state of Bavaria brokered an agreement between a number of insurers and representatives of trade associations for insurers to offer a voluntary payment (i.e. without an acknowledgement of any legal obligation) to policyholders in the hospitality sector”* REF: OECD paper, [Responding to the COVID-19 and pandemic protection gap in insurance](#).
- Now seek certification from the CEOs of insurers operating in Ireland as to their handling of business interruption claims as allowed for in [their letter to insurers](#) of 27<sup>th</sup> March.

3.11 The Central Bank has asked us to ‘Let us take that one away’ with regard to these first two proposals. However we have noted to the CBI that policyholders do not have much time left if any initiative they are taking is to be of any value.

3.12 What we are facing into, due to the approach of the insurers, the lack of speed or apparent effectiveness in the response from the State and the consequences of both for policyholders, is a repeat of the tracker mortgage scandal, with SMEs and social enterprises as victims this time around.



#### 4. FORBEARANCE

4.1 In the context of the current crisis, forbearance means the granting of rebates, policy extensions or policy pauses to policyholders by insurers, to assist policyholders experiencing severe liquidity issues.

4.2 Requests for forbearance are being made in the context of the dramatic reduction in economic and social activity since March 2020 and the inevitable dramatic reduction in motor and liability claims as a result, the benefit of which will all accrue to insurers unless they make concessions to their customers.

4.3 Our Survey indicates that of those who requested forbearance from insurers:

- 16% are getting a rebate
- 8% are getting a policy extension
- 7% have had their policy paused

4.4 Of the balance 60% are either awaiting a decision, have been refused forbearance or have been offered a discount off their next policy on renewal. This latter gesture is an empty one in that it deprives a policyholder of the ability to shop around, can easily be cancelled out by a price increase on the renewal and entirely misses the point that SMEs need assistance right now.

4.5 The Minister for Finance Paschal Donohoe met Insurance Ireland on this issue in April and subsequently issues two statements on [10<sup>th</sup> April](#) and [17<sup>th</sup> April](#) in which he:

- urged insurers to “take a more customer focussed approach when dealing with businesses and consumers”
- Confirmed that 8 key insurers had agreed to “reduce premiums for business customers to reflect reduced level of exposure as a result of COVID-19 restrictions for Employer Liability/ Public Liability and Commercial Motor”

4.6 We understand that the Minister has asked those 8 key insurers to evidence the type and scale of forbearance they have given to policyholders but we have not seen that evidence to date and our Survey suggests that the response to date from insurers is disappointing.

4.7 Our engagement with the Central Bank would suggest that there has been no direct intervention from the CBI on the issue of forbearance.

4.8 Apart from the Insurance Ireland members involved in the arrangement with the Minister, there appears to be little the Minister, the Department of Finance or the Central Bank can do to compel or persuade insurers to offer meaningful forbearance. A particular problem exists with some underwriters based in the UK and elsewhere who have flatly refused to offer any concessions on forbearance or business interruption and frankly seem to treat Ireland like some ‘Wild West’ where they can operate unhindered.

4.9 We want the Department of Finance and the Central Bank (CBI) to take a more hands-on approach to this issue so that insurers operating in Ireland, regardless of where they are headquartered, acknowledge the difficulties their customers are in right now and respond accordingly with meaningful forbearance concessions. We additionally ask that the Department and the CBI audit the form and quantum of those responses.

## 5. COVID-19 RELATED PERSONAL INJURY CLAIMS

5.1 Ireland is unique in a European context in that the scale of general damages awarded here far exceeds that awarded elsewhere. This was well-documented by the [Personal Injury Commission reports of 2018](#).

5.2 Compounding this situation are the absolute duty of care imposed on policyholders by some insurers and judges, the level of legal fees associated with personal injury cases<sup>2</sup> and the lack of any meaningful sanctions for fraudulent or grossly exaggerated claims.

5.3 As a result, SME decision-making in Ireland gives a disproportionate level of weight to the issue of insurance as the consequences of a claim are much more serious than elsewhere. This is well illustrated by the result of our Survey which shows that 55% of respondents are concerned about Covid19-related personal injury claims in the future.

5.4 Already, decision-making with regard to our nation's response to Covid-19 has at times been paralysed by the fear of personal injury claims or the fear of lack of insurance cover in a way that does not necessarily receive consideration elsewhere.

5.5 An example of this was the dilemma faced by childcare providers considering taking part in the abortive government scheme to provide childcare for the children of healthcare workers. A major contributor to the collapse of this scheme was the fact that they were told that they wouldn't receive insurance cover for Covid-19-related claims if they took part in the scheme<sup>3</sup>.

5.6 This concern is reflected in daily discussion with members who are already faced with bleak financials for 2020 and then have to factor in the potential costs of a claim. It is a major issue right across the hospitality, retail, leisure, community, sports, arts and charity sectors. Indeed any sector dealing with the public or with employees.

5.7 Many organisations will have to reopen without the support of their insurer in this regard as some insurers are removing any exposure to COVID19-related claims from their policies as they are renewed. A typical example is the following exclusion in a renewal schedule:

*"Virus Exclusion*

*It is hereby noted and agreed that there is no cover whatsoever under any section of this policy for any type, form, mutation of any virus or virus related conditions whether directly or indirectly effecting the policy holder."*

5.8 To allow a Covid19 claims industry to develop, possibly uncovered by insurers, will have severe consequences for SMEs and voluntary organisations. The nation cannot allow such a situation to develop.

5.9 Policyholders must play their part in terms of staff training, adhering to all relevant procedures and record-keeping. But in the current circumstances, this may not be enough to avoid being sued.

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NOTES: <sup>2</sup> For Litigated Settlements of less than €100k, average compensation was €23,199 and average legal costs were €14,684. [NCID Private Motor Insurance Report, December 2019](#).

<sup>3</sup> "No insurance cover for childcare providers that take part in government scheme, warns broker"  
<https://www.thejournal.ie/health-workers-eligible-for-childcare-scheme-5093226-May2020/>

5.10 In order to minimise the risk of being successfully sued, the State must either immediately indemnify SMEs against Covid-19 related personal injury claims and the associated legal fees, exclude Covid-19 from any element of liability for employers and occupiers (in Ireland or at a EU level) or:

- Urgently review and re-balance the “common duty of care” so that occupiers are required to take a duty of care that is reasonable, practical and proportionate but not absolute, ignoring personal responsibility
- Cut unfair general damages to reflect international norms and ensure that legitimate minor injuries attract modest damages. The Alliance expects general damages for minor injuries to be dramatically reduced along the lines of the [Fair Book of Quantum](#) published by ISME
- Fully resource a dedicated Garda Insurance Fraud Unit as part of the fight against fraudulent and exaggerated claims
- Provide detailed, sector-specific, reasonable and practical Covid19 guidelines to each SME sector

5.11 Equally, insurers must vigorously contest opportunistic or exaggerated Covid19-related claims and the Judiciary must be seen to apply a balanced duty of care so that where there is no negligence there is no claim.

## 6. CABINET SUB-COMMITTEE

6.1 The Alliance welcomes the detailed focus on insurance reform, particularly in the context of the Covid-19 pandemic, included in the Programme for Government.

6.2 In order to allow the Irish economy to recover from the pandemic through SMEs, the ongoing insurance crisis must be resolved immediately.

6.3 In this context, the Alliance for Insurance Reform was particularly disappointed and frustrated with the last-minute dropping of the proposed cabinet subcommittee on insurance reform from the final Programme for Government document, "[Our Shared Future](#)".

6.4 According to the final document, responsibility for insurance reform will now rest with a Cabinet Committee on Economic Recovery and Investment which will "prioritise the issue of insurance reform".

6.5 While we welcome the priority afforded to insurance reform by the Cabinet Committee on Economic Recovery and Investment, without the focus of a dedicated subcommittee the rest of the insurance reforms in the PFG document are in danger of becoming a series of vague commitments and considerations. This is particularly an issue given the apparent winding-down of the Cost of Insurance Working Group.

6.6 We would ask the next Government to reconsider this decision given the centrality of the issue to our economic recovery.

## 7. FINANCE FOR INSURANCE POLICY PAYMENTS

7.1 Because of the cost of insurance, many SMEs and voluntary groups finance it through specialist firms such as Premium Credit or Close Bros. Getting this finance arrangement normally depends on supplying satisfactory prior year accounts, but given Covid19, next renewals will be very difficult given the terrible results from 2020.

7.2 We ask the Department of Finance to prevail on brokers and underwriters to provide alternative payment arrangements (e.g. monthly payments).

## 8. CONSUMER INSURANCE CONTRACTS ACT 2019

8.1 The current Covid-19 crisis confirms the powerlessness of policyholders in their dealings with insurers. If it had been commenced following its signature by the President in December 2019, the Consumer Insurance Contracts Act would have helped, particularly the sections that confirm:

- Pre-contractual duties of insurers (information provision in particular) and consumers at different stages
- Post-contractual duties and claims handling

- Replacing the concept of insurance warranties with statutory provisions allowing insurers to include provisions that precisely identify or define the risk insured
- Dealing with onerous terms
- Confirming the 20 working days notice required for renewal notification already laid down in Central Bank regulations since November 1st 2019

8.2 This legislation merely rebalances the relationship between policyholders and insurers in a way that has been taken for granted in most of Europe for decades. It has been in development since 2015 and has been subject to extensive consultation and scrutiny via the Oireachtas and the Department of Finance.

8.3 It must be commenced by the incoming Government without further delay.

## 9. PLANNING FOR NEXT TIME

9.1 The issues we have raised need to be resolved urgently. However we also urge this Committee to consider what happens next time there is a pandemic. In particular:

- What business interruption cover if any will be available next time around? (The OECD has issued a paper on this question: [Responding to the COVID-19 and pandemic protection gap in insurance](#)).
- Who will protect community organisations against claims (Within reason, SMEs must reopen as they provide a livelihood to owners and others. Community organisations may find it easier to not open if they fear pandemic-related personal injury claims).

Thank you again for the opportunity to make this submission.

Peter Boland and Michael Magner  
**Alliance for Insurance Reform**  
**24<sup>th</sup> June 2020**

## APPENDIX 1

**MEMBERSHIP LIST**

The Alliance brings together 38 civic and business organisations from across Ireland, representing over 46,000 members, 690,000 employees, 499,000 volunteers and 374,000 students in highlighting the negative impact of persistently high premiums and calling for real reforms that will quickly reduce liability and motor insurance premiums to affordable levels and keep them that way. Our members include:

- AOIFE Ireland (Association of Irish Festival Events)
- Car Rental Council of Ireland
- Childminding Ireland
- Coach Tourism & Transport Council of Ireland
- Community Reuse Network Ireland
- Convenience Stores and Newsagents Association
- Cork Business Association
- Early Childhood Ireland
- Family Business Network Ireland
- Federation of Irish Sport
- Galway Chamber
- Galway City Business Association
- Galway County Public Participation Network (PPN)
- Ireland Active
- Ireland's Association for Adventure Tourism
- Irish Caravan and Camping Council
- Irish Concrete Federation
- Irish Hotels Federation
- Irish Road Haulage Association
- Irish Showman's Guild
- Irish Street Arts, Circus and Spectacle Network
- Irish Travel Agents Association
- ISME
- Licensed Vintners Association
- Motorsport Ireland
- Nursing Homes Ireland
- Play Activity and Leisure Ireland
- Quick Service Food Alliance
- Restaurants Association of Ireland
- Retail Excellence
- RGDATA
- Sligo PPN
- Society of the Irish Motor Industry
- South Dublin County PPN
- Sport Ireland
- Union of Students in Ireland
- Vintners Federation of Ireland
- The Wheel (Ireland's national association for community, voluntary and charitable organisations)