

# DÁIL ÉIREANN

## AN COMHCHOISTE UM FHIONTAR, TRÁDÁIL AGUS FOSTAÍOCHT

## JOINT COMMITTEE ON ENTERPRISE, TRADE AND EMPLOYMENT

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*Dé Céadaoin, 25 Bealtaine 2022*

*Wednesday, 25 May 2022*

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Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

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Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Richard Bruton,	Garret Ahearn,
Paul Murphy,	Ollie Crowe,
Louise O'Reilly,	Paul Gavan,
Matt Shanahan,	Marie Sherlock.
David Stanton.	

Teachta / Deputy Maurice Quinlivan sa Chathaoir / in the Chair.

## **General Scheme of the Personal Injuries Resolution Board Bill 2022: Discussion (Resumed)**

**Chairman:** The proceedings of Oireachtas committees will be conducted without the requirement for social distancing, with normal capacity in the committee rooms restored. However, committees are encouraged to take a gradual approach to this change. Members and witnesses have the option to attend meetings in the relevant committee room or online via Microsoft Teams. All those attending the committee room should continue to wash their hands properly and often, avail of sanitisers, be respectful of other people's physical space and practise good respiratory etiquette. If they have any Covid symptoms, no matter how mild, they should not attend in the committee meeting room. Members and all in attendance are asked to exercise personal responsibility in protecting themselves and others from the risk of contracting Covid-19. As they are well aware, if members are participating remotely they are required to participate from within the Leinster House complex. We have received no apologies, which is good.

Today we are discussing the proposed personal injuries resolution board Bill 2022. The general scheme of the Bill was recently referred by the Minister of State with responsibility for trade, digital and company regulation, Deputy Troy, for pre-legislative scrutiny by this committee. The Bill aims to amend the Personal Injuries Assessment Board Acts 2003 to 2019 to increase the number of personal injury claims settled through the Personal Injuries Assessment Board and to avoid the expense and time associated with litigation.

Due to the proposed expansion of the board's remit and new statutory functions to be conferred on it to resolve personal injury claims, the general scheme also provides for a change in the name to the personal injuries resolution board. The committee previously heard from officials from the Department of Enterprise, Trade and Employment and today I am pleased we have the opportunity to consider the matter further with representatives from various organisations. I welcome from the Alliance for Insurance Reform Mr. Peter Boland, director, and Ms Tracy Sheridan, the director and owner of Kidspace PlayCentre at Rathfarnham and Rathcoole. From Insurance Ireland we welcome Ms Moyagh Murdock, chief executive officer; Mr. Florian Wimber, director of advocacy, communications and public affairs; Mr. Michael Curtin, manager of regulation and policy development; and Mr. Michael Horan, non-life insurance manager.

Before we start I wish to explain some limitations to parliamentary privilege and the practice of the Houses in respect of references witnesses may make to other persons in their evidence. The evidence of witnesses physically present or who give evidence from within the parliamentary precincts is protected pursuant to both the Constitution and statute by absolute privilege. Witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of a person or entity. Therefore, if witnesses' statements are potentially defamatory in respect of an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative they comply with any such direction.

The opening statements have been circulated to members. To commence our consideration of this matter, I invite Mr. Peter Boland to make opening remarks on behalf of the Alliance for Insurance Reform.

**Mr. Peter Boland:** I thank the committee for the invitation to make a statement in its scru-

tiny of the personal injuries resolution board Bill 2022. The Alliance for Insurance Reform consists of 47 civic and business organisations from across Ireland, representing over 55,000 members, who in turn have 700,000 employees, 622,000 volunteers and 374,000 students. Our single aim is to get insurance premiums down to affordable levels and keep them that way. I do not propose to read the introduction to our presentation except to say that as recently as last month in a survey we conducted among members, 42% of respondents indicated that insurance costs are threatening the future of their organisation. This figure is not materially different from the response to the same question from a survey we carried out in 2018. In addition, 31% state that insurance costs are preventing them from providing certain services, and this view is particularly prevalent in the voluntary and community sector. Overall, liability premiums on renewal have increased by 16% in the past 12 months.

The fact that 85% of the value of personal injury settlements in the liability sector are now made via litigation guarantees that the settlement of such claims is as expensive as possible, with obvious ongoing impact on the cost of insurance. If we genuinely want to protect Irish businesses, voluntary and community groups, sports and cultural organisations and charities from the impact of unsustainable insurance costs, we must protect and develop PIAB so that it can settle more cases. This is where the personal injuries resolution board Bill 2022 comes in. We warmly welcome the intent of this Bill, even if it does not go far enough in terms of enabling PIAB to adjudicate on claims.

With regard to the specifics of the proposals in the Bill, head 4 regards the supply of personal public service numbers, and it is on page 6 of the general scheme. We welcome the requirement for claimants to provide their PPS number to verify their identity and the proposal that failing to supply a PPS number will now be an offence. However, we note there is no sanction for this offence. We ask that an appropriate sanction be added to make this requirement meaningful.

Head 6 regards the wishes of the respondent to enter mediation. Subject to some caveats, which I will outline in a moment, the alliance welcomes the provision of mediation into the PIAB process but our view is that it would be of most benefit if it could be introduced at any stage in the process. This head seeks to give respondents one opportunity to consent to mediation at the start of the process. We ask that the Personal Injuries Assessment Board, PIAB, be allowed to re-propose mediation to both parties later in the assessment, and particularly following assessment being rejected by either party. Additionally, we suggest that either party should be allowed to propose mediation at any stage as long as this does not serve to delay the overall process.

As I mentioned, the alliance for insurance reform welcomes the provision of mediation into the PIAB process, subject to several concerns. We welcome the commitment in the explanatory note to head 8 that mediation will not affect the timeline for assessments of a claim in cases where the statutory time frame applies. However, there is no mention of delivery costs of mediation. It must be crystal clear that mediation at PIAB cannot attract legal fees or other delivery costs, as this would fundamentally undermine its mission, particularly in the present situation, where there is no cap on fees for mediation. Furthermore, in order for mediation to be effective, it is essential that the plaintiff is present at all times, even where plaintiffs choose to use the services of a solicitor.

Head 9 deals with the power of the board to make procedural rules for mediation. As per our comments on head 6, we ask that PIAB and both parties be allowed to propose mediation at any stage in the assessment process and particularly following assessment, if the assessment is being rejected by either party.

Finally, with regard to mediation, we propose that if either party refuses to engage in mediation when it is proposed, such refusal should be factored into decisions on costs in any subsequent judgement by the courts.

We welcome the broadening of PIAB's responsibilities through the amendment of section 17 of the principal Act. Given the experience and expertise PIAB has developed in the 18 years since its establishment, it is now the most appropriate forum for the determination of a broader range of personal injury claims. In particular, it is the view of the alliance that it is well within PIAB's capability at this stage to assess psychological injuries and more complex claims, given that insurers' assessors frequently assess such complex claims, and insurers and claimants' lawyers settle accordingly.

Head 17 deals with section 50. Section 50 of the principal Act pauses the Statute of Limitations for claims before the board until six months following the issuing of an authorisation by PIAB. That six-month pause was a temporary measure to allay early concerns about the PIAB process being a barrier to the constitutional right of access to the courts. However, that issue has long been addressed and this pause must now be removed, as it merely serves to delay the process.

Head 24 deals with the functions of the board. The alliance welcomes the formal addition of functions regarding the publication of data and research on personal injuries and related areas. It is essential for reasons of public policy, competition, health and safety and fraud prevention that details of all personal injury claims in the State be recorded, analysed and published. The alliance calls on the Department to initiate the transfer of Insurance Ireland's claims data-sharing platform, InsuranceLink, into the ownership of PIAB, where it can be developed by the board in the interests of the common good and accessed by all parties with a valid fraud prevention or detection function.

The European Commission Directorate-General for Competition, having issued a preliminary assessment last year which found that Insurance Ireland restricted access to InsuranceLink, thereby restricting competition in the Irish motor vehicle insurance market, has published proposals by Insurance Ireland concerning access to InsuranceLink which involve Insurance Ireland retaining ultimate ownership of the database. We strongly believe that InsuranceLink should be taken from Insurance Ireland and made completely independent. PIAB is the natural repository for this data, given its founding legislation, its role in the Irish personal injury sector and its experience and expertise in this area. For this and all databases, data protection considerations must be honoured but not allowed to impede the provision of data where the data serves the common good, promotes safety or prevents and detects criminality.

Finally, with regard to head 24, we welcome the proactive approach proposed for promoting the board and its work. PIAB must continue to make clear to plaintiffs and respondents alike the benefits of settling via the board and the potential consequences of non-engagement or rejection of an assessment by the board.

On head 27 on the disclosure of information regarding offences, we welcome the formalisation of a mechanism for reporting suspected fraud to An Garda Síochána.

It is a common experience among our members that the case presented to court varies in material details from the case that was presented to PIAB, which undermines the assessments of the board. In addition to the content of the draft legislation we are scrutinising today, the service provided by PIAB would be greatly enhanced if court cases were to commence with

the exhibition of the PIAB claim. This would verify that, by and large, the same claim is being made in court. If it is not, then the claim should be sent back to PIAB.

The alliance believes that reform of PIAB will be a missed opportunity if it does not consider the development of PIAB into a quasi-judicial body, along the lines of the Workplace Relations Commission, Residential Tenancies Board or An Bord Pleanála. While the right of access to the courts must be protected, PIAB now has the experience and expertise necessary to facilitate it in adjudicating on personal injury claims. In addition, the recent adoption of judicial guidelines on damages for personal injuries means that many more cases may be directed towards the District Courts, which will present a capacity problem. PIAB is well-placed to adjudicate on such claims, therefore talking pressure off the courts.

We note the decision of the Supreme Court in the case of *Zalewski v. the Workplace Relations Commission, Ireland and the Attorney General*, and welcome the clarity this ruling would provide in considering the establishment of PIAB as a quasi-judicial body.

We propose that a mechanism be inserted into the Act that allows for periodic reviews of the new legislation in order to allow for the consideration of additional reforms and to counter any unforeseen challenges to the operation of PIAB in the future. Such a review mechanism is already built into the founding legislation of the Legal Services Regulatory Authority. I have provided section 6 of the Personal Injuries Assessment Board Act but I do not intend to read it out in full detail.

In conclusion, businesses, voluntary and community groups, sports and cultural organisations and charities need insurance to be affordable now and into the future as a matter of urgency. While we warmly welcome this draft legislation, we urge this committee to do everything in its power to make sure the legislation is amended, approved and commenced in its entirety immediately to facilitate this. Of all the major challenges facing Ireland right now, of which there are many, insurance is the one that Government can fix quickest but reforms are not moving fast enough. It is clear that neither the economy nor the fabric of society will fully recover from the Covid-19 pandemic unless insurance is sorted. Government has a golden opportunity to make the cost of insurance affordable now and forever, but only if it gets meaningful reforms, such as this legislation, into place now before the opportunity is lost. This concludes our formal presentation and we will be happy to take any questions.

**Chairman:** Thank you, Mr. Boland. I invite Ms Moyagh Murdock to make opening remarks on behalf of Insurance Ireland.

**Ms Moyagh Murdock:** Chairman and committee members, I am delighted to be here today to contribute to the committee's scrutiny of the personal injuries resolution board Bill 2022. I am the chief executive of Insurance Ireland and I am joined today by my colleagues, Mr. Florian Wimber, director of advocacy, communications and public affairs, and Mr. Michael Curtin and Mr. Michael Horan, managers from the regulation and policy development section.

Insurance Ireland is the representative body of the Irish insurance industry, with more than 133 members providing cover to over 25 million customers globally in more than 110 countries. Irish insurers invest nearly €490 billion annually. Our members employ approximately 35,000 people in Ireland and contribute €1.6 billion in tax income per year to the economy. Ireland is the fifth largest market for insurance in the EU and the biggest exporter of insurance services.

The proposal to reform the Personal Injuries Assessment Board with this Bill is a key ele-

ment of the Government's agenda for insurance reform. Insurance Ireland and our members strongly support the objectives of the Bill. It would be remiss of me not to re-emphasise the fact that our member companies recognise the value and the work of PIAB in providing for swifter settlement of personal injury claims and its impact on reducing legal costs since its inception in 2004.

The last time Ireland introduced such major reform, with the establishment of the Personal Injuries Assessment Board, was in 2004. Insurers responded positively and consumers benefited. We have continually advocated for the strengthening of the powers of PIAB as a means of reducing the legal costs involved in claims settlement. The benefit to consumers of strengthening these powers is that claimants would receive their compensation more quickly and unnecessary litigation would be avoided, thus saving on legal costs.

If the Bill is enacted, the extended mandate will allow PIAB to settle more personal injuries claims more effectively and efficiently, avoiding costly and lengthy litigation. This will lead to a more stable insurance market to the benefit of consumers, businesses and insurers alike. As my colleague has already communicated, the cost of insurance and the duration of litigation procedures present a fundamental threat to consumers and businesses. In its most recent motor report on the national claims information database, the Central Bank of Ireland reported that in 2020 the legal costs associated with settling personal injury claims through litigation were €16,064, compared with costs of €841 through PIAB. That is almost 20 times more. The Central Bank further noted that litigation has a very limited effect on the compensation of the claimant. Therefore, extending the mandate of PIAB to enable it to resolve more claims should result in significantly reduced legal costs and, consequently, reduced cost of claims. In addition, the Central Bank's report found that an average settlement through PIAB takes approximately 2.3 years, and is often much quicker, compared with 4.2 years for a settlement through the courts and litigation. Insurers have consistently said that consumers will benefit from quicker assessments and swifter payment of their compensation through PIAB and that doing so will avoid the lengthy legal process.

On the specific provisions in the general scheme, we note that parties will be asked to consent to mediation and, if mutually agreeable, it is envisaged that PIAB will facilitate mediation via a mediation officer appointed by it. More complex injury claims will be dealt with by PIAB, including wholly psychological injuries, which are currently released by PIAB to be settled in the courts. Traditionally, PIAB has not assessed these claims because there was no categorisation in the old book of quantum. The new personal injuries guidelines make provision for the assessment of injuries of a psychological nature. This increases the number of personal injury claims that can be resolved through PIAB, by including these types of claims not previously assessed by it. PIAB currently has a maximum statutory timeframe of 15 months within which to assess any claim. Claims that involve more complex injuries or injuries with a potential long-term prognosis that cannot be settled within the 15-month timeframe are released by PIAB to be pursued through litigation. The general scheme proposes an extension of up to two years beyond the current maximum period of 15 months. This would allow for increased resolution of these types of claims within PIAB, which would again greatly reduce the time and cost of settling complex claims.

The reform of PIAB is an essential element of the-whole-of-government approach to the progress of the action plan for insurance reform. It will improve the effectiveness and efficiency of claims processing, claims assessment and settlement processes and will reduce the need for costly and lengthy litigation. The proposed Bill will improve the Irish insurance market

environment to the benefit of consumers, businesses and insurers. We welcome the Cabinet's recent agreement on a proposal to amend the duty of care and occupiers' liability in Ireland. Together with this proposed Bill and the already implemented personal injuries guidelines, this rebalancing of the duty of care will contribute to a consistent and comprehensive suite of reforms to the Irish insurance market.

Insurance Ireland welcomes the proposed reforms in this proposed Bill and the changes the renamed and refocused personal injuries resolution board will bring to the Irish insurance sector. I thank the committee for this opportunity to present our position and I look forward to answering any questions members may have.

**Chairman:** I invite members to discuss the issue with the representatives present.

**Deputy Louise O'Reilly:** I thank the witnesses for coming in and for the evidence they have given. My first question arises out of the contents of Ms Murdock's opening statement. When I read it, I noticed there was something missing, namely, any mention of premiums or a reduction in premiums. Ms Murdock spoke of savings in legal costs and so on but there is no reference to these being passed on to customers. She says there will be a benefit to consumers and of course there will be if the claims process is quicker. There is nothing like the stress of a court case or a legal procedure hanging over you. Does Ms Murdock see this proposed Bill as being an effective way of reducing premiums? Is it simply about making things quicker or more efficient, or will those savings be passed on? It is not in the submission but does Ms Murdock see that happening?

**Ms Moyagh Murdock:** I am precluded from talking about future pricing and premiums. We are talking about taking the cost of insurance out of the process, which will have a big impact on the premiums that businesses and consumers currently pay. I can also point to what has happened in the last 12 to 18 months and even going back to when motor premiums reached their peak in 2017. In the past 12 months, those premiums have come down by 12%. Since the peak in 2017, they have come down 30%. While I acknowledge my colleague's survey of his members within the Alliance for Insurance Reform, the one bright spot in the monthly reporting from the CSO is that the cost of insurance is continuing to decline. The CSO does not report on employers' liability and public liability, ELPL, and property insurance because it is a complex portfolio. However, I know from reports from my members in this market that they have not seen any significant increase and nothing in line with the actual inflationary pressures that are on businesses in terms of materials and labour. We can also point to the fact that the ELPL market has been loss-making over the past number of years. We are only now in a position where we are starting to break even. It is important that this market is attractive in order to bring in more insurers. It must be a viable business for the sake of the consumers and the policyholders themselves and so as to attract insurers into the Irish market. As it stands, we all know it is very difficult to bring new players in. This proposed Bill, together with the revised guidelines and the news that the change in the duty of care is imminent, will certainly address the drivers of the cost of insurance in employers' liability, public liability and property insurance. I assure the committee that we have seen clear evidence of reducing prices up to this point in time.

**Deputy Louise O'Reilly:** I will ask Mr. Boland to come in on this in a second. I was looking at parliamentary question data from December 2021 showing profits within the insurance industry. For 2019, the operating profit or loss as a percentage of total income for employer's liability, public liability and commercial property insurance was 3%. Does Ms Murdock know what that figure was in monetary terms? Percentages do not give the full picture. Does she have a money amount for the profits in 2020 and 2021?

**Ms Moyagh Murdock:** I would not have the exact figure. I will ask my colleague to comment on this in a minute. That 3% profit comes after a period of making significant losses. It is an aggregated figure where losses were in excess of 20% for certain years. The problem is that a number of major players left the market and that figure, which is also based on the Central Bank's data, excludes the failed insurers that went out of the market. It is a very nominal return on investment, especially for people at group board level looking to reinvest in a market where there is only a return of 3%. There was an operating loss of 3% from 2015 to 2019. We started to see a return to profitability in 2020 and that was not just-----

**Deputy Louise O'Reilly:** Sorry to interrupt, but if Ms Murdock does not have the figure to hand, I ask that it be sent on to the committee. The amount of money involved is very important. I am conscious of time. Unless one of Ms Murdock's colleagues wants to come in, I want to ask Mr. Boland-----

**Ms Moyagh Murdock:** That is no problem.

**Deputy Louise O'Reilly:** I ask that it be done. I wish to check with something with the Chair. Am I right in thinking that Ms Murdock is precluded from talking about future premiums, but that other witnesses are not?

**Chairman:** Other witnesses are not precluded from talking about future premiums, as far as I understand it.

**Deputy Louise O'Reilly:** I did not think they were.

**Chairman:** I was going to ask Ms Murdock why that is the case.

**Ms Moyagh Murdock:** Under competition rules, it could be deemed to be price signalling. I want to stay away from that.

**Chairman:** Does that apply to Ms Murdock's organisation or-----

**Deputy Louise O'Reilly:** That is fair enough, but the same rules do not apply to Mr. Boland. I just wanted to establish that. Does Mr. Boland see the proposed Bill as being an effective way of reducing premiums, or might it reduce something else for someone else?

**Mr. Peter Boland:** Absolutely. That is why we are here. It is critical in getting Ireland to the same situation as other European nations and economies, where insurance is not an existential issue. I have cited several examples recently where representative bodies that are members of the alliance have met their European counterparts, and have been met with disbelief - and, in some cases, laughter - at the thought that insurance is the issue that it is in Ireland. Our role is to look at the cost of insurance in the near future. I will be honest and say that three or four years ago I would not have fancied the job of selling Ireland as a destination for liability insurers. It was a very difficult market. Many of the difficulties have now been resolved or are in the process of being resolved. That is reflected in the price of motor insurance, which is dropping at a steady rate. It is not dropping dramatically, but steadily. The price of liability insurance, which is subject to the same conditions, is not dropping. As far as we can see, the critical difference between the two is a lack of competition on the liability insurance side. The Government has accepted that, and has established the office to promote competition in the insurance market within the Department of Finance. The office was established in December 2020, but it has not resulted in any positive news yet. However, we expect that with all of the good stuff that is happening at the moment, this being a key part of it, it will have to be reflected in the price of



liability insurance. As matters stand, we are due reductions, because reductions are happening in motor insurance. They are not being passed on by the incumbents, so we need additional competition.

**Deputy Louise O'Reilly:** Mr. Boland mentioned having one go at mediation. I am a massive fan of mediation. It works when it works. One cannot just say that it will only work today but will not work tomorrow. I am thinking about amendments that could be made to make this legislation more effective. I would be interested in hearing Ms Murdock's views on mediation. When mediation works, it can work really well. All parties walk away from it happy out. Of course, when it does not work, there are other options. Does Ms Murdock have a view on mediation being available - not offered every ten minutes - right throughout the process? Sometimes people get into the process, think they want to have a row and then find out that perhaps it might be preferable to reach an agreement. I ask Ms Murdock for her views on that.

**Ms Moyagh Murdock:** We are very supportive of the mediation approach. Looking at the numbers, between 12% and 15% of claims are currently settled through PIAB, with a significant number going on to court. Some 10% of claims are settled immediately after PIAB hearings. Obviously, some sort of mediation goes on there. Some 60% of claims are settled through litigation before court. If we can make a big dent in that, it will take a significant amount of legal costs out of the process, which will be to the benefit to the consumer and to businesses.

**Deputy Louise O'Reilly:** Here is hoping that it is to the benefit of the consumers and businesses. I do think there is any guarantee of that, but let us hope it proves to be the case. I put the following question to Mr. Boland or Ms Sheridan, who will have very practical experience of the issue. Where policies or premiums were suspended or significantly reduced during the lockdown period, when the high-level restrictions were in place, or however one wants to put it, was it done easily and willingly? Were conditions attached? If so, what were the conditions like? What was the impact on businesses of any conditions that were attached?

**Ms Tracy Sheridan:** During Covid, when we were first closed, it was a bit of a fight to get insurance paused. We did eventually, after many meetings, begging and pleading. A three-month refund at the end was the best-case scenario for most businesses, but we had to pay the whole way through. Many businesses did not manage because insurance premiums are astronomical. The premiums are huge, and have been since 2017. I am heartened to learn that motor insurance premiums have come down in price, but the cost of personal liability and employer liability insurance most certainly has not. It has gone up by 16% since the judicial guidelines have come in. I have no idea why that is. It is not only that. Even if the premium does not go up, there are increases by stealth because particular activities are not covered or the excess goes up, without any claim being made. There are many ways in which premiums need to come down, more than just the headline cost. We certainly need to see that happening very quickly. This Bill can really contribute to that. The big issue is that, ultimately, the current system is unfair to businesses. The costs that insurance is accruing for businesses cannot be sustained. Ultimately, that is down to the legal fees. Those fees have to be taken out of it, however it happens. It must happen quickly. This Bill is great work, but change has to happen fast, because businesses are closing one after another. We are all hanging on by our fingernails and we need help.

**Deputy Louise O'Reilly:** I am sure Ms Murdock's industry does not want to see its customers closing their doors, in the first instance. I ask her to comment on the 16% increase in premiums since the judicial guidelines were introduced. That worries me.

**Ms Moyagh Murdock:** I cannot comment on specific cases, but what I am hearing from my members is that, in the round, they have not seen that increase at all. However, specific cases may have claims pending or may involve past claims. Generally speaking, what we are seeing is a flat level of premiums. We look forward to the next national claims information database, NCID, report on employer liability and personal liability insurance. According to the last NCID report, 93% of policies were under the €5,000 mark and 85% are under the €2,500 mark. We have not heard that there has been a general increase of 16%, but I know that the Alliance for Insurance Reform has carried out its own survey with its members. On the whole, we would say that the increase of 16% is not indicative of what is happening on the market itself. We fully accept that insurance is a major challenge for everybody, but that is for the reasons we have already outlined. This proposed Bill and the legislation relating to duty of care will have a major impact and will attract other players into the market. That is what we all want.

**Deputy Louise O'Reilly:** We are all hoping for that.

**Ms Moyagh Murdock:** The insurers want to see their policyholders remain viable and profitable.

**Deputy Louise O'Reilly:** I believe Ms Murdock. The policyholders have to be viable. I am aware that Mr. Boland wants to come in. I am not interested in getting into a back and forth because that is not the purpose of this meeting. I will give Mr. Boland a minute to respond.

**Mr. Peter Boland:** Even on the basis of media coverage in the past seven days, we have heard that businesses as diverse as hotels in the south west, agricultural shows, festivals, thatched houses and leisure centres have seen very substantial increases. That is on top of not getting a reduction during the pandemic.

**Deputy Louise O'Reilly:** I would have to agree with Mr. Boland, based on the anecdotal evidence, but we will wait for the NCID report.

I have a few seconds left. Then I have to leave because I am due to speak in the House. I apologise for that, but I will look over the report of the meeting. Does Ms Murdock think that inflation is going to have an impact on insurance premiums? If so, what does she think the potential impact is going to be? I am not asking Ms Murdock to comment on future prices. Will there be an impact because of the high inflation levels?

**Ms Moyagh Murdock:** I will refer to recent comments from the Central Bank that it is very concerned about the risk that people are underinsured in their home insurance policies. Undoubtedly, construction costs are hitting everybody. We are seeing significant challenges in getting labour, whether it is for the hotel sector, the leisure industry or festivals. The actual impact on general commodities and resources is having a major impact. It is unquestionable that it feeds into everything that we do. Insurance has to cover the risk. If these costs go up, policyholders must ensure that they are properly insured. I cannot comment on rates.

**Deputy Louise O'Reilly:** I am not asking Ms Murdock to do that. However, she will understand that those words alone are probably going to cause a bit of concern for people. I am conscious that the Chair is about to tell me that my time is up.

**Chairman:** The next speaker is Senator Crowe, who has seven minutes.

**Senator Ollie Crowe:** I welcome our guests and I thank Mr. Boland and Ms Murdock for their presentations. On page 3 of his opening statement, Mr. Boland refers to the need for

additional competition in the market. He also states that the Government must speed up key promised reforms and protect the new judicial guidelines from current challenges. I ask him to explain what he means by current challenges.

**Mr. Peter Boland:** To which paragraph is the Senator referring?

**Senator Ollie Crowe:** I am referring to page 3, on which is cited the need to restore policyholder faith in the insurance reform process and where Mr. Boland argues that the Government must do everything in its power to make sure incumbent insurers pass on the benefits of reform. I am asking about the judicial guidelines and the current challenges to them. I ask Mr. Boland to expand on those challenges.

**Mr. Peter Boland:** What we are referring to is the need for the Government to protect the new judicial guidelines. Just because the guidelines are in place does not mean that they will be in place forever. PIAB has been very strong in terms of passing on the benefits of the new guidelines and its average assessment on general damages is down by 47% currently. However, a number of challenges remain. The first is that it will ultimately depend on the view of the courts as to whether these new judicial guidelines stand or not. As a result, it is incumbent on the Department of Justice, in as much as it can, to get cases into the High Court as quickly as possible in order that we can get some certainty. In the meantime, a series of challenges to the judicial guidelines - constitutional and otherwise - are being put by individual plaintiffs and their legal representatives. We are very concerned about those challenges because significant resources from certain sections of the legal profession are being thrown at the judicial guidelines. We do not want them derailed because they are one of the most significant reforms to have happened in respect of the cost of insurance area for many years.

**Senator Ollie Crowe:** Ms Murdock argued that the passing of the proposed Bill will benefit Irish businesses. I hope that is true because, as we heard from Ms Sheridan and other business owners across the country, insurance costs are a major challenge. Having said that, the insurance industry also said that businesses would benefit from the introduction of personal injury guidelines. At a meeting of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, the then CEO of Zurich stated that the cost of public liability insurance would fall by 20% if the guidelines were put in place. He also said that if the cost did not fall, serious questions would need to be asked. As Ms Murdock is aware, it is now one year since the guidelines were introduced. The number of public liability claims has fallen by more 20% in recent years according to the PIAB. The awards being made have fallen by more than 40% since the introduction of the guidelines a year ago. I accept, as has been alluded to, that there are court challenges to the guidelines that have yet to be decided. There has been a considerable reduction in the number of claimants accepting PIAB assessments. This represents considerable progress on the situation from a number of years ago. However, businesses have not seen any benefit from the progress at all in terms of their costs for public liability insurance. In Ms Murdock's opinion, why is that the case and does she expect to see the cost of public liability insurance for businesses decreasing in the coming months?

**Ms Moyagh Murdock:** We stand over the commitment that was given. Insurers are still committed to passing on the savings. Indeed, they have been passing on the savings since the inception of the new guidelines. What we are concerned about is the length of time it is taking for these cases to come through. While the award levels have been reduced, as Senator Crowe correctly said, the acceptance levels have dropped significantly and we are down now from 50% to 37%. Insurers have built in the benefit of those perceived savings in the current rates of insurance. What we want to see is the other elements of the reform agenda come in to help that.

I will not go into the exact details but I have been given information and am concerned about three cases in particular that have come through the new guidelines at Circuit Court level, where the offers that PIAB made were rejected. One was in the south west of Ireland, where PIAB had made an offer of approximately €14,000 between general compensation and special costs

**Chairman:** I ask Ms Murdock not to identify specific areas please.

**Ms Moyagh Murdock:** Okay. That case went before a judge and no additional information was provided in terms of medical reports or an additional rationale as to why the offer was rejected or why the claimant was arguing for a higher award. In that case, the outcome was that almost €80,000 was awarded to the claimant, which was more than four times the original offer made by PIAB which, in itself was a generous offer compared with the old book of quantum. The case is being appealed but it was very concerning that there was no rationale given for the deviation from the new guidelines.

Two other cases that have been heard are equally concerning. In each, the PIAB offers were rejected and the claims went before the court. The court awarded significantly more - three times more - than was originally offered, with no additional information or rationale given for the deviation. I am concerned that they have come through the system when we know there is a big backlog of old cases under the old book of quantum. The sooner we get the other elements of the reform agenda put in place, the sooner we can put these to bed. Then we will see certainty come back into the market and we will see the new guidelines reaffirmed by the courts. That is really important. The cases will be appealed and we need to see the awards by PIAB being reaffirmed by the Judiciary.

**Senator Ollie Crowe:** I thank Ms Murdock. Mr. Boland referred to the need to ensure that there are more competitors in the market. That is something SMEs across the country have raised with me. Often SMEs can only get one opinion on private liability insurance. Obviously, that is not acceptable and it allows underwriters to adopt a like-it-or-lump-it approach. We all want to see change and Mr. Boland highlighted the need to ensure that the new judicial guidelines are protected and that key reforms, beyond those guidelines, are speeded up. Are there any steps he feels would enhance Ireland's attractiveness as a market for underwriters to enter?

**Mr. Peter Boland:** The reform agenda that is in place right now will do that. The market is already more attractive as a result of the implementation of the judicial guidelines, the establishment of the Garda insurance fraud co-ordination office and the commencement of the Perjury Act. We now have the legislation we are discussing today, which is a very important part of the jigsaw, as well as the proposals from the Department of Justice on duty of care. Ireland is very rapidly becoming a more attractive market from a liability perspective and it is just a matter of getting the additional competition in on the back of that now.

**Chairman:** I thank Mr. Boland. Deputy Bruton is next. He will be followed by Deputy Stanton.

**Deputy Richard Bruton:** I welcome our guests and thank them for their presentations. Our job is to conduct pre-legislative scrutiny on the general scheme. Correct me if I am wrong, but I did not hear any specific recommendations from anyone on changes to the proposed Bill that we ought to be considering. I ask our guests to indicate what changes they think we should consider.

The bigger issue that concerns us all is that the significant changes that have come through

legislation do not seem to be reflected in insurance premiums yet. What is so different about motor insurance in comparison with the other types? Motor insurance, according to CSO data, is down by 37% since 2016 and by 12% in the past 12 months alone. We are definitely getting traction in the motor sector from the changes that are coming through. What makes employers' liability and public liability so dramatically different? While I accept there is difficulty in comparing and getting a standard case, do the insurance industry, the Central Bank, the National Competitiveness and Productivity Council, NCPC, or any other body have an index of what is happening that is broadly accepted? We have the industry stating that there is no change in premiums and businesses indicating that they are up by 15%. They cannot both be right. I thought a lot of the effort of the Central Bank and the National Competitiveness Council was to move to some sort of a baseline but we seem to be still arguing about the numbers, and then the defence is always anecdotal, such as a business that has had an awful experience or a court case in which a judge charged three times the award. That does not help public policy. Can we find common ground where we could at least discuss this with shared statistics that everyone agrees with, rather than the anecdotal stuff that makes it difficult for us to disentangle what needs to be done?

**Mr. Peter Boland:** I can answer that.

**Deputy Richard Bruton:** There are two questions.

**Mr. Peter Boland:** In response to the Deputy's first question, we laid out our proposals and suggestions for the legislation on pages 6 to 10 of our submission.

**Deputy Richard Bruton:** In a nutshell, what is the Alliance for Insurance Reform looking to change?

**Mr. Peter Boland:** We support the broad thrust of the legislation. We would like there to be a sanction for not supplying a personal public service, PPS, number. The role of mediation should be broadened through the process, not just looking for agreement on mediation at the start of the process. Section 50, which delays the pursuit of litigation for six months after a PIAB assessment, should be dropped from the legislation. InsuranceLink should be moved under the control of PIAB. These are elements that are not in the current draft legislation. If a claim goes from PIAB to litigation and is materially different when it gets to court, it should be sent back to PIAB for reassessment. A periodic review clause should be built into the legislation using the same model as the Legal Services Regulatory Authority. Ultimately, it would be a lost opportunity if PIAB does not evolve into a quasi-judicial body that is able to adjudicate on cases. That is it in a nutshell from our perspective.

On the Deputy's other question, I will obviously defend our figures because they are quite comprehensive. We had over 900 respondents in the past two months in that survey so we are very confident of them. The difference may be in the different sectors. In the Central Bank's national claims information database, NCID, which provides very comprehensive data on liability and motor, the issue when it comes to liability is a sectoral issue. In the only liability report that has been published by the NCID so far there is a major contrast in terms of the changes between 2009 and 2019, which is the period looked at in the first report. For example, in that 11-year period, the premium for manufacturing increased by 61%; arts, entertainment and recreation increased by 105%; wholesale and retail trade, repair of motor vehicles and motor cycles increased by 21%. The big reduction, somewhat ironically, was in financial and insurance activities, which saw their average insurance premium drop by 69%.

Essentially, what seems to be happening is that if you are based in an office and are static,

you will have seen your liability premium drop quite dramatically over a ten-year period, a five-year period, and the past three years. If you are in what is regarded as a risky sector, whether that is hospitality and tourism, leisure, manufacturing or the vast majority of voluntary, community or sporting sectors, you are looking at increases.

**Deputy Richard Bruton:** Does Insurance Ireland broadly agree with those changes being recommended to the committee? Can we get to the bottom of what makes Ireland a difficult market in which those in the industry say they are being crucified?

**Ms Moyagh Murdock:** Broadly, we support the changes proposed by the committee. I do not disagree with what my colleague, Mr. Boland, has put forward as additional changes but I will be frank and more pragmatic by saying half a loaf is better than no bread at all. Expediency is key to getting this Bill passed without too many further complications that may cause it take longer to get through the Oireachtas process. If the spirit of what Mr. Boland is proposing can be incorporated, we would not be adverse to them at all. We contributed to the consultation and very much got our inputs into it.

In terms of the difference between liability and motor, over the past three years and 12 months in particular, we have seen the economy roar ahead. The premiums paid by businesses are a factor of footfall, turnover, and the actual business they do. That has had an impact on the premiums consumers are paying, but on the rate itself, we are not seeing the increases that we have seen in some headlines. Certainly, there are a number of individual cases that have had some difficulties and we have read the news and individual hotels have complained about the change in their premium from year to year. That can often be down to the fact that there are pending claims and past claims. The Bill before us, the duty of care and the Occupiers' Liability Act are key to addressing the situations that have an adverse effect on the premiums that businesses pay. I will ask my colleague to comment on the differences. There are a couple of other factors that make a pronounced difference to the two experiences.

**Mr. Michael Horan:** The most recent national claims information database report on employers' liability, EL, and public liability, PL, indicated there was an operating loss in EL and PL of 3% of total income from 2015 to 2019. The liability market is a very challenging market and has been for some years. It is reflected in some of the problems that are out there. Having said that, when we talk about agricultural shows and festivals and so on, there are many events around the country that operate with insurance and there are some that have problems getting insurance.

We have a situation in Ireland where we have had a relatively generous system of compensation over many years. The judicial guidelines are trying to tackle that. The personal injuries resolution board Bill is another building block to try to address the whole situation. The objective of all these efforts is to attract more players into the market and increase capacity. That is something we support as a representative association. Insurers need to be comfortable about the risks they take on. They want to take on as many risks as they can. As the national claims information database report shows, the liability market has made some players uncomfortable about some of the risks relating to liability in particular.

**Ms Moyagh Murdock:** We need to reverse the loss-making situation to attract more competition, and we would welcome that. That is key to it.

**Deputy David Stanton:** I thank our guests for their presentation. I just have a few questions. On page 5 of Mr. Boland's presentation there are two graphs that indicate the portion of

injury claimants who settled through each settlement channel from 2015 to 2019. The percentage of claimants who chose litigation is quite high compared to the percentage who took the PIAB route, which is quite low. From the other graph on page 4, it looks as though it would benefit plaintiffs to take the PIAB route. They seem to get higher payouts and it is faster. In Mr. Boland's view, why are people choosing to the litigation route rather than the PIAB route? Is there any guarantee that this legislation would reverse matters?

**Mr. Peter Boland:** It is a very good question. I will use the table on page 4 to explain exactly why litigation is so popular. It reproduces table 26 from the first national claims information database, NCID, liability report. The data the Central Bank, through its NCID unit, has provided over the past number of years has been exceptional in casting a bright light over this area. It leaves very little room for vagueness or fake news, to use an oft-used expression recently.

Insurance Ireland and Ms Murdock have given versions of these figures. There are many different ways the numbers can be pulled out of both the motor insurance reports from the NCID and this liability report but they all show the same thing. The set of figures we chose to highlight here shows injury settlement costs by the cumulative settlement band. Essentially, in the band on the left-hand side of the table, we have been very generous in calling minor injuries any that are up to €150,000, which covers all of the minor injuries and probably a few more. In the same table, across from the row showing the awards costing less than €150,000, the Deputy will see the direct settlements, which do not constitute a huge number of the settlements in this area. The table then moves to the PIAB figures. Through PIAB, the average compensation payout for awards under €150,000 is €26,760. If somebody rejects that assessment and goes to litigation, they actually drop to an average of €25,088. Therefore, the plaintiff is down by about €1,500 by going to litigation and, what is more, they are waiting an average of 2.7 years extra to get that assessment and compensation. In terms of natural justice, it is an appalling route to take because people are getting less and it is taking longer.

However, the average legal fees applicable to a PIAB settlement are €1,705 and the average legal fees applicable to a litigated settlement are €18,680, which is an increase by a factor of 11. That is the reason so many cases go to litigation. There is no benefit, by and large, for plaintiffs to take a straightforward minor personal injury into litigation but, as a rule, they go to litigation because there is another pot of gold at the end of that particular rainbow.

**Deputy David Stanton:** It seems that people do not realise they are better off sticking with PIAB. Are they being advised, in Mr. Boland's view, to go down the litigation route? Will this legislation before us do anything to change that? What more can be done to encourage people to stick with PIAB?

**Mr. Peter Boland:** We are very enthusiastic about this legislation for two reasons. First, the mediation allows this kind of data to be explained to plaintiffs so they are not just getting their information from one side of the argument. Second, there is an allowance in the draft legislation for PIAB to be able to promote itself more publicly and more effectively, and we would be very much in favour of that. If it was just down to numbers, PIAB would handle and settle every claim.

**Chairman:** Deputy Stanton's time is up but Ms Murdock will respond to his questions.

**Ms Moyagh Murdock:** I broadly agree with my colleague. It is probably human nature that people feel that in having a solicitor on the job, they will do better. There is a perception

that PIAB is a low-award entity whereas the real picture is that it is a low-cost process and a low-cost body but the awards coming out are every bit as fair and representative of the inconvenience and the injury caused. It is very important, as Mr. Boland said, that we raise awareness of the benefit of going the PIAB route. It is also worth pointing out that insurers themselves have an acceptance rate of in excess of 96%, so they very much support the process. What we need to do is try to get the message across to the complainants that they will do every bit as well or better than they would in going through the court system because they can get their lives back on track much quicker and they will be compensated. In the current climate of rising inflation, a bird in the hand is worth ten in the bush, so we are very supportive of those elements of the new Bill.

**Deputy Matt Shanahan:** I thank our guests for coming in and for the submissions, particularly the comprehensive submission from Mr. Boland. I would not share Ms Murdock's desire to have this rushed through; we need to try to do as much as we can on this legislation. It is interesting that personal injuries litigation has become a targeted profit centre for many legal entities, and that is a fact. It also assumes that the ability of the insurer to pay is unlimited because, ultimately, insurance companies just pass on the cost. Ms Murdock's interest in seeing reform now has more to do with companies potentially falling over because of insurance costs. I wonder about the amount of robust pushback Insurance Ireland has been putting on the Law Society for years. I have a concern about the level of escape from PIAB. I brought this up at the committee previously with regard to the attachment of post-traumatic stress disorder, PTSD, and all of that.

Ms Murdock referenced a couple of court cases and said judges are not taking account of the judicial guidelines. That message needs to be hammered home by her organisation. It is not enough to come in here to the committee and say it. Insurance Ireland should be going out publicly and saying that it is unacceptable what is going on.

With regard to Mr. Boland's submission, I ask him to comment on a couple of points. I am very involved with small and micro businesses and he touched on a lot of pinch points or nerves, to be honest. Businesses are looking for change and they are looking for this legislation to deliver. With regard to the NCID report, Mr. Boland's submission at page 4 states:

The only beneficiaries of this extended process are lawyers, who get an average of €18,680 in fees, 11 times more than the cost of delivering compensation through PIAB. Insurers pay those fees and charge the cost on to policyholders, even in circumstances where the policyholder is adamant the claim is fraudulent or exaggerated.

We all have experience of that. I again ask Ms Murdock what the members of Insurance Ireland are doing to try to challenge that situation in the courts. We all know that when it gets to the courts, the costs skyrocket. Mr. Boland might talk about that graph again so we absolutely understand why so few of these claims should be exiting the PIAB system in the first instance.

Second, on page 9 of the submission, he states that the alliance proposes legislation, including a mechanism to periodically review the legislation. Does he mean the legislation we are scrutinising now or all of the PIAB legislation?

With regard to Insurance Link, Mr. Boland states that it should be taken off Insurance Ireland and made completely independent. That is a prerequisite we should look for. It is my understanding that, over the years, it has been very difficult to attract insurance companies to this country because the level of data on insurance payout has not been available and people cannot make a sound business judgement as to whether it is a good or bad market to enter.



**Mr. Peter Boland:** I will take the questions in order. In terms of settlements, this needs to be understood because there was almost a myth that developed over the years that insurers picked up the tab for all of these claims. Insurers do not pick up the tab. They are businesses and they need to make a profit, and that is fair enough. They take whatever the cost is and they pass it on to policyholders. For every claim, right and wrong, the cost of that claim is passed on to policyholders.

It is important to note that if someone has been injured due to the negligence of somebody else, they must be compensated adequately in that situation. I do not think anyone would undermine that and it is the heart of the process, but the issue is the costs those sorts of claims attract. It is quite starkly illustrated by table 26. Essentially, anything that goes beyond PIAB is not about delivering additional compensation. There is a strong role for the courts in far more difficult, complex or major injuries. The figures change when one gets to the €500 million mark. Certainly, however, PIAB is very well suited to dealing with the vast majority of claims, such as the everyday minor injuries.

I would make an additional comment on this area, to which I referred in the text that we read out. We find that insurers will settle as a commercial expedient. If they have a file on their desk on which there is a total reserve of, for example, €75,000, and if they feel that they can get away in negotiations with €50,000 all-in, they will settle, regardless of the right or wrong of the case. This is infuriating from the perspectives of our members. They seek cases that have gone to PIAB and on into litigation where they know that it is a try-on, that it is fraudulent in a broader sense or that it is exaggerated. In our view, we get no protection in many cases from insurers in that area. It is all the more important now that they do not do that anymore, because seeking to do that would fundamentally undermine the judicial guidelines. If a narrative emerges that one can take a case from PIAB, go into litigation and get a few bob extra by dealing directly with the insurer, that will undermine the work of this House on the judicial guidelines, which remain a fundamental reform to the sector.

I will address the other issues that the Deputy raised. In terms of periodic scrutiny, to be pragmatic about it and to echo what Ms Murdock said about the need to move this on, we would suggest that if we were to review it, we should review the current legislation on it. It might become too complex if we were to draw the principal legislation into it as well.

On the Deputy's third point, which was on InsuranceLink, the story stands for itself. The preliminary view of the European Commission is that it was used as an anti-competitive tool. We would like to see it owned by an arm of the State for the common good and in the interests of the citizens of the State.

**Deputy Matt Shanahan:** Would Ms Murdock like to comment on that last point about InsuranceLink?

**Ms Moyagh Murdock:** I would prefer not to comment because there is an ongoing investigation. I am precluded at this point in time from talking about it.

**Deputy Matt Shanahan:** I apologise as I was trying to log in earlier and I may have missed this. Can Ms Murdock outline the problem there? What investigation is taking place?

**Ms Moyagh Murdock:** An investigation was initiated a number of years back by the European Commission on what had been perceived as anti-competitive practices. InsuranceLink is subject to that investigation.

**Deputy Matt Shanahan:** Can Ms Murdock give us an update on that? When does she think that a result will come?

**Ms Moyagh Murdock:** All I can say is that the Commission has published market sounding and market testing on proposed commitments. That is ongoing at the moment.

**Deputy Matt Shanahan:** Has the Alliance for Insurance Reform made any observations in that case?

**Ms Moyagh Murdock:** I think my colleague, Mr. Boland, is making them as we speak.

**Mr. Peter Boland:** We made a comprehensive submission to the European Commission on this.

**Chairman:** Deputy Stanton would like to come back in again.

**Deputy David Stanton:** I want to follow up on the issue of InsuranceLink. Could Mr. Boland explain, for the benefit of people who are watching this today, what InsuranceLink is and why he wants it transferred to PIAB, or PIRB as it will be? How would that work? What would the advantages of that be? I will leave it at that for the moment. Could he explain to people what is involved here?

**Mr. Peter Boland:** InsuranceLink is essentially a claims database. Critical to running an insurance business is having a database that outlines the historical claims that have been made by an individual. That allows an insurer to price a risk much more accurately. If you do not have the data, then you are just picking a number without having the claims history of the individual available to you.

Needless to say, this is an ongoing assessment of the situation by the by the Directorate-General for Competition, DG COMP, at the European Commission. I therefore need to be careful, but I will quote what they found in their preliminary assessment last year. They found that Insurance Ireland restricted access to InsuranceLink, which is that claims database they own and operate on behalf of their members. According to DG COMP, they thereby “restrict[ed] competition in the Irish motor vehicle insurance market”. That was the preliminary finding.

Proposals have been made to Insurance Ireland and have been circulated by the European Commission. They ultimately proposed that the database would remain in the ownership of Insurance Ireland. Given the history of the database, and given the way that the European Commission has found that it has been used, we have serious concerns about it remaining in the ownership of Insurance Ireland, regardless of the safeguards that they would put into place. They have listed a series of safeguards which, they claim, would make it essentially independent. Yet, it would essentially remain in the ownership of Insurance Ireland. We have a concern about that.

**Chairman:** Before Deputy Stanton comes back in, I will allow Ms Murdock to make a contribution.

**Ms Moyagh Murdock:** First, the Commission published a preliminary statement of objections approximately a year ago. I must emphasise that no finding of wrongdoing has been established and that that investigation is still ongoing. Obviously, the recent publication by the Commission sets out a number of safeguards. However, I emphasise that there has been no finding of wrongdoing established at this point in time.

**Deputy David Stanton:** I note on the InsuranceLink site that there is a statement which states that “the cost of falsified, exaggerated and-or duplicated claims in Ireland has been estimated to be in excess of €100 million annually, which ends up being paid by honest citizens”. There are therefore huge issues. We are looking at the proposal under head 24, that the alliance calls on the Department to initiate the transfer of Insurance Ireland’s claim status sharing platform InsuranceLink into the ownership of PIAB or PIRB. How would that benefit the legislation and the premium payers?

**Mr. Peter Boland:** The first aspect is an establishment of trust. PIAB has been exceptional in the way that it has transformed the personal injury claims landscape, although it has been fundamentally undermined over the years by various challenges. As policyholders, we very much trust PIAB to be able to provide the data, subject to data protection restrictions to anyone who is entitled to the data. When I say anyone who is entitled to it, I refer to people who would have to have a genuine interest in it. Needless to say, that includes all insurers, if they are quoting in the market, as well as other bodies, such as the Motor Insurers Bureau of Ireland and self-insured entities of which there are many operating in this country.

**Deputy David Stanton:** Am I right in saying that Insurance Ireland creates this database and that it is in existence because the claims keep coming in? Would Mr. Boland see it continuing in that regard? Would they continue to create it, gather the information and then pass it on to the PIRB? How would Mr. Boland see it working?

**Mr. Peter Boland:** The individual insurers have the claims information and the raw data. They would therefore have to continue to supply it to PIAB or to the PIRB.

**Deputy David Stanton:** Can I ask Ms Murdock about one particular point that came out in her statement? She said that Ireland has the fifth largest market for insurance in the EU and that it is the biggest exporter of insurance services. Could she expand on that and tell us how that is the case?

**Ms Moyagh Murdock:** Certainly. I will ask my colleague, Mr. Florian Wimber to comment on the detail of that.

**Mr. Florian Wimber:** I thank the Deputy for the question about the size of the market. Ireland not only has a domestic market, where there are challenges in assuming insurance, and Mr. Boland has referred to that. We also have a strong exporting market. Under the European Single Market insurance services are provided from Ireland under the freedom of establishment and the freedom to provide services to other EU countries and to approximately 110 countries globally. This market is consequently bigger due to the number of potential customers in it and that places Ireland as an international hub for insurance.

With specific reference to the second point on making Ireland the biggest exporter of insurance, according to data from the European Insurance and Occupational Pensions Authority, the head organisation of all supervisors in Europe, Ireland exports approximately €30 billion in premiums and is, by that, the biggest provider outside its own jurisdiction compared to the other markets, if that answers the question. The data only cover life and non-life insurance, not reinsurance.

**Chairman:** The next speaker is Senator Crowe followed by Deputy Shanahan. They have seven minutes each.

**Senator Ollie Crowe:** Mr. Boland in his statement referred to the potential for PIAB to

become a quasi-judicial body and the benefits that would bring. I certainly agree with that and it is a move I would like to happen. He referred to the Supreme Court decision in *Zalewski v. the Workplace Relations Commission*. My understanding from research and knowledge is that there is some uncertainty about whether the Supreme Court would rule similarly for PIAB to become a quasi-judicial body. A case brought before the Supreme Court as a personal injuries claim involves broader legal considerations that have been determined by the courts over time rather than the statutory employment law issues that come before the WRC. I share the eagerness of the Alliance for Insurance Reform for PIAB to become a quasi-judicial body, as it could have a substantial impact, but that causes some concern. Can Mr. Boland advise to what extent the alliance has considered this? Has it received legal guidance or what are his thoughts on that?

**Mr. Peter Boland:** The Senator's insight into it is consistent with ours. Certainly, it looks as if the implications of the *Zalewski* case have yet to fully work themselves through. We would be very keen to see PIAB or the PIRB as a quasi-judicial body, but if it is the view of the Attorney General and the Government that this type of model has an amount of uncertainty over it, then the pragmatic view to take is that we move ahead with the legislation as it is, with the proposed model, and then look back when the quasi-judicial option has been clarified further.

**Senator Ollie Crowe:** I thank Mr. Boland. I refer to Ms Sheridan and, perhaps, Ms Murdock. It is very frustrating for businesses, and being from Galway I am familiar with those in Galway city. It is very repetitive in a sense, and Ms Sheridan mentioned it earlier, that the costs of general insurance are just not going down. Not only are they very significant costs, but they are also putting businesses to the wall. That is very worrying. What hope can she give businesses this morning whereby she believes that the premiums should and will come down over time?

**Ms Tracy Sheridan:** I can point to the historical performance. Motor insurance is coming down significantly. I believe employers' liability, EL, and public liability, PL, are not going up to the extent that has been reported in general. One of the concerns that not just insurers but also businesses have is the wait-and-see approach being adopted by a certain cohort of solicitors. That is very damaging and there is a contagion effect there too. We want those cases expedited through to appeal. However, we see the Bill before us, whereby PIAB can hear more cases automatically, as a big game changer. Regarding the duty of care in the Occupiers' Liability Act, it calls out the issue with absolute liability and that is being addressed, whereby there is more personal responsibility being placed on the users of services and it is not just down to the occupier or the policyholder. That will be a real reassurance to businesses. It will also reassure new entrants from an insurance perspective coming into the market that it will have a significant impact.

If we look back to the last real change that PIAB went through in 2004, insurers responded very positively. That is where we would say we are committed to passing on the savings from these legislative changes. There is nothing to suggest they will not do that. It is in their interest to keep viable policyholders and viable businesses going. Quite often they have continued to insure certain sectors at a loss, as the figures from the Central Bank have demonstrated. It has been subsidised by investment income. Packages or portfolios by insurers are made up of a number of products - liability, motor and other types of property insurance. That has sustained those entities. However, we have seen too many exits from the market and that is what we want to prevent here. If we can get certainty and consistency back into the market, it will become a much more stable environment for insurers to enter, while businesses will get certainty as well.

In sectors where there are activity sports or adventure parks and where people can expect to have a bump or trip or fall, one should not have to expect that somebody will land a claim because there is absolute liability on the occupier or the policyholder. That is just ridiculous and it is out of sync with the other European jurisdictions against which we are benchmarking ourselves. As my colleague, Mr. Boland, said, they laugh when they see what is going on here. We must make it a more normal operating environment for both businesses and insurers to enter.

**Deputy Matt Shanahan:** I will return to the representatives of Insurance Ireland. What I refer to is possibly anecdotal but a large American-backed insurer came into the market here a number of years ago. It operated here for five to six years and then left with its tail between its legs. One of the issues that was raised at the time was that it did not have access to data beyond three years and that ultimately some of its original business planning was flawed strategically because of that. Do they wish to make any comment on that? Again, it relates to the access to data and who holds the data. Perhaps they might address that first.

**Ms Moyagh Murdock:** It was before my time so I am not familiar with it. However, what all insurers, both potential new entrants and existing players, want in a market is certainty and stability. Those years we referred to were probably the most volatile, with a race to the bottom and significant losses made. A lot of lessons were learned at that time.

**Deputy Matt Shanahan:** If I am planning to enter the insurance market in this country now, how many years of data can I get access to?

**Ms Moyagh Murdock:** As we mentioned, the Central Bank's NCID provides data for 12 years at this point. Insurers would not have had that during the period the Deputy mentioned. A significant effort goes into it. The Central Bank also has powers to expand the data required within that database. That is part of the miscellaneous insurance Bill that is going through as well.

**Deputy Matt Shanahan:** That is fine. I am under pressure for time and I thank Ms Murdock for answering that. I have a question about the issue that was highlighted in the submission by Mr. Boland, which is well known within insurance circles. It is where a claim is being brought and the insured person contacts the insurance company basically stating that it is a fraudulent claim for a plethora of reasons, for which there might be some evidence. The insurance company decides, because it thinks the matter might end up in the courts, to arrive at a settlement and the insured party loses his or her no claims bonus. Such people end up giving that money back to the insurance company over the subsequent three to five years in increased costs. Has Insurance Ireland done a cost-benefit analysis on the basis that if it does not challenge those types of claims or the Law Society of Ireland or legal eagles who propose them, it is simply perpetuating that practice? Has it examined such claims and decided to pick out 20, 30 or 40 of them and go hard at them to seek an order of attachment against the legal representatives who have brought those cases?

**Ms Moyagh Murdock:** One of the first problems is there is little prospect of recovering those legal costs in the cases that fail at court and that are clearly identified as fraudulent and are thrown out. The experience is that insurers never recover that money. Therefore, there is no deterrent there and many of these solicitors operate on a no foal, no fee basis. The Central Bank's report indicates the legal costs are 40% of the total cost of a claim before it arrives in court and for those settled at court, the legal costs are 104% of the award size. It is good economics to do an assessment and calculate that in fighting a case all the way to court the insurer would lose or else if it wins, it will not recover its legal costs in any event. It is a balance. The

insurers are committed to adhering to the new guidelines and have been doing so since their introduction last year. It is something we have listened to and there is a commitment to fight these cases. The new centralised Garda national fraud unit has been set up. Insurers have their special investigations units. They are fighting fraud on all fronts and that is delivering results. We see news headlines where cases have been prosecuted successfully in court, involving not only complainants but solicitors and medical professionals. That will continue but it is a very costly process to go all the way to court. The overall interest is to settle cases that are genuine as expediently as possible and to try to identify those that are not and present the Garda with the relevant information that it can follow through with a prosecution.

**Deputy Matt Shanahan:** In summation, I firmly believe Insurance Ireland, as a representative body, needs to be doing more to highlight this. I acknowledge there is a separation of powers between the Legislature and the Judiciary but this practice, which has been going on for years, is getting worse. A load of people are ambulance chasing. There is no fallout for a solicitor in bringing a case on a no foal, no fee basis. As Ms Murdock said, insurers cannot recover the costs. Some fraudulent cases have been brought to court. They are known to be fraudulent and are a try-on in the courts. Why is Ms Murdock's representative group not approaching the Law Society of Ireland or the Department of Justice to state we need a change in legislation to target this activity and to stamp it out because it is an ongoing scourge and it is costing small businesses in particular. I know many small enterprises whose insurance costs will put them out of business. Some of them are on the cusp of operating while they seek new business without insurance and that is a terrible position for people to be put in. I hear what Ms Murdock is saying but it seems this is a nut that has not been cracked for a decade and longer and it has got worse. We are now possibly even worse than the United States, which was held up for years as being the litigation capital of the world. We are certainly right up there with it. In fairness, it is not enough for Insurance Ireland to come in as a representative body to highlight that these are problems, it cannot recover its costs and all the rest of it. Why is Insurance Ireland not going after the legal people who are bringing those cases? It should put some legal onus and liability on them for bringing cases that are known to be fraudulent. Those legal people bring them, get the plaintiff in a case to sign off on it and then say they have to test these cases in court. That should not be done.

**Ms Moyagh Murdock:** I would argue we are doing that. It is very difficult to prove fraud because it covers a wide range of activity. It could be an escalated or an exaggerated claim with medical professionals providing the evidence-----

**Deputy Matt Shanahan:** With respect, we have had cases going to court with video evidence that has shown the case as been fraudulent and still such cases have progressed to court. How is it that Insurance Ireland cannot seem to bridge a sanction legally, with the Law Society of Ireland or through co-operation to get at this problem. As I said, at the end of the day insurance companies operate in a space-----

**Chairman:** The Deputy's time is up.

**Deputy Matt Shanahan:** -----they are in the middle and they pass on the costs to the insured. That is how they operate.

**Ms Moyagh Murdock:** As I said, the first thing to do is to remove the incentive to do it in the first place, which is the quantum of the compensation they could get. Also the ease of being able to blame someone else for a minor issue needs to be removed. Personal responsibility needs to be taken, the Civil Liability Act and the Occupiers' Liability Act should be changed

and the incentive removed. Quite often, it is like lottery numbers with respect to compensation being paid out and they have nothing to lose. The practice of taking cases on a no foal, no fee basis is too big of an incentive for claimants. We have a responsibility to fight those cases and prosecute them but it is a full agenda that we need to pursue as a collective. I hear what the Deputy is saying and I will take it on board.

**Deputy Matt Shanahan:** I thank Ms Murdock.

**Chairman:** As nobody else has indicated to speak, I thank all the representatives for assisting the committee in its consideration of this important matter today. The committee will consider this matter as soon as possible and see if we can get a report drawn up on it. I thank all the representatives for coming in. It is much appreciated.

### **Business of Joint Committee**

**Chairman:** I invite Deputy Paul Murphy to address the committee regarding correspondence received following the meeting of the joint committee on 11 May 2022.

**Deputy Paul Murphy:** In evidence to the committee on 11 May, Mr. Oliver O'Connor, chief executive of the Irish Pharmaceutical Healthcare Association, expressed the view that a waiver on the Agreement on Trade-Related Aspects of Intellectual Property Rights, TRIPS, would not improve the Covid-19 response in Africa because in his opinion, "there are more vaccines available than the African countries are ready and capable of accepting". I argued the real reason the pharmaceutical industry opposed the waiver was because it was unwilling to give up intellectual property rights in order that it could continue to make as much profit as possible. In doing so, I also queried whether Mr. O'Connor in expressing that view was using a "racist trope". I am happy to clarify that I was not and am not accusing Mr. O'Connor of being a racist or of having racist intent.

**Chairman:** I thank Deputy Murphy for that. As far as I am concerned, as Cathaoirleach, this matter is now closed and Mr. O'Connor will be advised accordingly. That concludes our consideration of the matter.

I propose we go into private session to consider other business. Is that agreed? Agreed.

The joint committee went into private session at 11.09 a.m. and adjourned at 11.25 a.m. until 9.30 a.m. on Wednesday, 15 June 2022.