

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

Dé Céadaoin, 18 Aibreán 2018

Wednesday, 18 April 2018

Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Billy Kelleher,	James Reilly.
James Lawless,	
Tom Neville,	
Maurice Quinlivan.	

Seanadóir / Senator Aidan Davitt sa Chathaoir / in the Chair.

Business of Joint Committee

Clerk to the Committee: I call the meeting to order in public session. As the Chairman is unavoidably absent today, I call for nominations for Acting Chairman.

Senator James Reilly: I nominate Senator Aidan Davitt.

Clerk to the Committee: Is that agreed? Agreed. I now invite Senator Davitt to take the Chair.

Senator Aidan Davitt took the Chair.

Senator Aidan Davitt: I thank Senator Reilly for nominating me as Acting Chairman. We have received apologies from Senator Gavan and Senator Humphreys. I propose we go into private session. Is that agreed? Agreed.

The joint committee went into private session at 1.37 p.m. and resumed in public session at 1.45 p.m.

Cost of Doing Business in Ireland: Discussion (Resumed)

Acting Chairman (Senator Aidan Davitt): I remind members, visitors and those in the Public Gallery to please ensure their mobile phones are switched off or are in flight mode for the duration of the meeting as they interfere with the broadcasting equipment, even when on silent mode.

We have some new members on our committee. I would like to welcome Deputy Billy Kelleher. Deputy Lisa Chambers was also added to our committee as of yesterday and she might join us later. I thank Deputies Niall Collins and Stephen Donnelly who were very strong contributors to this committee and were of great help in all the work we have been doing. We appreciate all they have done for us. For the information of our guests, with committees resuming, unfortunately there has been a slight clash of committees today and some members are tied in having two committees meeting today at the same time.

No. 7 on our agenda is a discussion on the cost of doing business. I welcome the following members of the Alliance for Insurance Reform; Mr. Eoin McCambridge, managing director of McCambridge's of Galway, Ms Stephanie Reid, owner of Monkey Business play centre, Mr. Ivan Cooper, director of public policy at the The Wheel, and Mr. Peter Boland, director of the Alliance for Insurance Reform. I welcome all our guests to our discussion on the cost of doing business.

In accordance with procedure, I am required to read the following: By virtue of section 17(2)(I) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter to only qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

In accordance with procedure, I am required to read the following: by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. If, however, they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter to only qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of a long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House, or any official by name or in such a way as to make him or her identifiable.

I remind our guests that each of their presentations should be of no more than five minutes duration. Members have been circulated with the presentations submitted by today's attendees. I ask Mr. Boland to begin his presentation to the committee.

Mr. Peter Boland: I thank the Chairman and members of the committee for inviting us here today. I welcome quite a number of our members who are present in the Gallery, particularly representatives of Irish SME Association, ISME, Motorsport Ireland, Playcentres Ireland, Ireland Active, the Society of the Irish Motor Industry, Retail Grocery Dairy & Allied Trades Association, RGDATA, and the Coach Tourism and Transport Council of Ireland. Their attendance here is a measure of the intensity with which they feel these issues and the way they affect their operations.

Members have already received a copy of our submission. Therefore, I will not go through it all but will summarise its key points. The Alliance for Insurance Reform brings together representative bodies from the not-for-profit charity, sports and small and medium size business sectors across Ireland, representing more than 35,000 organisations, more than 633,000 employees and more than 41,000 volunteers to demand rapid action to end crippling insurance costs. The creation of the alliance is a response to countless stories from small organisations where services and jobs are being affected by excessive insurance premiums, both liability and motor. Members will have heard many such stories, but there is a considerable fear among many organisations which are afraid to go public on their experiences because they are at the mercy of one underwriter or afraid to draw additional claims on themselves. What members are hearing is only the tip of the iceberg. However, we will not focus on the stories but analysis and solutions.

Our approach to insurance in Ireland is at a turning point. The system is dysfunctional to the extent that what is supposed to be a service industry that facilitates the operation of society has become an extractive industry, taking over €2 billion in motor and liability insurance premiums annually. It is protected and often made compulsory by the State and so expensive that it threatens the viability of many organisations that form the backbone of the nation.

A survey of 950 organisations within the alliance, carried out by Amárach Research in January, found that since 2013, nearly half of respondents had seen their premiums rise by over 30%, while over one fifth had seen rises of over 70%. This was in the broader context of a consumer price index increase of 0.9% in the same period. Two thirds of respondents also reported having increased excesses or new exclusions added to their policies, an equally damaging trend that severely restricts the ability of organisations to develop and creates additional exposure to cost.

Critically, 45% of respondents cited insurance as a threat to the future of their organisation, yet our members believe the insurance industry and the legal profession have the strongest voices in the corridors of power. Policyholders believe we have no voice. This is amplified by last week's Collins Institute report for Fine Gael which concluded that the Central Bank, the State institution charged with protecting insurance policyholders, was too focused on the needs of the financial services industry. There is much activity in the area, but our concern is that a lot will be discussed and that little will be done as it is not in the interests of the insurance companies or lawyers operating in this market for anything to change. If we were them, we would huff and puff in a show of empathy with our customers, but we would fight tooth and nail to stop real change. We would cite issues arising from the Constitution, data protection or competition, suggest self-regulation, agree to protocols, ease off on aggressive profit-taking for a while until the fuss died down and string out the debate to the next general election; anything to stop real reform.

In the last six weeks we have spoken to the Minister of State, Deputy Michael D'Arcy, and his officials, the Personal Injuries Assessment Board, the Office of the Data Protection Commissioner, the Personal Injuries Commission, the Legal Services Regulatory Authority and the Competition and Consumer Protection Commission and it is clear that many elements of the work of the cost of insurance working group are grinding to a halt, with the dead hand of vested interests evident. The buck stops firmly with policymakers. The actions we are suggesting are in the areas of prevention, consistency and transparency. We believe them to be just, proportionate, feasible, achievable within a limited timeframe and, ultimately, effective. The following are practical ways to solve the insurance crisis which we hope the committee will consider and support.

On prevention, to quote a member of the audience at a public meeting we held in Cork in February, "If I had a need for big money and I had a choice between robbing a bank and faking an injury, I'd pick the fake injury every day. More money and no consequences if I'm found out." We absolutely acknowledge the right of genuine claimants to fair compensation, but people have accidents all over the world; it is the consequences for Irish policyholders that appear unique. We are suggesting four actions in this area.

First, we call for sections 25 and 26 of the Civil Liability and Courts Act 2004 to be linked. We want an amendment to the Act such that if a case is dismissed under section 26 because the plaintiff knowingly gives or adduces evidence that is false or misleading, it would automatically be referred to An Garda Síochána for prosecution under section 25, which would penalise such an offence with a substantial fine or imprisonment or both unless a defendant deliberately falsely accused a plaintiff of giving such evidence.

Second, we seek the establishment of a Garda insurance fraud unit. The cost of insurance working group's motor insurance reports promised a dedicated Garda unit to focus exclusively on the investigation of insurance fraud. We want the unit to be established as a matter of urgency. The Minister has told us that there is not enough support in the House for it. If that is the case, we urge opposing parties to clarify their concerns and remove the blockages.

Third, we seek the regulation of claims management companies, also known as claims harvesters. Our members tell us that claim harvesting websites are acting as the ambulance chasers of old, pursuing potential claimants with promises of money to be made, regardless of how dubious the claim and with no costs or consequences. They are adding fuel to the fire of fraudulent, exaggerated and misleading claims and must be regulated by the State to protect policyholders and society as a whole. In particular, referral fees they might charge to refer live

cases to solicitors must be banned outright. Regulation, registration and a ban on referral fees would only bring Ireland into line with the regime in place in the United Kingdom since 2007. It is not sufficient for the Government to pass this onto the Legal Services Regulatory Authority which is still in the process of establishing itself. Regulation must be brought forward now.

Fourth, we want sections 7 and 8 of the Civil Liability and Courts Act 2004 to be amended. First, in section 7, we call for the period in respect of the Statute of Limitations on personal injury claims to be reduced from two years to one year. As the average period for a claim to be registered with the Personal Injuries Assessment Board following an accident is nine and a half months, this would not disadvantage claimants. Second, the language used in section 8 which purports to oblige a plaintiff to inform a defendant of an incident within two months is so conditional as to be useless and ignored in our experience. We ask that it be tightened in order that judges would have to take into account any delay in notification before allowing a case to proceed. The Department of Finance has stated it is pursuing this issue with the Department of Justice and Equality, but we want it done urgently.

On consistency, the general damages awarded in Ireland for minor injuries bear no relation to those awarded in other countries, which makes Ireland a very attractive place to have a minor accident. Furthermore, there is no consistency within the jurisdiction in awards for identical injuries, which makes it very attractive in personal injury cases to reject a PIAB offer and head for the courts, safe in the knowledge that with the right judge, the rewards may be substantially better. We seek two reforms in this area, the first of which is that the approach to calculating the book of quantum be changed. The Court of Appeal has established that the ceiling on general damages for catastrophic injuries is €450,000. It has also established that the concepts of common sense and proportionality are central to the principles of proper compensation. We call for a revised book of quantum calculated on that percentage disability basis as a matter of urgency through the Personal Injuries Commission which is only looking at solutions in the case of motor whiplash claims. The Government should extend its remit to all injuries immediately. Next we encourage consistency among the Judiciary. The 2004 Civil Liability and Courts Act should be amended to require judges who award damages in excess of the book of quantum for general damages to set out a detailed reasoning for so doing.

On transparency, the insurance industry is of systemic importance to the proper functioning of Irish society and enshrined as such in much legislation and regulations, yet there is virtually no transparency in the market, either at industry or individual policyholder level. We demand that control of analysis and reporting of the new national claims information database be given to the Personal Injuries Assessment Board, rather than the Central Bank, as envisaged by the cost of insurance working group. The PIAB has the expertise and funding necessary and no additional legislation would be required as sections 54 and 55 of the PIAB Act of 2003 already allow for this function. We ask that the blue book be reinstated immediately and enhanced in order to restore the only transparency there was in the market before the Central Bank discontinued it in 2016.

We want to scrap and revisit the agreed large increases protocol. The very first recommendation in the report of the cost of insurance working group on motor insurance was that insurers set out for customers the reasons for large increases in premiums. The protocol produced from this recommendation was one of the first actions to be ticked as completed in the cost of insurance working group, CIWG, updates. However, the protocol agreed between the Department of Finance and the insurance industry which I have linked with the submission is a good example of how the cost of insurance working group is being strangled. We would be better off

without it as it only creates the impression that something has been achieved when it has not. We want a meaningful protocol agreed to for both motor and liability insurance policyholders that individualises explanations, with clear calculations showing the basis of premium charges.

We seek the reinstatement of the 2003 insurance industry-IBEC protocol for dealing with claims. Almost one year was spent by the Department of Finance and Insurance Ireland talking in circles about a protocol for notifying policyholders about the progress of claims against them before the Department discovered a pre-existing protocol agreed to by Insurance Ireland's predecessor, the Irish Insurance Federation, IIF, and IBEC in 2003. The insurance industry is resisting it being implemented anew. We demand that it be implemented immediately, backed by legislation, for both the motor insurance and liability insurance sectors. A copy of the protocol is attached in Appendix 3.

As an alliance, we have put a great deal of work into addressing this crucial issue for our members and their employees and volunteers. We hope the committee can help us in ensuring action. We are happy to take questions.

Acting Chairman (Senator Aidan Davitt): I thank Mr. Boland who reiterated what he said on radio earlier. A great deal of work has gone into this issue and he has outlined ten actions which are transparent and easy to understand.

Deputy Maurice Quinlivan: I thank Mr. Boland for his presentation. Together with Deputies Tom Neville and Niall Collins, I was instrumental in inviting him to appear before the joint committee. Deputy Niall Collins is no longer a member of the committee, having taken up membership of another committee. I offer apologies on his behalf. Unfortunately, Deputy Tom Neville has to attend another committee meeting that clashes with this one. He wanted to be present and it is not a sign of disrespect on his behalf that he is not present.

I attended a meeting the alliance organised in Limerick and while I had heard everything raised previously, I was struck by the number of people who were outlining the same problems with the cost of insurance, the lack of reasoning for premium increases and why there were so expensive, that there was no transparency and that claims could not be stood over following rigorous investigation in many cases. Have jobs been lost due to insurance premium increases businesses have experienced in the past few years, particularly in the past year? Is it a problem for both SMEs and larger companies? I acknowledge that it is also a problem for community groups. Has the Government done enough to deal with hikes in insurance costs? What could it do today if it were to take action on the problems raised by the alliance? What are the barriers to addressing them? If Mr. Boland was Minister, what are the three principal actions he would take? Towards the end of his contribution he referred to the lack of transparency. What information is not being available by insurers to premium holders? Should the Central Bank be responsible for analysing a report on the national claims information database data?

Mr. Eoin McCambridge: I will deal with the question on business and employment. I am a shopkeeper with a one-premises business. Two years ago we looked into expanding our business and opening a second outlet. We had all of the work and planning done, but at the time we were finalising the expansion and just about to sign, we received notification that our insurance premium would increase from €52,000 to €102,000, a huge increase. Given other costs such as rates and rental costs, we decided not to go ahead. The second outlet would have been located in a sizeable premises and we would have employed between 30 and 40 people when we opened. The doubling of my insurance premium three years in a row was part of the decision we decided not to open the new premises. My current premium could have increased

to €200,000 this year. Fortunately, it did not, but the previous increases affected my ability to expand the business.

Mr. Ivan Cooper: I can give an example from the community and charity sector. Charities require public and employer's liability insurance. There are almost 10,000 such organisations in Ireland, with more than 140,000 people employed. The Wheel is a social enterprise which provides much needed transport services for people with disabilities. Its insurance premium doubled from €65,000 to €130,000. Because of the increased costs, the organisation has had to cut services and reduce its workforce. It is paying more for insurance cover than for petrol. It has had a big impact on services. From the perspective of charitable organisations that have to raise funds to pay additional insurance costs, it is a big challenge to fundraise for services without being lumped with this additional overhead. Organisations in the voluntary healthcare sector have been taken into the State's insurance programmes because they are unable to pay the premiums they are attracting.

Mr. Peter Boland: We have no objection to the Central Bank collecting and collating the data, but we have a major issue with it analysing and reporting on it because of its dual role in respect of the insurance industry. It has a prudential role which always seems to receive priority and a consumer protection role which appears to be ignored. As one of the Deputy's colleagues said at a meeting of another committee a few weeks ago, the bank is a dog that does not bark, never mind bite when it comes to customer protection. We would strenuously object to the bank taking on that role.

With regard to the information not being supplied, the simplest reform the Government could implement is to tell the Central Bank to reinstate the blue book. The blue book was a set of industry data which, while not perfect, gave an overview of what was going on in the industry and a sense of profitability. Profitability is complex in the insurance industry and can only be interpreted over a number of years, if not a decade, because of claim trends and other issues. However, the blue book provided clarity, but the Central Bank summarily cut it and 2015 is that last year for which data are available. The blue book has been replaced by a set of Solvency II data which are unintelligible, even to actuaries, and of no use from a consumer point of view. From claims up, all of the data are available. The PIAB collects the data constantly because all claims must initially go to it. It is a matter of collating the data and reporting on them, as the PIAB is well placed to do.

I refer to the question about the three actions the Government should take. The actions we have suggested are granular and defined enough to be acted on because there are different people who could act on each. If the Deputy wanted something to be done before close of play this evening, I suggest the establishment of a Garda insurance fraud unit. Gardaí had reached the stage where they had met their colleagues in the United Kingdom where they looked at a similar unit, but that initiative seems to have shuddered to a halt. Everybody is in agreement that it makes sense so we are not entirely sure why it has shuddered to a halt. That would be number one.

Number two would be asking the Judiciary to express why judges are going beyond the book of quantum in the context of general damages. I want to emphasise here that we are always looking at protecting the plaintiff on this, so we are not talking about special damages, which are for loss of earnings or other expenses. We are talking about very specific general damages which apply in cases of injury. They are measured in the book of quantum but they are constantly being overruled in the courts. We cannot and do not want to interfere with the role of the Judiciary in this country but we want an explanation when the book of quantum is breached.

The Insurance Ireland-IBEC protocol on dealing with claims is absolutely dogging the entire small and medium enterprise sector at the moment. Ms Reid will probably say the same in a moment. I refer to claims being settled without any consultation with policyholders. It is a matter of natural justice and it is creating a fog in this area, which makes it very difficult to find out what is going on because there is so little transparency on the part of the insurance companies. The protocol is there. It has been properly parsed and written. I assume it has been legally vetted because it was signed off and agreed by Insurance Ireland's predecessor in 2003. It is just a matter of them getting off their asses, if members will excuse my expression, and implementing it again because nothing has changed between then and now that might bar us from using it.

Deputy Maurice Quinlivan: I will return to the issue of transparency for a moment. At the meeting I attended in Limerick - I understand the same issues were raised in Galway and Cork as well - people gave specific examples of where they did not even know there was a claim against them until their policy was due for renewal. Do the witnesses have any examples of that?

Ms Stephanie Reid: No more than Mr. McCambridge, I am not accustomed to public speaking. I joined the Alliance for Insurance Reform out of frustration with insurance. From 2016 to 2017, for example, I saw my insurance double. When I asked for an explanation, the only one I was given was that the market was rising. The most recent incident I had was a claim back in 2011 when a number of false allegations were made and on the day the matter was contested, it was discovered that the allegations were false. I believed the case had gone away until recently when I received a letter from a solicitor who allegedly acted on my behalf and, to my shock, he was looking for payment for that. Another shock I got was when I was told the case was settled for €40,000 plus costs. I was totally unaware of that and kept completely in the dark. I had no voice although I am the policyholder.

Deputy James Lawless: I welcome the witnesses. It was good to listen to their presentation. I congratulate them on setting up the group and on coming before us to engage in respect of this issue. When one is trying to run a business, one has enough things to do in terms of one's shopfront or backyard without having to lobby or advocate for changes in legislation. I understand that the frustration they experienced led the witnesses to this point. The same is true of those in the Gallery. I read with interest about the number of stakeholders and component groups involved in the alliance; it is quite a significant body that is represented. It great to have the group before us.

The points addressed in the presentation all appear to be very sound and reasonable. Is it a ten-point plan? I hope we can progress the points in some shape or form, either at the committee or in the Houses, because they make a lot of sense.

I wish to inquire about a couple of matters. Reference was made - I have read details of this elsewhere - to sums being paid out in respect of minor injuries and other incidents without being challenged and even without the knowledge of policyholders. Ms Reid spoke about such a case. People representing businesses and employment agencies have come to see me at my constituency office to discuss workplace accidents whereby an employee is allegedly injured and when a claim comes in the insurer often settles it without contesting matters or ascertaining the details of who did what. Employers often say that claims are trumped up and that they did not get their day in court or anywhere else - such as at an employment tribunal or other forum - in order that they could thrash matters out. They often say that if they were given the choice, they would have fought it tooth and nail. However, they do not get a choice because their insurers just pay out and if they query the matter, the insurer says that is the way it is and there is

nothing to do about it but pay the premium the following year. Insurers say that is how they do business. That is extremely frustrating. Business owners have come to me with such cases and I will be interested to hear the experience of the witnesses in that regard.

Perhaps that comes under the point relating to the claims management companies. I have heard from people locally that there are websites and hotlines - offered through the medium of a variety of languages - people can ring in order to report accidents at work and the companies involved will chase the claims on their behalf. Such companies encourage or vet the process, which is unhelpful to say the least to the premium payer.

My final point correlates to all that I have just said. I noticed that much of the documentation provided refers to rising legal costs. I appreciate that this is a factor. I will put my hand up and say that I am a lawyer, but I do not speak for the legal industry - far from it. I am not practising at present but I hear from colleagues. Does the issue go back to insurers? I am interested to find out if the supposition is correct that the lawyers are creaming it and that legal costs are driving up costs overall. Colleagues who are practising tell me that since the PIAB was set up and insurers began to do the work in-house, there is very little work for them because there is not much litigation in view of the fact that many cases do not go to trial. Barristers find that they are not weighed down with injury cases coming their way. In fact, they say it is all going to PIAB or what is increasingly common is that insurers say they will settle and that is the end of the story. That seems to be the big problem, namely, the lack of counter-challenge whether it is in the courts or through an employer having his or her say or having some forum that can hear both sides of the case. The question is how it is even cost effective for the insurers to be doing that. Perhaps the answer is that they are ripping off the person who pays the premium and that is how it is cost effective, but it just seems that if that challenge was there it might be one solution to the problem. I would be interested to hear the views of witnesses on what I have said.

Mr. Eoin McCambridge: I will have a stab at responding to that question if I may. Reference was made to the prevention of claims but in fact the PIAB only handles 10% of the claims and something like 20% of them make it to court. I might not be correct in my statistics but up to 80% of cases are settled in between. In my personal case my understanding is that insurance companies are reluctant to defend, first, because of the costs of defending cases. We raised that under the heading of consistency. When cases go to court the judgments seem to be quite random. There seems to be a lack of consistency in judgments. Again, insurance companies are very reluctant to go to court because it costs so much. That is one of the reasons they push for settlements. That is what happened in our case, whereby the insurer pushed to settle rather than defending. Even though the company felt there was a case to defend it was very reluctant to go to court because of the costs.

The other issue in addition to prevention is that when a case gets to court even if the insurer wins the case it is very rare that the costs will follow the plaintiff. It is generally defendants who seem to have the costs awarded to them. Again, it is one of the reasons we said we would really like to see a change. I am sorry if I am getting my sections mixed up but I think it is in section 26 that where a judge dismisses a case, it is just dismissed but nothing happens and the person walks away. That is why we are looking for an automatic referral under section 25 so that the Garda would get involved and there would be a prosecution. We have to start preventing such claims. If someone hurts himself or herself on my premises, I, as a businessman, want to look after that person but I am afraid to do anything because he or she could claim for €70,000, €80,000 or €90,000 for hurting a finger. It is bizarre because the cost of the claim could be relatively small. When one starts to add in all the costs, however, it gets out of control

and that is reflected in my premium. The system is very dysfunctional and, as a layperson, it is very hard to understand what is going on. We certainly need to prevent those kind of small, misleading - not necessarily fraudulent - but exaggerated claims.

Mr. Peter Boland: If I could add to that, I had a discussion with an acquaintance in the legal profession last night about this whole area. I understand the reluctance of insurance companies to go to court because it is a bit of a lottery. That is not to be sympathetic to them in any way, shape or form because they have a lot to answer for in this area, but it is certainly the case that the gentleman I had the discussion with could only think of one case in recent case law where anybody was prosecuted under section 25 of the Civil Liability Act, and that was back in 2012. The legislation is there but the way in which it is structured does not act as a deterrent for people who are intent on making exaggerated or misleading claims.

Going back to Deputy Lawless's comments on the issue of legal costs, we have not focused on legal costs to any great extent because we do not want this to turn into a blame game. To be honest, we have felt that much of the debate on this in recent years has been very unsophisticated in that the vested interests take a position and point their guns at the opposition. There has, between the legal profession and the insurance companies in particular, been a lot of "It's your fault. No, it's your fault." We say that everyone involved in this, particularly those making money out of it, have a responsibility to address it. What is different now is that it is unsustainable. Businesses, charities and voluntary groups were able to handle the increases for a number of years, but it has gone past that point now and we are looking at a much broader issue. This is why we are not a business-based organisation any more, because this is a societal threat. The consequences of what is happening at present are that schools will not be able to allow kids to exercise in the schoolyards, it will not be possible to build additional community playgrounds, Montessoris will have to close because of the excesses and conditions on them, voluntary clubs will be restricted in what they can do, charities will not be able to provide the services they have been able to provide and society as a whole will shrink. That is what we are looking at. We want to avoid this bashing back and forth and actually get some action because we fear that an awful lot of what is being done at present consists of long-term processes aimed at solving an urgent problem, and that is of no use to our members. That is why the ten items we have listed, we feel, can be addressed before the summer recess, never mind by the end of the year.

Mr. Ivan Cooper: I wish to add a word of support to that. It is just to acknowledge Deputy Lawless's acknowledgement that everyone here has many more significant things that he or she should be doing today. It takes something in the world of charities, where there are so many challenges: fund-raising challenges, regulatory challenges and the governance challenges with which everyone is familiar. This issue has risen right up and for many organisations is now an existential challenge. I may be able to give another few examples later on at an appropriate moment to reinforce that. It should be noted that this is a very complicated terrain, as I am sure we are all aware, and it is difficult to understand the dynamics of what is going on. It is a challenge. It is a measure of the significance of the problem that ordinary business people and folk from the world of charities are taking time out to try to come to grips with this complicated landscape and make reasonable recommendations to our Parliament on the basis of it.

Acting Chairman (Senator Aidan Davitt): Are Deputies Kelleher and Lawless happy enough with the responses?

Deputy James Lawless: Yes. I thank the witnesses.

Deputy Billy Kelleher: I wish to raise two issues. Do we have figures for the number of

cases that were dismissed under section 26 of the Civil Liability and Courts Act 2004? Are they available publicly? Mr. Boland said that only one or two referred prosecutions have taken place under section 25 of the same Act. In the context of the next appointee, the Alliance for Insurance Reform recommends the establishment of a Garda insurance fraud unit. Mr. Boland said, “The Minister has told us that there is not enough support in the House for this.” It was a recommendation of the group. What I am trying to get at is why there is not enough support. How have we tested that support, just as a matter of interest? I am new to this committee; I had spent the past seven years on another committee. Why is there no support? Was there a motion before the House? Was there a debate in the Dáil? How has the support of the Dáil been assessed as to whether the establishment of a Garda insurance fraud unit would pass muster? I ask Mr. Boland to elaborate on that.

Moving to the other issue I wish to raise, there is no doubt, in my experience, that people put up fierce resistance to change if money is involved. There is no doubt but that there are huge sums at stake here in the context of the legal profession, the insurance companies and other vested interests. That is a fact. The Central Bank, of course, is a prudential overseer of the insurance market and has a prudential obligation to ensure that we have a functioning insurance market. Equally, we have cases in which insurance companies went wallop and left people without any form of compensation. It is a matter of getting that balance right. Equally, other organisations come before us expressing exasperation at that fact. When Mr. Boland says that the Central Bank has prudential duties, where does he see this role? What other agency does he see as having a role as the advocate for policyholders, bearing in mind that policyholders must be protected as well when they do have a claim?

Acting Chairman (Senator Aidan Davitt): Just before I call the witnesses for an answer, I will take Senator Reilly as well because he-----

Senator James Reilly: No. Go ahead.

Acting Chairman (Senator Aidan Davitt): Is the Senator sure? I know he has other commitments.

Senator James Reilly: I am fine.

Mr. Peter Boland: I will answer Deputy Kelleher’s questions in reverse order again. Regarding advocacy for consumers, we are about the crisis that is happening right now. In an ideal world we will go out of business-----

Deputy Billy Kelleher: Statutory advocacy.

Mr. Peter Boland: Yes. I will get to that. We are talking about things that will have an impact immediately. In the longer term, there is definitely a case for a separate body to oversee all of the financial sector in terms of consumer advocacy. I am not the first to bring that to the table; that has been mentioned regularly. We are all involved in small businesses and small enterprises and we are not great fans of additional oversight and bureaucracy. However, we cannot understand how the Central Bank can have that prudential role and a consumer protection role at the same time. They are mutually exclusive.

Regarding the lack of support, I think three of us who are here today were at that meeting with the Minister. We were told there was a lack of support for the proposal. It was not clarified on what basis that support was lacking, but we were told there was a lack of support. We were very disappointed by that because everything we had read from the cost of insurance working

group would have suggested that everyone was gung ho on the idea and that it was going forward. However, it seems to have been parked for now and we would be very anxious to get it back in place. Regarding costs, it had already been agreed by Insurance Ireland that it would fund that unit, so the cost to the taxpayer would have been negligible.

As we understand it, and according to my legal contact last night, we can find only one case of a prosecution under section 25. Regarding section 26, I know there are numbers in the cost of insurance working group report. Up to this year, I think, it has been very low, certainly in the low teens, as I understand it, but we have seen an acceleration in the number of cases being dismissed under section 26 in recent months, and there have been headlines about that in the newspapers. The one thing we cannot get over is that someone who has been found by the court to make a misleading or exaggerated claim - and often that is putting it politely - is then able to walk out of court scot-free, with no consequences, and in a position to do something similar again some time down the road.

Acting Chairman (Senator Aidan Davitt): Copy that.

Senator James Reilly: I reiterate that Deputy Neville was very keen to be here today for this but he is also Fine Gael's lead speaker on mental health and is on the Joint Committee on the Future of Mental Health Care, so there has been a clash. He was here for the quorum at the start of the meeting to enable it to begin. I just wanted to put that on the record because, like Deputy Quinlivan said, this is an area in which Deputy Neville is particularly interested. I am also very interested in it because being a GP means running a small business, and owning a shopping centre has all the problems the witnesses have outlined. However, I am very interested in it from the point of view of the consumer and the Government. I really welcome the witnesses, the presentations they have made and the document they have given us because they have very clear, concise, reasonable suggestions, some of which I wish to discuss with them because I want to see what the blockage is.

I have heard very clearly what they have said and I agree with them 100%: where vexatious complaints are made, there must be consequences for those who go beyond vexatious to fraudulent, and let us call a spade a spade. We want to ensure that any citizen who is injured and is entitled to compensation gets it, but it should be reasonable and proportionate. The comments regarding putting in place legislation that would put an onus on members of the Judiciary to explain the reason they have departed from the book of quantum in terms of an award make perfect sense and I hope they would not see issue with that. Nobody wants to interfere with the independence of the Judiciary or the individual case because all cases are different but, at the same time, an explanation would be welcome.

I refer to some of the comments made. The witnesses have given us some anecdotes, including Mr. McCambridge of McCambridge's in Galway, with which I am very familiar, my wife being from Galway, but they are anecdotes. It would be very useful if there was some study done that gave evidence to the fact that X number have not been able to expand and Y number of jobs have been lost. On many occasions in the voluntary sector, I have seen people who have not been able to set up facilities, perform a service or even run an event because of insurance costs. There is no question about that. I welcome, and I will continue to say this, that the witnesses have given us some clear suggestions. The suggestion on the Garda fraud unit makes absolute sense to me. There must be consequences for those who commit fraud.

I do not know what issues we will face in terms of whether there should be an automatic referral between section 26 and section 25 but nonetheless we must explore that to identify the

problems.

I want to discuss regulation of the claims management companies. Mr. Boland stated this had been done in the United Kingdom in 2007. Have the witnesses been given a rationale for the absence of such regulation? Have they been told the reason we do not have such regulation or what the blockages are in that respect?

Regarding the legal costs, there is no doubt, as the witnesses have acknowledged, that very often insurers will not go to court because it is cheaper to settle the claim. That is a problem but it possibly would not be as much of a problem if there was a consequence for those who made false claims. The insurance company could then set about clarifying what happens to people when they do make false claims. As a doctor, I see the other side of this in my surgery with people who have been injured but I have also had experiences, and I am not getting into the blame game, of where I have been instructed by “the lawyer” representing the client to refer them to a particular consultant, which I will always put in the report because I do not believe that is appropriate. It is a particular problem for crèches and childcare facilities also. We want children to play in a normal environment outside, get dirty and allow them graze their knees. That is the reality of life and to put in place anything that would block that seems detrimental to me.

All I ask of the witnesses is for them to identify the problems as to the reason the blue book has not been reinstated, particularly the 2003 IBEC-IIF protocol. Have they had discussions with the Minister or the Department on that and, if so, what has been their response as to the reason that has not happened? I will be very supportive of many of the issues the witnesses have raised today and will pursue them with the Ministers and the Departments relevant to them.

Do the witnesses have any thoughts on the need to have a policyholder advocacy office, as raised by Deputy Kelleher, in terms of consumer protection in the future? We all know this is a dynamic area and as soon as we solve one lot of problems, another lot will present themselves. It is the idea of who might be appropriate for that.

Mr. Peter Boland: I will deal with the IBEC-IIF protocol. The cost of insurance working group, CIWG, report is written in very parliamentary or diplomatic language, for want of a better word, but I get the impression from reading it that there was quite a bit of frustration in the Department of Finance when it turned out that a protocol already existed which had not been brought to its attention during the initial work on the cost of insurance working group. It appears now from the fourth quarterly update that the insurance industry is saying that that protocol does exist but it has been superseded by the Central Bank’s consumer guidelines. We have had a good look at the Central Bank consumer guidelines and, to be honest, the contrast is like saying that one no longer needs a driver licence because one has a new membership card for Xtra-Vision. They are completely separate. It is completely inappropriate and there is no connection between the two. The suggestion that the Central Bank guidelines could replace a detailed protocol like the one we have put into our submission is almost farcical. There is some strong resistance in that regard, but it is only from one side of the coin.

Regarding Senator Reilly’s question on the blue book, we were told at that meeting that the Central Bank is independent. The Central Bank made that decision, and that is its decision. As we have outlined, we are not specialists in this area but if the Central Bank has any role in terms of protecting the consumer, it needs to get with the programme and bring the blue book back as the bare minimum in terms of oversight of the area.

Mr. Eoin McCambridge: Regarding claims management, we spoke about that with the Minister. In terms of claims management, the issue is that it is the Law Society which has responsibility. In fairness, it attempts to block these sites but if it takes down one site and it is blocked, another site pops up. Were one to google it any time of the day, a number of sites would come up. There is no effective legislation in place to punish these sites. They keep reappearing, and we need legislation to deal with that.

The Senator mentioned people taking fraudulent cases but there is another issue. I have friends who have been injured but do not take cases. They do not want to be seen to be taking cases because people will assume they are fraudulent. It has got that bad.

Another issue is that, as businesses and policyholders, we see the judgments. I have got almost an unhealthy interest now in looking at the newspaper headlines every Thursday and Friday to see what has happened in court cases. As a lay person reading through the judgments, one tries to work out how the judges arrived at their conclusions and sometimes it is very difficult to do that. They may well have perfectly valid reasons and we believe if we could see those we would understand better the reason premiums are increasing or what we can do to prevent these issues but as a lay person reading the newspaper, I am not getting a clear picture as to the reason vast amounts of money are being awarded in these cases. There is no downside to taking a case at present. If it is thrown out, it is thrown out but nothing happens following it so unless we address these issues I believe the number will grow. There is no downside to taking a case.

Mr. Ivan Cooper: Coming back to Senator Reilly's point about preventing children from playing, it is turning into a bigger issue of the nature of the society that is being created out of all of this with people being encouraged almost to behave in this particular way, setting up people into adversarial relationships where people are afraid to do certain things, rejecting the sharing of risks, rejecting shared responsibilities and, generally speaking, leading to this more adversarial society. There are cultural changes associated with some of this as well.

Ms Stephanie Reid: When it comes to children's play, there was a time when we would put in obstacles that would teach the children to risk manage themselves but now, and some of my colleagues are in the Gallery, we are scaling back on that. We virtually have to wrap them in bubble and they cannot do anything any more because everything is a risk.

Acting Chairman (Senator Aidan Davitt): Are Senator Reilly and Deputy Kelleher satisfied with those replies? From my point of view, I fall into many of the categories the witnesses are representing in that I have a child in a crèche. I am chairman of quite a large GAA club and I have a small to medium business so I know from first hand the problems facing the sector. This committee has heard that the main costs of doing business are rates and insurance. I do not think the increase in rates would have put anybody out of business but the increase in insurance premiums has certainly put people out of business, including people who had good businesses and who had been in business for a long time. What insurance companies are charging is a chronic problem and some of those who come up with figures on which to base policy must have friends in the insurance industry. Some of the numbers seem to have been taken out of the telephone book and the increases in insurance premiums are incredible.

There has been an in-depth investigation of the insurance industry. Did the witnesses' findings lead them to believe there was collusion within the insurance industry and by insurance companies?

Mr. Peter Boland: The Competition and Consumer Protection Commission, CCPC, is in

the process of investigating motor insurance and the European Commission has two inquiries going on at the moment. We met the CCPC and it is not yet in a position to comment but we have common ground with it in the sense that no data are available. The Acting Chairman asked a very good question and we have heard a lot of commentary on the issue in the past six months or so. There are more data in the banking industry - a sector which is getting a lot of criticism at the moment - than in the insurance industry so it is very difficult to answer. It is a very concentrated industry and 90% of the motor insurance business is handled by only six underwriters, while 90% of the liability insurance market is controlled by eight underwriters. There is not a lot of competition and the Department of Finance takes the view that it illustrates how unattractive the insurance market is. We have other views but we need data and the first step is to have enough information to work out what is going on. As it stands, there is no transparency.

Ms Stephanie Reid: The costs of insurance are a matter of urgency. From 2016 to 2017 my insurance costs doubled and my insurance is due again on 16 May, when all the indications are that it will double again. As my circumstances have not changed and I have been claim-free for the past five years, I have no explanation for it. However, it is going to put me out of business, as it will several play centres throughout the country.

Mr. Eoin McCambridge: The working group report stated repeatedly that there was a lack of data and it struggled to identify the problem. The national database is essential for this purpose. Insurance Ireland does not want to release any more data but it is absolutely essential that we get more granular data. As motorists, we are legally obliged to have insurance and I would not operate my business without insurance. We cannot have six companies controlling 80% of the business without knowing what is going on or having any explanation as to why our premiums are going up. Because of this, we are very keen for data to be collated by the Personal Injuries Assessment Board.

Acting Chairman (Senator Aidan Davitt): Do the witnesses believe there are many businesses which operate without insurance? I know it happens because I have come across such an instance.

Mr. Peter Boland: There is anecdotal evidence to that effect but we do not know the extent of it. The claims of individual motorists operating without insurance are probably overstated and that may be the case with public liability and employer liability insurance.

Mr. Ivan Cooper: There is an element of fear in organisations because there is only one insurer in the market, meaning they do not feel they have any room to express a view on it. They have no choice. All directors of charities are volunteer board members and non-executive directors so none is being paid, but they are personally responsible for anything that goes wrong in the organisation and will carry the can as trustees. Not having insurance is not an option.

Deputy Billy Kelleher: Insurance is almost mandatory for motorists and is mandatory in other areas. Most businesses have loans from banks so would be obliged to take out several insurance policies such as public liability insurance, property insurance and personal life cover. Is any direction given by banks on the type of insurance to be taken out, for example when expanding a business? Is insurance being forced upon people in some cases? Do banks force a policy on people, thus narrowing their scope to shop around?

Mr. Peter Boland: It has not been a major issue. However, a big and related issue is the fact that there are eight underwriters which dominate the public liability markets. Just one or, at a

maximum, two underwriters will be available in individual sectors. It might sound like eight underwriters are quite a lot from the point of view of competition but in individual sectors such as taxis, golf clubs, Montessori schools, play centres etc., there are only one or two and we are increasingly finding that anyone dealing with the public, and who has made a claim in the past three to five years, will only have one underwriter who is prepared to quote.

Acting Chairman (Senator Aidan Davitt): Deputy Neville has just arrived, as he was at another committee. He met the witnesses at a previous meeting in Limerick. Does he have any questions?

Deputy Tom Neville: I apologise for not being here for the presentation but I will read it. I am also on the mental health committee. I met the alliance group in Limerick on the night it was formed and took extensive notes on what its members had to say. The insurance body was before this committee but we have only scratched the surface. I have been working heavily on the motor insurance side, rather than on business insurance, but I am from a business background and I am becoming familiar with the business side of the issue too.

A lot of the points made today were made in Limerick so I will not hold the committee up. However, I will do what I can in regard to this issue. The Acting Chairman and I have discussed the issue of insurance costs in the context of the cost of doing business. It is staring us in the face that the cost of insurance is a huge factor in that regard. There is a need for a major push back in that respect.

Acting Chairman (Senator Aidan Davitt): I thank our participants, Ms Reid, Mr. Boland, Mr. Cooper and Mr. McCambridge, who have been very informative. I also know that they have been very proactive. It is great that they have come together to highlight the problems for small and medium businesses, for which committee members are thankful.

The joint committee adjourned at 2.50 p.m. until 4 p.m. on Tuesday, 24 April 2018.