

DÁIL ÉIREANN

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

Déardaoin, 13 Meitheamh 2019

Thursday, 13 June 2019

The Joint Committee met at 2 p.m.

Comhaltaí a bhí i láthair/Members present:

Peter Burke,	Gerry Horkan,
Joan Burton,	Anthony Lawlor,*
Pearse Doherty,	Kieran O'Donnell.
Michael McGrath.	

* In éagmais / In the absence of Senator Paddy Burke.

I láthair / In attendance: Deputy Richard Boyd Barrett.

Teachta/Deputy John McGuinness sa Chathaoir/IN THE CHAIR

Senator Gerry Horkan took the Chair.

Business of Joint Committee

Vice Chairman: I propose that we go into private session to consider committee matters. Is that agreed? Agreed.

The joint committee went into private session at 2.06 p.m. and resumed in public session at 2.38 p.m.

Scrutiny of EU Legislative Proposals

Vice Chairman: The schedule A proposal before the committee is a proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework. Is it agreed that this proposal does not warrant further scrutiny? Agreed.

Cost of Insurance Working Group: Minister of State at the Department of Finance

Vice Chairman: I welcome the Minister of State, Deputy D’Arcy, and his team. Today we will discuss the current state of play with regard to the cost of insurance working group and the cost of insurance for businesses generally. The committee has been concerned about these matters for a significant time. We discussed the issue of insurance costs for small and medium-sized businesses in April. The Minister of State’s opening statement has been circulated to members.

I wish to advise the witnesses that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to 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. They are asked to respect the parliamentary practice to the effect that, where possible, 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. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I invite the Minister of State to make his opening statement.

Minister of State at the Department of Finance (Deputy Michael D’Arcy): I welcome the opportunity to provide an update on the work of the cost of insurance working group to the committee. My primary focus in this address will be on business insurance. I am very conscious of the difficulties that the cost and availability of insurance are creating for many businesses and voluntary and community groups. I can understand the frustration that many people

have with the existing position. I believe that, with the objective evidence provided by the Personal Injuries Commission benchmarking report on the higher than average award levels for soft tissue injuries in the country, we have a solid basis for addressing these difficulties through the enactment of the Judicial Council Bill. I will talk about that in more detail later.

The cost of insurance working group has made it clear from the outset that there is no single policy or legislative silver bullet to stem or reverse immediately premium price rises and that some of the necessary reforms will take time to implement. This was also recognised by this committee in its motor insurance report. The major constraints faced by any Government are twofold. Award levels are the prerogative of the courts and therefore, for constitutional reasons, the Judiciary cannot be directed as to the levels that should be applied. Second, pricing levels are a commercial matter for insurance companies and are determined based on the risks that they are willing to accept. For legal reasons, the Government cannot interfere in such matters as this is prohibited by the EU Solvency II directive. It was recognised that there was much the Government could do to improve the general environment within which insurers operate as well as laying the ground for a more long-term transformation of the insurance market through tackling issues such as award levels. This is the context within which the work of the cost of insurance working group needs to be considered.

There has been significant progress in the implementation of the two cost of insurance working group reports. Examples include addressing the personal injuries framework in Ireland through the establishment of the Personal Injuries Commission, and its subsequent two reports, the second of which benchmarked award levels for soft tissue injuries and made recommendations to address gaps that exist between this jurisdiction and others. Another is the commencement by the Law Reform Commission of the examination of the possibility of capping awards in respect of some or all categories of personal injuries through legislation. Insurance fraud is being tackled through closer co-operation between An Garda Síochána and the insurance industry on foot of the fraud round table's work and the recent decision by the Garda Commissioner to develop a divisional focus on insurance fraud, which will be guided by the Garda National Economic Crime Bureau, GNECB, which will also train gardaí throughout the country on investigating insurance fraud, as well as the recent success under Operation Coatee, which targets insurance related criminality.

The Government has made several legislative changes which are significant in the insurance reform debate and called for by stakeholders. These include increasing transparency around the cost of private motor insurance through the establishment of the national claims information database, NCID, in the Central Bank as well as the Courts Service confirming that it will publish a more detailed breakdown of awards in personal injury cases in its annual reports; increasing the effectiveness of the Personal Injuries Assessment Board through the Personal Injuries Assessment Board (Amendment) Act 2019; making it easier for businesses and insurers to challenge cases where fraud or exaggeration is suspected through amendments to sections 8 and 14 of the Civil Liability and Courts Act 2004; and providing certainty to policyholders and insurers through the reform of the insurance compensation fund.

The committee should note that I look forward to the finalisation of the work of the Central Statistics Office, CSO, on a price index for business insurance as well as the Central Bank's work potentially to extend the scope of the NCID to include employer and public liability insurance, which at this point I believe it should. I will also look at how we can speed up the work related to the development of a functioning fraud database, recognising that data protection concerns must be addressed before other issues such as the governance or location of such a da-

tabase can be decided. I believe that the cost of insurance working group actions taken to date have helped to create a much more receptive atmosphere for what we are trying to achieve with the reform of the area of insurance and personal injuries litigation, since there is a much greater understanding of the depth, nature and extent of the underlying problems and much greater support for what needs to be done to address them.

I believe that these actions have had a significant impact on private motor insurance. CSO figures from May 2019, which is a small change from the script circulated, which indicated April, show that the price of motor insurance is now 24.5%, rather than 24.4%, lower than the July 2016 peak, almost three years ago. My colleagues in Government and I are determined to continue working to ensure that these positive pricing trends can be extended to other forms of insurance, including those relevant to businesses.

I will address the issue which I believe is key in the next phase of work of the cost of insurance working group. Bringing the levels of personal injury damages awarded in this country more in line with those awarded in other jurisdictions is the single most essential challenge which must be overcome if there is to be a sustainable reduction in insurance costs. The Personal Injuries Commission has highlighted the significant differential between award levels in this country and England and Wales in particular, and has made a number of recommendations to address the issue, including the establishment of a judicial council to compile guidelines for appropriate general damages for various types of personal injury.

I believe that this awards gap needs to be closed significantly and I am working with the Minister for Justice and Equality, Deputy Flanagan, to ensure that this happens at the earliest opportunity through the enactment of the Judicial Council Bill, which completed Committee Stage in the Seanad in April. Since then, the Government has approved the drafting of amendments for Report Stage in the Seanad, which will provide for the establishment of a personal injuries guidelines committee, the sole purpose of which will be to develop guidelines for various types of personal injury to be adopted by the judicial council. The amendments are subject to formal legal drafting by our colleagues in the Office of the Parliamentary Counsel and I hope that they will be agreed on Report Stage in the Seanad shortly. I have been informed that the Seanad will take this next Thursday. The co-operation of all Members of the Oireachtas will be vital in getting the Bill enacted as soon as possible. I know that I can count already on support from members of this committee.

It is to be hoped that this, along with the work that the Law Reform Commission has commenced, will result in the lowering of award levels. If this were to happen, I would expect the insurance industry to take account of such reductions in its pricing. Mr. Justice Nicholas Kearns, former President of the High Court and the chairperson of the Personal Injuries Commission, noted in the foreword of the commission's second report that insurance industry representatives on the Personal Injuries Commission repeatedly stated that because award levels and associated costs accounted for the bulk of the cost of insurance, if claims costs were to come down and to be maintained at a consistent and predictable level, then premiums would also reduce accordingly.

I want to address the establishment of a dedicated Garda insurance fraud unit. It is important to clarify that the recommendation from the cost of insurance working group was to explore the potential for further co-operation between the insurance sector and An Garda Síochána with regard to insurance fraud investigation. While the issue, including the UK precedent, was explored in the report and the potential benefits were outlined, no commitment was given on this matter. It was made clear that it was always subject to further examination and that any

decision on this matter was always going to be for the Garda Commissioner. Since my previous appearance before the committee last year, the Garda Commissioner has decided for operational reasons that a divisional focus is preferable to the establishment of a centralised insurance investigation unit. I understand that this approach is aligned with a general divisional focused Garda model. The Commissioner intends that the GNECB will guide divisions and provide training in the investigation of insurance fraud. It is important to accept the expert view of the Garda Commissioner in this regard, and I am confident that this marks a key turning point in how insurance fraud will be investigated by An Garda Síochána in the future.

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

In the end, the availability and cost of insurance to some businesses will depend on the consistency and quantum of award levels. The cost of insurance working group structure remains the best means by which to continue to achieve this objective. The enactment of the Judicial Council Bill will also be an important step forward in this regard and I hope there will be support in the Houses to enable a speedy conclusion to this process. In this spirit, I intend to work closely with Deputies Michael McGrath and Pearse Doherty on considering how to progress their respective insurance related Private Members' Bills, the Civil Liability and Courts (Amendment) Bill 2019 and the Consumer Insurance Contracts Bill 2017. Along with the cumulative effects of the completed implementation of the two reports' recommendations, this work will include views on increasing stability in the pricing of insurance for businesses and developing a more competitive insurance market overall.

Senator Kieran O'Donnell: With regard to the establishment of a judicial council, specifically the terms of reference for drawing up the new guidelines, how does the Minister of State envisage expediting the judicial council's review of the book of quantum? What is the time-frame for that? Under what terms of reference will that review operate?

Deputy Michael D'Arcy: I will highlight my understanding of the schedule, which is not within my control or the control of the Oireachtas. As I said, we expect Report Stage of the Bill will be taken in the Seanad next Thursday. I hope it will conclude the same day. It will subsequently be moved to the Dáil as quickly as possible. I apologise for repeating myself but it was understood that the Judicial Council Bill would be completed before the end of 2018. When it became obvious to me, prior to Christmas, that it would be delayed I targeted its completion for the end of the summer session. I believe that target can be realised. We can get it through the Seanad on Thursday and have it back before the Dáil before the end of the summer session. I have also requested a motion for earlier signature to allow the legislation to be enacted without delay. The will allow the President to sign the Bill and it will then become law. I have not done anything beyond that. At that point, I will liaise with the Attorney General with a view to ensur-

ing that, from the insurance side, the judicial council will be established as quickly as possible.

I should note that the Judicial Council Bill is a large Bill, which proposes the most revolutionary reorganisation of the Judiciary for decades. While the insurance side of the legislation is receiving considerable focus and attention, it is only a small part of the Bill. Neither I nor members of the committee can control the Bill's progress. It will go before the Select Committee on Justice and Equality for Committee Stage debate and I expect there will be deep analysis and scrutiny. I hope, however, that this scrutiny will not delay the passage of the Bill beyond the end of the summer session. Having said that, if we can get it through both Houses, I will speak with the Attorney General to try to have the council established as quickly as possible.

Under the schedule I have for this initiative, we should be able to form the committee of seven judges, one from each court, and have the analysis concluded and the new guidelines in place towards the end of the year. That is my schedule but the timeframe is out of my control and that of the committee. It would be helpful to agree a date by which to have the Bill passed.

Senator Kieran O'Donnell: The Minister of State would like to see the review of the book of quantum completed and the new guidelines implemented by the end of 2019.

Deputy Michael D'Arcy: I would like to see the work done and the committee's consideration of the figures concluded so that the figures can become the new guidelines before the end of this year.

Senator Kieran O'Donnell: I have two other quick questions. The question of Brexit preparations in the area of insurance has come up. How does the Minister of State see the green insurance card operating after Brexit? Will people be able to use the insurance cover they have in Ireland when travelling in the North or the UK? Will the Minister of State give us an update and tell us his views on that issue?

Deputy Michael D'Arcy: In the event of a no-deal Brexit on 31 October, people whose vehicles are properly insured in Ireland will be obliged to carry the green card in Northern Ireland. I am of the view that the insurance companies should automatically send out a green card for every car insured here. It is then a matter for individuals travelling to Northern Ireland or the UK to take that card with them. The current position is that a person's insurance company will send their policyholders a green card on request. I am not satisfied with that position as some people may not be aware that this will be a legal requirement and that the card could be requested on the side of the road in Northern Ireland or the UK. The right thing for the insurance companies to do would be to automatically send a green card to everybody who has insured their cars. When a person subsequently reinsures a green card should be sent out. This will only be relevant in the case of a no-deal Brexit.

Senator Kieran O'Donnell: Has the Minister of State had an opportunity to engage with the motor industry on this issue?

Deputy Michael D'Arcy: I intend to meet the insurance companies directly. It is something I have done on one occasion before. I will ask all of the insurance companies to come in to discuss a number of issues, of which this will be one.

Senator Kieran O'Donnell: It would be remiss of me not to follow up on one point. The Minister of State is looking for the insurance companies to automatically issue green insurance cards without the insurance policyholder having to apply. Post Brexit, companies that export to the UK will be required to have a customs registration number, known as an EORI number. As

it stands, exporters can apply for such numbers online. From my understanding of the latest figures I have found, which run up to the end of May, approximately 84,000 businesses will need customs registration numbers, of which 46,500 have them in place. Another 45% of exporters, approximately 37,500, do not have a number in place. In order to prepare for the event of a no-deal Brexit at the end of October, could the Department of Finance engage with the Revenue Commissioners to automatically issue customs registration or EORI numbers to the remainder of these exporters now? Could that measure be introduced? It is in keeping with the Minister of State's view on the green insurance card. To be ready for Brexit, it is critical that any company that exports - and the Revenue Commissioners indicate that there are approximately 85,000 such businesses - have EORI numbers in place. Will the Minister of State take that matter up with the Revenue Commissioners?

Vice Chairman: This matter is very tenuously related to insurance.

Senator Kieran O'Donnell: The Vice Chairman will appreciate that this is an outstanding issue.

Vice Chairman: I have given the Senator a fair bit of latitude but I remind members that this session is about insurance.

Senator Kieran O'Donnell: It would be remiss of me if I did not include it.

Vice Chairman: Today's module is insurance.

Deputy Michael D'Arcy: I thank the Vice Chairman for trying to protect me. The issue the Deputy raises does not fall within the scope of my side of the Department but I will raise it with the Minister.

Senator Kieran O'Donnell: I thank the Minister of State.

Deputy Michael McGrath: I welcome the Minister of State and his officials. Just as the meeting started, an email landed in our inboxes from the Alliance for Insurance Reform with the results of a survey of its members. There were 494 respondents to the survey and the headline result was that the cost of insurance for small businesses and charities has increased by an average of more than 200% in five years. Some 49% of respondents indicated that rising insurance costs threaten their business or activity. The Minister of State noted that we still do not have an index of business insurance costs - employer or public liability. In the absence of official data, does he accept the figures provided by the Alliance for Insurance Reform showing the types of increases that are occurring?

Deputy Michael D'Arcy: I cannot accept figures that are presented to me when I know nothing of how they have been compiled. I accept that 500 people have responded and that the analysis is based on those responses. However, I do not know if it is a representative sample or if----

Deputy Michael McGrath: The Minister of State does not know if it is unrepresentative either.

Deputy Michael D'Arcy: No, I do not. One of the problems with insurance that I noted at an early stage was the lack of data at every level. We need to address that. With the help of Deputy Michael McGrath, the other finance spokespersons and the committee, we passed the Central Bank (National Claims Information Database) Bill 2018 very quickly at the end of last

year. This allowed us to start the process of establishing the database for motor insurance. We hope and anticipate that we will have the proper datasets analysed correctly and appropriately so that we can shine a spotlight on the levels of increases and the extent to which they are damaging companies around the country.

Deputy Michael McGrath: These figures show that we are at a crisis point with premiums. The position is not sustainable. It is closing businesses and threatening festivals, voluntary bodies, charities and community groups throughout the country. The Minister of State has the full backing of the committee to do what is required to address the issue once and for all because those figures are not sustainable.

Deputy Michael D’Arcy: I accept that. I think the Deputy and most other members know I am driving this as hard as it can be driven.

Deputy Michael McGrath: I will take the Minister of State through the nuts and bolts of this, if I may. Senator Kieran O’Donnell teased out the process under way with the Judicial Council Bill. That legislation will lead to the establishment of a personal injuries guidelines committee. The Minister of State is saying that when that Bill is passed the matter will move into the judicial realm and be out of his hands.

Deputy Michael D’Arcy: Yes.

Deputy Michael McGrath: He expressed hope that the new guidelines for award levels will be in place before the end of the year. Do we have an assurance or indication from those who will be involved in doing this that the timeline will be met? On what is the Minister of State’s hope based?

Deputy Michael D’Arcy: It is not possible for me to answer that until I get the legislation through both Houses.

Deputy Michael McGrath: How is the Minister of State reaching the conclusion that the new award levels will be set and in place by the end of the year?

Deputy Michael D’Arcy: I am not reaching that conclusion. I am saying that this is the date by which I believe it should be met. If the Oireachtas can organise itself and pass the legislation quickly and efficiently, there is no reason this incredibly important work cannot be prioritised.

Deputy Michael McGrath: That is the Minister of State’s view but, for clarity, he has not received any information or reassurance from the Judiciary or those who will be involved in the committee that this work will actually be done by the end of 2019.

Deputy Michael D’Arcy: That is correct. The reason I cannot answer the question is that I cannot predict whether the legislation will be passed by the end of this session.

Deputy Michael McGrath: If it is passed, as I imagine it will be, who will be responsible for driving the process from there?

Deputy Michael D’Arcy: The first thing I will do after the Bill has been passed is meet the Attorney General. I will seek a meeting with the Minister for Justice and Equality, Deputy Flanagan, the Attorney General and the Chief Justice to highlight the emergency that businesses, festivals and so forth all over the country are facing as a result of insurance costs. The Oireachtas has responded extremely well to this emergency. I hope and anticipate that the Judiciary

will do likewise.

Deputy Michael McGrath: Apart from passing that key Bill, what else can the Oireachtas achieve on insurance before the summer recess?

Deputy Michael D’Arcy: If we could also get the Deputy’s Bill over the next Stage, that would be very helpful. It would also be helpful to get Deputy Doherty’s Bill over the next Stage. The final pieces for both Bills would be to have Report Stage debates prior to the budget. We passed three Bills last year, namely, the Act providing for the establishment of a national claims information database, the Personal Injuries Assessment Board (Amendment) Act and the Insurance (Amendment) Act. If we could pass the Judicial Council Bill and the Bills proposed by Deputies McGrath and Doherty, respectively, this year, the Oireachtas will have responded very well to the current insurance emergency.

Deputy Michael McGrath: The committee decided earlier to invite representatives of the major companies to appear to discuss the issues arising in the insurance industry, the reforms they want and what the industry can give in return to policyholders and customers. We hope to do that before the Dáil rises in mid-July.

Deputy Michael D’Arcy: That would be an important body of work. I have met Insurance Ireland, the representative body for the companies, and I will also meet the insurance companies individually. The position I have taken with Insurance Ireland is that insurance companies must not delay addressing premiums following the enactment of the Judicial Council Bill. We are on a very clear pathway of reducing awards, which will then reduce premiums. I do not want to hear from the insurance companies that in two years, when a certain number of cases have been completed, their underwriters will consider the matter. The industry must show good faith towards the Oireachtas in response to the level of support it has shown in passing legislation to improve the sector. This must impact on the premiums they are currently charging.

Deputy Michael McGrath: We expect representatives of the insurance companies to appear before us because of the importance of these issues for society, the economy, consumers, motorists, businesses, voluntary bodies, charities and so on. We expect the big companies, once they have received invitations, to appear before the committee to explain their case, give their perspective on the industry at this time and the challenges it faces, make suggestions on what needs to be done and outline the impact on premiums should those suggestions be put into effect. We hope they will accept our invitation and I look forward to them appearing before us.

It has been very frustrating trying to get information and data on fraud. The Minister of State referred to two recent cases where people were convicted of insurance fraud. Can he provide information to the committee on the number of prosecutions and convictions secured under the Civil Liability and Courts Act 2004? Can he get those data because I have tried to get them and cannot do so?

Deputy Michael D’Arcy: We are trying to get all of those data and we have some. There have been 50 cases of blatant insurance fraud reported to the Garda National Economic Crime Bureau, GNECB, since last October.

Deputy Michael McGrath: That is very recent.

Deputy Michael D’Arcy: To put that in context, 25 of those cases involved staged accidents. They are the figures we have. I know that it has been put out that hundreds of cases have been presented, but we have the figures for the numbers of cases in the nine-month period from

October and they are the actual numbers of fraud cases presented.

Deputy Michael McGrath: What I am asking about - I am sure the Department is doing this - is the level of engagement with the Courts Service. We want the data for the numbers of cases brought under the 2004 Act. How many prosecutions have been brought and how many convictions have been secured? Is it too much to ask that we be given that data? Will the Minister of State write to the committee with what he has and tell us what he is trying to get?

Deputy Michael D’Arcy: I will do that.

Deputy Pearse Doherty: I welcome the Minister of State and his officials. I also welcome his remarks on my Bill which was passed on Second Stage nearly two years ago. It was agreed at this committee that we would deal with amendments to it on Committee Stage in the second week of July. As I know that the Government has issued a money message for it, I look forward to passage of the Bill into law.

In his opening statement the Minister of State said he had put it to the industry that it needed to give strong public commitments very soon to reflect savings to be gained in the recalibration of award levels. Has he received a single commitment from it that this will happen? We know that in 2002 the Irish Insurance Federation - Insurance Ireland’s predecessor - made a very clear commitment when it outlined a list of reforms it believed were required and argued that if they were implemented, there would be a reduction in premiums by a certain percentage. There was transparency. I do not know if the Minister of State trusts the insurance industry, but I do not. It is involved in price gouging and a lot of spin, bluster and distraction on the real reasons premiums are increasing. I am not saying its issues such as the making of exaggerated claims and fraud are not real and do not need to be dealt with. There is a need for zero tolerance in the attitude towards them, but when we see that insurance companies have increased their profits by 1,300% in one year and made a profit of nearly €250 million on the backs of hard-pressed motorists and businesses that are seeing their public liability insurance premiums increase, that tells me that it is simply price gouging on the part of the industry. Has the Minister of State received a commitment from it similar to the one received from the Irish Insurance Federation in 2002 when it stated clearly that if anti-fraud measures were to be implemented, they would result in a reduction of 2%; that if there were to be changes in the book of quantum, they would result in a 1% reduction; and that if the PIAB was to be involved, it would result in a reduction of 7.6%? That was very clear and verifiable. My concern is that while we need to do this in respect of the book of quantum and see An Garda Síochána taking enforcing action on fraudulent claims, there is no guarantee that any of the reductions will be passed on to customers. Past experience shows that the industry will just pocket the money.

Deputy Michael D’Arcy: One thing on which I am clear is that we are doing all of this work in order that the benefit will flow to the consumer, the person paying premiums, not the insurance company. I have made strong statements on the insurance companies. I do not hold them in high regard. They always win. They are the ones who charge premiums and are in charge of the allocation of an award, if one is made. The sector decides the methodology to be used by which smaller claims remain on an insured person’s record. They remain on an insurance company’s books for a significant period of time before being settled. The most significant issue is the level of award. The report of the Personal Injuries Commission highlighted the fact that the difference was about four and a half times the amount. The Department of Finance has produced an analysis that shows that it was five times the amount, while the PIAB carried out an analysis that also showed that it was almost five times the amount. I am talking about lower awards. The insurance sector was also represented on the Personal Injuries Commission.

On occasion after occasion, it has stated that if award levels are reduced, premiums will be reduced. I am the person who has said to the Chairman of the committee that it should bring in representatives of the insurance companies. This is a public forum and the committee should put that exact question to them also. I will put it to them company by company, but that will not happen in public. I will adopt a very hard line to ensure what Deputy Doherty spoke about will not happen, namely, that insurance companies potentially will trouser the money if the level of awards comes down and premiums stay high. That is not what this is about. I have met Insurance Ireland and put the same line to it.

Deputy Pearse Doherty: I do not question the Minister of State's objective in making sure reductions are passed on to customers. He has made the point that he does not hold insurance companies in high regard. The point is that 17 years ago we were able to get the insurance industry to produce a table that was very clear. It took into account road safety, the PIAB, a reduction in the incidence of uninsured driving, the promotion of rehabilitation, the abolition of stamp duty of 2%, the reform of the courts, anti-fraud measures, the exclusion of earnings from the black economy, a reduced number of solicitors for plaintiffs, the book of quantum and repeal of the Health Act. The industry stated that if all of this was done, it would result in a reduction in premiums of 36.35%. We have been here before and seen motor insurance premiums increase by over 70%, according to the CSO. The industry tells us that it was all because of Setanta. We fixed the issues related to Setanta and the risks for insurance companies through legislation, yet we have not seen premiums drop by 70%. On the other side, we have seen companies increase their profits by 1,300%.

Deputy Michael D'Arcy: In the case of motor insurance, there has been a reduction of 25.5% from the peak of three years ago in July 2016. They are the figures. In 2016 there was a loss year on year of €75 million. In 2017 there was a profit of €59.7 million. I know that the figures quoted are correct on the basis of how they are presented, but the fact that the sector was losing €75 million a year was the reason insurance companies were exiting the Irish market. I remind the Deputy that, year on year, between 70% and 80% of personal injury claims involve whiplash. As I said, there was a loss of €75 million in 2016. Make no mistake - I am not here to defend the insurance companies. They are clever enough and well able to defend themselves, but in the scheme of things, a loss of €75 million in 2016 was converted into a profit of almost €60 million. That gives a different complexion than what was presented.

Deputy Pearse Doherty: As the Minister of State said, the figures are accurate. Last year the insurance industry made a profit of €227 million. Some insurance companies did not make a profit in the previous year, but they have since made massive profits totally €250 million. I am not saying insurance companies should not be profitable. Of course, we need insurance companies that are profitable, but should they be making profits on the backs of drivers, businesses and those involved in community groups who are trying to run festivals? No, they should not. What they are not willing to give is a commitment that if we introduce reforms, such as those contained in the Judicial Council Bill, they will reduce premiums. That is the problem. They are making these profits at a time when they are stating that claims are far too high, that there is fraudulent activity, etc. Yet, the claims were as high last year, the year before and for several years before that. Fraudulent activity has been happening forever and a day. I take a zero-tolerance position in respect of fraudulent activity and the Minister of State knows my position on it. I believe strongly that we should have a centralised Garda enforcement unit. This committee has agreed to invite the Garda Commissioner before it in order to tease out how we might look at the model he wants to deploy. Therefore, I take a zero-tolerance approach to fraudulent claims. However, what I do not fall for is the spin from the industry that fraudulent claims are

the reason premiums are going up, or that it is the level of awards. A good example is that the industry only reported 50 fraudulent claims in nine months.

Deputy Michael D’Arcy: That is my point.

Deputy Pearse Doherty: If the issue was as big as they say in all of their advertising, which is that it is costing everybody €50 extra on their premiums, then there would be thousands of claims reported. I have no doubt there are more than 50 fraudulent claims in the system. However, the reality is that these companies are price gouging. If we deal with fraudulent claims, if we enable the Garda enforcement action, if we are far more robust in regard to prosecution and deterring people from making fraudulent claims, I am not convinced the premiums will reduce a penny. The core of this goes back to the point that these companies were gambling, and it was not gambling with people’s premiums. They were basically investing in the bond market with the premiums and when the returns fell, their profits fell. They then put up prices to cover that fall.

We need to take a very tough approach. There has been a kid-glove approach from Government, although perhaps not from the Minister of State. Some of the Minister of State’s colleagues have really let him down in a number of ways recently. Unless we get clear commitments from the industry, I do not know how we can ensure that a private company which is based on profits for its shareholders is actually going to pass on any of the reductions or that any reforms introduced by the Oireachtas will benefit people.

Deputy Michael D’Arcy: I am not sure if the Deputy has heard me do so but I have made the point on numerous occasions that for every fraud case, there are hundreds of exaggerated claims, and for every exaggerated claim, there are hundreds of legitimate claims which are awarded funds on the basis of the book of quantum, in line with the award levels. Fraud, we are told, costs the sector approximately €200 million, although that is an industry figure and I do not have an actual figure. The Deputy must remember that the vast majority of claims are legitimate and this a concern I have about something that is happening right now. I applaud the strength with which the Deputy has consistently been opposed to fraudulent and exaggerated claims, as have I and most others also. However, the big issue we come down to is that over €2 billion was awarded to people in regard to claims, which is a huge quantity of money. What we are trying to do is put in place a structure whereby people who are affected by a moderate incident get an moderate amount of compensation in damages to compensate them for that incident. Again, I am talking about the lower levels of claims, not the higher levels of claims, and it is important to put that in context. That was the nuts and bolts of what the Personal Injuries Commission report is about.

Deputy John McGuinness took the Chair.

Deputy Pearse Doherty: I agree with the objective. To take a hypothetical situation, if we pass the Judicial Council Bill and if we set up the council - there are a number of ifs - we may reach a position where that panel recommends, for example, that soft tissue injuries, such as whiplash, would be cut by half, given these make up the majority of claims in the first instance. However, the industry is not indicating that this would result in premium reductions of X%. There is nothing from the industry side. Therefore, the industry has forced us into a dealing with a matter which we would deal with in any event. If the claims are too high, they are too high. If there are fraudulent claims, they need to be stamped out. The problem is that the industry is sitting back and looking at its profits increase dramatically, It then sees these reforms, which are only going to push up its profits unless it decides to pass them back. If the industry

is stating that high claims for soft tissue injuries are affecting the industry, it will be able to do the calculations and it should be able to turn around and say that if the book of quantum said X amount for soft tissue injuries, say, €7,000 as opposed to €15,000, that would result in a premium reduction for motorists of 10% across the board, although these are hypothetical figures. The industry is not willing to do that and the question is why that is the case. In my view, it is because it does not want to be held accountable. We need to get the companies where they were in 2012, when there was an action plan and, although we were in the same type of crisis, there was a commitment from them. However, Insurance Ireland is a different animal from its predecessor. I would encourage the Minister of State to deal with that.

I want to talk about the Central Bank. The Central Bank ceased to publish private motor insurance statistics in 2015. The statistics published that year told us something very clear - I ask the Minister of State to remember this point - namely, that the average cost per policy, which combines cost per claim and claim frequency, in year one declined for both comprehensive and third-party fire and theft. The average cost per policy decreased by 4% from 2014 to 2015, from €272 to €261 for comprehensive cover. Third-party reduced from €288 to €272. In terms of frequency, comprehensive policies saw a decrease from 5.2 claims per 100 policy years in 2014 when compared with the previous year. The number of third-party claims decreased from 3.7 claims per 100 policy years. In 2015, the statistics showed that the costs to insurers appeared to have fallen.

We had transparency when the Central Bank was producing private motor insurance statistics. The last time it published them, in 2015, we were able to see that the cost to the insurers per policy was reducing for comprehensive insurance, the cost per policy was reducing for third party, the number of claims that were being made was reducing to 5.2 per 100 policies for both comprehensive and third party and the cost to the insurers was falling. However, what happened to premiums in the same year that all of this was happening? Premiums from January to December 2015 went up by 30%. There is only one beneficiary of the Oireachtas or the Central Bank ending the private insurance motor insurance statistics and that is the insurance companies. They can come in here and feed us bullshit about claims, about premiums and about this, that and the other, and we do not have the statistics to argue. We have to rely on statistics from back in 2015, when we can see very clearly that everything was going in the other direction yet they decided to increase premiums by 30%. I would argue strongly that we need to get those data back. It is one of the big issues in terms of transparency. We need to have the granular detail. We need to know exactly what is going on with this industry - an industry that is under investigation both domestically and at European level, rightly so. This would mean we can make a proper calculation of what is actually happening.

In my view, the CSO also has a role in the context of calculating the real cost of insurance for both motorists and businesses, an issue on which I have spoken to the Minister of State before. I have huge regard for the CSO. It is brilliant. However, there is no point in the CSO telephoning and saying, "Hello, AXA Insurance, this is Mr. so-and-so from the CSO, we are doing our monthly survey on insurance costs and we want to ask what is the price for this, that and the other." The insurance companies are wise to this. If I phone up looking for an insurance premium and the Minister of State phones up looking for the same, we can get two different quotes. It is not that they know it is the CSO; the CSO introduces itself. Therefore, there is now a question around the credibility of the CSO data. The insurance industry itself disputed the CSO data when the premiums were increasing by 70%. The other advocates and consumers are now questioning the CSO data because they believe it has been manipulated by the industry. That is not something about which any of us should be shocked. Deputy Michael

McGrath spoke about the fact that the evidence from the Insurance Reform Alliance, consumer groups and our experience is that what the data is now showing does not reflect the experience of individuals out there.

Deputy Michael D’Arcy: To respond to something the Deputy said previously, my colleagues in the Government did not let me down. I want to make that point because it has been said quite a bit. I was given full authority to deal with this by the Minister for Finance, Deputy Donohoe. He told me to go and deal with it. I do not think anyone is questioning my commitment to dealing with the insurance difficulties we have at the moment. Subsequently, when it looked though as the Judicial Council Bill would be slowed down or delayed, I went to the Taoiseach and he gave me his full support. The reason we are back on track is because of the support from the Taoiseach, the Minister for Finance and the Minister for Justice and Equality.

What the Deputy is saying goes back to increases in 2015. What shocked me most was the lack of data and information when I came into this job two years ago. The Deputy is asking me to comment on what happened two years before I came into the job and I cannot do that. I will comment on what will happen in the next two years. The cost of insurance working group met during the week. Representatives from the Central Bank were there and I pushed them strongly about the NCID. Work started on that immediately after the legislation was passed. That work is ongoing. I hope we can get the figures from the NCID and have granular analysis in respect of the entire motoring sector first. We will have that in this calendar year. I am pushing very strongly for quarter three which is not very far away. I cannot give a commitment that this will happen in quarter 3 but I have a commitment from the Central Bank that it will happen before the end of the year. We will have the information analysed. We will have-----

Deputy Pearse Doherty: Only data on claims will be analysed.

Deputy Michael D’Arcy: The information will be on the management expenses and other expenses, including other components, the commission written and earned, the investment income and other income including those other components. It is not just claims.

Deputy Pearse Doherty: We are able to quantify and publish the cost of the average comprehensive or third-party insurance policy and whether that was reducing or increasing. There is no reason the Central Bank should have stopped this. There is an absence of that data and we need it immediately.

Deputy Michael D’Arcy: That will be in the NCID.

Deputy Pearse Doherty: Is the Minister of State saying that will be produced in the third quarter of this year?

Deputy Michael D’Arcy: I am pushing for the third quarter. I cannot guarantee it but it will be before the end of the year.

Deputy Pearse Doherty: Will public liability not be a part of it?

Deputy Michael D’Arcy: It will not.

Deputy Pearse Doherty: When will public liability be a part of it?

Deputy Michael D’Arcy: We want to ensure that we get the first year’s information correlated correctly and appropriately. The information will be collated and we want to move into public liability at that stage. Public liability and employer’s liability insurance is more difficult

than motor insurance. I have highlighted that from day one. It is much more diverse, there are many more sectors and much more work involved in that. We want to try and start with the NCID for motoring first because that is where there are the most claims in the largest amounts.

The extension of the NCID to cover employer's liability and public liability insurance will increase transparency for these types of non-life insurance. The Act has been drafted to allow for the extension of the scope in line with the recommendations. The Central Bank has initiated a project to study the merits and feasibility of expanding the scope to employer's and public liability. The bank will engage with external stakeholders, including industry and consumer representative groups to convey the key data requirements for employer's and public liability. The bank will research the employer's and public liability insurance environment in other jurisdictions, including focusing on data availability. The bank plans to produce a feasibility report for the cost of insurance working group by quarter four of this year, including recommendations for employer's and public liability data submission requirements.

The work has started on this. It will not be available for analysis before the end of this year but the thought process has started to try and move into the employer's and public liability space immediately.

Deputy Pearse Doherty: I want to reiterate that the commitment of the insurance industry for reductions in premiums in line with reforms we will introduce is the key issue.

Deputy Michael D'Arcy: It is.

Deputy Pearse Doherty: The Minister of State indicated that he has asked. I am not questioning that and I do not want to go into that space. When I stated earlier that the Minister of State had been let down, I was not talking about his Government colleagues, I was talking about his parliamentary colleagues. We need a commitment from the industry, as was given in 2002, that reforms will result in reductions in the cost of insurance. That is what consumers want.

There has been much toing and froing, juggling and manoeuvring. I welcome the Judicial Council Bill. A filibuster was taking place and it was being delayed. People need to look at themselves in that regard. The amendments have taken a long time. I am glad to hear the Minister of State say that they are ready and that the Bill will go to the Seanad next week.

There are many ifs involved and there are things we do not know because we are putting this into the hands of judges. Does the Minister of State have a plan B? We set up a seven-person panel of judges. What if the panel comes back and says the level of awards and the book of quantum are fine? What is plan B? Is there one? Can anything else be done? That is the right course of action now but-----

Deputy Michael D'Arcy: We all accept that this is the right course of action. We must rely on the Judiciary, in line with the Personal Injuries Commission, PIC, report which stated that the Court of Appeal decisions and precedents that are in place must be considered by the committee within the judicial council. It must have regard for the levels of those awards and the levels of awards in England and Wales where analysis was done and independently verified by KPMG. It must analyse Irish awards with reference to similar awards in England and Wales. We all believe this is the correct pathway.

Plan B is as follows. The Law Reform Commission has started the process to see if the Oireachtas has the authority to cap the levels of awards. It will do its body of work and conclude it as soon as possible. It has started already which is good and welcome. I would wel-

come it being concluded sooner rather than later so that, if a plan B is required, this could be a part of it. If that is the case, we will know if the Oireachtas has the authority to limit the levels of award. That said, none of us knows what will happen. Deputy Pearse Doherty outlined a circumstance wherein the Judiciary says the levels of awards are fine. In that case, it will be a matter for the Oireachtas to decide if we deal with this by referendum to give the Oireachtas the authority to cap the levels of awards. If the Law Reform Commission comes back and says the Oireachtas does not have the authority to cap awards, that will require plan C.

Deputy Pearse Doherty: I have a final comment. I would have questions if this body was capping the level of awards. I take the Minister of State's point and agree that there are thousands of people who make legitimate claims. Mr. Charlie Weston has brought attention to this issues around exaggerated and fraudulent claims and he should be commended for that but there is a danger that people think everyone is a scammer or chancer.

Deputy Michael D'Arcy: Yes.

Deputy Pearse Doherty: Many people who would have legitimate claims do not make them because they will lose their no-claims bonus so they pay the garage to fix their car themselves. Others do not make claims because they think it would bring bad luck, or whatever it is. That is the way it is. Why would we reduce the level of awards so a private company could benefit from that if we were not satisfied that then savings would be passed on? I would be reluctant to do that.

Deputy Michael D'Arcy: Not a single one of us, in either House, is doing that or wants that done. The Deputy asked me to get a commitment from the insurance companies but I will probably not be able to get a commitment from those companies in writing. However, I will keep a flashlight in the their faces. The Minister has spoken about the profiteering of insurance companies and none of us wants that. We want the insurance sector to be put on a stable footing in this country in order that companies can be competitive and profitable, with a stable structure in place for proper competition. We have eight companies that have had between 89% and 92% of the sector for the past number of years. We do not have enough companies competing for the business that is here.

Deputy Pearse Doherty: We are still dealing with high mortgage interest costs in the State. When the banks were not willing to move, one of the threats was that if they did not move, the capital reserves they had to hold would be increased, which would have put them at a disadvantage. This was a threat - a bata mór or a big stick - to try to get them to move on the matter. Is the Department considering options such as this, as opposed to moral suasion, to convince the industry to move? If we have other tools in a toolbox and the companies continue to rip off their customers, we could say the Oireachtas could act as a result.

Deputy Michael D'Arcy: I have not been shy in being tough with insurance companies from the moment I came to the job. That will not change. I am here to protect the consumer and not the insurance companies. That is true of everybody in the Oireachtas.

Senator Gerry Horkan: I thank the Minister of State for his opening statement. I appreciate that he has said he does not know from where the figures have come but I want to draw attention to the Alliance for Insurance Reform survey that was only circulated to us earlier. There were 494 responses, with the largest sector being motor and transport, followed by hospitality, leisure, retail, not-for-profits, healthcare, arts and entertainment, with "other" accounting for 6%. There were not that many questions but question No. 3 was answered by all 494 respon-

dents. It asked how much insurance costs have increased since 2015, and the average answer was 204%. There is a question on whether an insurer had increased excesses or added new exclusions, and 28% of respondents having increased excesses, with 11% seeing new exclusions, 23% seeing both and 36% seeing neither. There is a question as to what three phrases best describe the impact that increasing insurance premia has on an organisation. From the possible responses, 48.5% of respondents indicated it threatened the future of the organisation, 45% stated it inhibited the ability to grow and 32% indicated it was preventing the organisation from providing certain services while 25% stated it made jobs less secure. Respondents were also asked if the Government is doing enough to address the insurance problem. Of the 494 respondents, two said “Yes”, 23 did not know and 469, or almost 95%, said “No”. That is not a personal attack on the Minister of State.

That is a flavour of the issue. These are people who took the time to respond to the survey and they are involved with the industry. We have had people in here who run play centres, events festivals, playgrounds, local authorities, pubs and restaurants. I do not doubt that every time the Minister of State goes to a public function, people are talking about insurance. I am the chair of a school board and I know such boards that have seen their premiums go from €27,000 to €34,000 per year with no new claims or incidents. Once a group package agreement is over, the charge is being increased by significant amounts. Insurance is necessary for most people and they cannot afford to be without it. The Minister of State was a member of this committee when we did our work on motor insurance, and 92% of people are not claiming. This means 8% of people have caused the premium rises. The legal and insurance industries may be making now but we had figures indicating that at a time they certainly were not making money.

There is a significant frustration and I would be happy to progress the Judicial Council Bill 2017 as speedily as possible in the Seanad next Thursday. Report and Final Stages will be taken and the legislation could be passed very quickly. There may be 30 Government amendments. I am certainly happy to progress it as fast as possible. We were ready to take it in the Seanad as soon as it was offered and no other Bill delayed it. We were happy to process it as soon as it was scheduled for us. The Minister of State’s opening statement lists all the good work being done, and the Bill is a part of that.

I do not wish to portray all insurance companies or legal people as evil. I have family members who are involved with solicitors, etc. The awards available to people for what seems to most people to be minor incidents are an attraction. I have said it previously in the Seanad that if people are caught trying to rob a bank, they would probably go to jail and end up with a sanction but people who make a false insurance claim, by and large, end up with no sanction if they get caught. They can come back next week to try again. We are bringing in the Garda Commissioner, which is helpful, as well as insurance company representatives. It is morally and socially unacceptable to make exaggerated claims and stage accidents. There is a cost. There was a social welfare campaign with the line, “Welfare cheats cheat us all”, and insurance fraud is costing every one of us. Most of us with cars will not make a claim but premiums continue to increase. I acknowledge that I experience a small drop following a large increase over a couple of years in my premium.

I welcome the work done by the Minister of State but when does he think restaurants, pubs and charity events will benefit from meaningful reductions? We know this is about reducing the volume and value of claims. With motor insurance, it is also about having fewer accidents and crashes. When does the Minister of State believe there will be meaningful results? These businesses are closing and are under pressure. He knows this as he is doing that work. Can he

give them some hope?

Deputy Michael D’Arcy: I refer to the Alliance for Insurance Reform figures. The only insurance one is legally obliged to have is motor insurance. Motor insurance was where the cost of insurance working group started. There has been a 24.5% reduction from the peak in 2016 in that sector. The 2016 increase figure of 69% was from a very low base arising from a price war that turned out to be a catastrophe for the sector. When the cost of insuring a vehicle was less than the cost of a windscreen, it did not work out well for any of us. The price war drove people from the sector, as companies went bust and companies exited the market. As a result, insurance costs started to increase. If we accept the CSO figures for the increase, we must accept the same CSO methodology pointing to a decrease. I would be surprised at a 204% increase in motor insurance in the period outlined when the CSO indicates the numbers are going down.

Senator Gerry Horkan: It was that 24% of the respondents were in the motor transport sector. There were 494 respondents and approximately 25% were in the sector. The overall insurance cost for everybody, including hospitality and retail, went up.

Deputy Michael D’Arcy: I would be surprised even if a quarter of respondents were from the motor sector.

Senator Gerry Horkan: These are averages.

Deputy Michael D’Arcy: People say the Government should do more or the Government has not done enough, but it is not the regulator of the sector. The Central Bank of Ireland regulates it. I was at a meeting recently to speak about insurance and I explained the Judicial Council Bill. A woman responded and said that we should tell the judges what to do now that we have a panel of seven. We do not have the authority to do that under the separation of powers. People think the Government should tell judges what to do. We are putting a structure in place and if it is required, the LRC will make a determination on whether we have the authority to do so. If not, and there is no change in the amounts, the only way the Oireachtas can acquire the authority is via a referendum. We are prepared to consider that, depending on the outcome. I do not wish to have to take that path but if we must do so, it is something we will consider.

In addition, people have the perception that the Government should price insurance. A major editorial by a well respected business newspaper stated that the Government should consider entering the insurance market. We are expressly prohibited from doing so by law. People have a perception that the Government should do this, that and the other in areas where it is disallowed. We cannot go there. If we do, we will end up wrapped up in the courts for years and the reforms we are trying to make will not happen at all. Nobody wants that. There is a reason for everything we are doing or have not done.

With regard to the period I envisage - and I put this strongly to Insurance Ireland - the moment the Judicial Council Bill is passed a show of good faith from the insurance companies should be, first, an improvement in their risk appetite and, second, the premiums to reduce immediately. Insurance Ireland tells me it does not know if the Bill will be passed. That is a fair statement. If it does not pass before the summer recess, will it be passed in 2019? It probably will be, but it will be at the end of the year. One is then looking at a decision on the formation of the committee taking longer, the formation of the committee taking longer and the decision within the committee taking longer again. If we do not get this done before the end of the session, it could be the end of 2020 before it happens. That would be a catastrophe. That is why I am pushing so strongly to get the legislation through, for an earlier signature motion for the

President, for the council to be formed and for it to get on with its work as quickly as possible.

However, I have put it to Insurance Ireland and I will put it to the companies directly that they need to start to show good faith to us for the work we have done to try to improve the sector. We have all done that work, including members of this committee and Members of the Dáil and the Seanad. We are doing everything we can to try to improve the sector in its totality. I am fine with companies making a profit, but I am not fine with companies profiteering.

Senator Gerry Horkan: I will explain that figure about the insurance cost. It was that they took the 2019 renewal, minus the 2015 costs and divided by the 2015 costs. That was their insurance cost generally. It was not motor insurance but whatever costs they have. While they are now only legally obliged to have motor insurance, it would be very unwise of a restaurant, play centre, event space or pub to try to operate in a world without insurance. Some of them have talked about self-insurance schemes and so forth, but very few business owners want to have personal exposure to a claim that could happen in an event. I doubt that any of us would expect them to do so. I accept the points the Minister of State made.

In terms of the visibility, the national claims database and so forth, for a long time we have said we do not know what is happening because we cannot see what is happening. When will we get decent visibility on figures?

Deputy Michael D’Arcy: The date I have is that I pushed for the end of the third quarter.

Senator Gerry Horkan: Is that this year?

Deputy Michael D’Arcy: Yes, in terms of the motor NCID. I cannot guarantee that. It is a stretch for it to be ready by the end of the third quarter, but it has told me for certain that it will be available in 2019.

Senator Gerry Horkan: Will that give us details of claim payouts-----

Deputy Michael D’Arcy: It will be management expenses, other expenses including the nature of the components, settlement channels, commission written and earned, investment income and income of other nature.

Senator Gerry Horkan: Will that be on a total industry basis?

Deputy Michael D’Arcy: Yes, an industry basis.

Senator Gerry Horkan: We will get an idea of how profitable or otherwise they appear to be.

Deputy Michael D’Arcy: That is correct.

Senator Gerry Horkan: That is welcome. It has taken quite some time but it will be there.

Deputy Michael D’Arcy: It is not taking quite some time.

Senator Gerry Horkan: We were talking about this in 2016. I am referring to the time taken to when it finally became law.

Deputy Michael D’Arcy: To be fair to the Central Bank, it had started the work before the legislation was finished. It was ready to go. I have complimented Members of both Houses for the flexibility they have shown on the NCID at the end of the winter session last year and on

the Insurance (Amendment) Bill this time last year with regard to their flexibility and the speed with which they were prepared to bring the legislation through. The Central Bank had started the work prior to the legislation being finished and ready to go. It was able to start in January this year so it would have the work finished in the calendar year of 2019.

Senator Gerry Horkan: Will the visibility be on motor insurance only?

Deputy Michael D'Arcy: It is motor insurance only initially.

Senator Gerry Horkan: What is the plan then with regard to public liability and employer liability?

Deputy Michael D'Arcy: It will move to that sector after the first year's motor information is made available.

Senator Gerry Horkan: We should see that, perhaps, in the third quarter of 2020.

Deputy Michael D'Arcy: I cannot give a commitment on it yet.

Senator Gerry Horkan: What is the reason for that?

Deputy Michael D'Arcy: It is a far more varied sector than motor insurance. There is a great difference between a play zone and a nightclub or a play zone and a business that might be a meat factory. There is a massive difference between the sectors in terms of business employer liability, EL, and public liability, PL, versus the motor sector, which is fairly standard and where the difference is the range of vehicles rather than sectoral differences.

Senator Gerry Horkan: I accept that the Minister of State cannot give a guarantee as to when, but what is the process in terms of when it will start collecting information? The motor insurance process has started. When is it anticipated that it will start on nightclubs, restaurants, play zones, meat factories, marts or whatever it happens to be?

Deputy Michael D'Arcy: The date we have, and we are putting a warning on this as the feasibility may turn out to be very different when the work starts, is that the Central Bank plans to produce a feasibility report for the cost of insurance working group by the end of this year in respect of EL and PL and data submission requirements. However, we are seeing that this is a far more different and varied sector than the motor sector. We are satisfied we will have a good handle on the NCID data for motor for this year, but we are unsure of the extent to which it will flow into EL and PL. There is a presumption that it will, but we cannot guarantee that.

Senator Gerry Horkan: Okay. I thank the Minister of State and his officials for their efforts on this. It is important that the committee gets regular updates from him and, through him, from the cost of insurance working group on what is happening, if things cannot happen why they cannot happen and if they cannot happen whether there is a way of getting around whatever barriers there are to make them happen. Equally, this committee should return to its motor insurance report and see what has been delivered, what we have been told cannot be delivered and so forth. It is one of the most important issues. Recent insurance incidents that have been reported in the media have engaged the public in a way I have not seen many issues engage the public. There are many issues on which one would like to engage the public but this issue has taken off. With fraudulent exaggerated claims, everybody feels that money is being given to people who do not deserve it and the rest of us are paying for it. That situation must be resolved quite speedily. Otherwise there will be fewer restaurants, play centres, event spaces and festi-

vals, which will be to the detriment of all of us. I will conclude on that.

Deputy Michael D'Arcy: I will respond to those points. We wrote to the committee last February. The media have done a good job highlighting cases that needed to be highlighted, but I must warn that I have a concern. The vast majority of claims are legitimate, where people's lives have been impacted by the carelessness, recklessness or negligence of somebody else. They are entitled to damages. Not all cases are fraudulent or exaggerated.

Deputy Richard Boyd Barrett: As long as we have been dealing with this issue, which has been for some time, I have let the Minister of State and the Government know that People Before Profit's view is that the only way fair insurance premiums will be achieved and the profiteering of the insurance industry stopped is to have a not-for-profit insurance company. The sooner we go down that road, the better. Then we will get to a situation where we have fair insurance for our young people, for example, who are completely extorted, our taxi drivers will not be facing a situation where their livelihood will be lost if they have one claim against their insurance, and we will get past the situation where huge numbers of small businesses, festivals and so on in this country literally have their livelihoods and their ability to continue to function viably threatened because of insurance extortion by insurance companies.

I commend the work that has been done on a cross-party basis, including by the Government, the Minister of State and others, in dealing with legitimate issues. There is no doubt they are legitimate issues. Insurance fraud is wrong and it has to be dealt with and stamped out. There should be no excessive awards. There should be fair rewards for fair and legitimate claims. We should not have a situation where legal costs are essentially driving up the cost of insurance for people and we should do everything we can to eliminate unnecessary legal costs and all the other matters we have talked about to have some sort of consistency in awards.

There is nothing in any of this update that will prevent the profiteering. That is the problem. The insurance companies will continue to profiteer for as long as they can. Why would they not? They always have and unless we do something to stop them profiteering, they always will. I put it to the Minister of State that this is the problem with all of this and the evidence is now starting to come in, because whatever claims they could make that all these sorts of reforms were necessary in order for them to bring them into line, and they were not making money and so on are gone now because they are making money. They are making a lot of money, they are not dropping the premiums, and I do not believe for one minute that they ever will. That is why the Minister of State cannot get that assurance from them in writing because they will not ever give it in writing.

To be honest, there is nothing that we are proposing that will force them to reduce premiums to fair and reasonable levels because that is not the business they are in. They are not in the business of ensuring that people get fair insurance premiums. They are not even in the business of making sure that everybody who needs insurance gets it because, as we know, they will exit from areas where they cannot make a profit if they feel like it. They just decide not to provide insurance in that area because they cannot make a profit. They go where the profits are and they will use every compulsion and pressure on the Minister of State and on us to get us to take measures which will drive up their profits. What compulsion is there on them to feed those increased profits back into fair premiums? I put it to the Minister of State that there is none.

Deputy Michael D'Arcy: I have heard this position being presented before, that not-for-profit insurance companies are the way forward. However, those companies would be obliged to adhere to the same Solvency II rules as a for-profit company. They would have to adhere to

the same EU directives on insurance and capitalisation as a for-profit company. While the figures look very rosy, the issue is that they are only profitable for motor insurance. The employer's liability, EL, and the public liability, PL, side are loss making and have been loss making for five or six years. I will give the Deputy the figures on this. The liability insurers made underwritings of loss outside of motor insurance in 2017 of €46.9 million. That is the liability and what they lost to underwrite the EL and PL side of insurance. There is not much profit there.

The Deputy is asking to open the State up potentially to making losses in that sector. It is something that is not the right direction. We have the right pathway. The Deputy has commended all of us on the work we are doing on this. I try to be fair to all Members of both Houses and the help and support on this is total. Nobody is trying to implement an ideology or to be political. We are all trying to put in place a better sector so that businesses can get a fair premium, stay trading and employ people for the benefit to society that brings. There is a profit on motor insurance but there is no profit on the liability side and we cannot just ignore that this is the case. The €227 million profit from 2017 is broken down into a €126 million overall profit. Motor profit might be more than that but the public liability is removed out of it because it is in a loss and there is a €100 million profit from investments. Those are the figures.

The Deputy's line to me is effectively to keep the spotlight on the insurance companies, and I will do that. The figures we have to date are for almost €200 million in profit from three companies in 2018. The profits are up again from 2017. I can only assume that for the other five major companies which have to report, the figures will also be increased. I do not want profiteering in the insurance sector. I want companies to be profitable, because if they are profitable, they stay, they underwrite accordingly, they underwrite well, and they treat their clients properly.

I am not sure if the Deputy has heard me make the point that on too many occasions I have had people with me who have been contracted with an insurance company for years or decades and then suddenly, because the risk appetite is not there or it just suits the insurance companies to exit, it leaves. To me, that is an appalling treatment of somebody that a company has been contracted with for years or decades. That is wrong, it does it because it suits it, and that is because the insurance company potentially is reducing its risk appetite because it is easier to do so than to stay in the sector. I will keep the hard line to them, as I know the Deputy will when they come in here.

Deputy Richard Boyd Barrett: The problem is, and the Minister of State did not really respond to this point, that there is nothing we can do apart from keeping the spotlight on them, to use the Minister of State's phrase. There is nothing we can do to compel them to give fair premiums and not to profiteer. There is nothing we can do to stop them just exiting the market whenever it suits them for whatever reasons they decide.

I put it to the Minister of State that there is probably not a lot we can do either to stop them cooking the books for when they are making losses and when they are making profits, because we know they can carry out creative accountancy with their internal operations, their parent companies and their subsidiaries and they can move money around, just as the likes of Google and Facebook do. I suspect that is what they have been doing to put pressure on us to do certain things which will increase their bottom lines. That is my belief, but aside from that, my point is that there is nothing we are proposing here that will prevent them from doing that.

Deputy Michael D'Arcy: Can I just make the point that with the profitability-----

Deputy Richard Boyd Barrett: Is the Minister of State saying that if somebody cannot make a profit out of an important insurance sector, then that sector just will not have insurance coverage? That is the logic of what he is saying. Take taxi drivers as an example. Society and public transport need taxi drivers. However, problems with insurance coverage and premiums threaten the livelihoods of taxi drivers if they have one claim against their insurance. If the insurance companies decide not to cover taxi drivers because they cannot make a profit, does that mean the taxi industry would shut down? Would we be precluded from stepping in where the market fails and ensuring there is insurance coverage of that sector?

Deputy Michael D’Arcy: That is what is happening sector by sector.

Deputy Richard Boyd Barrett: It is bonkers for us to allow that to happen.

Deputy Michael D’Arcy: Everything we are doing is to stop that. Since the cost of insurance working group was established, we have tried to put in a better sector. The levels of awards are the most significant issue. The committee recently met representatives from the child care sector on this issue. The State does not fix the prices for the kids’ zones. We do not tell them what they charge their clients. We do not fix the price for the taxi driver. Equally, we do not fix the prices the insurance companies charge their clients.

Deputy Richard Boyd Barrett: We do fix the price for the taxi driver.

Deputy Michael D’Arcy: I am making the point about individual sectors. The State does not do it but a regulator may. What I meant is that the Government does not do so. We are trying to ensure we have a proper market which is sustainable like it is in other jurisdictions. The UK and continental markets are much more stable than ours. The levels of compensation awards for minor injuries in England and Wales are a fraction of ours.

For example, I received a phone call recently from a young man in his late 20s who plays football. He was injured playing football and out for six weeks with a bit of damage done to his ankle. He was back playing sport after this and within two months he was in a car crash. Again, he was injured and could not play sport again for four weeks. After listening to discussions about exaggerated and fraudulent claims, he rang me. He was feeling guilty. When I asked him if his case was fraudulent, he said it was not. When I asked him if he exaggerated his injuries, again he said he did not. When I asked if his award was within the guidelines, he stated it was. He got €14,500 which was the correct amount of money for an award in the book of quantum. If we have to pay out every time somebody gets an injury on a football field, the damage is being done with the levels of awards, the period in which they are being settled, the issue being dragged out over years, and inconsistencies.

Deputy Richard Boyd Barrett: I agree with all of that.

Deputy Michael D’Arcy: That is good because we do not always agree.

Deputy Richard Boyd Barrett: We do not. However, there is a cross-party agreement on these issues. We needed to address them and they are being addressed now. I will give credit where credit is due. This is notwithstanding the fact that people have legitimate claims for serious injuries.

Deputy Michael D’Arcy: Yes. I am being clear that we do not throw the baby out with the bathwater.

Deputy Richard Boyd Barrett: That is fair enough. We should not debate matters we do not have to debate. Insurance fraud should be stamped out. Excessive awards should not happen. Cases being dragged on for ever and ever with extortionate legal costs should not happen. We need to streamline that in the interests of-----

Deputy Michael D’Arcy: In the interests of the consumer.

Deputy Richard Boyd Barrett: -----society, business and people who have to take out insurance for one reason or another. My point is that there is no mechanism to prevent insurance companies taking advantage of the well-intentioned work of the committee and all parties or of the measures taken by the Minister of State. I put it to the Minister of State that is what they are doing. They are taking advantage of the public demand, as well as the political willingness in the Oireachtas, to address these issues. They are just taking us for a ride. There is nothing to stop them doing it.

Deputy Michael D’Arcy: That is why we are increasing transparency with the national claims information database on motor insurance. We will be doing a granular analysis within the sector to see how profitable it is. That is why, towards the end of this year, we want to move it towards a thought process that will take that into employers’ liability, EL, and public liability, PL, analysis. That is a bigger job, which I have highlighted, and a much more varied sector compared with the motor sector. That is why we want to see how profitable they are and the extent to which they are profiteering or not. It may be the case that they are not.

Deputy Richard Boyd Barrett: I am firmly of the view that they are. As I said, I believe we need a not-for-profit insurance company. If one looks at road safety generally, it has improved over recent years. Safety in the workplace has generally improved, with workplace fatalities going down.

Deputy Michael D’Arcy: However, the awards have gone up.

Deputy Richard Boyd Barrett: Okay. We agree on that point. As Charlie Weston rightly put it, there is something wrong in the Irish insurance industry and it is not just about these matters.

Deputy Michael D’Arcy: That is why we are trying to fix it.

Deputy Richard Boyd Barrett: My point is that we will be here again dealing with high insurance premiums in two years when all of this is gone through because they are profiteering.

I have raised with the Minister of State and his predecessor engagement with the taxi advisory committee on the specific problems faced by the taxi industry. I understand one meeting occurred with Insurance Ireland and the taxi advisory committee, after which a report was given to the Minister of State. What happened to this report? There is a particular difficulty for taxi drivers.

Deputy Michael D’Arcy: That report is with the Minister for Transport, Tourism and Sport.

Deputy Richard Boyd Barrett: Will anything practical come out of it? Will anything be done for taxi drivers?

Deputy Michael D’Arcy: That is a matter for the Minister for Transport, Tourism and Sport.

Deputy Richard Boyd Barrett: Is that as much as the Minister of State can say? Yes. The issue was raised repeatedly by me and others as well as by taxi drivers that premiums for them were so high that their livelihoods were at risk. If they had even the slightest prang, it could push their premiums to a point where it was not viable to operate as a taxi driver. That is still a particular problem and we need taxis. Something had to be done about this. It was agreed that the taxi advisory committee would meet Insurance Ireland with a view to looking at the specific problems with insurance faced by taxi drivers. Then a report would come out of that engagement. What is coming out of that? Is that going to address the problems faced by taxi drivers?

Deputy Michael D’Arcy: That was passed on to the Minister for Transport, Tourism and Sport. I met a taxi company recently and spoke to an insurance company to see if it would be prepared to conduct a pilot programme on the installation of dash cams and black boxes so that it could get data on the speed the drivers were doing, whether they were within the speed limits and whether that would produce a reduction for taxis. That pilot scheme is being considered.

Chairman: If that report was all about insurance for taxis, why was it passed on to the senior Minister?

Deputy Michael D’Arcy: The cost of insurance working group operates with several Departments: Justice and Equality, Business, Enterprise and Innovation, Transport, Tourism and Sport, and Finance. It also involves the State Claims Agency, the Personal Injuries Assessment Board, PIAB, and the Central Bank. While I chair the group, the actions are a matter for each Department. My role is to push each Department to get things done and to make sure that as many of the actions as possible are done.

Chairman: Does that mean that the Minister of State pushes the Minister on Deputy Boyd Barrett’s question? It has not just gone to the Minister but there is a timeframe within which he must return to the Minister of State with an answer.

Deputy Michael D’Arcy: I pushed that on to the Minister for Transport, Tourism and Sport but my role is not, and I do not have the authority, to tell the Ministers what to do or to deal with it.

Senator Anthony Lawlor: Will the Minister of State correct the following sentence in his opening statement: “Award levels are the prerogative of the courts and therefore, for constitutional reasons, the Judiciary cannot be directed as to the levels that should be applied.” The Civil Liability Act 1961 refers to awards brought forward by the Oireachtas which are constantly being updated. It is possible for the Oireachtas to prescribe awards on a death. The Minister of State might like to correct that.

Deputy Michael D’Arcy: No. I will clarify it. There are several opinions on this and that is a matter for-----

Senator Anthony Lawlor: That is legislation that has been on the books since 1961 and which is constantly updated by the Minister-----

Deputy Michael D’Arcy: Not for personal injuries.

Senator Anthony Lawlor: It is an award for damages on someone’s death.

Deputy Michael D’Arcy: There are a range of opinions. The Senator has made his statement and that is his opinion. I have pursued the constitutionality of the Oireachtas being al-

lowed to cap awards. The Law Reform Commission, LRC, will come back to us. I am obliged to take the opinion of the Attorney General, and all those other opinions, the Senator's included, are opinions. The only one I am legally obliged to accept is his. I will not be changing my opening statement. The information that I have is that it is a matter for the Judiciary. We have a pathway for dealing with this in the Personal Injuries Commission, PIC, report, namely, the judicial council. The Judiciary will review the guidelines, I hope very soon, and I do not want to have a constitutional clash between the Oireachtas and the Judiciary. That would not be beneficial. If we can do this quickly and efficiently, we will deal with the matter. If we want to bang heads with the Judiciary, the Oireachtas will be wrapped up in the courts for years.

Senator Anthony Lawlor: I have not mentioned anything yet. I just asked the Minister of State to take a look at that because of the Civil Liability Act 1961.

Deputy Michael D'Arcy: I will not be looking at it.

Senator Anthony Lawlor: All right. That is the Minister of State's opinion. We will differ on that. The Judicial Council Bill 2017 will come before the Seanad next Wednesday. We still have not seen the additional amendments that the Minister for Justice and Equality proposes to bring forward. Will the Minister of State give us a timeframe for when Senators will see these amendments?

Deputy Michael D'Arcy: It should be at the end of the day.

Senator Anthony Lawlor: My problem with guidelines is that there is no legal basis for them. They do not have to be adhered to by the Judiciary. The judicial council may prescribe awards. The Minister of State indicated that if pathway A for the Judicial Council Bill 2017 does not work, there is pathway B, which the LRC is considering at the moment and which coincides with my Bill on the capping of awards. The Minister of State has indicated pathway C would be a referendum. Judges do not have to adhere to guidelines. There will always be an instance where the legal profession will refer to previous cases and where the awards proposed by the judicial council could be challenged. I am nervous that the Judiciary will not adhere to the guidelines.

Deputy Michael D'Arcy: Insurance is a small corner of the Judicial Council Bill. It is a pretty radical reformation of the way the Judiciary operates. Part of that will be a question of how to upskill members of the Judiciary and how to question a member of the Judiciary who steps outside the guidelines. There will be peer review of sentencing. That is a matter for the Judiciary to resolve.

Senator Anthony Lawlor: If the LRC reports that it is constitutional for the Oireachtas to cap awards, does the Minister envisage bringing forward legislation to put a cap in place?

Deputy Michael D'Arcy: That will be a matter for the Minister for Justice and Equality, not for me.

Senator Anthony Lawlor: What is the Minister of State's opinion?

Deputy Michael D'Arcy: I would hope and anticipate that it will not be required and that the guidelines will be in line with the PIC report. If they are in line with the PIC report, there should not be a requirement for a cap on the awards. If, however, the LRC reports to us that we can, then it is a matter for the Attorney General to determine whether we are authorised to do so. The LRC report will be a guide. It will then be a matter for the opinion of the Attorney General.

Senator Anthony Lawlor: That will be an opinion of the Attorney General.

Deputy Michael D’Arcy: That is the only opinion that matters.

Senator Anthony Lawlor: The impact of legal and other fees on personal injury awards is being examined. Why is there a delay in that and who is responsible for its delivery?

Deputy Michael D’Arcy: Part of the problem has been not having information. We do not have the exact figures, and until we get the data and the analysis of how much is spent on the legal process, we cannot move. I have a note to the effect that the Department of Justice and Equality was unable to source a reliable information stream with regard to legal costs. We do not know the figures. The implementation of the recommendation is contingent on the establishment of the office of legal cost adjudicators, OLCA, as provided for under the Legal Services Regulation Act 2015. The establishment of the OLCA is on target to take place at the end of the second quarter of 2019, that is, at the end of this quarter. This requires the passage of several supporting legislative amendments that are of course subject to the Oireachtas. The cost of insurance working group understands that a period of at least one or two years will be required from the time this new body becomes operational before an appropriate amount of data will be available to commence with a meaningful review.

Senator Anthony Lawlor: Again, everything is being deferred further.

Deputy Michael D’Arcy: That is in line with the time that we said it would take.

Senator Anthony Lawlor: The estimated start date of the OLCA has been constantly deferred. There is no guarantee that it will happen in the second quarter of 2019. It is now the second quarter of 2019. There are only a couple of weeks left in the quarter. It is not going to happen in the second quarter of 2019. It has been deferred again.

Deputy Michael D’Arcy: It is a matter for the Department of Justice and Equality. This is similar to the question concerning the Department of Transport, Tourism and Sport.

Senator Anthony Lawlor: Looking at that I would say the legal profession is doing its damndest not to provide the information. That is what I gather from the Minister of State’s answer.

Deputy Michael D’Arcy: The national claims information database will provide a lot of data as well. That will be available before the end of this year.

Senator Anthony Lawlor: I have a few more queries. The Courts Service was to publish the results of personal injuries claims in a more granular way in its annual report. Has this happened?

Deputy Michael D’Arcy: I will read the note for the Senator. The Courts Service has indicated to the Department of Justice and Equality that it will publish a more detailed breakdown of awards in injury cases in its 2018 annual report. The details of awards on medical negligence will be published separately. We have stripped those out to try to provide a better insight into personal injuries awards. The publication of more granular information with regard to personal injury awards will provide more clarity around the average amount awarded and any particular trends. The Courts Service has not published its 2018 report yet, but this information is in line to be published in that report.

Senator Anthony Lawlor: Has the Law Reform Commission, LRC, given any indication

in its work programme as to when it will publish its findings regarding the capping of damages?

Deputy Michael D’Arcy: The LRC has stated that it will be publishing a consultation paper before the end of this year. There will then be an opportunity for civic bodies, groups and organisations to feed into that consultation. It will publish the findings at some point in 2020.

Senator Anthony Lawlor: When can we expect to see the introduction of notifications for people against whom claims are made?

Deputy Michael D’Arcy: The LRC reports that Deputy Pearse Doherty has provided a Bill, the Consumer Insurance Contracts Bill 2017. This Bill will be on Committee Stage before the end of this term. We are attaching this measure to that Bill.

Senator Anthony Lawlor: I have one more query. I refer to the first report of the Personal Injuries Commission, PIC. Court rules committees are considering its recommendation to amend the relevant court rules in order to require reports to be produced in a standardised format. When will this happen?

Deputy Michael D’Arcy: I do not have the answer to that. I will revert to the Deputy.

Senator Anthony Lawlor: The Judicial Council Bill 2017 is coming before the Seanad next week. I am not sure how much of a positive impact this will have on the cost of insurance for ordinary citizens and businesses. It will take time, because it will have to go through the Oireachtas. Then a committee will have to be set up in the Judiciary, which will have a review and will then decide. We could still be discussing this in two years, with no change having been made to awards. As far as I am concerned this is one leg of a stool. The Minister of State indicated in his initial comments that there is no single silver bullet. As far as I am concerned one of the legs of this stool is the awards being paid out by the Judiciary. This problem has been caused by the Judiciary because it has increased the awards on an annual basis. It has been shown that on average, there has been an increase of between €700 and €900 per annum in a variety of awards, without any justification. I hope that we get the Judicial Council Bill 2017 through the Seanad and the Dáil as quickly as possible. I hope that the Government initiates the necessary legislation as quickly as possible in order that this proposed committee, which I have not yet seen, can be established as quickly as possible. I hope that we do not need to bring legislation forward to provide for a cap on damages. The perception is that the Government is dragging its heels on this issue. I do not believe it is. This is a complex matter but we need to deal with it quickly because as people have indicated, businesses, farmers, communities, festivals, shows and ordinary citizens driving their motor vehicles are suffering as a result of this.

Deputy Michael D’Arcy: I thank the Senator. The Government is absolutely not dragging its heels on this. The PIC report was published last September. We anticipated that this would be done by the end of 2018. That did not happen. Deputy Pearse Doherty highlighted the filibuster that has taken place. The Judicial Appointments Commission Bill 2017 was originally ahead of the Judicial Council Bill 2017. It was not unreasonable for the Minister for Justice and Equality to proceed in line with how that legislation had progressed in the Seanad. However there has been very little comment on the filibuster behind which this legislation got stuck. Were it not for that filibuster, this would already be completed and the Judiciary would be doing its work right now.

Chairman: Reflecting on the previous meetings we have had on this issue feels like Groundhog Day. I have listened carefully to what the Minister of State has had to say and I do not

question his dedication to the task of fighting to lower insurance costs. Businesses that have come before this committee and individual voters that have complained to us have not had any satisfaction whatsoever. I know that employer's liability and public liability are different things, as the Minister of State said. However a business is a business. It runs on employer's liability, public liability and motor insurance. I have yet to meet a business that will openly say that its insurance costs have been cut by 25%. Only today I received a text-----

Deputy Michael D'Arcy: Is the Chair referring to motor insurance?

Chairman: No, I am talking about any cost facing businesses. I ask the Minister of State to bear with me. One cannot simply single out motor insurance and state one will deal with public liability insurance later on. That does not work for business owners dealing in the current marketplace and who are giving employment. Nothing has happened and there has been no change, in spite of what I read in various media outlets. There is the odd press release claiming that the cost of insurance has come down but it has not. It has not come down in the transport business; it has actually significantly increased. A man sent me a text message this morning because he knew this meeting was coming up. He told me that in his business, insurance costs have increased during the past three years by 200%. The mart operators appeared before us. They simply cannot get insurance. People outside the Oireachtas who are watching and listening to what we are doing are not interested in the different avenues one must travel to deal with the different headings of insurance. They are interested in one thing, namely, whether their house insurance, motor insurance and public liability and employer's liability insurance have gone up. The answer to the question is that they have.

Deputy Michael D'Arcy: Chairman, I have to be-----

Chairman: Let me finish. Deputy Boyd Barrett mentioned taxi drivers earlier. We could take transport companies, farmers or marts. They are all telling us the same thing: their insurance costs have gone sky-high.

Now, presumably the report Deputy Boyd Barrett referenced is about insurance. The Minister of State mentioned that it went to the Minister for Transport, Tourism and Sport. Is that not really the problem? So many within Government have a finger in the pie of insurance, in terms of legislation or regulation, that this will get dragged on forever. The insurance companies love it because once they see the Government struggling to get to grips with it, then they are getting away with it. They are making vast profits. They are not charities. They would not be in the business for the sake of charity or without profit. They are making profits. They have concealed or kept information from us. They have been reluctant to deal with the Minister of State and with the working group. They have had to be dragged to that table. Business people and individual motorists want to know when their premiums will be reduced.

Deputy Michael D'Arcy: The Chairman correctly notes that the individual who is in charge of a business is not interested in the pathway but I have to be. I am talking about the pathway to how we get the reform done. I am obliged to be interested. I am obliged to adhere to the principle of separation of powers. I am obliged to highlight that the State does not have any role in the pricing of insurance products. I cannot ignore these points. I am determined to do the work that I am doing, rather than ending up wrapped up in court for years. However, if I do not take the correct pathway, that is what will happen and that serves no one.

The Chairman said marts cannot get insurance. I was in a mart three weeks ago and that mart has insurance. On the Chairman's point on whether the cost of insurance is going up, yes

the insurance for marts is expensive because the successful marts are putting between 600 and 1,000 large animals into a venue with people. Some of the work practices in some of the marts are not good. I have raised this with the main insurer of the marts in the country, which is one particular insurance company. Many of the health and safety reports done have concluded with the works being carried out, and this has ensured that those marts are insured. Some of the smaller marts potentially do not have enough business to cover the extra work that must be done to bring up the health and safety standards.

I have seen the film “Groundhog Day” with the Bill Murray character. I am unsure whether the Chairman is Bill Murray but there is a character in the film call Phil and Bill Murray comes along every day and greets Phil. I have been here before and I keep pushing our proposals and the work that we are doing. The cost of insurance working group has been on the go for 30 months. We have highlighted how all these proposals would take time. I am unsure whether the Chairman is Bill Murray and I am Phil or *vice versa*, but we are nearing the end of it. In particular, we are nearing the end of it for what I consider to be the biggest issue, which is the level of awards. When we are done and we get the level of awards down or reduce them, my role and that of the Chairman and the committee will be to keep the spotlight on the insurance companies to ensure they do not try to pocket potential windfall amounts because we will have reduced the awards to the point where people who are damaged from a moderate injury receive a moderate payment. That is what we must do. We cannot allow the insurance companies to do that. I am absolutely determined in this regard, as I know is the Chairman. The Chairman has as great a role as do I because he has a public forum to which he can bring in the insurance companies, one by one, and keep the hard line on them, as I do in private.

Chairman: That does not seem to be working. That is the point I am making. You and I are talking about this, and the committee is dealing with it. Yet, as the working group deals with it, there are businesses operating throughout the economy that are being forced to close or curtail their activities because of the various types of insurance. That cannot be endured. One sector cannot hold all of the other sectors to ransom. One insurance company insures most of the marts. Most of the marts have experienced significant increases. I met representatives of the taxi industry some weeks ago. There is no justification for the increases they have experienced. I will turn to the report.

Deputy Michael D’Arcy: Can I respond to the point, Chairman? I do not wish to forget my answer.

Chairman: No, take a note. There are two officials beside you. They can take notes as well. I have no one beside me.

Deputy Michael D’Arcy: The Chairman does have people beside him.

Chairman: I am looking at the Minister of State’s report. Wherever a report, protocol or legislation is mentioned, the action gets done but the hard part is giving information to the consumer. That does not get done. It is too intricate according to these recommendations. Let us consider the first recommendation. I will bring us through them. The first states that insurers should set out reasons for large increases in premiums to consumers. That is ongoing.

Deputy Michael D’Arcy: No. That is being attached to the legislation that Deputy Pearse Doherty has developed.

Chairman: That is what I said. It is ongoing. What is to stop insurance companies from

simply giving the information? If my insurance premium goes up by €1,000 or if it doubles, then surely I am entitled to sit down with my broker or insurance company and ask why the premium has gone up although I have made no claims. The companies will not even answer people who ask that question.

Deputy Michael D’Arcy: As I have said, we could not get them to do it. As they would not do it voluntarily, we are adding it to the legislation.

Chairman: Does that not tell you something about them, Minister of State?

Deputy Michael D’Arcy: Everything that we are doing with almost the entire sector is done with kicking and screaming.

Chairman: That tells us everything about them.

Deputy Michael D’Arcy: That is the position in which I find myself.

Chairman: Given the context in which the Minister of State finds himself, should the Government not give everything to one person, namely, to the Minister of State? The report was sent from the working group to the Minister for Transport, Tourism and Sport. Whatever is required to be done should be done immediately. That simple example involving information being asked from the service providers does not apply in any other sector. The question for many is why they are charging so much for a piece of meat or a service and the service providers cannot answer. As a result people will not pay them, nor should they.

Deputy Michael D’Arcy: I cannot make them answer, Chairman.

Chairman: That is the problem. I will leave it at that because that answers everything.

Deputy Michael D’Arcy: To respond to the question of whether one sector can hold all the other sectors, the one dynamic of all the sectors is the level of awards. If somebody is injured in a mart and ends up in court, the level of the award causes the damage. If it is an accident involving a taxi, it could be the same injury, such as a broken arm or leg or whatever the case may be, but the high level of awards is the greatest issue we are addressing. The Judicial Council Bill will be debated by the Seanad next Thursday. I hope we can progress it to the Dáil the following week in order that we can move onto Second Stage and conclude Committee and Report Stages by the end of the session.

When all is said and done, if it was as profitable for insurance companies as has been presented, they would not exit the market to the extent they are. Eight insurance companies in our small jurisdiction control between 89% and 92% of the entire market.

Chairman: I have another example of information. When a claim is being settled, as happens regularly in the case of transport, taxis and wherever a large number of vehicles are involved in the business, all we are asking is that the settlement be disclosed, but that recommendation has been delayed. The Minister of State stated the Department of Finance failed to reach an agreement with Insurance Ireland.

Deputy Michael D’Arcy: Yes.

Chairman: Surely a business that pays its premiums is entitled to know-----

Deputy Michael D’Arcy: No, it is not entitled to know.

Chairman: A business that pays its premiums-----

Deputy Michael D’Arcy: It is not entitled to know.

Chairman: Why not? Should insurance companies not be required to outline the compensation?

Deputy Michael D’Arcy: That is what we are doing with the provisions attached to Deputy Pearse Doherty’s Bill.

Chairman: The Department has recommended a delay.

Deputy Michael D’Arcy: The Chairman has told me to require insurance companies to disclose awards and that is what we are doing.

Chairman: I return to the point that insurance companies are calling the shots and are not co-operating with the Department.

Deputy Michael D’Arcy: Whether or not they co-operate with me, if I have to pass legislation to make such provisions, I will do so. We thought we would bring them to a point where they would do so voluntarily but that turned out to be wrong. We decided-----

Chairman: That says a lot about them.

Deputy Michael D’Arcy: That is the environment in which I am working.

Chairman: That brings us to the end of the meeting.

Deputy Michael D’Arcy: I reiterate my thanks to the Chairman, the members of the committee and the Members of both Houses, who have been very helpful to me and the section of the Department that is responsible for insurance. I would love to move much faster than we are but these are the confines in which I work. It does not mean we will lessen our intensity or drive to improve the sector.

Chairman: I thank the Minister of State and his officials.

The joint committee adjourned at 4.55 p.m. until 3.45 p.m. on Tuesday, 18 June 2019.