DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 18 Nollaig 2019

Wednesday, 18 December 2019

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair/Members present:

Jack Chambers,	Lorraine Clifford-Lee,
Catherine Connolly,	Martin Conway,
Jim O'Callaghan,	Niall Ó Donnghaile.
Thomas Pringle.	

I láthair/In attendance: Deputies Pearse Doherty and Martin Kenny and Senator Mark Daly.

Teachta/Deputy Caoimhghín Ó Caoláin sa Chathaoir/in the Chair.

Business of Joint Committee

Chairman: As we have a quorum, we shall commence in public session. I remind members to please switch off their mobile phones as they interfere with the recording equipment. I thank Senator Mark Daly for his presence and for facilitating the commencement of today's business.

Senator Mark Daly: I am always happy to be of service.

Chairman: Nollaig shona don Seanadóir. Apologies have been received from Deputy Peter Fitzpatrick. We shall now go into private session.

The joint committee went into private session at 9.04 a.m. and resumed in public session at 9.40 a.m.

Access to Justice and Legal Costs: Discussion (Resumed)

Chairman: The purpose of this morning's engagement is to continue the series of hearings on the separate but related issues of access to justice and legal costs. The focus of today's meeting will be more on the costs aspect.

We are joined from the Competition and Consumer Protection Commission by Ms. Isolde Goggin, chairperson, and Mr. Fergal O'Leary. From the State Claims Agency, we are joined by Mr. David Mack, head of legal costs, and Mr. David Dunning, senior legal cost accountant. From Insurance Ireland, we are joined by Mr. Gerry Hassett, interim chief executive, Mr. Michael Horan, non-life manager, and Mr. Declan Jackson, director of government affairs. From the Legal Services Regulatory Authority, we are joined by Mr. Brian J. Doherty, chief executive, and Mr. Ultan Ryan, secretary. All the witnesses are welcome.

I will shortly invite the witnesses to make their opening statements in the order in which I have introduced them. It is in no special order and is just based on the seating arrangement.

I must draw the attention of our witnesses to the situation relating to privilege. Please note that you are protected by absolute privilege in respect of the evidence you are to give to the committee. However, if you are directed by the committee to cease giving evidence on a particular matter and you continue to so do, you are entitled thereafter only to a qualified privilege in respect of your evidence. You are directed that only evidence connected with the subject matter of these proceedings is to be given and you are asked to respect the parliamentary practice to the effect that, where possible, you should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members should be aware that under the salient rulings of the Chair they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I invite Ms Goggin to make her opening statement on behalf of the Competition and Consumer Protection Commission.

Ms Isolde Goggin: I thank the committee for the invitation to speak to it today. I am joined by Fergal O'Leary, member of the commission, who has responsibility for our consumer protection and advocacy activity.

The Competition and Consumer Protection Commission, CCPC, was established in 2014. We work to improve consumer welfare across the economy by enforcing more than 40 competition and consumer protection legislative instruments. Through our advocacy efforts, we work to influence public debate and policy development, promoting competition and highlighting the interests of consumers. We are active in several markets including motor insurance, ticketing, public transport procurement, the motor sector, nursing homes and in the retail sector regarding pricing and product safety. Most recently we commenced a major study on the public liability insurance market.

The legal services market has been a high priority for the CCPC and our predecessor organisation, the Competition Authority, for many years. I want to outline some of the key aspects of our work and highlight some potential considerations that would help to address some of the issues in the market.

Legal services are fundamental to the functioning of our economy. The State, and therefore taxpayers, is the biggest purchaser of legal services. Excessive legal fees, along with out-dated, inefficient practices, increase the cost of doing business, while also resulting in higher costs for all consumers of legal services. In 2006, our predecessor organisation, the Competition Authority, published its final report on competition among solicitors and barristers. The report concluded the legal profession was saturated with unnecessary and disproportionate restrictions on competition and was in need of substantial reform. These restrictions limited access, choice and value for money for those wishing to enter the legal profession and for those purchasing legal services.

From the consumer perspective, the legal services market was, and remains, extremely challenging to navigate. As is the case for most professional services, there is an information asymmetry between the profession and consumers. The ability to compare offerings is limited, particularly when the service is required urgently. An additional difficulty arises given the uncertainty around cost, as the likely cost of services is often uncertain at the outset.

One of the challenging features of the legal services system is that it is characterised by well-organised groups of professionals who have been effective at influencing the nature and pace of reform efforts. Since our 2006 report and recommendations, several important developments have taken place, including the establishment of the Legal Services Regulatory Authority and recently, the Legal Costs Adjudicator. However, as is widely acknowledged, the pace of reform has been slow and much more work needs to be done. The cost of legal services is a critical concern for anyone who has to engage the services of either a barrister or a solicitor, including the State. An assessment of whether costs have increased, or are high, can be made only on the basis of accurate industry data. In most markets, a sectorial regulator is best placed to gather such data. The CCPC is of the opinion that the Legal Services Regulatory Authority should promote public awareness and disseminate information to the public in respect of the cost of legal services.

The CCPC believes that action is also required in the area of education and training of legal practitioners to enhance consumer choice and competition between legal practitioners. Existing monopolies on the provision of legal education and training held by the Honourable Society of King's Inns and the Law Society of Ireland should be brought to an end and replaced by a system of regulated standards for education, overseen by the Legal Services Regulatory Authority. The opening up of these markets would enhance the quality and standards of legal services education while encouraging the emergence of competing providers. There is also scope to reduce the barriers to entry to the legal professions. There are unnecessary costs and

duplication in education encountered by new entrants and those switching between the professions. Competition in legal services education would not only address issues in terms of access and choice but would also contribute to bringing down costs.

Specifically, on consumer access to redress, and in the context of the types of issues we deal with day to day through our consumer helpline, consumers can seek redress through the small claims procedure and through a small number of alternative dispute resolution processes. However, there are challenges to both, with low engagement levels with the alternative dispute resolution process. The limit for claims that can be brought by consumers through the small claims procedure is currently €2,000. We have in the past and continue to suggest that consideration should be given to increasing the small claims value in order that consumers can seek their own redress for higher value products and services. For example, the European small claims procedure, which allows for a claim to be made in civil or commercial matters against a trader based in another member state, had its limit increased to €5,000 in 2017.

A further significant future development in this area is in the field of collective redress. We note that in November EU member states agreed on a position which would make it possible for consumers across the EU to go to court as a group, when a trader has harmed them, which is a positive move for consumers.

The CCPC believes that, despite reforms, the legal services market could and should be more competitive. If further reforms were introduced, they would drive higher levels of competition, consumers, businesses and the State would benefit. While some progress has been made, significant issues which led to the establishment of the Legal Services Regulatory Authority, including low levels of competition, barriers to entry, self-regulation and resulting high costs have not yet been resolved. Meaningful reform will be achieved only if momentum is maintained. The scrutiny afforded to this cause by the committee is welcome in that regard. The CCPC is committed to playing its part in this reform.

Chairman: I thank Ms Goggin. I invite Mr. David Mack to make his opening statement on behalf of the State Claims Agency.

Mr. David Mack: I thank the committee for inviting me to talk about the issue of legal costs from the perspective of the State Claims Agency, SCA. I will begin with the role of the SCA legal costs unit and then make specific comments on third-party legal costs in personal injury cases.

The legal costs unit was established in the SCA in 2013 to deal with third-party costs arising from certain tribunals of inquiry, namely, the Mahon, Moriarty, Morris and Smithwick tribunals. Its remit has been extended to include third-party legal costs of the State and certain State authorities. This means the legal costs unit deals with third-party legal costs of these State authorities regardless of whether they arise during the SCA's claims management work or involve other legal costs incurred by the State authority concerned. The legal costs unit carefully examines the legal costs submitted by the representatives of plaintiffs, before negotiating to cut the State's bill for legal costs by as much as possible. If it cannot reach an acceptable agreement, it refers the case to a legal costs adjudicator, subject to a right of appeal to the High Court. The legal costs unit has successfully achieved significant savings for the State. I have attached a summary of our results in 2017 and 2018 and the position up to the end of November 2019 as an appendix to this opening statement.

While we are aware of the significant level of public dissatisfaction with legal costs, our

view is that large sections of the legal services market work effectively. We believe that in terms of the remuneration of solicitors or barristers, legal costs are generally non-controversial in areas like probate, conveyancing, company law, acquisitions and mergers, and commercial disputes. The introduction of the lawyer-client terms and conditions agreement mandated under section 150 of the Legal Services Regulation Act 2015 is likely to enhance relationships and competitive fee structures in these areas. The common denominator driving the smooth working of these areas of law is pure economic market forces. In short, consumers have never been more empowered and equipped to shop around, and indeed they do so in respect of certain categories of legal costs expenditure in which there is a direct contractual liability to meet the cost of the service rendered.

It would be a mistake to say the entire market for legal services is functioning as competitively as it should. Personal injury litigation is the great outlier in this regard, largely due to the widespread take-up of no-win, no-fee retainers. It cannot be disputed that such terms facilitate access to justice for those who would not otherwise have the means. In basic terms, the injured party may not have the financial resources to fund litigation but has a good case which the solicitor is keen to take. However, the costs are ultimately paid by a third-party insurer or indemnifier and there is no incentive on the plaintiff to shop around or to seek value with regard to the fees charged. It was made clear in the 2005 report of the legal costs working group, which was known as the Haran group, that the problem with this is that the person paying the piper "is not in a position" to call the tune. This model does not work unless the defendant or potential indemnifier for damages and costs has sufficient resources and there is a good prospect of success with the claim.

The legal costs provisions introduced under the Legal Services Regulation Act 2015 are to be welcomed and have the potential to reduce litigation costs. For example, the modification of the costs-follow-the-event rule provided for in section 169 of the Act will enable the court to carve out costs orders that do justice between the parties. The new court rules contained in Sl 584/2019 will be also of assistance to paying parties with capacity to make lodgments or tender against legal costs liabilities with a view to avoiding some of the costs of adjudication. These measures were identified by the Haran group as necessary to reduce costs. There are good reasons to believe they will achieve this aim. The Haran group also advocated a three-pronged approach for reducing legal costs, involving the replacement of the taxation of costs system, the introduction of enhanced and meaningful lawyer-client written retainers and an overhaul of court processes with a view to increased efficiency. Progress has been made in all three areas. The newly appointed chief legal costs adjudicator brings a vast amount of experience in legal costs knowledge. He has undoubted expertise and is well placed to improve the operation of the rules for all parties by way of practice directions, protocols and other informal guidelines. The new four-phase bill of costs, which replaces the traditional lump sum approach, is aimed at providing more transparency in the process. Transparency in costs claimed is an area in which further work could prove beneficial.

The legal costs landscape in England and Wales has been undergoing major transformation in recent years. As these reforms remain ongoing, it may be too soon to draw conclusions about their overall effect. I draw the committee's attention to two initiatives: proportionality and costs management. Under the principle of proportionality, no more should be payable than if the litigation had been conducted in a proportionate manner. The so-called Lowndes test indicates that if global costs are disproportionate, individual items should not be allowed unless it is established that they were necessarily incurred and reasonable. A more radical approach evolved whereby a final costs figure was effectively guillotined if the outcome was deemed to

be disproportionate to the issues litigated. In recent times, there has been a move away from the guillotine approach towards the original Lowndes test, as enunciated in 2002. Section 17 of the Courts Act 1981, as replaced by section 14 of the Courts Act 1991, is an example of an earlier Irish experience with this principle. The rule was generally unsuccessful because the prevailing view on the adjudication of costs was that the statutory cap had no application in respect of negotiated settlements or consent orders where the onus was placed on the paying party to make express provision for the limitation as a term of the settlement. Furthermore, increases in the jurisdiction of the courts have rendered the 1991 provision redundant.

Proportionality can be of particular use in some lower-value claims in which the costs claimed and allowed can exceed the damages awarded. In England and Wales, cost management is inextricably linked to case management as an overriding principle of the civil procedure rules. A cost-budgeting approach is regularly used in the UK courts at a preliminary phase of proceedings and is prospective in nature. The parties apply to the court for approval of a litigation budget which is enforced with liberty to increase the amount fixed for costs in limited circumstances only. Such a system can have benefits for larger claims in which case management directions are currently an issue. I hope my remarks have been helpful to the committee. I am happy to assist the committee with any further queries it may have.

Chairman: I invite Mr. Gerry Hassett of Insurance Ireland to deliver his opening statement.

Mr. Gerry Hassett: I thank the Chairman and members of the committee for the opportunity to make this address. I am joined by Mr. Michael Horan, who is our non-life manager; and by Mr. Declan Jackson, who is our director of Government affairs. Insurance Ireland represents the general insurance, health insurance, life assurance, international, reinsurance and captive management sector. We represent 140 companies. Our membership is split approximately 50:50 between companies that write insurance for the domestic market and companies that sell to the international market from Ireland. Insurance Ireland members export insurance cover to 110 countries throughout the world. We have more than 25 million policy holders. Our members pay out €13 billion in claims and benefits annually and contribute more than €1.6 billion to the Exchequer each year. Total industry employment is 28,000, both direct and indirect. One in four jobs in financial services in Ireland is in insurance.

It is important to provide some context before we discuss the practical aspects of the Irish legal system. Legal costs and processes must be seen in the context of the urgent need to reform our cost of claims. We know that the average personal injury award in the most frequent category, that of soft tissue whiplash, is 4.4 times greater than in the UK. This very stark fact cannot continue to be ignored. The cost of compensation awards is the defining issue in the Irish non-life market. This has been established by the Personal Injuries Commission and in the policy approach that led to the establishment of the Judicial Council. The need to reform ancillary costs such as legal fees is equally pressing. The recommended reforms which were set out clearly in the report of the cost of insurance working group must be completed as a matter of urgency. Therefore, the consideration of legal costs by this committee must be cognisant of the wider impacts of legal fees and the need for urgent reform of costs.

We are seeking to provide a perspective from the insurance sector, which is a heavy user of, and highly dependent on, the Irish legal system. In our evidence before the committee, we will concentrate on the civil justice system, with which our members interact on a daily basis. On behalf of policy holders and customers, insurers are seeking four essential qualities when we interact with the legal system. First, we want it to be consistent, which means that predicted outcomes can be repeated in similar settings on numerous occasions. Second, we want it to

be efficient, which means that no party to the proceedings should spend more than necessary in terms of time and resources to get to the outcome. Third, we want it to be independently reviewed, which means the actions and expectations of all participants in the system should be reviewed to ensure the legal system is delivering against policy goals. Fourth, we want it to be fair, which means that the system gives a fair outcome to policy holders and those who have suffered through no fault of their own.

On consistency, insurance companies are supporters of the model as operated by the Personal Injuries Assessment Board, PIAB. We support it because it is consistent with the award levels in the book of quantum and there is stability in terms of delivery costs, which were 6.1% in 2018 with an average processing time of 7.2 months. Traditionally, insurers accept the determination of PIAB in approximately 90% of the cases where such a determination is made. PIAB is consistent in terms of amounts awarded as well as time to deliver and cost of delivery. It should be noted that PIAB put through more cases in 2018 than it did in 2010, although this increase stabilised from 2014 onwards.

In contrast, litigated cases are adjudicated subject to the facts as presented before the judge on the day the case runs. The variables in such a situation may be as elementary as the relative skill and experience of the legal teams on either side. The justice system is suffering from increased demands on capacity. In 2014, 17,763 personal injury cases were filed across the District, Circuit and High Courts. In 2018, 22,049 such cases were filed across the three court. For valid reasons, there is inconsistency in the amounts awarded in litigated cases, as illustrated by the figures for each court.

On how the legal system can become more consistent, the establishment of the Judicial Council is to be welcomed. The operation of the personal insurance committee of the council will be vital in reviewing and striking a just quantum for Irish personal injury awards. We believe it was an error not to give the book of quantum to the Judiciary when it was first introduced in 2004. Judicial peer review of decisions, in conjunction with training and collective judge-led learning, will assist in further generating consistency in awards. Much of the legislative basis for this is contained in the Judicial Council Act 2019, under which the book of quantum will be replaced by statutory guidelines on personal injuries awards. These guidelines will result in a system similar to that in operation in England, Wales and Northern Ireland.

In advocating for efficiency, we are striving for a situation whereby no party to proceedings spends more time or resources than is necessary to get to the appropriate outcome. The Irish legal system does not perform well in respect of time to decision. According to the World Bank, the average time from filing a proceeding in Ireland to enforcement of justice is 650 days. The OECD average is 578 days, while only two other EU 27 Countries, namely, Poland and Italy, take longer than Ireland. Irish insurers typically reserve on the basis that judgment in litigated personal injury cases will be delivered between four and six years after the date of an incident. In the UK, insurers typically reserve on the basis that judgment will be delivered between two and four years after the date of an incident. Time to settle is a key indicator of efficiency in litigated cases as the settlement offered is based on prevailing injury award levels at the time of judicial decision rather than the date of the incident. This can involve considerable inflation. There was considerable inflation in the size of awards contained in the second edition of the book of quantum published in 2016 compared to the first edition, published in 2004.

Costs for delivery are also considerable as a direct result of the time to deliver. In this regard, I will rely on two Government reports, namely, the National Competitiveness Council, NCC, legal costs bulletin 2016 and the Department of Finance motor insurance key information

report 2017. The NCC bulletin indicates that, based on CSO data, legal services prices did not fall for a prolonged period between 2007 and 2015. To illustrate the point, the NCC contrasted this with the fall in the price of accounting services. The Department of Finance report found that legal and other costs in closed personal injury claims typically accounted for 42% of the compensation amount paid to claimants. In 2016, the average personal injury payment to those involved in a motor accident was €23,600, which aligns with the average PIAB motor award of €22,454 for that year.

On how the legal system can become more efficient, there should be more active case management to ensure that cases, once entered, are heard as quickly as possible. There is a suspicion that the seeking of leave to adjourn is often used as a lever in negotiation. There should be agreement on independent medical experts and methodologies of assessment which would decrease the time taken to reach a judicial determination. The Judicial Council Act which passed through the Houses of the Oireachtas in July 2019 and was commenced yesterday evening by the Minister for Justice and Equality, Deputy Flanagan, is of importance. Effort should be made to extend the pre-action protocol model from medical negligence cases to personal injury cases.

On an independent review process, given the nature of litigation, a very narrow understanding of review is often applied. In the past, this has been confined to appeals of judicial decisions. It is for this reason that Insurance Ireland supports the role of the Legal Services Regulatory Authority, LSRA. Specifically, we believe the authority will be vital in protecting and promoting the interests of consumers and promoting competition in the provision of legal services in the State. The principle of independent investigation of complaints is to be welcomed. There is no national aggregate collection of costs as they apply to litigation and this lack of insight makes it difficult to undertake effective analysis of legal costs. In turn, public policy is often fragmented and without a frame of reference.

I refer to how to review the performance of the legal system and the associated costs. The establishment of the LSRA is welcome but the length of time for it to become fully operational illustrates the complexity of the task it faces. It should be actively supported to be self-funded and fulfil its mandate as a matter of priority. Once fully operational, it should be given a mandate to conduct proactive and own initiative thematic reviews, rather than merely investigate complaints. In so doing, the authority would be acting in line with best international supervisory practice. We would like to see a national aggregated collection of legal costs as a ratio to compensation payments in civil disputes. In time, such an agreed data source would provide the necessary raw data to evaluate the success or otherwise of public policy in this area.

On fairness, the balancing of rights and responsibilities between claimant and policyholder is difficult and can lead to the generation of considerable costs. We would support a system which may separate the issues of damages and liability. In such a system there may be an increased role for PIAB in determining damages and, prior to moving to litigation, a form of arbitration to establish where liability rests. Ideally the arbitration should take place quickly and allow for a speedier conclusion of the matter. This may be fairer and avoid full litigation. Such a system has been successful in the commercial courts and would mean that only cases involving irreconcilable differences between the parties would come before a judge for a full hearing.

I thank the committee for the opportunity to come before it this morning. We look forward to answering members' questions.

Dr. Brian Doherty: I thank the committee for inviting us to appear to discuss the issue of legal costs. I am joined by my colleague, Mr. Ultan Ryan, secretary to the authority. The invi-

tation letter issued by the committee suggested that witnesses may wish to focus on issues they believe are most relevant to their areas of expertise. Of the areas of examination listed by the committee, those most relevant to the role of the LSRA relate to greater transparency on legal costs in Ireland and increased competition within the legal sector which may reduce costs.

It may be helpful to outline the relevant statutory objectives and functions of the LSRA that frame its mandate, highlighting those directly relevant to the matter at hand and the concerns of the committee. I will provide an update on the status of the LSRA in fulfilling its broad statutory remit with emphasis on the areas of activity that might have most impact in the areas of cost and competition. I will look ahead to the new year and some elements of the future work programme of the LSRA relevant to the costs of legal services in the State.

The LSRA is the new independent regulator for the provision of legal services by legal practitioners. Section 13(4) of the Legal Services Regulation Act 2015 sets out the six statutory objectives of the LSRA which are, in effect, our operating principles. These are to protect and promote the public interest, support the proper and effective administration of justice, protect and promote the interests of consumers relating to the provision of legal services, promote competition in the provision of legal services in the State, encourage an independent, strong and effective legal profession and promote and maintain adherence to the professional principles of legal practitioners as specified in the Act. The committee will note that while a reduction in legal costs is not explicitly mentioned, we are tasked with protecting the public interest, the interests of consumers of legal services and with promoting competition. The Act intends that these principles guide the authority in all of the work it undertakes. The authority's 11 functions are set out under section 13 of the Act, and in the context of today two of those functions are particularly relevant. I will not read all of section 13 into the record. It is included in our submission. I will highlight subsections (e) and (g) which relate, respectively, to receiving and investigating complaints and to promoting public awareness and disseminating information to the public in respect of legal services, including the cost of such services. The committee will note that the remit of the LSRA is broad.

The membership of the authority is comprised of 11 members who are appointed by the Government following nomination by a number of bodies. The Government appointments to the authority are approved by resolutions of both Houses of the Oireachtas. Of the Authority's 11 members, six are lay members including a lay chairperson, Dr. Don Thornhill, and five are non-laypersons. The six lay members are nominated by the following bodies: the Citizens Information Board; the Higher Education Authority; the Competition and Consumer Protection Commission; the Irish Human Rights and Equality Commission; the Institute of Legal Costs Accountants; and the Consumers' Association of Ireland. Of the five non-lay members one is nominated by the Bar Council-Bar of Ireland, one is a solicitor nominated by the Legal Aid Board, one member is nominated by the Honorable Society of King's Inns and two are nominated by the Law Society. Each member of the authority is statutorily required to act on a part-time basis. The authority is required by law to be independent in the performance of its functions. Authority members are required to protect and promote the public interest. They are nominees and not representatives of the nominating bodies. The authority has met on 19 occasions since its establishment.

The executive function of the authority is provided by myself as the CEO and by the staff of the Legal Services Regulatory Authority. As I mentioned earlier, the statutory remit of the LSRA is broad. In terms of areas of our work that relate most directly to legal costs, there are three key areas that I will focus on today, namely, legal costs transparency; promoting compe-

tition; and complaints about costs. On legal costs transparency, from 7 October 2019 under sections 150 and 152 of the 2015 Act, legal practitioners are required to provide specific and detailed notices on costs to their clients. Under the new provisions, when solicitors and barristers first receive instructions from a client they must provide the client with a notice written in clear and understandable language setting out the legal costs that will be incurred in the matter concerned or, if this is not reasonably practicable, the basis on which the legal costs are to be calculated. Section 150 sets out in detail the information that must be included in the notice. This includes the costs incurred up to the date of the notice; the costs that are certain to be incurred and the costs that are likely to be incurred; the amount of VAT to be charged; information as to the likely legal and financial consequences of the client's withdrawal from the litigation and its discontinuance; and information as to the circumstances in which the client would be likely to be required to pay the costs of one or more other parties to the litigation and information as to the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recoverable from other parties to the litigation. There is also an obligation under the Act for the legal practitioner to provide a further notice to the client where they become aware of any factor that would make the legal costs likely to be incurred significantly greater than those disclosed or indicated in the first notice. This means that the process of notification of costs is an ongoing one and not just an initial once-off notification. Legal practitioners are also now required to provide, as soon as practicable after the conclusion of legal services, a signed bill of costs that meets the requirements of the Act including an itemised statement of the amounts charged in respect of the legal services. The provisions of sections 150 and 152 are an important step in the promotion of transparency and consistency in how legal services are costed and billed. These new requirements on legal practitioners will allow consumers of legal services to make more informed decisions in respect of the legal services which they have sought. With updated notices being provided to them, they will have the opportunity to review their own choices, priorities and decisions as to how they wish to proceed.

The LSRA expects that it will be required in due course to consider complaints where it is alleged that section 150 notices were not provided, were not clear or were inadequate. However, these notices should greatly improve communication and transparency on cost between practitioner and client, which should in turn have a positive impact in respect of volumes of such complaints. Section 150 and the requirements of this part of the Act go a long way towards providing a statutory framework for the communication of legal costs. There is now a clear obligation on legal practitioners to be transparent, consistent and thorough in communicating with their clients. The LSRA will consider the failure to provide a section 150 notice or an accurate notice when considering complaints of excessive costs and the new Legal Costs Adjudicator will also consider the notices when adjudicating on bills of costs. In fact, a failure to properly comply with the requirement to provide a notice of costs can be taken into account to disallow costs in an adjudication. The new Office of the Legal Costs Adjudicator is established under part 10 of the 2015 Act. The Legal Costs Adjudicator replaces the Taxing Masters' Office and is wholly independent and separate from the LSRA. The new office will also maintain a register of determinations in relation to applications for the adjudication of legal costs, which adds a new layer of transparency to legal costs.

On promoting competition, the LSRA has conducted public consultations, research and reports on a series of key subjects as required under the Legal Services Regulation Act. Three of the reports submitted to the Minister for Justice and Equality were undertaken in line with the statutory objective of promoting competition in the provision of legal services. These reports examine or relate to the introduction of legal partnerships in the State, multidisciplinary practices and the consideration of whether barristers should be permitted to hold clients' money or

to receive direct instructions in contentious matters.

On limited liability partnerships, LLPs, legal partnerships and multidisciplinary practices, in November 2019 the LSRA introduced the framework that will allow existing solicitor partnerships to apply to the LSRA for authorisation to operate as limited liability partnerships. This is intended to put Ireland on a par with other jurisdictions that have operated LLPs for a number of years but also to have the potential to increase competition in the legal services market, reduce professional indemnity insurance costs for LLPs and to consequently lower legal costs. Following on from the introduction of LLPs, the Minister for Justice and Equality will be introducing the necessary legislation to allow the LSRA to introduce the framework for legal partnerships as a new business model for legal service delivery in 2020. Once legal partnerships have been introduced, the LSRA will consider whether multidisciplinary practices would be a viable and positive model for legal services delivery.

On complaints about costs, on 7 October 2019 the LSRA began receiving and investigating complaints relating to solicitors and barristers. Since that date, the LSRA has received 522 complaints or queries and more than 847 phone calls and e-mails requesting information or complaint forms. We have been busy. It was anticipated that there would be a spike in complaints at the beginning of operations under this function as a result of persons waiting for the LSRA to open its service who might otherwise have made their complaints through the previous framework at the representative bodies. It should be noted that the LSRA in determining admissibility of complaints cannot admit a complaint to the process where the same or substantially the same complaint has been previously determined by the High Court or by the Law Society or any of its committees or tribunals. Similar restrictions on admissibility apply in relation to matters which have been the subject of civil or criminal proceedings. The impact of this is of particular significance at this early stage of the operation of our complaints function as part of the transition to the new regime. The issue of the cost of legal services is directly relevant to complaints in a number of key ways. There are three grounds for complaint, namely, that the legal services provided were of an inadequate standard; that the amount of costs sought by the solicitor or barrister were excessive; and that the legal practitioner performed an act or omission which amounts to misconduct under the Act. There is a degree of overlap between the three grounds for complaints when it comes to costs. This is because a complaint about excessive costs can actually become a complaint about misconduct where the amount of costs sought is grossly excessive. Under the definition of misconduct for legal practitioners in the 2015 Act it is misconduct to seek an amount of costs in respect of the provision of legal services that is grossly excessive. It is also misconduct for a legal practitioner to be involved in an act or omission which involves fraud or dishonesty, is connected with the provision of legal services which are inadequate to a substantial degree or which is likely to bring the profession into disrepute. Focusing on non-misconduct cases for a moment, in non-misconduct complaints where it is alleged that the amount of costs sought by the legal practitioner in respect of legal services provided to the client was or is excessive, the complainant has three years either from the issuing of the bill of costs or from when the complainant knew or ought reasonably to have known that the amount of costs sought was excessive, to bring the complaint to the LSRA. If a complaint of excessive costs is made to the LSRA and meets the admissibility criteria under the Act that would allow the LSRA to deal with the complaint, the LSRA must first attempt to informally resolve or mediate the complaint between the legal practitioner and the complainant. We are hopeful, based on our experience so far from 7 October, that both legal practitioners and complainants will engage in this process and allow for an early resolution of issues of cost and inadequate service. However, where the client or the legal practitioner do not accept the invitation to informally resolve the complaint of excessive costs, where attempts to resolve are

not successful or where the LSRA forms the view that a resolution or agreement is unlikely, the LSRA has the power, having first sought the views of the parties, to determine the complaint. This means that the LSRA can direct that the costs were, in fact, not excessive or where it concludes that the costs sought were excessive can direct the legal practitioner to refund without delay, either wholly or in part as directed, any amount already paid by or on behalf of the client in respect of the practitioner's costs in connection with the bill of costs or to waive, whether wholly or in part, the right to recover those costs. Any direction of the LSRA can be appealed by the client or the legal practitioner to an independent review committee. The decisions of the review committee ultimately can be appealed to the High Court.

Dealing with misconduct complaints under the Act that relate to costs where it is alleged that the amount of costs sought by a legal practitioner was grossly excessive, these will be considered and assessed for admissibility and the legal practitioner will be given the opportunity to address the allegations. If the complaint is found to be an admissible complaint, it will be forwarded by the authority to an independent complaints committee.

The complaints committee is tasked with considering and investigating misconduct complaints, and has a range of sanctions at its disposal, including directing that a legal practitioner participate in a professional competence scheme, that he or she refund to the client some or all of the fees paid, or that he or she pay compensation to the client of a sum set in the Act as not exceeding €5,000.

Should the complaints committee be of the view that the matter is so serious as to warrant it, it can refer the matter for the consideration of the legal practitioners disciplinary tribunal, LPDT. The tribunal is independent of the LSRA and is in the process of being established through the Department of Justice and Equality. That tribunal, the LPDT, will consider more serious matters of misconduct and has a wider range of sanctions from advice, admonishment and censure, a direction that the legal practitioner pay up to €15,000 restitution to the client, to a direction that a specified condition or restriction be placed on the legal practitioner's practice. The tribunal can also apply to the High Court for further measures including that a legal practitioner be prohibited from practice.

Under section 73 of the 2015 Act, the LSRA is required to report on the operation of its complaint function every six months. The first report is due before 7 April 2020. The Act requires that figures on the nature and type of complaints received be included in the report, and the LSRA intends to identify and outline where trends in complaints have emerged.

Even in the relatively short time that has passed since 7 October 2019, complaint themes are emerging. The one feature that seems to cut across almost all of them is, perhaps unsurprisingly, communication. Where a legal practitioner fails to explain adequately to a client the costs of legal proceedings or services, the timeline it may take to deliver legal services, or the risk involved in pursuing certain costs of legal action, complaints will naturally follow.

I mention briefly the roll of practising barristers, which the LSRA established in 2018. The roll is a tool by which members of the public can be assured that the barrister to whom they may turn for legal advice is lawfully entitled to provide legal services. It is published on the LSRA's website.

We have also issued professional indemnity insurance regulations for barristers. This means that, for the first time, practising barristers outside of the Bar of Ireland are required to have minimum levels of professional indemnity insurance that provide an important protection for

consumers.

I draw the committee's attention to a number of other initiatives under the Act that the LSRA will be undertaking in 2020. We will be issuing advertising regulations in the new year that will govern the advertising of legal services. We will also issue regulations that will allow us to enhance the roll of practising barristers to include information on barristers' areas of practice and specialism.

We were disappointed not to be able to introduce legal partnerships alongside limited liability partnerships as a new model of legal service delivery in 2019, but there is a need for a legislative amendment before this can be done. We have been assured of the Minister for Justice and Equality's support for that amendment. This will allow barrister-barrister partnerships and solicitor-barrister partnerships to be formed for the first time and, although take-up may be modest to begin with, the new model has the potential to reduce costs for consumers. Once we have delivered legal partnerships, we have committed to revisiting the issue of multidisciplinary practices under the 2015 Act.

Before 30 April 2020, the authority is required to report for the first time, and thereafter annually, on the admissions policies of the legal profession and to assess whether the number of persons admitted to practise as barristers and solicitors in 2019 was consistent with the public interest in ensuring the availability of legal services at a reasonable cost. The LSRA is also required to consult publicly and to report to the Minister before 1 October 2020 on whether the profession of solicitor and barrister should be unified. Finally, and this is not an exhaustive list, the LSRA in 2020 will submit a further report to the Minister, following on from our initial report of September 2018, on the education and training of legal practitioners with recommendations as to potential reforms. All of these reports have, at the very least, the potential to lead to reforms that could increase competition in the delivery of legal services and could have a positive impact on the costs of those services.

My colleague and I look forward to engaging with the Chairperson and the members of the committee and to responding to any issues and questions that may arise.

Chairman: I thank Dr. Doherty. As Dr. Doherty stated, the Legal Services Regulatory Authority has been busy. It is now up to members to pose questions or respond to any of the points made by the four submitting entities. I have indications from Deputies O'Callaghan, Jack Chambers, Pringle and Martin Kenny, and I will start with Deputy O'Callaghan.

Deputy Jim O'Callaghan: I thank everyone for coming in here and for their submissions. I have been a barrister for a long time. Usually, I do not like to give speeches about my own assessment but I will give these entities my assessment of how legal costs could be reduced. I want to hear what they have to say in respect of it. It is helpful that we have here before us today two of the largest purchasers of legal services - insurance companies and the State. In most cases that are operating in the courts, most defendants will be indemnified. They are covered by insurance companies and, therefore, insurance companies are involved in most cases. There is also a large part of litigation that involves the State. That is nothing unusual. It would be the same in most other parts of the world as well.

In terms of purchasing the services of barristers, there are approximately 2,300 in the country and the vast majority of the work is probably done by 300 barristers. It is a very competitive environment being a barrister in Ireland, and there are a large number of people who are highly educated, have qualified to be a barrister, have worked there for many years but who are

not getting much work. They are not making a living out of it. Part of the problem, in my assessment, is that the large purchasers of legal services purchase services from the same group of successful people all the time. That is understandable because going to court is an unusual event - it can be an exceptional event - and one wants to ensure that one will not hire somebody who is untested.

However, it would be helpful if insurance companies, the State and everyone else who is involved in litigation would shop around a bit more to try and see whether there are other places they could go to get the work done. It is as though all of these entities are shopping in Brown Thomas. There are other shops that they could go to and look for services. I do not say this to facilitate younger barristers who are desperate to make a living. It will have the impact of reducing the amount of money these entities must pay on legal costs. I am sure at present insurance companies have barristers and solicitors who are doing cases in the courts for them, and the State has as well, but if there were a mechanism whereby cases could be put out to tender to see whether a person would charge a certain amount for a case, I guarantee it would get younger qualified capable barristers who would be prepared to do the work for 75% of what is being charged at present. When the State Claims Agency is trying to purchase the services of, for example, a barrister or a solicitor, to what extent do Mr. Mack or Mr. Dunning shop around and, having heard that Jack Chambers will do it for a certain amount, ask whether another barrister or solicitor will do it for 75% of that?

Mr. David Mack: I thank Deputy O'Callaghan. First, we welcome the Legal Services Regulation Act 2015. That fits in exactly with what the Deputy stated. It encourages people to shop around. My role, as head of legal costs, involves third-party legal costs, and I am not fully qualified to explain our position as a purchaser of legal services. Suffice it to say that we certainly have a procurement model within the agency in terms of barrister panels acting for our own clinical indemnity scheme and general indemnity scheme. It is a feature of what we do at the agency. We are in a position to manage and control the costs that we directly incur, but the same cannot be said about third-party costs where, to quote Haran, we do not get "to call the tune". We can manage our own spend and do so in terms of some of the clinical indemnity claims and the general indemnity claims.

Deputy Jim O'Callaghan: I understand the point Mr. Mack is making. I suppose third-party costs to a large extent will be determined by the costs that the State or the insurance company is paying out. If there is a medical negligence case or another case the State is involved in, is there some mechanism whereby barristers could tender their price for that case and the State could decide, as in any other procurement process, that it would go with that person, stating that he or she seems well qualified and deserving of a chance?

Mr. David Mack: There is jurisprudence to the effect that one would have regard to what counsel for the State has marked, but generally the plaintiff or other opposing party will argue that there is a higher fee payable to the plaintiff, applicant or whoever that party might be. Realistically, we do not have any control over the barrister fees.

Deputy Jim O'Callaghan: Who does that? Is it the Chief State Solicitor's office that originally-----

Mr. David Mack: That is correct. The Chief State Solicitor's office would have its own management of the chancery, constitutional or non-personal injury side.

Deputy Jim O'Callaghan: I do not believe it puts out to tender individual cases so that

individuals could say, "I'll do that case for X".

Mr. David Mack: I am not aware of that.

Deputy Jim O'Callaghan: In her submission, Ms Goggin referred to the report done in 2006 and she stated that it was a very anti-competitive profession. My assessment is that it is an extremely competitive place but the reason costs are not coming down is because people are not availing of the full panoply of people who are available and are sticking with the same people most of the time.

Ms Isolde Goggin: That is a very good point. From our point of view, when we are looking at competition in the market, it is not enough that there are many competitors in the market. I take the Deputy's point that there are many barristers and it is a very long-tail profession. There are a few superstars at the top who are making a lot of money and many people down at the end who are scratching around trying to make a living and finding it very hard to survive, particularly in the first few years.

The difficulty in competition comes down to the point I was making about information asymmetries. In many consumer transactions, there is an information asymmetry between the ordinary person who is going to court for the first time or whatever and the solicitor or barrister who understands how the case might evolve and the cost. Also, within the profession, there are many information asymmetries, even for professional buyers, the insurance industry and the State. If I am looking for somebody who has a competition specialism, how do I know who they are? It is very difficult. One tends to rely on word of mouth, and that exacerbates the problem.

In terms of the point Mr. Doherty was making about barristers being able to point out their areas of specialism on the barristers roll, that would give one a start. One would at least be able to say that apart from the big names that everybody has heard of, there are people who have litigated in this area about whom the solicitor one is using might not have heard but who could be brought into the mix. The idea of going to tender for that is a good one, once we have a base of knowledge of who does this kind of work, because some of it is quite specialised.

The other area we brought up in the report and on which I know the Legal Services Regulatory Authority is working is the one of barrister partnerships. If one is doing litigation frequently, one finds that the top barristers constantly double and triple-book themselves. It then comes to the date and they are in the Supreme Court so they cannot do the High Court or the Central Criminal Court and they give the case to somebody else. For us, the advantage of barrister partnerships from the consumer point of view is that they are a sort of guarantee of quality. I refer to an arrangement like chambers in the UK. If one is going to a certain chamber, that chamber is a mark of quality so one knows that if the case is being passed on to somebody, he or she will reach the same high quality of the person one originally wanted. We believe that more flexibility in the business models would make it easier for new people to get in, get a start and not be expected to make a living in the same way as the top people do through word of mouth but through being handed over work within a partnership or a firm. We believe being able to say, "Yes, I have an expertise in this area and put that on the roll", would help them a good deal as well.

Deputy Jim O'Callaghan: They do that already. One can go on the Law Library of Ireland website and check the expertise of a barrister. In my assessment, it is an obligation on the purchaser of the legal service, the person who is spending the money, to look around to see if he

or she can get this cheaper. That is what we would do in any market. We look around. If we want to get a flight somewhere, we do not necessarily book the first one we see.

Ms Isolde Goggin: The problem for the consumer is the assessment of quality. They tend to go for the superstar names if they can get them because they believe that is a guarantee of quality. There is a fear of people who are lesser known but we need to find ways of overcoming that. We would have an obligation to get the best value possible. When I say "we" I mean anybody in the State who is making these purchases. We also have an obligation to do our best to win the case. That is where that choice becomes very difficult for people when they do not know much about other parts of the industry than the very top 1% or 2%.

Deputy Jim O'Callaghan: That is unfortunate but I believe there is an obligation on purchasers to realise that there are other persons who can do it and who need to be given a chance. The profession is full of young, talented people who do not get an opportunity. I have trained barristers and opportunity is the biggest determinant in terms of whether their career takes off. Some of them get it; some of them do not.

Ms Isolde Goggin: If I could make a final point, that is where we believe the sole practitioner rules work against new entrants to the bar. The fact that, from the very start, one has to be a sole practitioner is very hard for somebody who does not have a lot of backing.

Deputy Jim O'Callaghan: In England now, where they have chambers, it is very hard to get into chambers so we are excluding people at a very early stage, through the English process, by putting people into chambers. It is hard to get into them. If one does not get into a good chambers, one will not get anywhere.

I have a couple of questions for the Insurance Ireland witnesses. My first is to Mr. Hassett. In fairness to Insurance Ireland, its assessment is that the recent premiums in Ireland are too high is because judges' awards are too high, there are too many fraudulent claims and legal costs are too high. Is that correct?

Mr. Gerry Hassett: One is the primary reason and then there are other secondary reasons. If we take, say, motor insurance, 8% of claims relate to personal injury and 75% of costs relate to personal injury. A typical personal injury claim for, say, a whiplash soft tissue injury is of the order of €20,800. That is four and a half times the size of an equivalent award in the UK. That is the primary issue.

In terms of the secondary issue, we are short of data on this but our supposition is that because the awards are relatively high, it creates a bit of an incentive for people to commit fraud here more than, say, in the UK. Also, we are aware that the cases that get litigated and go through the courts system can attract legal costs of up to 60% of the settlement amount. The fundamental issue is the awards. Everything else flows from that.

Deputy Jim O'Callaghan: Does Mr. Hassett accept that in recent times, certainly since 2015, personal injury awards are being reduced by the Court of Appeal?

Mr. Gerry Hassett: In general, personal injury awards in total continue to rise. Personal injury awards have continued to rise by an average of 4% or 5% for each of the past four years.

Deputy Jim O'Callaghan: In the Court of Appeal, and I do not want to quote cases at Mr. Hassett, in cases such as Nolan *v.* Wirenski, Shannon *v.* O'Sullivan and Fogarty *v.* Cox, there has been a line of jurisprudence reducing awards by the Court of Appeal. Does Mr. Hassett

accept that?

Dr. Declan Jackson: The Deputy is right that the Court of Appeal is reducing those awards, but if he looks at the injury awards where we see the inflation, that is actually below the jurisdiction of the High Court. It would be District Court and Circuit Court, so the Court of Appeal does not reach down into those. We believe the mechanism for that is the judicial council. In terms of the larger awards, the Court of Appeal is reducing those in the High Court but the average award settlement for motor personal injury will be about €23,000 or €24,000. That will fall below the High Court.

Deputy Jim O'Callaghan: In his submission, Mr. Hassett stated that legal costs and processes must be seen in the context of the urgent need to reform our cost of claims. He is obviously aware from the Central Bank report that came out two days ago that the cost of motor claims came down 2.5% between 2009 and 2018, so is that statement correct?

Mr. Gerry Hassett: The average cost for a claim went up by 64%. What the Deputy is seeing is that the incidence of claims is falling and the average cost of claims is rising. Underneath that, what we are seeing is that the proportion of claims that are related to personal injury have gone from a total of 59% to 75% in that period.

Deputy Jim O'Callaghan: Does Mr. Hassett think the Central Bank report was helpful to this discussion about legal costs and awards?

Mr. Gerry Hassett: What the Central Bank report has done is given us a good set of data. As in any debate, people quote different sources and methods. Ultimately, the Central Bank report is helpful and the fact that it will be renewed annually is helpful also. We will be able to map trends through that.

Deputy Jim O'Callaghan: Does Mr. Hassett accept the finding of the Central Bank report that the cost of claims per policy has reduced by 2.5% in respect of motor claims between 2009 and 2018?

Mr. Gerry Hassett: That is the number in the report.

Deputy Jim O'Callaghan: Does Mr. Hassett accept that figure?

Mr. Gerry Hassett: Absolutely, yes.

Deputy Jim O'Callaghan: Does Mr. Hassett accept that the premium per policy has increased by 42% between 2009 and 2018 on motor insurance?

Mr. Gerry Hassett: Yes.

Deputy Jim O'Callaghan: Does Mr. Hassett accept that the claims frequency between 2009 and 2018 has reduced by 40%?

Mr. Gerry Hassett: Yes.

Deputy Jim O'Callaghan: Does Mr. Hassett accept that profits in the industry are at 9%?

Mr. Gerry Hassett: Over the period covered by the report, the industry incurred losses for four of the ten years but profits peaked at 9% in the final year.

Deputy Jim O'Callaghan: The profits at present in the motor insurance industry are at 9%.

Is that correct?

Mr. Gerry Hassett: That is what is in the report.

Deputy Jim O'Callaghan: Does Mr. Hassett accept that?

Mr. Gerry Hassett: I have no reason not to accept it. It is a figure. The claims data from 2018 quoted in the report will change over the next four or five years as claims are settled. That is, however, the number in the report.

Deputy Jim O'Callaghan: It was stated in the submission from Insurance Ireland that, when it came to whiplash awards being much higher in Ireland than the UK, and I accept that, this was "a very stark fact and one which cannot continue to be ignored". Does Mr Hassett agree that the fact that the insurance industry is making profits of 9% on motor insurance is also a very stark fact that cannot continue to be ignored?

Mr. Gerry Hassett: I would be very surprised if a margin of 9% continued over the period covered by the report. The report is clear that the motor insurance market is cyclical. I think what we see in 2018 is the top of the cycle and I would be surprised if margins continue at that level. The long-term margin the insurance industry aims for is 5%.

Deputy Jim O'Callaghan: Mr. Hassett is perfectly entitled to make that claim. The assessment and explanation given by the insurance industry in Ireland is that the reason we have high premiums in motor insurance is because of high awards, fraudulent claims and legal costs. Would Mr. Hassett accept that another reason we have high premiums in Ireland is because the profits of the insurance industry are too high when it comes to motor insurance?

Mr. Gerry Hassett: If we look at the claims to loss ratio graphic in the report, it is clear the long-term average is 75%, which is well in line with insurance norms. I refer to remarks made by the deputy governor of the Central Bank in a statement on the day the report was released. She indicated there was a prolonged period of losses, which peaked in 2014. Those have since been coming down and firms are now more profitable in line with peaks and troughs in the cycle.

Deputy Jim O'Callaghan: Do we know-----

Mr. Gerry Hassett: If I could just explain for one minute, insurance profitability is an inexact science and that is because in a single year a premium is collected and then in the next five or six years claims are paid out. The Central Bank report is helpful in providing a clear lens on something complex. It is, however, a clear lens in hindsight. In the year in which a premium is collected, an insurance company will not be sure what the claims liability is going to be. That estimate will sometimes be undershot and other times it will be overshot. In fact, the one thing we know is that we will never get it precisely accurate. What we see in an insurance cycle is that in some years we undershoot and in others we overshoot, and that is why premiums fluctuate year on year.

Deputy Jim O'Callaghan: Does Mr. Hassett think there is enough competition in the Irish insurance sector?

Mr. Gerry Hassett: I would love to see more competition in the Irish insurance sector.

Deputy Jim O'Callaghan: I am sorry for going on and I will finish now. I agree with Mr. Hassett on the legal costs. Looking at the Central Bank report, we can see the legal costs are

reasonable when cases are resolved at the Personal Injuries Assessment Board, PIAB, or even before that stage. It is when cases are litigated that the legal costs become too large. They are too high a percentage of the award. Does the fact that so many cases can be resolved at PIAB not show that all the efforts of insurance companies should be focused on trying to settle cases there?

Mr. Gerry Hassett: We support PIAB and, as we indicated in our submission, insurance companies tend to accept more than 90% of PIAB awards. In recent years, however, we have found that the acceptance rate of PIAB awards has been dropping significantly.

Deputy Jim O'Callaghan: All the Central Bank report has looked at is the motor insurance business. Does Mr. Hassett know if there is going to be a similar report on public liability insurance, which is a major issue? Is the Central Bank undertaking such a report?

Mr. Gerry Hassett: I am not aware of that.

Dr. Declan Jackson: We understand that the Central Bank is preparing an add-on module to the report. There will be a data request towards the middle of this year for publication.

Deputy Jim O'Callaghan: Is it known what insurance companies' profits are for public liability claims?

Mr. Gerry Hassett: The big trend in public liability insurance is companies leaving the market. We are not *au fait* with the individual profit characteristics of firms, but what is clear in the liability market is that much of it, particularly some of the specialty cases, has been covered by syndicates from the UK. Those syndicates are exiting the market and are no longer willing to write cover. That would seem to indicate the necessity of some structural reforms. I do not have access to individual profit numbers, however.

Deputy Jim O'Callaghan: I thank Mr. Hassett.

Chairman: I call Deputy Jack Chambers.

Deputy Jack Chambers: I welcome everyone and thank them for their contributions. This meeting is happening in the context of serious developments in the childcare sector and the ongoing crisis in the motor insurance sector. My first question is for the representatives of the Competition and Consumer Protection Commission, CCPC. We have a competition issue in the insurance market, which is borne out by profitability and the mismatch between what we are hearing from the industry and the backdrop of claims. The cyclical data over ten years highlight the clear difficulties we have. Is there a competition issue generally and can the CCPC provide information on that? Will the representatives from the CCPC also provide an update on the investigation ongoing regarding Insurance Ireland? There is an allegation regarding Insurance Ireland acting in a cartel-like capacity and I would like an update on that issue.

Ms Isolde Goggin: That investigation is ongoing and I cannot make any comment in the public domain because I could not be seen to prejudice the possible outcome. On competition in the insurance market, it is very different in different sectors. We have been hearing today about what is going on in the motor sector. We are also carrying out a study, or have been requested by our Minister, Deputy Humphreys, to carry out a study on public liability insurance. That study is ongoing and is topical. As Mr. Hassett stated, companies are leaving that market and we seem to be heading for a different type of problem in that area. I ask my colleague, Mr. O'Leary, to comment on that issue as he is leading on that study.

Mr. Fergal O'Leary: We have been under way with this study since July, when we got the request from the Minister. So far, what we are finding, unsurprisingly, is that it is difficult to get data to make evidence-based recommendations in the public liability market. In and of itself, that is a significant issue. The lack of transparency on what is happening in the market is not helpful for anybody. There are certainly issues with this being a niche market in parts. What we have done is that we have taken the overall market for public liability and we are trying to break it down into as many subsectors as we can. We are trying to figure out what exactly is the problem for each of those subsectors, and when we can do that we can then come up with some solutions and recommendations for the Government to consider.

What we are seeing, and this was alluded to by Insurance Ireland, is that insurance is cyclical. There is a soft side to the market when things are good for insurance companies and then there is a hard side when things are not good. It seems to be, however, that the market for public liability here is a little bit broken at the hard side of the market and we are seeing many exits from the market. That is the nub of how we can make this better in future. If we can understand why those companies are leaving and if there are barriers to entry for new companies coming in, then we will be able to come up with recommendations and solutions for individual subsectors such as childcare. We have engaged in that area and Early Childhood Ireland has been very helpful in providing us with information. We will be looking for more information from that organisation as a representative of a key subsector. We need to get to the point of what exactly is the reason for firms leaving at this harder end of the market.

Deputy Jack Chambers: Mr. O'Leary mentioned difficulty accessing data and problems with transparency. Has there been co-operation from Insurance Ireland concerning accessing those data?

Mr. Fergal O'Leary: We plan to engage with Insurance Ireland in the new year and we hope the data will be forthcoming. Much information has been put into the public domain and a significant amount of that came through the Oireachtas committee hearings in the summer. Those hearings have been extremely useful to us regarding requesting data-----

Deputy Jack Chambers: Has the CCPC requested the data since the summer?

Mr. Fergal O'Leary: We have not yet made that request to Insurance Ireland, but we plan to do that early in the new year.

Deputy Jack Chambers: Mr. O'Leary mentioned difficulties accessing data. To what organisation was he referring?

Mr. Fergal O'Leary: From our engagement with the cost of insurance working group and from having had a member on the public injuries commission as well, we have seen that data being hard to come by is a feature of this industry. What we are trying to do is, first, figure out what subsectors we have to focus on and then look for whatever data there are. There is a lot of it in the public domain and we will try to find some more that currently is not there. We do not want to overlap with what the Central Bank is doing in terms of its public liability data plans. That is the space we are in at the moment with regard to the study.

Deputy Jack Chambers: I want to turn to Insurance Ireland. There is an investigation ongoing around an allegation, and Insurance Ireland is involved. Some of that is around data transparency and access. Will Insurance Ireland be forthcoming with the CCPC in its study on public liability?

Mr. Gerry Hassett: Absolutely. We believe in transparency of data. The Deputy said there was an allegation. We are under investigation and I accept that, but people throw allegations around. With respect, there is a process that is ongoing and nothing has been proven. I accept that. As we said, we absolutely support the Central Bank process in terms of the motor market, and if the CCPC or others want to engage in a similar process on the liability market, we will endeavour to do whatever we can to assist that. Good transparency ultimately leads to good policy, which is in the long-term interest of all the players.

Deputy Jack Chambers: Why does Mr. Hassett believe an investigation was commenced by the relevant authorities, both locally and in a European context?

Mr. Gerry Hassett: I cannot possibly answer that question. It is an unfair question to ask me in the current circumstances. I am sorry.

Deputy Jack Chambers: I will move on. On the Central Bank report, what would Mr. Hassett feel is an appropriate loss ratio for the industry?

Mr. Gerry Hassett: The long-term loss ratio that was quoted in the report as a sort of dotted black line is about 75%.

Deputy Jack Chambers: When has the loss ratio exceeded 100% in the past ten years?

Mr. Gerry Hassett: It peaked at 94% in 2014, if I remember correctly.

Deputy Jack Chambers: When did it exceed 100%?

Mr. Gerry Hassett: It has not exceeded 100%.

Deputy Jack Chambers: In press statements in the past 12 months, Insurance Ireland mentioned that the commercial performance of the motor market has been very poor.

Mr. Gerry Hassett: I can explain. The loss ratio is one dimension of the profitability of the motor market and it does not take into account any commissions paid or the management expenses of any of the insurance companies. Typically, those expenses are of the order of 20%. If we take a long-term average of a 75% loss ratio and 20% commission and expenses, that leaves room for a 5% margin.

Deputy Jack Chambers: Which motor insurance market is more profitable than Ireland at present?

Mr. Gerry Hassett: I would say Ireland, over the past decade, has been one the least profitable markets in Europe.

Deputy Jack Chambers: In the past three years, has there been any motor insurance market more profitable than that in Ireland?

Mr. Gerry Hassett: I do not have those numbers, so I do not know.

Deputy Jack Chambers: Is it correct that Insurance Ireland is involved with other similar bodies across Europe?

Mr. Gerry Hassett: Yes.

Deputy Jack Chambers: Is it correct it also represents the underwriters?

Mr. Michael Horan: We represent insurance companies. The average claims ratio over the ten years covered by this national claims information database report is 75%. That is the average over the ten years. When we factor in the other costs that are outside claims, such as commission, management expenses, reinsurance and so on, we end up in an unprofitable situation in quite a number of those years, as the deputy governor of the bank said yesterday. People have to look at it over the ten-year period. What is tending to happen is that people are comparing the situation in 2018-----

Deputy Jack Chambers: Which was very profitable.

Mr. Michael Horan: -----which was virtually the best year in the ten years, with virtually the worst year, which was 2009. There are eight years in between when claims costs were going up, and that has to be acknowledged as well. It is the situation over the long term that we have to look at. If people take one snapshot in one year, it has a distorting effect.

Deputy Jack Chambers: No. I think the insurance industry is distorting and misrepresenting the factual basis, and it has done so for a decade. If we look at what some judges have said, they have said it is a dishonest industry and they have accused Insurance Ireland of having an effective PR strategy to distract from its core profitable basis, which has been represented by the Central Bank report.

Mr. Gerry Hassett: Is the Deputy pointing to any specific things we said? It is difficult to respond to that in a general space. What we have been campaigning on is that the cost of claims is too high, and the Central Bank report absolutely bears that out. Injury claim cases are now 75% of all motor claims, up from 59% at the start of the decade, and the average cost per claim is up by 64%.

Chairman: While I do not want in any way to curtail any particular line of questioning, I want to caution that the focus of our engagement is on access to justice and legal costs. It is important that all of our questions and our exploration is in that context, as the Committee on Justice and Equality.

Deputy Jack Chambers: The cost of claims per policy is down 2% in that ten-year period and the number of claims is down 42%. The industry is picking certain picking statistical phenomena to distract from the core probability, which I believe is the focus, and the core issue of competition in the market, given the number of underwriters that are underpinned on average in Ireland is far less than in other areas.

Does the Legal Services Regulatory Authority believe it is correct that a solicitor would ask a doctor to amend a medical report?

Dr. Brian Doherty: It is a very specific question and I am always loath to get into theoreticals. It is a misconduct offence under the Act for any solicitor to engage in fraud or dishonesty, so it would be improper for any solicitor to intervene with a doctor to try to amend a report in a dishonest or fraudulent way. There are scenarios whereby, if the solicitor was to receive a report he thought did not cover all of the actual facts, he may write back to a doctor to say it requires amendment. There is certainly a line to be drawn and it is not for the solicitor to engage in diagnosing or coming up with medical conclusions. It is for the doctor to do so independently and also in an ethical way.

Deputy Jack Chambers: We had a discussion involving Deputy O'Callaghan around the price and cost of legal claims. In my view, it comes down to pure transparency. Would the

authority like to see both barristers and solicitors publish their prices and their per-hour costs? I would also like to hear the CCPC view on that point. Does the Legal Services Regulatory Authority believe there should be full price transparency at entry point? For me, this is the bigger issue and it is because of the unknown unknowns that legal costs rocket. Is the Legal Services Regulatory Authority trying to implement that with solicitors, in particular in regard to the cost per hour or the cost for a particular service that is being provided at entry point? Dr. Doherty mentioned the section 150 obligation that the solicitor would provide the client with the cost. Should there not be an obligation on the solicitor to provide publicly the potential cost before the service is even sought?

Dr. Brian Doherty: Certainly, the Act under which we operate, and whose implementation we are tasked with, does not go as far as that and it is limited to section 150 notices. However, the section 150 notices, as they require the legal practitioner to outline in a very detailed and structured way what the costs have been to date and what costs will be incurred, are a useful step and a useful tool. While this might not have the complete transparency the Deputy is suggesting, it would allow consumers of legal services to shop around, in effect, and to compare one with the other. We have a responsibility under the Act, and the CCPC referred to this directly, to promote and disseminate information in regard to legal costs. While the Act does not then continue by providing us with powers to require legal practitioners to provide us with those costs, we can rely on the powers under section 73 in regard to complaints concerning legal costs. As the legal costs adjudicators register of decisions increases, we hope that will provide us with a mechanism to try to increase transparency.

Deputy Jack Chambers: I would like to hear the CCPC view on that.

Mr. Fergal O'Leary: From 2011 to 2013, one of our predecessors, the National Consumer Agency, looked at trying to make costs more transparent in a number of professional services, including dentists and doctors. We also looked at legal fees and engaged with the Law Society. We were trying to put more information in the public domain about some of the commoditised services that a solicitor may offer such as conveyancing or making a will. We made some progress with that and I think that more prices are available. We also looked at the idea of solicitors and, in due course, barristers making known how much an hour of their time costs. We got into some difficulties about the exact specifics of how that would work. Ultimately that work was overtaken by the establishment of the LSRA, which has a specific remit in this area. We think that there should be more transparency and we will continue to work with that. To be fair to the profession about the specifics of publishing costs upfront, it can be difficult, but nevertheless it is an area in which more progress should be made and we will continue with that.

Deputy Jack Chambers: It might be difficult to do it but the only consequence is a bigger bill for the consumer, because where there is uncertainty about cost per hour, the net outcome is a bigger bill.

Mr. Fergal O'Leary: I absolutely agree with the Deputy. My colleagues from the LSRA cited communication issues as being one of the main factors that prompt complaints to them. When consumers are seeking to engage the services of a solicitor, they need to be upfront about what they are looking for, and in return, the solicitor needs to give a reasonable expectation of how much this will cost. I think that remains an issue and prompts many complaints. That interaction at the start is not clear enough on both sides.

Deputy Jack Chambers: One issue with the LSRA is the no win, no fee matter, which is common. I googled that this morning and approximately 20 solicitors' firms have used that

particular phrase. We clearly have an industry that is trying to incentivise claims and it is promoting that issue. Has the LSRA investigated that? A simple googling of the term would be enough to examine it. There is an incentive between the service provider who is the legal professional and the client to drive a claim forward to a significant degree beyond the intermediary bodies that have been mentioned. What is the witnesses' legal assessment of that? Does it match proper professional practice? Are they investigating that?

Dr. Brian Doherty: Our remit to investigate is on foot of the complaints that we receive about specific-----

Deputy Jack Chambers: Is there a legal basis to operate like that?

Dr. Brian Doherty: There is no legal basis to guarantee a win in a claim or to try to incentivise or attract people in that way.

Deputy Jack Chambers: Does Dr. Doherty think that attracts increased claims?

Dr. Brian Doherty: It would be conjecture on my part. We have not done any research on that. We commenced taking complaints from 7 October just past so we are looking at a number of areas that are emerging.

Deputy Jack Chambers: The LSRA will not get a complaint from a client who has been guaranteed no fee. I am asking about the general basis, not whether the LSRA has received any complaints. Is it correct for the professionals who the LSRA is responsible for to have a system of no win, no fee, which I think is contributing to a claims culture in our society?

Dr. Brian Doherty: I do not think that they are prohibited from a no win, no fee agreement with the legal consumer. I appreciate the Deputy's concern and we will issue advertising regulations in early 2020. We are engaged in public consultation about that and other issues of how services are advertised.

Deputy Jack Chambers: Would Dr. Doherty agree that it could incentivise claims?

Dr. Brian Doherty: I agree that there is potential to incentivise claims where it is agreed that no fee would be sought if the claim does not succeed.

Deputy Jack Chambers: Dr. Doherty says that it is allowable under his jurisdiction.

Dr. Brian Doherty: Yes.

Deputy Jack Chambers: Should it be banned?

Dr. Brian Doherty: We are too early in considerations of complaints on other issues for me to come to a conclusion on that without us having done our proper due diligence and research. We will consider and engage with any recommendations that the committee makes.

Deputy Jack Chambers: I think it is a significant issue and in many instances it brings people along a false path, creating a culture where there is a dysfunctional relationship between the service provider, the solicitor and the client, which means that they are doing things such as asking a doctor to amend a medical report through the legal process because there is a combined incentive. What is Dr. Doherty's view of any solicitor taking a percentage of a claim?

Dr. Brian Doherty: That is prohibited.

Deputy Jack Chambers: Does Dr. Doherty believe that is happening?

Dr. Brian Doherty: My belief is not the nub of the question. We have not received complaints about that issue since 7 October so we have no evidential basis for stating that it is happening. If it comes to our attention, we will investigate it.

Chairman: A small thought of mine is that for those who cannot afford services, no win, no fee might be the only basis on which they can seek justice. There is some need for careful consideration of the point. Dr. Doherty's position has been well articulated. I remind members of the context of our engagement with each of the contributors this morning.

Deputy Martin Kenny: I thank the witnesses for their contributions. It has been enlightening and interesting. With regard to complaints about fees and where that takes us, the witnesses made the point that the LSRA has a statutory system for complaints with a limit of €5,000. One of the flaws relates to when a legal process is going on. I have come across a situation where a person has a dispute with a solicitor about the fees charged, where they believe they were wrongly charged and overcharged and the service provided was not adequate for the money being charged. The solicitor has moved very quickly to take a case against that person. If that were to happen quickly, is it correct that the LSRA cannot intervene? If a solicitor has moved to recover the costs legally and has taken that person to court or taken proceedings against him or her, the LSRA is prohibited from engaging at that point and the person cannot complain to it.

Dr. Brian Doherty: The complaint can certainly be received and considered. I believe that the Act allows that the LSRA can examine the issue and can, in certain circumstances, append the consideration of the complaint to the conclusion of the legal proceedings. An avenue is open to the LSRA to consider the complaint. I do not think the issue of complaints has arisen since 7 October. I do not think it is a prohibition. It is a prohibition if a court has determined the issue, but if it is pending, I believe that we can still have jurisdiction in certain circumstances. Obviously the court proceedings may taken precedence in certain circumstances.

Deputy Martin Kenny: I just wondered if that was a slight contradiction. I will come back to what Deputy Chambers was speaking about earlier - no foal, no fee - which is a term that one would often hear. The problem here is more one of regulation than whether it should be a practice that we need. I refer to circumstances where a person with a strong case, wherever that might be, reaches an agreement with a legal practitioner that he or she will not be charged anything if the case is not won. There is confidence in that situation that a win is going to happen. The person in that case is not going to be looking closely at the level of charges because someone else is going to be paying them. That is what people feel is the case. It may well be an insurance company that ends up paying. Is there a requirement for tighter regulations in that respect? I do not think it is a practice that should be banned or barred. It is a practice that may well, as the Chairman said, open up a legal avenue to somebody who would not otherwise have the necessary resources and would be afraid of entering the legal process. We all hear the scare stories. In those circumstances, regulation is the issue. Is there regulation in this area or what degree of regulation can be brought to bear?

Dr. Brian Doherty: To go back to the section 150 notices that have come in since 7 October, the onus is now on legal practitioners to set out in clear and straightforward terms all and any possible costs that will be incurred during the course of legal proceedings. It is no longer just a once-off responsibility. If circumstances change, then that has to be reflected in further notices to the consumer, and if there is a failure to do so, then the legal costs adjudicator can disallow some of those costs. A complaint can be made to us about such issues. There are, therefore,

protections within the new regimen to explain not just the costs that have been incurred but any potential for costs, and there is a responsibility on the legal practitioner to provide an explanation should there be an event that may increase the risk of costs.

Deputy Martin Kenny: The issue here is not that the costs are not explained. The issue is that the costs are not relevant to the people concerned because somebody else will end up paying.

Dr. Brian Doherty: Also under the notice, in the specific section, there is a requirement to outline where there is a possibility that a third party may not be liable for all of the cost. Under the statute, that information has to be included in the notice and a clear explanation provided as to the possible impact on the consumer of the legal services.

Deputy Martin Kenny: From the perspective of the CCPC, has there been any examination of that issue or have there been instances, for example, where it has been seen that legal costs in those situations would be a certain degree higher than they would be if the client was at risk of making the payment?

Ms Isolde Goggin: This whole area of no foal, no fee is interesting. As the Chairman pointed out, questions arise involving access to justice for people who otherwise would not be able to fund it. We have not looked specifically at the issue described by Deputy Kenny. It is the case, as he has pointed out, that there are perverse incentives for people not to pay close attention to fees being paid by someone else. That would, however, have to wash out through the role of the legal costs adjudicator, in that the person who ends up paying the costs can appeal the fees through an independent third-party body. It would have to be dealt with in that way. What would knock out false claims is them being thrown out by the courts. There is an incentive for people to enter into these things with a hope of winning where the claim may not be justified. That element of arbitrariness in judgments creates the incentive for these kinds of cases to be taken in the first place.

Deputy Martin Kenny: I am not suggesting cases may be in any way fraudulent. The fact, however, that the people taking cases know they will not have to pay for the legal services and that someone else will be paying means they will not be paying close attention to the level of services or resulting costs that will be incurred. That is because the people taking the cases have been guaranteed that they are not going to have to pay the costs. People, therefore, go into a case they know they are going to win, the case is likely to be settled in those circumstances and, at that point, the costs of the legal services are going to be paid by the other party. The other party does not have access to knowledge of what the fees were from the outset because that information is only given to the client. Is an element of regulation required in respect of that?

Ms Isolde Goggin: My colleague is the expert on that, but I think the legal costs adjudicator is there to deal with that kind of issue.

Dr. Brian Doherty: Under the notice, the legal practitioner initially consulted - as the Deputy has rightly said the other party at that point is not aware of this - has to provide the consumer with:

> information as to the circumstances in which the client would be likely to be required to pay the costs of one or more other parties to the litigation, and information as to the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recovered from other parties to the litigation.

There cannot just be a promise that clients will not have to pay the cost. The risks to the legal consumer have to be set out. On the side of the legal costs adjudicator, in the context of a third-party application, there must be consideration of whether costs are reasonable and were reasonably incurred. The legal costs adjudicator can, therefore, dig into the costs, and that is its role.

Deputy Martin Kenny: That is fine. Turning to Insurance Ireland, a point was made regarding underwriters. Every time we hear of underwriters, they are outside the State, in London or somewhere else. Yet, there is this situation where competition from outside of the State seems to be something we cannot get around. Only one underwriter is going to cover the crèche and childcare sector. I am sure, however, that dozens of underwriters across the European Union cover this situation. Why can we not get any of those companies to come in here? Is there truth in the view regarding the importance of access to data and Insurance Ireland controlling access to that data? I refer to companies from outside of the State being unable to access the data and therefore being unwilling to enter the market.

Mr. Gerry Hassett: I do not believe that is the case. Pretty much all of the companies that left the market had access to the data. Many of those companies were members. It is not necessary, however, to be a member to get access to the data.

Deputy Martin Kenny: It is not necessary to be a member to access the data.

Mr. Gerry Hassett: A company does not have to be a member to access the data. That is very clear. Each speciality market has its own characteristics. The UK, with Lloyds etc., is clearly the centre of insurance risk in Europe. That may not be the case for much longer, but it certainly is at the moment. Regarding the overall liability market, my understanding is that about 70% of it is underwritten in Ireland and about 30% internationally. We find, however, that some of those speciality type cases, such as crèches, have their own particular requirements and underwriting needs. Those are the ones that tend to be more often underwritten by somebody outside. My understanding regarding crèches is that up to some months ago there were two providers, one of which was an international business based in Ireland and the other a speciality business based out of the UK.

Dr. Declan Jackson: I think Deputy Kenny is right. While we are a big exporting jurisdiction of insurance, selling insurance to some 110 countries around the world, given the size of the market we also rely on capacity coming into Ireland. For sustainable risk pools and for speciality lines, there is a need for more provision than is available in Ireland. In January 2017, we were asked by the then Minister of State at the Department of Finance, Deputy Eoghan Murphy, what success in these reforms would be like. We said that it would involve more capacity coming into Ireland and staying here. For us, if we have a sector with three, four or five companies, for instance, writing those sorts of risks, it then becomes much more stable as they move their positions in the market. That is not happening at the moment. It was correct to say in 2017 and it is more correct to state today that we need more provision.

Deputy Martin Kenny: Apart from Insurance Ireland, has anyone else got any views on that topic? Are there any views as to why there is a feeling that there are legal barriers or any other barriers? Insurance, as has been said, is one of the major factors in legal costs involved in people going to court, to take or defend cases, and engaging in the legal system. The limited availability of underwriters seems to be one of the problems we have. Has anyone else got any reasons, apart from-----

Mr. Fergal O'Leary: Not yet. As I said to Deputy Chambers in terms of the responses I

gave on the public liability study we are doing, that is a key part of this. We are going to be talking to the many insurance companies which operated in public liability here and which have left the market, and we will be travelling to the UK early in the new year. As I said, within the cycle there is a soft part and a hard part but, normally, the hard part does not lead to a whole lot of exit, which is a critical point. The question for us is whether there are things particular to Ireland or is it just investment decisions. What we have learned so far is that these are large companies operating in Lloyds in London and they have a pool of money which they allocate across Europe. Given the relative size of the market here, there is a small bit that may come to Ireland and stay here for a while but the question is what is the decision-making process.

The other thing we have found, as I said in response to Deputy Chambers, is that data is an issue here, and I am not talking just about specific data on claims, costs or premiums. If companies in a foreign jurisdiction are making investment decisions to come here or not, I think the data could be better to allow the companies to make those decisions.

Chairman: Some colleagues have to leave as there is other work they have to attend to. I want to flag that we have, as a practice, invited all our guests to join us for a photograph at the end. As this group is the last in this particular tranche of hearings and the last of 2019, I would like to invite the witnesses to join us for a photograph at the end. I call Deputy Catherine Connolly.

Deputy Catherine Connolly: Will the Chair remind me of the overall heading of our meeting?

Chairman: It is access to justice and legal costs. Legal costs seems to be the critical focus this morning but I think it is important to remember the first part of the title - access to justice.

Deputy Catherine Connolly: In that context, on the last point made by Deputy Chambers in regard to the no foal, no fee basis, I would not have the same concerns about that, certainly at this point. I believe there is a great lack of data generally on the insurance industry, which is a huge problem, although we are beginning to get it with the Central Bank report, which is a start. Are statistics available as to how many cases have been taken on a no foal, no fee basis and is there any way of accessing that information?

Dr. Brian Doherty: Not that I am aware of. Deputy Chambers's question was around the advertising of no foal, no fee.

Deputy Catherine Connolly: The underlying logic is that people are being encouraged to go forward who really should not. I have a difficulty with that narrative, and I would come back to the insurance companies about narratives. We cannot have any narrative about no foal, no fee because we do not know, except that solicitors and barristers, who are often very courageous, go forward to take cases on behalf of people who would not have access to justice if they did not do that. Is that not right?

Dr. Brian Doherty: That has been our experience to date. I would echo that there is a lack of data in the marketplace generally.

Deputy Catherine Connolly: Would it not be very helpful, so we can have an honest narrative and a narrative that reflects the facts, if we had facts around how many solicitors and barristers take cases on a no foal, no fee basis, the outcome of that and clarity around the costs of those cases? Is there any way of doing that?

Dr. Brian Doherty: The Legal Services Regulatory Authority has a responsibility to disseminate information in regard to legal costs. There is no mechanism in the Act to give us the powers to access certain data but we still intend to pursue that.

Deputy Catherine Connolly: There is a public interest.

Dr. Brian Doherty: Yes, in regard to transparency.

Deputy Catherine Connolly: I made a point in praise of barristers and solicitors. However, it also highlights the difficulties people have in accessing the courts that they have to go through this mechanism. It would be helpful to have that information.

Dr. Brian Doherty: Yes.

Deputy Catherine Connolly: In regard to public liability, the CCPC has commenced a major study, which started in July. When will it be ready and can Mr. O'Leary tell us about it?

Mr. Fergal O'Leary: We are in the middle of working our way through analysing how much time we spend trying to collect data to make evidence-based reforms versus getting the study done quickly. That is exactly the point we are at. We have spent the last couple of weeks getting on board some external experts to help us to do that quicker. The study is about halfway done and our indicative timetable is to have a report delivered to the Minister by the middle of next year.

Deputy Catherine Connolly: Mr. O'Leary touched on the fact the CCPC has problems collecting data. Can he elaborate on that?

Mr. Fergal O'Leary: It is difficult to find out who is operating in the market. With any competition assessment we do, we would normally start out by assessing what is the concentration level in a particular market, who is operating year-on-year and who is coming into or leaving the market here. It is difficult to find that data for this market on its own so the analysis we do subsequent to that is made more difficult.

Deputy Catherine Connolly: The analysis will be very limited if the CCPC does not have the data.

Mr. Fergal O'Leary: That is correct. The crux of this matter is how much time we spend trying to collect data versus making recommendations on which the Government and the State can act. As I said, we are in the middle of the study at the moment and our resources are going towards trying to figure out that key part of getting enough evidence while not spending too much time on it. While I say this in a way that is not critical of the Central Bank, it is about three and a half years since the cost of insurance working group started and the report was published this week. I do not think anybody wants us to be a year or two working on this public liability insurance study.

Deputy Catherine Connolly: Did the CCPC consider publishing an interim report highlighting the difficulties it has in collecting data?

Mr. Fergal O'Leary: We did not. The issues around transparency are already accepted. As our colleagues from Insurance Ireland said, the Central Bank plans to publish data on public liability next year, so I think that point is well accepted. Again, we are not trying to replicate the work that is being done by either the cost of insurance working group or the Personal Injuries Commission. We feel we can do that. We are confident in terms of our ability to look at this

market from the point of view of an analysis around theories of harm and to make evidence-based recommendations on that point. However, we do not plan to make an interim report simply because that would slow down the publication of the final report.

Deputy Catherine Connolly: The CCPC should perhaps consider doing that if the difficulties continue in regard to collecting data. This would let us know the information. Information belongs to us and it is powerful to have it so we all can be part of the analysis.

Mr. Fergal O'Leary: That is accepted and, as a commission, we always keep these things under review. If it looks like the timelines are going too long, we will reconsider that decision.

Deputy Catherine Connolly: Of course, we all make comments in the context of insurance difficulties everywhere, including in regard to crèches. On my desk is a reference to the Galway community services which are part of the much lauded Galway 2020. They had a scheme of events and they cannot do it because their insurance literally jumped in one year from €10,000 to €24,000. That happened without explanation and not based on any claims, alleged fraud or anything like that - it was a complete jump. In addition to legal costs, there appear to be many problems in the narrative that is being given as to why premiums are high.

The Legal Services Regulatory Authority has been taking complaints in regard to solicitors and barristers since October.

Dr. Brian Doherty: That is correct.

Deputy Catherine Connolly: Dr. Doherty has given us the numbers. Has it been difficult in that short while since October to detect trends or to draw conclusions?

Dr. Brian Doherty: We must produce our first report by 7 April, but even within that short timeframe there are key trends it could outline. As I said earlier, communication is the general theme of the report.

Deputy Catherine Connolly: My apologies, I was not here earlier.

Dr. Brian Doherty: In effect, where legal practitioners may have failed to properly inform customers in regard to cost and the risk of taking-----

Deputy Catherine Connolly: I have read the submission in detail. Does Dr. Doherty have anything further to add?

Dr. Brian Doherty: Another theme is probate, which seems to be attracting a large number of complaints. We have received complaints in regard to a number of parties who may be putting themselves forward as barristers but who are not on the roll of practising barristers and may be exploiting members of the immigrant community who are very vulnerable. We have also received complaints in regard to the non-payment of barristers. I would caveat all of that with the point that all of this is based on data since 7 October. We will report in full on 7 April.

Deputy Catherine Connolly: In regard to the review committee, am I correct that the complaint is made to a board?

Dr. Brian Doherty: The complaint is made to the authority and processed by authority staff. There are three categories of complaint, including inadequate service, excessive fees and misconduct. The LSRA staff can attempt to informally resolve complaints of inadequate service or excessive fees. There are circumstances in which they can determine those complaints and

those determinations can be reviewed by an independent review committee.

Deputy Catherine Connolly: What is the role of the authority?

Dr. Brian Doherty: The authority is involved in establishing the review committee but its decision-making is independent of authority.

Deputy Catherine Connolly: Has the review committee been established?

Dr. Brian Doherty: It will be established early in the new year. It will be comprised of lay members and nominees from the Bar Council of Ireland and the Law Society of Ireland.

Deputy Catherine Connolly: How many decisions have been determined by authority staff?

Dr. Brian Doherty: Under the scheme of the Act we first have to attempt to informally resolve those complaints. The complaints that have been admitted are in the process of being informally resolved. It is only where that resolution process fails that we then move to determination.

Deputy Catherine Connolly: Can Dr. Doherty provide us with the number of complaints that have been resolved informally?

Dr. Brian Doherty: I regret, I cannot. We have had very encouraging engagement from both legal practitioners and complainants such that complaints are being resolved prior to the admissibility decision.

Deputy Catherine Connolly: What happens to the complaints that do not come within the remit of the authority? Is it the role of the authority to decide if a complaint is admissible?

Dr. Brian Doherty: A decision is made as to whether the complaint is admissible under the scheme of the LSRA Act. The complaints that we can informally resolve and determine are those related to inadequate service or excessive costs. Complaints of misconduct are dealt with by the complaints committee but if they are determined to be of a serious nature they are sent to the legal practitioners disciplinary tribunal.

Deputy Catherine Connolly: It will be interesting to see the report in due course. When will it be published?

Dr. Brian Doherty: We are required to report every six months. The first report will be published before 7 April.

Deputy Catherine Connolly: Will it be a public report?

Dr. Brian Doherty: Yes.

Deputy Catherine Connolly: I thank Dr. Doherty.

I will now move to questions to Insurance Ireland. I have read Mr. Hassett's submission in detail. I like to deal in facts. There is an absence of fact generally in the Insurance Ireland submission. Reference is made in the submission to there being a "suspicion" that very often seeking leave to adjourn may be used as lever in negotiation. I do not believe the word "suspicion" should be referenced in a submission. It should be based on facts. I have some questions for Mr. Hassett in regard to the narrative of Insurance Ireland. Does that narrative change follow-

ing the publication of the Central Bank's report? I agree there are many nuances in the report such that it requires a second reading and that I have read it only once.

Mr. Gerry Hassett: Not particularly. There are changes of detail, I will accept that, but we still believe the cost of claims in Ireland are too high and that without structural reform normality will not return to the market.

Deputy Catherine Connolly: On what basis does Mr. Hassett believe the cost of claims are too high?

Mr. Gerry Hassett: I am not 100% sure of that. We have seen significant inflation in that area in the past number of years. For example, the report from the National Claims Information Database, NCID, shows a drift from €31,000 to an average of €47,000, which is approximately 40%. I am not 100% sure why that is, but I know it seems to be a fact.

Deputy Catherine Connolly: In regard to premiums and dual pricing, with which I was not familiar until recently, what direction has Insurance Ireland given in this regard? This is about an existing policyholder being treated differently from a new customer in that the latter can get a cheaper premium. Is that correct?

Mr. Gerry Hassett: The Central Bank has instigated a review of dual pricing and the extent of it. Dual pricing is a common practice across many markets. There are positives and negatives to dual pricing. Encouraging people to switch creates value in the market. It is a sign of a healthy market. However, if loyal customers are being penalised for their loyalty then that is a problem.

Deputy Catherine Connolly: What has Insurance Ireland done about it?

Mr. Gerry Hassett: As an industry body, Insurance Ireland does not have a line of sight into the commercial practices of its members. Under competition law, we cannot do that. While I am aware from an anecdotal point of view that this practice is going on I do not have any data around the extent of it or how it is applied in various markets.

Deputy Catherine Connolly: Would it not be important to have that data?

Mr. Gerry Hassett: I am not allowed to have that data.

Deputy Catherine Connolly: The insurance companies can provide the data.

Mr. Gerry Hassett: The insurance companies are currently engaged in a review with the Central Bank on sharing that data with the Central Bank. Insurance Ireland is not the appropriate authority to do that.

Deputy Catherine Connolly: I understand that, but Mr. Hassett can have an opinion on the matter. He can comment on the absence of data.

Mr. Gerry Hassett: We welcome the Central Bank review but we have no line of sight on the commercial activity of our members.

Deputy Catherine Connolly: Okay. In regard to the current European Commission investigation, is it an investigation under the anti-trust legislation?

Mr. Gerry Hassett: Yes.

Deputy Catherine Connolly: Was Insurance Ireland previously investigated by the European Commission?

Mr. Gerry Hassett: I do not believe so.

Deputy Catherine Connolly: The current investigation is a first for Insurance Ireland.

Mr. Gerry Hassett: Yes, I do believe that to be the case.

Deputy Catherine Connolly: The Central Bank report is interesting. Mr. Hassett quoted figures from it. It is difficult in the limited time I have available to me to question him on all of those figures. On page 14 of the Central Bank report it states that the average premium per policy was €706 in 2018, which was 42% higher than in 2019. The report provides a breakdown, including a period during which there was falling premiums for a period, followed by increasing premiums, with premiums increasing by 62% between 2013 and 2018. Would Mr. Hassett agree that is a huge increase?

Mr. Gerry Hassett: Yes.

Deputy Catherine Connolly: Mr. Hassett thinks that is okay?

Mr. Gerry Hassett: I do not think it is okay. It is a reflection of several factors. If the Deputy looks at the loss ratios contained in the report she will see the industry sustained significant losses which peaked in 2014. In that period, we had-----

Deputy Catherine Connolly: Can Mr. Hassett quote the losses?

Mr. Gerry Hassett: Yes. They are set out in graphic form on page 19.

Deputy Pearse Doherty: It is page 45.

Mr. Gerry Hassett: There is a table on page 45.

Deputy Catherine Connolly: Will Mr. Hassett clarify what is set out on page 45?

Mr. Gerry Hassett: Essentially, the long-term loss ratio across the period is 75%. Typically, in addition to that there is 20% related to management expenses and commissions. Taking 2014, where the losses peaked, and one adds the-----

Deputy Catherine Connolly: What did they peak at?

Mr. Gerry Hassett: It was 94%. When one adds the management expenses and the commissions at 20%, the 94% increases to 114%.

Deputy Catherine Connolly: The highest point was 94%. What was the lowest point?

Mr. Gerry Hassett: The lowest point was in 2017 at 59%.

Deputy Catherine Connolly: It is cyclical, is it not?

Mr. Gerry Hassett: It is cyclical.

Deputy Catherine Connolly: Does the Central Bank acknowledge that?

Mr. Gerry Hassett: It does.

Deputy Catherine Connolly: Insurance companies are making very healthy profits. Is that right?

Mr. Gerry Hassett: Looking at these numbers, there were profits in 2017 and 2018, with significant losses in some earlier years.

Deputy Catherine Connolly: Okay. The premiums did not go down when the profit went up.

Mr. Gerry Hassett: No. As I explained previously, it is not an exact science. A premium is collected in a single year and losses or claims are sustained in future periods. This report is very clear. It is probably much more accurate about earlier years than later years because the claims data for earlier years are much more accurate. We have been able to count up all the claims with the passing of time. We have seen for litigative cases that companies typically reserve four to six years ahead. When a premium is set, one is not always aware of what the claims experience will be. That is why it is cyclical. Sometimes one overshoots and sometimes one undershoots. That is the nature of it.

Deputy Catherine Connolly: The plain English on page 18 is very helpful information from the Central Bank. It states:

> Between 2009 and 2018, the average annual gross earned premium increased by 42%; the average cost of claims per policy reduced by 2.5% over this time.
>
> To recap on Part 2, 2013 was the lowest point for average premiums over this ten year period, having decreased by 13% from €498 in 2009 to €435 in 2013. Premiums started to increase again in 2013, increasing by 62%

It recaps again for us after that. It is very helpful. What is really jumping out for me is a healthy profit, premiums going up and a narrative that is not reflective, partly because the narrative is not based on fact from anybody, even the no foal, no fee basis. I have a difficulty with the narrative from insurance companies. I was in the Chair in the Dáil lately and heard a narrative about fraud, lying and cases that were not right. Are the figures for fraud not in fact extremely low?

Mr. Gerry Hassett: Can I provide some context for the figures?

Deputy Catherine Connolly: Please. That would be helpful.

Mr. Gerry Hassett: It is a tale of two halves. From 2009 to 2013, claims costs and premiums came down. That is clearly the side that the Deputy wants to see.

Deputy Catherine Connolly: They came down a little bit but the difference between the cost of the premiums and the profit-----

Mr. Gerry Hassett: That is my point. The year 2013 was the period of peak losses in the sector. Companies such as Setanta and Enterprise collapsed, with a major multinational company here having to recapitalise itself to the tune of hundreds of millions. To put this in context, with average premium levels, we collect approximately €1.5 billion a year and pay out in the order of €1.1 billion or €1.2 billion.

Deputy Catherine Connolly: I saw that.

Mr. Gerry Hassett: The primary objective of an insurance company is to have enough money to pay its claims. In 2013 and 2014, there were questions about whether companies would have enough money to pay their claims. From a prudential point of view, if one has those issues, the only outcome is to increase the premium.

Chairman: Before Deputy Connolly comes in with her next question, prior to her arrival I cautioned about this matter a couple of times. I fully appreciate the context of the Deputy's line of questioning and its appropriateness, but it is important for the questioner to contextualise it himself or herself and not to rely on my understanding of it. I need the Deputy to reflect that it is in the context of legal costs. We are not a different committee.

Deputy Catherine Connolly: I understand that. I probably will not have time to get to the State Claims Agency. It is in the context of the submission from Insurance Ireland and the report published yesterday. That is why I asked my questions at the beginning. I have a final question for Insurance Ireland, and if I am allowed, I will go back to the State Claims Agency, or if my time is up, so be it. Does Insurance Ireland have a view on premiums and how they are calculated? Should there be more openness?

Mr. Gerry Hassett: I understand that this database is going to be published every year. This is the first year that we have seen it and we are all coming to terms with the data in it. We will see it annually. Much of the debate will be about the changes from one year to another. I think that level of transparency is helpful. Typically an insurance company will price to achieve a 5% margin in a year. The reality of it is that it rarely achieves that. It will either overshoot or undershoot. The Deputy can see that it fluctuated wildly over the ten years. There were years of losses and years of profits. I accept that 2018 seems to have been a pretty profitable year. It is hoped that marks the top of a cycle and it may move in a different direction. I do not know. As the Central Bank says, it ebbs and flows.

Deputy Catherine Connolly: Could I ask one question of the State Claims Agency? I am not asking questions that are for the Joint Committee on Health or the Committee of Public Accounts. Does the State Claims Agency have a policy about confidentiality clauses? Does it take its direction from the Minister or where does it take its direction from?

Mr. David Mack: The function that I perform is purely head of legal costs for third-party legal costs. I do not believe that we have a policy on confidentiality for legal costs agreements or bills of costs coming in. From time to time, we promote mediation and we try to stay within the parameters of mediation. I have said to colleagues that we cannot contract out of obligations that are consistent with public service. I do not believe there is any policy about third-party legal costs management that involves confidentiality.

Chairman: I thank Deputy Connolly. Our final contributor is Deputy Pearse Doherty. He is very welcome to the Joint Committee on Justice and Equality.

Deputy Pearse Doherty: My first question is about legal costs for claims that are made and settlements that are not accepted by an individual at PIAB who goes on to make a claim in the courts and where the court does not award a higher payment. Dr. Doherty might be able to answer this. Is there any evidence of the sections in the 2007 Act being enforced by the courts, which means that the legal fees would not be payable to that individual?

Dr. Brian Doherty: Sorry, Deputy, I do not have that information. I apologise.

Deputy Pearse Doherty: Does Insurance Ireland have any knowledge of or insight into

this?

Mr. Gerry Hassett: No major insight.

Deputy Pearse Doherty: Do the witnesses have any insight about the number of settlements that are not accepted by a claimant that go on to be litigated in the courts? What percentage of those receive a higher payment than was on offer?

Mr. Gerry Hassett: We do not have any hard data on that. We know that insurance companies tend to accept more than 90% of the recommendations of PIAB and the acceptance rates on the claimant side have been in the mid 60s, though they have fallen slightly.

Dr. Declan Jackson: We would have no sight of what happens to individual claims that are not accepted. If they go through PIAB, we would not have line of sight all the way through.

Deputy Pearse Doherty: The companies that make up Insurance Ireland are the ones that are defending these cases in the main. Legislation was passed here in 2007. It was suggested by PIAB at the time that it would result in fewer people going to the courts. The trend has been the opposite because it allowed the courts to ensure that no legal costs would be paid if the award was not paid. What are Insurance Ireland's affiliated insurance companies doing? Do they press that? Do they bring it to the judges' attention in these cases? Is it the case that all of these claims get a higher payment than PIAB had offered? I would find that surprising given that PIAB's payments and the court payments are quite in line when one excludes payments of more than €100,000.

Dr. Declan Jackson: The comment on the amounts is borne out in the settlement channels, PIAB and the courts. On the Deputy's specific question on insurance company activity, I do not have an answer for him today but I can ask about it and we can come back to him on that.

Deputy Pearse Doherty: I have heard Insurance Ireland banging on about this for quite a while and it has a fantastic propaganda machine and, indeed, captured many of the political parties in here and much of the media in terms of its spin. There is a section of the Act that allows for legal costs not to be paid out and, at this point, Insurance Ireland does not know if any of the 100-plus companies that make up Insurance Ireland actually press this in any of the court cases it is dealing with, yet it continues to raise the issue of legal costs as a major issue in terms of the cost of claims overall.

Mr. Michael Horan: What would often happen is that an insurance company would make a lodgement, and that puts the claimant on risk for costs. If the award does not beat the amount of the lodgement, the person is liable for part of the costs of the claim. There are tactics that people can use to put the claimant on risk for cost if they are not behaving reasonably, if you like.

Deputy Pearse Doherty: That is why I am raising the issue of the Personal Injuries Assessment Board (Amendment) Act 2007, which specifically deals with this issue. My question is how often that is happening. How often are the courts not awarding costs and is there any indication from Insurance Ireland in this regard?

Mr. Michael Horan: One of the problems in the past was that people would sometimes make a claim to PIAB, reject the award and then, effectively, almost make a different claim or add other things into the claim at the litigation stage. Now, thanks to the Personal Injuries Assessment Board (Amendment) Act 2019, there are provisions for the courts to take a view from

a costs perspective. That is something the insurers are very alive to and very keen to push.

Deputy Pearse Doherty: If I can put it this way, does Insurance Ireland know of any court case in regard to somebody who did not accept a PIAB settlement award, which went to the High Court and where section 51A of the legislation, which means the individual would not be paid their costs, was effected?

Mr. Michael Horan: We cannot talk about individual cases but we can come back to the Deputy on that.

Deputy Pearse Doherty: I am not talking about individual cases. I am trying to figure out Insurance Ireland's knowledge in regard to any of this. Is it aware this is happening or not?

Mr. Michael Horan: We can come back to the Deputy with more information on that.

Chairman: We do not want to know about individual cases, nor is the question seeking that.

Mr. Gerry Hassett: What we would do in a situation like that is poll our members and seek the information. We can revert to the Deputy.

Deputy Pearse Doherty: I appreciate that. Insurance Ireland makes the point about PIAB and suggests the level of cases that are not being accepted has increased as a percentage over the last period. We know from the Central Bank report that PIAB is probably the most effective way of keeping costs down and, indeed, is more effective than the insurance companies settling the claims themselves. How many claims have the insurance companies rejected annually? What does 10% look like?

Dr. Declan Jackson: Based on an acceptance rate of 90%, and given the figures in the PIAB annual report for 2017, we are talking about 12,663 total cases, so 10% of that is about 1,200.

Deputy Pearse Doherty: As we are probably talking about a ten-year period, there would be some 12,000 cases over that period. Has Insurance Ireland done any analysis of those? Once it rejects a case or rejects a settlement, it is more than likely that it goes into litigation or else the insurance company settles, which is unlikely if it is the one rejecting the settlement. When the case goes into litigation, that is adding the extra €20,000 or €30,000. For those 1,200 cases the companies have rejected per annum, has Insurance Ireland done any analysis as to whether it was cost effective for them to do so, that is, that there would have been a reduced cost in the courts?

Dr. Declan Jackson: No, we have not. The reason we would not do that is because how companies settle and manage claims is a competitive issue. How they price is a competitive issue and how they manage the expense line of settling claims is a competitive issue for them as well. We have not done anything individually or at an aggregate level in that regard.

Deputy Pearse Doherty: I find that shocking. Has Insurance Ireland done any analysis of the 1,200 claims it rejects each year from PIAB with regard to how many of them fall into the different categories, for example, €1 to €10,000, €10,000 to €20,000, €20,000 to €30,000, and those above €100,000?

Dr. Declan Jackson: We have not done any analysis of that.

Mr. Gerry Hassett: I would have thought it would be a matter for PIAB to provide those data. We are not privy to the data that PIAB has. We get the same sort of data the Deputy gets

in regard to PIAB.

Deputy Pearse Doherty: We can ask PIAB in that regard. The point I am making is that it is likely the 1,200 claims that Insurance Ireland is rejecting are claims that have higher costs, that is, those that are at the higher end of perhaps €90,000 or €100,000. We know the cost of these claims when they are litigated makes up over 50% of total costs, even though they are a small proportion, given some 7% of claims are above €100,000. The reality is Insurance Ireland could have rejected every single one of them and, therefore, Insurance Ireland or the insurance companies could be the reason 50% of the legal costs are being paid out through the courts because they did not accept the settlements from PIAB.

Dr. Declan Jackson: There are two points. Insurance Ireland does not accept or reject any claims.

Deputy Pearse Doherty: Yes, I meant the insurance companies.

Dr. Declan Jackson: Second, the case could actually settle for less than the PIAB determination and it may not go to litigation, so the converse could also be true.

Deputy Pearse Doherty: I know that.

Mr. Michael Horan: The other point is that PIAB only deals with cases where liability is not at issue. A lot of cases would involve disputes on liability and there would be complexity involved in the case and maybe high value involved in the case as well. PIAB only deals with the cases where there is no issue on liability and we are just talking about quantum. That takes a lot of the complexity out of the debate.

Deputy Pearse Doherty: I understand that. When they settle on a quantum, when they settle on a figure to pay a claimant who may have serious bodily injuries, insurance companies affiliated to Insurance Ireland reject 1,200 of the cases based on the quantum. They go to court and if they are at the higher end, they could make up in excess of 53% of the entire legal costs of all litigated claims in the courts. Let me make this point. The courts pay out, on average, the same compensation as PIAB for claims less than €100,000. It is extremely likely that what is happening here is that insurance companies are rejecting claims that are on the higher end, towards €100,000, which make up some 53% of all legal costs when they go into litigation. The real issue is that it is insurance companies that are putting this bill upon themselves and, really, upon their consumers as a result. I am fully aware the witnesses do not have any of that knowledge.

Mr. Gerry Hassett: One headline number would be that, in 2018, there were 22,000 injuries cases filed in the courts. Let us take the 1,200 figure, the PIAB figure. That is 5%. It may be they are proportionately higher - I do not know - but we are certainly not flooding the courts with lots of cases. In the Central Bank report, the annual filing went from 14,000 to 18,000 over the past five years. At 1,200 per year, even if they all went into court, I do not see how it is the insurance companies that are clogging up the courts.

Deputy Pearse Doherty: That takes me to the next point. We are just dealing with PIAB at the minute and I did not suggest the insurance companies are clogging up the courts. I am trying to find out, for the cases they have rejected, whether it has been the case that they have been at the higher end. Have they resulted in significant legal fees? For cases above €100,000 the legal fees are significantly more. Yet, Insurance Ireland has not polled any of its members or collected any data on that. Is that what Mr. Hassett is telling me?

Mr. Gerry Hassett: Yes.

Deputy Pearse Doherty: Can Mr. Hassett explain one thing to the committee? The figure for settlements between insurance companies is above 90% of all claimants. Is that correct?

Mr. Gerry Hassett: Is that direct settlements?

Deputy Pearse Doherty: Yes, direct settlements.

Dr. Declan Jackson: The figure is 53%.

Deputy Pearse Doherty: I do not mean the value of cost but rather the number of claims.

Mr. Gerry Hassett: A total of 53% settled directly, some 16% settled through PIAB and 31% settled through litigation. The details are on page 8.

Deputy Pearse Doherty: I am looking at page 22, which has details on settlement of claims. Under all claim types, it states 94% are directly settled, while 2% are resolved under PIAB and 4% are litigated.

Dr. Declan Jackson: What is the page number?

Deputy Pearse Doherty: It is page 22. Anyway, that takes in all claims. Let us move on to personal injury claims.

Dr. Declan Jackson: That is damage as well as injury.

Deputy Pearse Doherty: I understand that. Let us move on to personal injury claims. The figure is 53%. Then 14% of claims are settled through PIAB and 33% of claims are litigated. I do not have the figure before me but we know close to 50% of PIAB awards are not accepted either by the insurance company or the claimant. This corresponds to approximately 6,000 cases per year. It should correspond to 14%. What makes up the other 17% that are litigated?

Mr. Michael Horan: Can Deputy Doherty repeat the question?

Deputy Pearse Doherty: Please look at page 24. In 2018, some 53% of personal injury claims were settled directly by the company while 14% were settled by PIAB. This means approximately 14% of those PIAB settlements were rejected and litigated, but 33% of claims are actually settled through the courts.

Mr. Gerry Hassett: Certain claims are not eligible for PIAB. A claimant cannot go to PIAB with certain claim types in the first place. A claimant can elect not to go to PIAB as well. It is a claimant decision whether to go to PIAB.

Deputy Pearse Doherty: How many cases did the insurance companies refuse eligibility for PIAB to deal with? That is one of the provisions insurance companies have.

Dr. Declan Jackson: That is the consent number. I do not know the consent number but I imagine PIAB could give that figure to the committee. I do not know the figure for consent for determination to happen.

Deputy Pearse Doherty: Would that arise where insurance companies do not admit liability?

Dr. Declan Jackson: There can be a number of reasons PIAB cannot make a determination.

It could be if liability is in question. Certain claims are deemed to be outside the scope of PIAB. For example, if psychological injuries are attached to a claim, that would fall outside the scope of PIAB to make a determination. There are several other technical reasons as well.

Deputy Pearse Doherty: I want to ask about a report done by the Central Bank and the data that Insurance Ireland releases in its annual report and fact file. Is this data the same data?

Mr. Gerry Hassett: No, it is swings and roundabouts. We are comparing different data sources. I would have thought the broad direction of travel is similar, but there are clearly differences in the data and how we interpret the data. It is a question of apples and oranges.

Deputy Pearse Doherty: Why would there be differences? For private motor insurance, does Insurance Ireland deal with all private motor when it reports? Does Insurance Ireland have an insight only into a certain section of the insurance industry?

Dr. Declan Jackson: More companies are captured in the Central Bank than would be captured in ours.

Deputy Pearse Doherty: What is the proportion?

Dr. Declan Jackson: The legislation for the Central Bank report states that if a company writes any motor business it must make a return to the national claims information database. I am subject to correction, but I understand we have approximately nine or ten-----

Mr. Gerry Hassett: We need to put some context on this.

Deputy Pearse Doherty: Sorry, nine or ten what?

Dr. Brian Doherty: There are nine or ten companies I would recognise as members on the Central Bank report, whereas the Motor Insurers Bureau of Ireland list has 44 companies.

Mr. Gerry Hassett: Some of those are specialist companies. I imagine the big market share players are represented in the Insurance Ireland fact file. The Insurance Ireland fact file replaced the blue book, which was a repository. It was an attempt to keep tabs on what was going on in the industry. I imagine everyone would agree that a centralised data source is a better source.

Deputy Pearse Doherty: I am trying to get a handle on this. We were always relying on the Insurance Ireland fact file. I am seeking an estimate from the Insurance Ireland representatives. What percentage of private motor insurance is covered under the Insurance Ireland fact file compared to the Central Bank report?

Mr. Gerry Hassett: Off the top of my head, I would give a figure of 90%.

Deputy Pearse Doherty: I am talking about market share.

Mr. Gerry Hassett: The top eight players all have a market share of more than 7%. One has a share in above 20%. The arithmetic suggests it is up near 90%. The other players tend to be specialist players for classic cars or particular market niches.

Deputy Pearse Doherty: Okay, let us say the figure is 90%. Does Mr. Hassett wish to correct the record of a previous committee meeting? Mr. Hassett was before me recently. He stated that his information was that premiums were coming down and had come down. He said they peaked in 2016 and had come down significantly. I challenged him and asked him to produce the facts. He went on to say his understanding was that prices had been coming down

since the middle of 2016. He then went on to say that prices were falling. Mr. Horan intervened and defended the statement from Mr. Hassett. Mr. Horan said that the fall in recent years meant that motor claims costs had stabilised. Does Mr. Hassett accept that was not true?

Mr. Gerry Hassett: I do accept that. Based on the Central Bank report, which I accept, I accept that is not true. I want to put some context on this - I think I placed the same context at the time. Actually, I was relying on data that had been shared in the market. It was third party data. Insurance Ireland has no access to price information. We should not have access to price information from any of our member companies either. The only data source we had at that time was the Central Statistics Office data. The data we quoted relating to 2017 were CSO data. One could look at the CSO data and the Central Bank report and question it because they do not line up.

Deputy Pearse Doherty: I put the facts about the CSO data to Mr. Hassett at the meeting. I am sick to my teeth of telling people this, including those in the Government. Mr. Hassett knows this better than anyone. The CSO data come from a CSO official telephoning an insurance company and stating that he or she is from the CSO and the office is looking for a price on a particular insurance policy. Then, the insurance company gives the price and the CSO reports on the change of that policy. Insurance Ireland provides information to the European authority, which compiles a report on insurance. Is that correct?

Mr. Michael Horan: We provide statistics.

Deputy Pearse Doherty: One of those figures is the average cost of insurance per motorised vehicle. Is that correct?

Mr. Michael Horan: I do not recall providing that.

Deputy Pearse Doherty: Insurance Ireland does so. Actually, the figure shows in 2017 that insurance premiums went up. Anyway, let us forget about that.

Is Mr. Hassett seriously telling me that he claimed repeatedly that insurance premiums went down from 2016 to 2017? They did not go up a little; they went up 15%. Is Mr. Hassett telling me that he is so completely unconnected with the industry that he has no clue what is happening? This is despite the fact that 90% of the motor market falls under Insurance Ireland.

Mr. Gerry Hassett: As a trade association we have no access to price information. We should not have such access either.

Deputy Pearse Doherty: Mr. Hassett continued to claim at an Oireachtas committee that it was going down.

Mr. Gerry Hassett: We quoted CSO data.

Chairman: Deputy Doherty, I am sorry but it is likely that if that is to be followed up you will have to revert to the other committee business. I wish to emphasise that access to justice and legal costs has to be the determinant in questioning here today.

Deputy Pearse Doherty: My final question relates to the data. When we have data, we need to know they are valid and accurate. Sinn Féin had reservations in regard to the legislation that underpins this report in terms of the Central Bank because we know that insurance companies transfer moneys to their headquarters. One insurance company transferred a significant amount of money to its headquarters and, therefore, was able to record a loss in this jurisdiction.

This practice is legal but, therefore, the data are distorted.

On the Insurance Ireland fact file, in responses to me at a meeting of another committee Mr. Hassett, backed up by Mr. Horan, stated that the claims ratio for 2017 was 71.5%, which they reiterated to other members here today. We now know the claims ratio for 2017 was 59%, which means the insurance companies were more profitable than was suggested. At the aforementioned meeting, Mr. Hassett also made the point that the loss ratio for 2016 was 82%. We now know it was 69%, which, again, means the insurance companies were more profitable than was disclosed. He also made the point that in the three years prior to 2016 the loss ratio was in the mid-90s, but it was not. It fell into the mid-90s only in one year and it was in the mid-80s in the other two years. Again, this means the insurance companies were more profitable than was suggested.

The Insurance Ireland fact file covers 90% of the motor market. Is it nothing more than a propaganda tool given the information we now have in terms of the 100%, which could in no way allow for the type of discrepancies in the figures which Insurance Ireland present compared to what is now presented to us by the Central Bank?

Mr. Gerry Hassett: I think the data in the Central Bank report are highly consistent with the fact file. There may be variations on a year-by-year basis and we can discuss how they may occur. In terms of the cycle, a claims ratio of 75% is highly consistent.

Deputy Pearse Doherty: The Insurance Ireland fact file references a claims ratio of 71.5%. This means that for every euro taken in 71.05 cent is paid out in claims. The Central Bank reports states that the amount paid out is 59 cent, which is a significant reduction. For the previous year, Mr. Hassett claimed it was 82 cent, but the Central Bank report states it was 69 cent. They are not small margins of error.

Mr. Gerry Hassett: I refer the Deputy to the graph on page 19 of the report, which shows that the ten year average claims ratio is 75%.

Deputy Pearse Doherty: I am not disputing that. What I am disputing is that the statistics provided in Insurance Ireland's annual fact file are completely at odds with the statistics provided in the Central Bank report. Legally, companies are required to report accurate, verifiable information to the Central Bank. There is a massive discrepancy in regard to how much of every euro taken in by Insurance Ireland is paid out in claims. Insurance Ireland claims that last year it paid out 71.5 cent of every euro it took in but the Central Bank report indicates that the actual amount paid out is as low as 59 cent. For the previous year, the discrepancy was massive as well, at 82 cent versus 69 cent. Insurance Ireland claimed that in two previous years it was in the mid-90s but it was 84. How could there be such a discrepancy?

Mr. Gerry Hassett: There are differences in the methodology. I will ask my colleague, Mr. Horan, to elaborate.

Mr. Michael Horan: The NCID report is done on an accident year basis. This is explained on page 6. It is the year in which the accident occurred. It may take several years for all claims to be fully paid, etc. That is the basis of the NCID report. On page 7, it references the financial year, which is the year for which financial accounts are stated. When stating the claims incurred in a financial year insurers include claims which were paid in the year, reserves they set aside for claims that happened that year and changes to the reserves set aside for claims that happened in previous years. The fact file is done on a financial year basis. In the National Claims infor-

mation Database report many of the chapters are on an accident year basis such that the figures will not stack up exactly. For example, the financial year stated accounts for, say, 2016 are a snapshot as at year end 2016 and the NCID report is a snapshot as at year end 2018, looking back at all of the accident years, such that it can see that in many of the earlier years in particular the claims were fully settled. There is an element-----

Deputy Pearse Doherty: The NCID found that the expected claims loss that Insurance Ireland had identified did not materialise, which is another serious issue in terms of what the insurance industry is doing. The industry is over-compensating in regard to future losses. It has to identify the claims settled in a particular year and make provision for the following years such that it is cooking the books and over-estimating only to find on look-back that that level of claims was not paid. When the Central Bank carries out the exercise which Mr. Horan spoke about, the actual claims ratio drops dramatically.

Mr. Gerry Hassett: The Central Bank report shows that Insurance Ireland paid out a higher percentage of premium in claims over the ten year period than is shown in its fact file. I reject the Deputy's comment.

Chairman: I must ask Deputy Doherty to bring this particular line of questioning to a close as it is stretching the relevance to the overriding subject. I am not in any way challenging the legitimacy of the Deputy's questions but it is my responsibility to ensure the committee addresses the matter before it. Has the Deputy concluded his questions?

Deputy Pearse Doherty: Yes. I would welcome if the information requested could be forwarded to the committee.

Chairman: I will be referencing that in a moment.

Deputy Doherty's final engagement aside, it is fair to say that there has been a certain dominance of attention to Insurance Ireland. The Central Bank report is most likely the reason for it. As I have emphasised repeatedly, the committee's business is the address of access to justice and legal costs. It is important to point out the that views of members' expressed during the course of today's hearing are the views of members. They do not have the imprimatur of the Joint Committee on Justice and Equality. The committee will deliberate on all of the evidence presented to it over a number of hearings, and others received in written submissions and, ultimately, publish a report with recommendations. This is always a compromise. The committee is comprised of 11 members coming from disparate positions, as evidenced today, so for the report to have the imprimatur of the committee there will be a degree of give and take.

As in the case of committee members the expressed views of the Chairman are the views of the occupant of the Chair of the Joint Committee on Justice and Equality. I take a very different view in regard to the line of questioning posed to Dr. Doherty regarding "no win, no fee" and "no foal, no fee". I want to make it abundantly clear that the theme of these hearings is access to justice. Anything that would in any way inhibit or prevent any citizen having access to justice would run utterly and absolutely contrary to everything that I would believe in. In regard to the particular question posed to Dr. Doherty, in my view, he was correct in not responding to it. We must ensure that access to justice is not the preserve of those who can afford it or those who can afford to take the risk. Every citizen has the right to access justice. I believe strongly in that view.

In regard to the data requests, of which there were a number and Dr. Jackson indicated it

will be possible to provide, I do not expect him to provide PIAB data but if he can we would welcome it. With no disrespect to any of the witnesses, there is a dearth of data as evidenced in questioning by colleagues from across the political spectrum. This is regrettable because data inform. They help to formulate ideas and, it is hoped, effective and efficient change in the workings of the system. Where requests have been made, including by Deputy Pearse Doherty, the previous contributor, any information should be furnished to the clerk to the committee and not to the individual members who have presented. The clerk will circulate information to all members, who will have equal access to the information that the witnesses or any of the representative groups will share. Though Deputy Doherty is not a member of this committee, it will be shared with him equally, as it will be with members who have presented or who have not been able to attend today. I had some questions but I think we have all been exhausted, and the questions have been touched on in different ways. We have a significant job once we resume. We are anxious to conclude this report. We do not know how long we have in these Houses, so we will endeavour to get the report concluded as quickly as possible and published before the Taoiseach blows the whistle for a rematch for everybody concerned. I will vacate my position at that time.

It remains only for me to thank the witnesses. I will not reference the organisations but call the witnesses by their Christian names, if I may. I thank Isolde, Fergal, David, David eile - two together; snap - Brian, Ultan, Gerry, Michael and Declan for their attendance today.

This is the last sitting of the Joint Committee on Justice and Equality in 2019. I thank members for their participation throughout the year. It has been very productive. We hope that whatever duration the Thirty-second Dáil has into 2020, we will continue to be an important contributing body within the Houses of the Oireachtas. I invite witnesses to join us for a photograph. Pat will show us outside. We publish the photograph of all our witnesses with the reports.

The joint committee adjourned at 12.25 p.m. until 9 a.m. on Wednesday, 29 January 2020.