



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*  
(OFFICIAL REPORT—*Unrevised*)

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## SEANAD ÉIREANN

*Dé Máirt, 12 Feabhra 2019*

*Tuesday, 12 February 2019*

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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### Gnó an tSeanaid - Business of Seanad

**An Cathaoirleach:** I have received notice from Senator Martin Conway that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Education and Skills to outline why a national school, details supplied, in County Clare is unable to avail of broadband which is critical for the school and particularly critical for a visually impaired student to access vital classroom equipment to overcome his disability.

I have also received notice from Senator Lorraine Clifford-Lee of the following matter:

The need for the Minister for Justice and Equality to provide an update on the proposed reopening of Rush Garda station.

I have also received notice from Senator Fintan Warfield of the following matter:

The need for the Minister for Foreign Affairs and Trade to make a statement on the difficulties Irish-registered parents in same-sex marriages abroad are experiencing in obtaining Irish passports for their children.

I have also received notice from Senator Kevin Humphreys of the following matter:

The need for the Minister for Housing, Planning and Local Government to outline the progress being made on delivery of Part V housing in the dockland areas in Dublin.

I have also received notice from Senator Colm Burke of the following matter:

The need for the Minister of State with responsibility for the Office of Public Works and flood relief to outline the number of vacant residential properties which are owned by the OPW and the proposals he has to bring same into use.

I have also received notice from Senator Michelle Mulherin of the following matter:

The need for the Minister for Business, Enterprise and Innovation to make a statement on the efforts of IDA Ireland to deliver foreign direct investment and jobs to north and east Mayo, including the construction of an advanced technology building in Ballina.

I have also received notice from Senator Neale Richmond of the following matter:

The need for the Minister for Children and Youth Affairs to provide an update on the planned nationwide roll-out of baby boxes.

I have also received notice from Senator Brian Ó Domhnaill of the following matter:

The need for the Minister for Finance to undertake a review of the criteria surrounding eligibility for a primary medical certificate.

I have also received notice from Senator Jennifer Murnane O'Connor of the following matter:

The need for the Minister of Transport, Tourism and Sport to make a statement on the lack of public transport infrastructure for patients in Carlow travelling to Kilkenny hospital.

Of the matters raised by the Senators suitable for discussion, I have selected those raised by Senators Conway, Clifford-Lee, Warfield and Humphreys and they will be taken now. I regret that I had to rule out of order the matter raised by Senator Murnane O'Connor on the ground that the Minister has no official responsibility in the matter. The other Senators may give notice on another day of the matters they wish to raise.

I welcome the Minister for Education and Skills who is here to respond to the first matter, which is from Senator Martin Conway. The Senator is obliged to be here to raise his issue but he is not here yet. The train is about to leave the station and he will be left behind.

## **Nithe i dtosach suíonna - Commencement Matters**

### **Broadband Service Provision**

**Senator Martin Conway:** I welcome the Minister to the House. It is always great when a senior Minister comes in to deal with this type of very serious issue. I do not want to give its name, but a small school in west Clare has a student who is visually impaired. A vital piece of equipment has been purchased between the school and the parents of the child, in order for him to access vital statistics from the whiteboard and to be able to operate on a level playing pitch with the other boys and girls in the school. This piece of equipment costs in the region of €4,000 to €5,000 and is available for the young person so he can progress with his learning.

We all want to see young people, whether they have disabilities or are able bodied, being able to go to integrated schools and benefit from the wonderful environment of a small rural school. However, this piece of equipment which cost so much money is rendered inoperable because there is no broadband. The broadband in the school is not at a suitable standard for this piece of equipment to work.

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I have liaised with the broadband officer in Clare County Council, who has been out to the school, tested the lines and determined that the speed is totally inadequate to operate any kind of equipment, not to mention this particular piece of equipment. The nearest Eir connection is over 1 km away from the school.

I am raising this matter on the Commencement of the House today because I do not know what else to do. It is grossly unfair that a school in rural Ireland would not have broadband in the first instance. While I understand there are a number of schools in this situation, and something was done for many of them, there are some exceptional cases such as this where nothing is happening. What compounds the situation and makes it all the more urgent is the fact that there is a student whose parents want him to learn, yet who cannot learn because of his disability and because the equipment provided to him is rendered inoperable by the lack of broadband.

**Minister for Education and Skills (Deputy Joe McHugh):** Gabhaim buíochas leis an Seana-dóir fáchoinne an cheist thábhachtach seo. I welcome the opportunity to provide an update on the status of broadband services in schools. The delivery of high quality Internet connectivity for all schools is a key objective of my Department. It is accepted that good connectivity is essential to ensure that schools can progress the embedding of digital technologies in teaching and learning and facilitate the implementation of new and revised curriculums. An inter-departmental group involving my Department and officials from the Department of Communications, Climate Action and Environment is working to determine how best to address high-speed broadband connectivity to all primary schools. This group will take account of developments in the Government's national broadband plan and its associated intervention strategy, which targets areas for the State intervention element of the national broadband plan.

Broadband capacity can vary due to geographical location and local available infrastructure, which can impact on the level of service that can be provided. The policy of my Department is to offer the best quality connectivity to all schools in line with the technical solutions available in the school location. In terms of the broadband services in the school referred to by the Senator, it should be noted that the school is located in the national broadband plan intervention area and services in this area are targeted under the national broadband plan. This school currently has a service which provides broadband speeds of up to 3 Mbps on a DSL line. In an effort to improve services to the school, it was recently the subject of a broadband mini-competition organised by the Department. The provision of service to the school has been awarded to a wireless service provider, which will deliver upgraded speeds of 17 Mbps. The provider is currently working with the school to arrange installation and to deliver this improved service to the school.

To assist children with particular educational needs, the Department operates a scheme of grants towards the purpose of essential assistive technology. Equipment under the scheme is provided for children with more complex disabilities who, in order to access the school curriculum, require essential specialist equipment. Funding was provided under this scheme to the school in the case referred to by the Senator. It should be noted that the equipment provided does not require an ongoing broadband connection to facilitate access to the curriculum. If the school has concerns or needs advice, it may consult the visiting teacher service of the NCSE, which will be able to assist.

Under the current schools broadband programme, the Department's practice is to review constantly the availability of broadband with the aim of improving services to all primary schools as broadband connectivity improves throughout the country.

**Senator Martin Conway:** I thank the Minister. It is certainly news to me that an organisation is engaging with the school because I understood that was not the case. Perhaps it has started engaging in recent days. When the IT section of Clare County Council tested the lines going into the school, it found that the speed was just 1 Mbps, which is very poor. I would appreciate it if the Minister could use his good offices to double-check with the provider, come back to my office with an update on the situation and, most important, provide a timeline for when this equipment will be operable.

**Deputy Joe McHugh:** That is a reasonable request. With regard to whatever information is available to me, I will certainly ensure the Senator will be able to connect with the school and, hopefully, with the contractor who has won the tender for the wireless option. Wireless has been a solution for rural Ireland for many years. It is not the preferred solution if one is trying to get up to 1,000 Mbps. A similar scheme has been announced by SIRO in the larger towns. Ennis in County Clare might have been covered by that. There are other options through Eir and through copper connectivity. The focus in the short to medium term - not the medium to long term - has to be on the national broadband plan. The schools that are not getting broadband at the moment will be covered by that. It is important. I appreciate the Senator's decision to raise this matter. It is about equality of access. People cannot be discriminated against just because of geography. That is the reason I wanted to come to the House. If there is anything the officials in the Department of Education and Skills can do to expedite this, I will be happy to ensure it is done. Gabhaim buíochas arís leis an Seanadóir fá choinne an cheist seo a ardú. Beidh mé sásta na sonraí ó mo chuid oifigigh a chur in iúl don Seanadóir. Beidh mé i dteagmháil leis.

**Senator Martin Conway:** Go raibh maith agat.

## **Garda Stations**

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister of State, Deputy Stanton, back to the House.

**Senator Lorraine Clifford-Lee:** I thank the Minister of State for coming to the House to debate this important issue. I am looking for an update on the reopening of Rush Garda station. Rush station was one of the six Garda stations that were announced in November 2017 to be reopened as part of a pilot project. That was November 2017 and now we are in February 2019 and I am looking for an update. The people of Rush were delighted when it was announced they would get their Garda station back. They severely felt the loss of the Garda station and the diminishing of the Garda numbers in north County Dublin.

In case the Minister of State does not know, Rush is a small coastal town in north County Dublin with a population of some 10,000. It has grown rapidly in recent years and that growth is set to continue. Like all of north County Dublin, the population is exploding there, but we have seen a 20% decline in Garda numbers in the area. This particular Garda station was closed back in 2012. The people in Rush are very anxious about their personal security and the security within the town. We were very happy when this reopening was announced. I would like an update on what stage it is at. The last time I raised this issue was in May 2018 and at that point there was a discussion between the OPW and An Garda Síochána with regard to an assessment of needs. I was informed that this assessment was nearing an end. I would appreciate if the Minister of State could give us an update and, as far as possible, a timeline for when we could see Rush Garda station open.

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**Minister of State at the Department of Justice and Equality (Deputy David Stanton):** I acknowledge the serious interest taken by the Senator in this matter. I know that she is speaking about a very nice part of north County Dublin. I compliment the Senator on her work for the people there. The Minister, Deputy Flanagan, sends his regrets as he cannot be here today due to other commitments.

**Acting Chairman (Senator Gerry Horkan):** I believe we will see him later.

**Deputy David Stanton:** I am sure you will.

The Senator will be aware that A Programme for a Partnership Government commits to a pilot scheme to reopen six Garda stations, urban and rural, to determine the possible positive impacts that such openings would have on criminal activity, with special emphasis on burglaries, thefts and public order. The Garda Commissioner's final report, which is available on my Department's website, recommends that Rush Garda station be reopened along with the following stations: Ballinspittle, County Cork; Bawnboy, County Cavan; Leighlinbridge, County Carlow; Donard, County Wicklow; and Stepside, County Dublin.

It is important to recognise that the programme of replacement and refurbishment of Garda accommodation is progressed by the Garda authorities working in close co-operation with the Office of Public Works. The OPW has the responsibility for the provision and maintenance of Garda accommodation. The Minister for Justice and Equality has no direct role in these matters, as the Senator will appreciate. The Minister has been informed, however, that at the outset of the pilot reopening process the Garda authorities provided a brief of requirements to the OPW on the reopening of each of these six Garda stations and requested that the OPW carry out technical surveys to determine the works necessary to enable the stations to reopen.

The Senator is aware that following the consideration of the OPW technical surveys of each of the six stations, the Commissioner identified the organisation's preferred way forward bearing in mind operational needs, costs, timeframe for delivery and other factors. Engagement between the OPW and An Garda Síochána has continued, providing further necessary detail to allow the pilot programme of reopenings to proceed to the next stage of implementation.

As the works required at each station are different it can be expected that the six stations will be reopened at different times. The Department has been informed that the necessary works were completed at Donard station in December 2018 and the station has now been handed over to An Garda Síochána by the OPW.

Finalisation of design planning, where required, and the procurement for works at each of the five remaining stations included in the pilot programme are at different stages but are being processed by the OPW in conjunction with An Garda Síochána in line with all applicable processes and procedures. In advance of today's debate the Minister requested an update from the OPW and the Garda authorities specifically on progress on Rush Garda station. From the OPW we understand that a revised brief of requirements regarding Rush station was received from An Garda Síochána in August 2018. We are informed that the OPW prepared and submitted a proposed plan to the Garda authorities for review and that a final design plan was agreed and signed off in December 2018. We are informed that the OPW is currently preparing tender documents to procure the required works at Rush station via the OPW measured term maintenance contract. Some interim minor maintenance works such as clearing pathways and so on will be carried out by the OPW regional office in advance of those works. The OPW has said it

expects works to be complete and the Rush station to be handed over to An Garda Síochána by this year, summer 2019. After the handover of the building the exact date of reopening of the station will be an operational matter for An Garda Síochána. I assure the Senator that implementation of a pilot Garda station reopening project and reopening of all relevant stations will be pursued as a priority. The Office of Public Works expects that work will be completed in all remaining stations this year. I hope that is useful to the Senator.

**Senator Lorraine Clifford-Lee:** I thank the Minister of State for his comprehensive answer. It is great that the project is progressing at this rate. I am pleased the Minister of State has given a final date of summer 2019. I have tried to pin down the Minister on several occasions. Obviously, things were progressing. It is good the Department is moving towards the final point in this and I note the tender documents are being prepared. It would be assumed that relatively minor works remain to be done on the Garda station if the Minister of State envisages the handover taking place this summer. I hope that An Garda Síochána can staff the station at that stage. I will make a request to the Minister to provide extra Garda resources for north County Dublin, including extra Garda cars and the other resources that the Garda needs. There is no point having the Garda station reopened if there are not enough resources in place. I thank the Minister of State for the update. I appreciate it.

**Deputy David Stanton:** I compliment the Senator on her interest in pursuing this important matter and I thank her for raising it. Again, I assure her of the Government's commitment to the pilot Garda station reopening scheme, which is intended to determine possible positive impacts that such openings would have on criminal activity. That is the reason it is going ahead.

As I have said, An Garda Síochána and the OPW are working closely together to allow for the reopening of the stations concerned, including the station in Rush. I have heard the Senator's views and I reassure her that the OPW and Garda authorities are working closely together to allow for the reopening of each of the six stations. The station in Donard has been completed and has been handed over and the others will hopefully be completed this year as well.

It is not possible for me to say at this stage when exactly Rush Garda station will reopen because that is a matter for the Garda Commissioner. I am informed by the OPW that the necessary remedial works will be completed by the summer of this year. Staffing and other resources are matters for the Commissioner and the Minister has no direct role in directing that, as such. The exact opening date is an operational matter for An Garda Síochána. I thank the Senator for her interest and for raising this matter.

### **Passport Applications**

**Acting Chairman (Senator Gerry Horkan):** I welcome the Minister of State at the Department of Foreign Affairs and Trade, Deputy McEntee.

**Senator Fintan Warfield:** I thank the Cathaoirleach for selecting this Commencement matter. I was contacted recently by an Irish woman whose British wife recently gave birth to their son, who was conceived through assisted human reproduction methods. They are both legally recognised as parents in Britain on all statutory documents, including the birth certificate. However, when the Irish mother, who is the non-biological mother, wished to apply for an Irish passport for her child, she was told that she was not recognised as a mother under law and, therefore, was not entitled to apply for an Irish passport for her child.

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The reply from the Department to a recent parliamentary question that I submitted through Deputy Crowe confirmed the position and stated that, for the purposes of Irish law and with specific reference to the Irish Nationality and Citizenship Act 1956, a parent is understood to mean either the mother or father of the child. It further stated that for the purposes of Irish law the mother of a child is the person who gives birth to the child or a female adopter of the child. What this means in reality is that same-sex parents are excluded. These parents frequently rely on assisted human reproduction methods to conceive. Parents who are legally recognised and hold Irish citizenship cannot extend their citizenship rights in the same manner as everyone else. This is clear discrimination and a very real denial of rights and would certainly not withstand legal challenge.

It bears some resemblance to the time when we did not have marriage equality, before we held the referendum on civil marriage equality, and the relationship of couples who had been married elsewhere was relegated to a civil partnership in this State. As the Minister of State knows, the Zappone and Gilligan case was an example of that. The referendum that followed brought with it very hurtful conversations on the validity of same-sex parent-led families, when posters stating “Every child deserves a mother and a father” were put up around the State. The people’s vote said that there is no single proposition for a family in Ireland, only diversity.

We urgently need relevant legislation to catch up and it is unacceptable that a passport form in this day and age would ask for a mother and a father and exclude same-sex parents. There is also an unprecedented demand for Irish passports so we have to ensure that our passport laws are robust and that we are not leaving anyone behind. Does the Minister of State agree that the Act needs to be updated and will the Government bring forward such legislation in this term?

**Minister of State at the Department of Foreign Affairs and Trade (Deputy Helen McEntee):** I thank the Senator for raising what is a very important issue. While much of my response is quite technical in outlining the situation as it stands, the Senator has brought it back to what it should be about, namely, families, children and their parents. While he, I and many others would recognise both people in the example he gave as parents, the letter of the law says otherwise. We have to work to bring about change, as we have done in the past and as the Senator outlined.

All passports are issued in accordance with the provisions of the Passports Act 2008, as amended. Pursuant to section 7 of the Act, a passport cannot be issued unless the Minister is satisfied that the person is an Irish citizen and as to the identity of the person. Citizenship is governed by the Irish Nationality and Citizenship Act 1956, as amended, which is under the responsibility of the Minister for Justice and Equality. Legislative measures relating to citizenship do not fall within the remit of the Department of Foreign Affairs and Trade. I will therefore confine my remarks to an explanation of the current citizenship legislation under which the Department of Foreign Affairs and Trade operates. I will also explain the current legislative situation relating to guardianship of children.

The Department, specifically the passport service, is tasked with processing passport applications in line with the requirements of the Passports Act. The passport service has received several applications from same-sex married couples seeking to obtain Irish passports for their children born abroad and, in giving due consideration to these applications, has rightly raised a number of issues relating to both citizenship and guardianship with the relevant Departments and the Office of the Attorney General.

I would like to set out the current legislation on citizenship. Section 7 of the Irish Nationality and Citizenship Act 1956, as amended, addresses citizenship by descent and provides that a person is an Irish citizen from birth if at the time of his or her birth either parent was an Irish citizen, although an additional requirement of registration is imposed in respect of children born outside the island of Ireland where the Irish citizen parent was also born outside the island of Ireland.

For the purposes of the 1956 Act, a parent is understood to mean either the “mother” or “father” of the child. For the purpose of Irish law, the mother of a child is the person who gives birth to the child or a female adopter of a child. In general, the “father” is the person identified as the genetic father of the child or a male adopter.

The passport service has received passport applications for children born outside the State to same-sex couples where one member of the couple is an Irish citizen and the other is not. Following consideration of the 1956 Act, the passport service understands that, under the current legislation, where the Irish citizen is neither the birth mother nor the genetic father or neither the male nor female adopter of the child, the child does not qualify for Irish citizenship by descent. The passport service sought and received advice on its understanding of the 1956 Act from the Office of the Attorney General.

While the passport service’s understanding was confirmed, the Office of the Attorney General was of the view that further confirmation from the Department of Justice and Equality was required.

*3 o’clock*

The passport service has sought clarification from the Department of Justice and Equality on this and many other related matters, including the effect on citizenship of Parts 2 and 3 of the Children and Family Relationships Act 2015, once commenced by the Minister for Health.

I would like to outline the current legal status and position on guardianship. There are particular provisions in the Passport Act dealing with applications for children. Under the terms of the Act, the passport service requires the consent of a guardian or guardians before issuing a passport for a child under the age of 18 years, subject to very limited exceptions. Section 14(1) of the Act provides, “The Minister shall, before issuing a passport to a child, be satisfied on reasonable grounds that where a child has two guardians, each guardian of the child, and where a child has two or more guardians, at least two of those, consent to the issuing of a passport for the child”. In line with section 2 of the Act, “guardianship” is a term with a defined legal meaning. For the purposes of that section, “a guardian” means a person who, first, is a guardian of the child pursuant to the Guardianship of Infants Act 1964 and, second, is appointed to be a guardian by either the child, deed, or will or order of court in the State and has not been removed from that office. In cases where a child has only one guardian within the meaning of the legislation, the guardian is required to complete a sole guardian affidavit to confirm that there is no other person to confirm that no other person holds guardianship rights in respect of the child applying for a passport. This is necessary in order to verify that the requirements for guardian consent have been satisfied. It is my understanding the Minister for Health has recently met civil society representative groups from the LGBTI community to discuss a range of issues, including the rights of same-sex couples and their children. I will bring this debate to the attention of the Minister, the Minister for Justice and Equality and my colleague, the Tánaiste, Deputy Coveney. This is an issue we need to address and it is an area in which I would like to

see further progression.

**Senator Fintan Warfield:** I hope the Minister of State will appreciate that she has provided a lot of information and that I will not be able to extract the key points in just one minute.

**Acting Chairman (Senator Gerry Horkan):** I might give the Senator some latitude.

**Senator Fintan Warfield:** People have a reasonable expectation, after the big national conversation we had on foot of the referendum, that relevant obstacles will be dealt with. This does not affect a huge number of people, but there is an expectation that the obstacles will be removed. Often, when working on LGBT rights, people are surprised because we have had that national conversation to hear that certain issues have not been sorted out or dealt with. However, these issues still arise; this is not the only such circumstance. Legislation only allows mothers to avail of adoptive leave; therefore, two men who adopt do not have shared or equal adoptive leave entitlements. This is but one of many issues which include the Children and Family Relationships Act. I will keep in touch with the Minister of State and her office and appreciate her response.

**Deputy Helen McEntee:** There have been recent discussions on this matter which do not just follow on from the Attorney General's request for further clarification from the Department. There have been other legislative developments, led by the Department of Justice and Equality, the Department of Health and the Department of Employment Affairs and Social Protection which will I hope have a positive impact in this area in dealing with some of the concerns that have been raised. Most importantly, there must be continued engagement with civil society groups on the issues faced by same-sex couples to try to address some of the outstanding issues raised by the Senator. I am happy to engage with my colleagues and, on a personal level, with the Senator to progress them further.

### **Housing Provision**

**Senator Kevin Humphreys:** Last Saturday I marched with the communities of Sandymount, Ringsend and Irishtown on Pearse Street because of the fear of the loss of social and affordable units within them. Last week there was an announcement that the 40 housing units to be provided in the South Lotts Road area, which is in a strategic development zone, SDZ, were to be provided instead in Rialto. The units were to be part of the community gain from the SDZ covered under Part V of the legislation. Following on from the media coverage of the issue, it was announced by senior officials at Dublin City Council that there would be no social housing in Dublin 2, Dublin 4 or Dublin 6 without a special case being made for it. Another senior official said there would be no affordable housing in Dublin 2, Dublin 4 or Dublin 6. The best they can expect is to build them out in the suburbs. This has led to fears, which I can understand, that the 350 social units promised for the strategic development zone in Poolbeg West will not be delivered, never mind the 550 affordable and affordable rental homes promised by the then Minister, Deputy Coveney.

The deposits have been paid on the sites in the strategic development zone, SDZ, in Poolbeg West and on the Poolbeg Peninsula. Some €30 million has been set aside for a bridge over the River Dodder to give access to the Poolbeg West development site. The taxpayers paid for the decontamination of the site and there is a blank cheque from the Department for the plinth that has to be put in place but which is, so far, uncosted.

It is unacceptable for senior city council officials to say there will be no social or affordable housing in these areas and to be left unchallenged by the Department. The previous Minister, Deputy Coveney, gave a firm commitment to the delivery of 900 units and this is written into the strategic development zone plan that is before An Bord Pleanála at the moment. Fine Gael has been saying that the housing crisis can only be solved by delivery but we know there is a strong lobby for going higher. I do not necessarily have a problem with height or density but there are three strategic development zones in the Docklands - the North Lotts, the South Lotts and Poolbeg West. There is speculation that building on the North Lotts will go higher. The Minister needs to take note of the fact that strategic development zones have clear objectives and integrated planning schemes. If one goes higher in one location one has to do the same for all developments in that location and if one increases commercial development, one also has to increase residential, and *vice versa*. With the height strategy outlined by the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, the Government is running the risk of undermining the three strategic development zones. The outcome will be that over 5,000 units in this city will be delayed.

I am not sure if the Government has the competence to manage this issue. All I see in the attempts to increase the supply of housing is mistake after mistake. There have been three delays in supply, all caused by the Department of Housing, Planning and Local Government. These were the change in apartment sizes, the change in car parking spaces and the change relating to the height strategy. All led to further planning applications, even though developments of over 100 units can go straight to An Bord Pleanála. There has been delay after delay with applications being withdrawn.

**Minister of State at the Department of Housing, Planning and Local Government (Deputy Damien English):** I will try to deal with the question that was asked, as well as the ten other questions that were added in during the Senator's contribution.

**Senator Kevin Humphreys:** They are related issues.

**Deputy Damien English:** My role regarding Part V of the Planning and Development Act 2000 is to provide the policy and legislative framework, while the day-to-day administration and operation of Part V are a matter for the local authorities. Senator Humphreys will, no doubt, be aware that following an independent review of Part V, completed in 2014, which included a detailed and lengthy consultation process and which took into account the general housing market trends at that time, the requirement was reduced from 20% to 10%, effective from 1 September 2015. My Department subsequently issued statutory guidelines to local authorities on the amended Part V rules. These guidelines recommended that the acquisition of units on the development site be the preferred option for local authorities. However, each local authority must make sure its Part V agreements constitute the best use of financial resources available and that unit sizes meet social housing requirements.

My Department considers all requests from local authorities for sanction for funding of the acquisition of units under Part V in light of construction costs in the area, and also one of the key aims of Part V, general social integration, which is very important.

Senators will know that Part V is just one constituent part of the significant efforts being made by this Government to deliver the social housing supports that Ireland needs in the coming years. These efforts are backed up by an unprecedented level of investment under the Rebuilding Ireland action plan. More than €6 billion of taxpayers' money will be spent during

the lifetime of that plan delivering in excess of 50,000 social housing homes, as well as many more supports through the private rental market. Part V homes are expected to deliver just under 5,000 of the overall total and as the construction sector recovers and delivery increases, so too does our dividend in terms of Part V. It is encouraging to see their numbers increase year on year because they not only deliver additional stock but make a vital contribution, as I mentioned, in terms of promoting social integration and developing more positive sustainable communities - a benefit to all of Irish society. I know Senator Humphreys agrees with that. That is probably part of what the debate on this Commencement matter is about, namely, to ensure that we still achieve that.

We are very much about delivering the social housing we need as a nation. We are also very well aware of the need to build those sustainable mixed tenure communities all over Ireland. In general, this approach works well across the country. Unfortunately there are occasions when our two key objectives of increased delivery and social integration can come into some conflict. When this happens we must be pragmatic, constructive and seek to strike the right balance. Such a scenario tends to happen in what might be termed more “high-end” developments.

As to areas such as the Dublin Docklands, all options for the delivery of Part V homes are explored, including the most cost-effective way of delivering much-needed social housing units in these specific electoral areas. Alternatives can, if required, be explored, particularly off-site development nearby which delivers more homes for the same price. In other words, there is the option in some scenarios for some land swaps or for some land to be given in terms of housing. My Department is committed to working with the council to help find that balance and to deliver solutions that increase our social housing stock in the places where they are needed but at a price that is acceptable to the Exchequer. That is a decision that has to be made locally as we tease through the different sites.

On the Deputy’s attempt to suggest that changes we have made with respect to apartment sizes, car parking spaces, and height strategy are delaying matters, we have to make necessary changes to effect the overall supply of housing now and well into the future. We have the Re-building Ireland document, which is a strategy for social housing and housing in general. We are reaching all the targets set in terms of what we want to deliver, both in the private sector and the public sector. We are bang on target right across the board. The Central Statistics Office figures confirmed that last week.

Furthermore, the changes we have made might in some cases on different sites generate new applications, but it has been confirmed that the overall supply of housing is up by 25%. Commencement notices are up by more than 50%. With respect to some sites, there will be chop and change but the overall delivery is up and the trend is positive.

We believe the changes we have made regarding the height strategy, car parking spaces and so on will increase the supply and mix of housing coming onstream which we badly need. Those are changes that were probably put off for many years by previous Governments but we have made them now and I have no doubt they will effect supply in a positive way in the future. One can select one or two sites and argue over them but we have had to make decisions in the round to increase the supply of housing well into the future.

**Senator Kevin Humphreys:** The Minister of State clearly knows what I have said to him. Council officials have probably blown the whistle on him if they are saying there will be no social or affordable housing in the areas of Dublin 2, 4 and 6. They are already implementing that

policy. The Minister of State mentioned provision in an off-site development nearby. That is not what happened in the South Lotts strategic development zone. The units are being provided in Rialto, a different housing area, more than 3 km away. Therefore, the Minister of State, with respect to any of the answers he has given, has not satisfied my concerns. He has confirmed that the community's fears in this respect are real. The 350 social units on the Poolbeg West site are now in danger. The Minister of State's commitment to the 550 social and affordable units is now questionable.

I have asked the Minister of State for clear answers but he has not given any. He has avoided a straight answer. I will give him a clear warning. If there are changes in the strategic development zones, that may very well undermine all the strategic development zones not only in Dublin but across the country and cause a further worsening of the housing crisis. The Minister of State and the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, are in charge of housing and have a responsibility to deliver on the objectives of the SDZ, but they are not doing so. They have allowed the officials in Dublin City Council to choose not a nearby off-site location but a distant off-site location. This is not acceptable to the communities of Ringsend, Irishtown and Pearse Street and the Government must pull its socks up and start to deliver on the objectives of the SDZ and under Part V which clearly states there can be an off-site allocation but that it must be nearby. That is not happening in the city and it is not the intention of the Department's officials for it to happen in the city. The Government needs to wake up and smell the roses.

**Deputy Damien English:** On the Dublin docklands and Part V, the cost of purchasing units in the docklands area can often far exceed the cost ceilings we try to maintain. In some cases, land and development costs are extremely high, the units have a high specification or there are high management fees for services such as a concierge, gyms and so on beyond what the Department generally funds through the local authorities. In some cases, the purchase would not be deemed to be value for money, leading the city council to determine that off-site provision be considered to comply with Part V. For example, it determined that on-site affordability was not possible at the Capital Dock development and procured the Part V units off-site in Rialto.

**Senator Kevin Humphreys:** Rialto is not nearby.

**Deputy Damien English:** There is another development under consideration by the city council, namely, the Landings as part of Project Wave, which will deliver 30 units on-site. The cost of these units will also be high, at more than €400,000 per unit, but the council considers them to be good value for money compared to the estimated cost of sourcing and possibly upgrading on-site units. While the Department has asked the council to consider alternative options for the delivery of the Part V portion of the development, the council is preparing a submission to the Department which will restate the suitability and affordability of the on-site units. The council is, therefore, making a case.

I stress that in the case of Part V projects and certain areas of high pressure, site by site decisions must be made in conjunction with the local authorities and the Department. Dublin City Council has eight active developments in the docklands area to which Part V applies and we are working through them. Three of the developments have received planning permission, while the city council has made contact with the other developers. In general, for Part V projects, delivery is agreed at commencement stage of the planning application. It is not the case that we are making only general comments. The Senator is perhaps trying to make a different argument. We must work through each site, which is what we are trying to do as well as we can.

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**Senator Kevin Humphreys:** There are 1,720 planning applications, but there have been only 26 deliveries-----

**Acting Chairman (Senator Gerry Horkan):** The Senator does not have an opportunity to respond.

*Sitting suspended at 3.20 p.m. and resumed at 3.35 p.m.*

### **An tOrd Gnó - Order of Business**

**Senator Jerry Buttimer:** The Order of Business is No. 1, Judicial Appointments Commission Bill 2017 - Committee Stage, resumed, to be taken at 5.15 p.m. and to adjourn at 7 p.m. if not previously concluded; and No. 2, Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018 - Second Stage, to be taken at 7 p.m., with the contributions of group spokespersons not to exceed ten minutes and those of all other Senators not to exceed six minutes.

**An Cathaoirleach:** I call Senator Ardagh.

**Senator Diarmuid Wilson:** Senator Clifford-Lee.

**Senator Lorraine Clifford-Lee:** Senator Ardagh is not present today, so it is me.

**An Cathaoirleach:** Senator Clifford-Lee is very welcome. I should have been more observant. I apologise.

**Senator Lorraine Clifford-Lee:** No bother. I forgive you. I continue to raise the concerns about the national children's hospital. I was once again out and about in north County Dublin knocking on doors and it was again the main topic of conversation. Everyone wanted to talk about the massive overruns. There is now a shift in focus from the massive overruns to where we are going to get the money to plug the gap. We learn that €100 million is to be taken out of capital expenditure this year alone. This sum must be found to plug this outrageous gap due to the overspend on the national children's hospital. I therefore continue the call of my colleague, Senator Ardagh, last week that we get the Minister for Health into the Chamber as soon as possible this week to talk about the overruns at the children's hospital and specifically to outline where the cuts will come.

We have learnt through the media that €100 million is what must come out of the capital budget this year but, astonishingly, €30 million must come out of the transport budget, with all the other Departments contributing approximately €3 million each. It is astonishing that the Department of Transport, Tourism and Sport must plug the gap in the Department of Health's expenditure. As well as the Minister for Health, I would like the Minister for Transport, Tourism and Sport to come to the House because we want to learn what transport projects will be cut. We have-----

**Senator David Norris:** Stepside Garda station.

**Senator Lorraine Clifford-Lee:** Perhaps one of the reasons €30 million is coming from the transport budget is that the Minister's focus is elsewhere. We will be back debating the Judicial Appointments Commission Bill following the Order of Business. He is concerning

himself with judicial appointments and the reopening of Garda stations and taking his eye off the ball. A total of 30% of this year's overrun must be borne by the Department of Transport, Tourism and Sport. What transport infrastructure project will bear the brunt of this? Will Bus-Connects be rolled out? Will we have the greenways that have been promised? What about the carriages for the northern commuter line? I face into packed carriages when I get on the train in the morning in Donabate, as do all my constituents. Will we see this resolved? We need the Minister for Transport, Tourism and Sport to come to the House. Will this create a precedent for following years? We know the gap will have to be plugged in the coming years. Will the Department of Transport, Tourism and Sport have to plug the gap? I could go on and on about the failings of the Minister in that Department. This is an important issue, particularly in north County Dublin, which has the fastest growing population in the country and where the transport infrastructure does not cater for the needs of the people living there currently or who will live there in future. The Department of Transport, Tourism and Sport must plug the gap caused by the Department of Health. The Ministers for Health and Transport, Tourism and Sport need to come to the Chamber to answer our pressing questions on this.

**An Cathaoirleach:** I welcome Valerie and Martin Hurley, neighbours of mine from west Cork, to the Public Gallery. Martin is celebrating his 50th birthday. They are accompanied by Deputy Murphy O'Mahony. I hope they have a lovely day and that Martin has a great 50th birthday.

**Senator David Norris:** Hear, hear.

**Senator Gerard P. Craughwell:** I want to address the issue of the national children's hospital and other associated matters. I have also been addressed and spoken to by members of the public about the waste of parliamentary time in calling for Ministers' heads every time something goes wrong.

**Senator David Norris:** Exactly.

**Senator Gerard P. Craughwell:** What changed in the Department of Justice and Equality when Deputy Frances Fitzgerald's head was taken? What changed when Deputy Denis Naughten's head was taken? What changes in any Department when a head is taken? The same people are left behind doing the same job they always did. I have spoken previously about how the Carltona doctrine protects those who are behind Ministers. If the Minister, Deputy Harris, had been watching the children's hospital all day every day and was not watching the nurses, people would have said we needed his head because he had not been watching the nurses. That would mean he must divide his time between the nurses and the hospital but what about the GPs? This bloody nonsense has to stop. It is debasing politics and both Houses of the Oireachtas.

The Minister for Transport, Tourism and Sport has been mentioned with regard to the Judicial Appointments Commission Bill. There have been 86 hours of debate so far.

**Senator David Norris:** More.

**Senator Gerard P. Craughwell:** Half of the Government has no faith whatsoever in the Bill. The bottom line on it is another little deal was done.

**Senator Jerry Buttimer:** Senator-----

**Senator Gerard P. Craughwell:** I am sorry but I am trying to get something across.

**An Cathaoirleach:** Senator Craughwell is almost succeeding. He should continue.

**Senator Gerard P. Craughwell:** Members of the public are entitled to fair representation in the House and we have had the nonsense for 86 hours. Now, I am told the Leader is to step up debate on the Bill to two days a week but for what? Why are we doing this? Half of the Leader's party does not believe the Bill is worthy.

**Senator Jerry Buttimer:** Does Senator Craughwell have Senator McDowell's single transferable script?

**Senator Gerard P. Craughwell:** If the Leader wants to play that old game, we can play it. The bottom line is if the Government was honest-----

**Senator David Norris:** Please observe the dignity of the House.

**An Cathaoirleach:** Through the Chair.

**Senator Gerard P. Craughwell:** -----it would pull the Bill and let us get back to proper parliamentary work. We have had 86 hours of debate for what? The chances are when the Bill is eventually dragged through the House, the President will send it to the Supreme Court and it will be struck down because it is unconstitutional anyway.

**Senator David Norris:** And the Minister knows it is not constitutional.

**An Cathaoirleach:** Please, this is-----

**Senator Jerry Buttimer:** It is a pity Senator Craughwell is not the President.

**Senator Gerard P. Craughwell:** I did try.

**Senator Jerry Buttimer:** He had the chance.

**Senator Gerard P. Craughwell:** I did not get the Leader's backing.

**An Cathaoirleach:** Please.

**Senator Jerry Buttimer:** The white flag was raised before the off.

**An Cathaoirleach:** This is not the Supreme Court so-----

**Senator Gerard P. Craughwell:** Among ourselves, we need to find time to decide where we should debate and what we should debate. However, it is a nonsense to call for a Minister's head every time there is a little glitch outside the door. What happens? The same people stay in place and the same things go on. Perhaps the €30 million is being taken from the Department of Transport, Tourism and Sport as the *quid pro quo* for the Judicial Appointments Commission Bill. I do not know. We need to stop this.

**Senator Alice-Mary Higgins:** Today, our MEPs will vote on an EU-Singapore trade agreement and the associated EU-Singapore investment protection agreement. I raise this issue because the House voted to express concern about the prospect of an investor court system that would allow corporations to sue states for lost future profits when new regulations are introduced by elected representatives in response to the needs of the electorate. There would be what has been termed a significant chilling effect on our ability to pursue good policy, respond politically and regulate. With these courts comes the risk that any new regulatory decision could

be a hostage to fortune because a blank cheque had effectively been given to any corporation looking for lost future profits, which is a wide scope. The House debated the matter at length. It is unfortunate that problematic elements in the Transatlantic Trade and Investment Partnership, TTIP, and the EU-Canada Comprehensive Economic and Trade Agreement, CETA, are raising their head again in the EU-Singapore investment treaty. I have urged our MEPs to vote “No” because we can have a better kind of trade deal. We all want trade, but it has to work for citizens as well as corporations.

The House will hold further debates on the issue, as we cannot afford to introduce such courts, particularly in light of our climate change commitments. The idea that strengthening those commitments would come with a “hostage to fortune” cost is in conflict with our international obligations. Of particular concern is that the EU-Singapore treaty also asserts the right to overturn local government decisions. I say this on a day when Dublin City Council produced a climate change action plan for Dublin, for which I applaud it, that is more ambitious than the Government’s action plan for the State. Dynamic actions are being taken on issues like climate change at local level, but these new treaties would not only lead to challenges to the State, but also to local authorities, and would have a chilling effect on them and stop them taking proactive actions.

I wish to make a specific request. I thank the Leader for arranging improved debates on climate change in recent weeks, with witnesses appearing before us. However, there is a linked, but different, crisis. Will the Minister for Communications, Climate Action and Environment address the House on the ecological crisis? Certain areas are seeing a 60% extinction level and there are reports of a 40% decline in the number of insects, something that has been called a catastrophic collapse. At the beginning of our term in the Seanad, we debated the pollinator plan, our hedgerows, and the importance of insect life and green corridors. These issues are linked to, but distinct from, climate change. Will the Leader arrange a specific debate on this matter and will he pass my request on to the Minister?

**Senator Rose Conway-Walsh:** I pay tribute to the determination and dignity of the nurses. Union members are yet to be balloted and will reach their own decisions around what is on the table for them, but regardless of the outcome, they have done a great public service by highlighting a problem that would only have worsened with time. The reasons for the dispute need to be addressed. I thank those who, despite having their appointments postponed and their personal needs unmet, stood steadfast behind the strike. They know how necessary it is for those working in the system to shout “Stop”. I also thank the care staff and others within the health system, not only for the vital work they do, but for recognising that all workers have the right to work within a safer system.

Regarding the €450 million overspend at the national children’s hospital, Senator Craughwell wondered what the point would be of asking for someone to be accountable or for someone’s head on a plate. I ask the Senator and others to explain what we mean by accountable. Do we mean there should be a number of apologies?

**Senator David Norris:** There should be an explanation.

**Senator Rose Conway-Walsh:** There are some things that cannot just be explained away.

**Senator David Norris:** They have, which is the point.

**Senator Rose Conway-Walsh:** We have been doing this for years. It is interesting to look

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back to 2008 and 2009, when Fine Gael vigorously criticised Fianna Fáil for wasting money, describing the Health Service Executive as a bureaucratic monster that eats money. It rightly accused Fianna Fáil of cancelling services rather than cutting waste. Fine Gael was going to do things differently.

**Senator James Reilly:** Just like the Senator's party.

**Senator Rose Conway-Walsh:** Have a bit of manners, Senator. I am speaking.

**Senator David Norris:** Is that directed to me?

**Senator Rose Conway-Walsh:** Yes.

**Senator David Norris:** All right. Very good. The Senator was not looking at me.

**An Cathaoirleach:** Ciúnas, le bhúr dtoil. Senator Norris, sometimes your interjections are unhelpful.

**Senator Rose Conway-Walsh:** I appreciate that.

**Senator David Norris:** They are what?

**An Cathaoirleach:** They are unhelpful.

**Senator Rose Conway-Walsh:** Sometimes they are unwelcome.

**Senator David Norris:** They are intended to be.

**Senator Gerry Horkan:** Only sometimes.

**An Cathaoirleach:** Senator Conway-Walsh has the floor and should be allowed to continue.

**Senator Rose Conway-Walsh:** I hope I will be allowed another minute for that. It is about where accountability stops and how many times somebody must be made accountable. The Minister for Health, Deputy Harris, has apologised for not giving a fuller account in a parliamentary reply but this is not the first time he has had to apologise. He is a serial apologist. We have had the CervicalCheck scandal, the treatment waiting lists, the trolley crisis, problems for scoliosis patients and many other failings. The public are wondering at which point we say the buck must stop somewhere. The question is how many apologies make up accountability.

There is now a €450 million overspend on just one project. There may be people in the Chamber who think that is okay and one can just apologise for that. It does not matter what pot this comes from, as it all comes from the same pockets. These are the same pockets that have absolutely nothing left to give. They are the same pockets that get fleeced for everything despite us going to them time and again to pay for things. Somebody must pay for this and it is the Irish citizens and taxpayers who do so. It is decision time for each and every Fianna Fáil Member in these Houses. Do they still have confidence in a Minister who conceals vital information while pretending to negotiate a budget?

**Senator Lorraine Clifford-Lee:** Sinn Féin has no Ministers in the North.

**Senator Rose Conway-Walsh:** They were negotiating a budget.

**Senator Lorraine Clifford-Lee:** It is allowing civil servants to run it. It may as well do

what it is doing in the North.

**Senator Rose Conway-Walsh:** This could not be made up. Do the Senators not feel they are being taken for fools?

**Senator Lorraine Clifford-Lee:** It is peak Mary Lou.

**Senator Rose Conway-Walsh:** Senator Norris should not join those benches as well. Is he joining the unaccountable-----

**Senator David Norris:** Who is this woman?

**An Cathaoirleach:** Senator Norris should take a seat. I ask Senator Conway-Walsh to conclude as I have been very fair.

**Senator Rose Conway-Walsh:** Do the Senators not know they are being taken as fools by the people to my right?

**Senator Máire Devine:** They are.

**Senator Kevin Humphreys:** Senator Clifford-Lee called into question the Minister for Transport, Tourism and Sport, Deputy Ross, and I have called him into question numerous times. At the beginning of this term, I spoke about collective Cabinet responsibility and the Minister was not very good at following that concept. In considering what has happened in recent days, it is the Cabinet that is responsible rather than individual Ministers. There is a collective responsibility and those decisions are made collectively. There has been a change with the structures in Cabinet. In looking at accountability for this, we must consider why this problem occurred and how we can ensure it does not happen again. A previous Minister for Public Expenditure and Reform challenged all spending, as Senator Reilly, a former Minister for Health, will attest. It was a challenging environment in the previous five-year Government term when it came to expenditure matters, and each item of spending was put under a magnifying glass to ensure we could get full value for money for the taxpayer.

There has been a change in the structure of the Department of Finance and it has caused cost overruns, including with the children's hospital. When we speak of accountability, we must understand the reasons. We cannot lay this at the door of one person as there is collective Cabinet responsibility. This must be taken seriously as too often, under every Government, there have been overruns. We must examine the people getting the contracts and how they legally challenge those contracts if they do not win them. We must consider how they enlarge their cost base when they get those contracts. I want to raise a very serious issue which was on the front page of *The Irish Times* today. The article said that families who turn down offers of social housing are to face a five-year wait. To be honest, I believe this is spin. This is about blaming people who are on the housing list for the housing crisis. I know of very few people on the housing waiting list who have refused housing units. I deal with a huge number of applicants week in and week out and the vast majority are delighted when they get an offer.

There have been some refusals. I accept that. Sometimes there have been very good reasons and sometimes there have been poor reasons, but we should not blame people who are on the housing list. The issue should not be spun on the front page of *The Irish Times* and it should not be suggested that all those poor people on the waiting list are refusing housing, which is the subliminal message. They are not. I am only aware of one person who refused an offer of

housing from Dublin City Council in the last six months and that was because the person would have had to give up their job because they would have had to surrender the support of their family in minding their children, which allowed them to go out to work. The person would have then been caught in an unemployment-based poverty trap and housed well away from his or her family. I was disappointed. The headline was spin rather than substance and blamed the people who are on the housing list. It gave the message that they get loads of offers and keep saying “No”. A tiny percentage refuse.

**Senator James Reilly:** I want to raise a very important issue which affects the entire north of Dublin city and county, namely, metro north. On Thursday Fingal County Council will present details of four master plans for Swords, involving 67 ha of land, 218,000 sq. m of commercial space, and 55 acres of office space in buildings four, five, six and seven storeys high. Some 18,000 jobs will eventually be created in this area. The plans include 2,700 badly needed homes. There will be 10,000 new residents. Another 3,500 homes are to be constructed as a result of the funding the Minister for Housing, Planning and Local Government has made available under the local infrastructure housing activation fund, LIHAF. That represents another 12,000 residents, so there are to be 22,000 extra residents for Swords. Swords has a population of 40,000 at the moment. The Fingal development plan for 2017 to 2023 projects that the population will grow to 100,000.

I would like the Leader to bring in the Minister for Transport, Tourism and Sport because we need the first phase of MetroLink to start as soon as possible. I know there are issues and disputes about the route on the south side but there are no such disputes on the north side. This has been in planning for more than 20 years. It is very clear that MetroLink will take pressure off the city of Dublin by allowing access to the city from these lands by rapid transport. It will connect the airport, DCU and Swords with the city. As previous speakers have said, Fingal has the youngest population in Ireland and, possibly, in Europe. These are talented, well educated people who are looking for jobs and who want to stay in Fingal. The north end of the MetroLink line has to go ahead while the south side sorts itself out.

This initiative is close to my heart. I fought for it during my time in Cabinet when there was no money and people wanted to kill it. I wanted it to be kept alive. We have the money now and we have a plan and preferred route for the north side. Can we please proceed with this? The Minister needs to come in here urgently to explain to us why it cannot go ahead on the north side now while the arrangements for the south side of the city are finalised.

**Senator Robbie Gallagher:** I would like to raise my concerns about the imposition of the 23% VAT rate on food supplements. This decision makes no sense. It is wrong and it should be reversed. I call on the Minister for Finance, Deputy Donohoe, to revisit this decision before any further decisions are made on it. This proposal will affect and hurt the most vulnerable in our society, namely, the people who are under severe financial pressure due to the rising costs of living. People take food supplements for a variety of reasons, but they primarily take them to stay healthy, to stay away from their local GP and to stay away from hospitals that are already under pressure. With Brexit just around the corner, the timing of this proposed increase is wrong. I am disappointed to say that it is yet another example of the Government’s total lack of understanding of what life is like for those of us who live in the Border counties, or what life is like for those who are trying to run a business in the Border counties. It is difficult enough without making decisions like this. If this decision goes ahead, it will result in people travelling across the Border to shop, which will have a very negative impact on the businesses that are struggling to stay open along the Border counties. Consider the fact that this also follows on

from the increased VAT rate for the hotel industry. It does not fill me with confidence that the Government gets it when it comes to businesses and people and what they are going through in the Border counties. I ask the Leader to bring our message back to the Minister for Finance, Deputy Donohoe, to press the stall button on this decision, for the benefit of people's health and for those who are trying to run and keep open businesses while employing people in Border counties.

**Senator Pádraig Ó Céidigh:** Táim buíoch as ucht deis labhairt anseo inniu mar gheall ar chúrsaí gnóthaí beaga small and medium sized enterprises. I totally echo and support Senator Robbie Gallagher's comments. Tá an ceart aige go hiomlán. It is a major issue. We in both Houses are neglecting small and medium-sized businesses in Ireland and particularly in the Border counties. These are the heart and soul of sustaining employment throughout the State with 97% of businesses being SMEs.

Will the Leader speak to or connect with the Minister for Business, Enterprise and Innovation, Deputy Humphreys, to ask her to come to the House? There is a major issue with insurance. The Irish Small and Medium Enterprises Association, ISME, has conducted research recently on 850 SMEs that shows 83% of those SMEs are experiencing increases in insurance premiums. We will debate the Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018 in this House later. I very much welcome that legislation. I received a phone call this morning on my way to the House from a person who has a business in the midlands. Three years ago he employed 65 people and today he is employing about 115 people. He has four cases of people looking to bring insurance claims against him. A person can bring a claim against an employer and I have no problem with that. I do have a problem, however, when on some occasions the claims are vexatious and may not be 100%. I very much welcome the Bill.

I am the rapporteur for the Seanad Public Consultation Committee, which has drafted a comprehensive report that is very near completion and will be published shortly. This report will give us an indication of the roadmap of the SMEs in Ireland. Subject to the committee's approval and under the chairmanship of the Leas-Chathaoirleach of the Seanad, Senator Coghlan, it is hoped we will have an opportunity to debate the issue and have a full session debate in this House with the relevant Ministers. It affects tourism, transport, enterprise, farming and Bord Iascaigh Mhara. I would very much welcome the comprehensive discussion and debate around that, if the Leader could facilitate that.

**Senator Neale Richmond:** I listened with interest to the Commencement debate earlier.

*4 o'clock*

A pertinent matter was raised by Senator Warfield on passport applications for children of same-sex couples abroad. It was very important and I really hope that issue can be resolved. It led me to the idea that we really need a debate in the House on the passport system and the future of the passport system for a couple of other serious reasons as well as the reasons raised by Senator Warfield this afternoon.

First and foremost, regardless of what happens in the next period of fewer than 50 days, Brexit is coming. We have already seen tens of thousands of people in the UK and farther afield take the opportunity to seize Irish citizenship and apply for a passport. The numbers of those applying to the Irish Embassy in Britain have multiplied every year-on-year. We have serious questions to ask about the capacity of the passport service to meet these demands. The passport

service, much to the credit of the Ministers and officials working there, has vastly and greatly improved in recent years with the rapid online system and improvements in many other processing areas. However, I have fears in respect of the capacity and I believe it is our absolute responsibility to meet the demand with a proper information campaign for the Irish diaspora. This is something Senators Lawless and Ó Donnghaile have worked hard on, whether in the US or the North, to ensure those who are Irish citizens know their entitlements, the processes and procedures and their rights. We should ensure the process is met in the most speedy and proper manner.

**An Cathaoirleach:** Thank you for your brevity, Senator.

**Senator Máire Devine:** I salute my colleagues, the nurses and midwives of Ireland, following their great successful rally on Saturday and the extraordinary support of the public through the streets of Dublin. It was almost like a festival or carnival everywhere they were celebrated.

I want to ask Senator Clifford-Lee and her colleagues where they were. Where were they to support the nurses? They all seemed to go into a huddle or they hid away, because they could not answer the question one way or another.

**Senator Lorraine Clifford-Lee:** I was not. I was on the picket line.

**Senator Máire Devine:** At the rally there was no sign of anyone from Fianna Fáil whatsoever.

**Senator Lorraine Clifford-Lee:** I have to take one day a week to mind my children.

**Senator Máire Devine:** There was not a sign or any presence of Fianna Fáil one way or the other at the rally.

*(Interruptions).*

**Senator Máire Devine:** I want to know where they all were.

**An Cathaoirleach:** Please, Senator Devine, address the Chair.

**Senator David Norris:** That is rubbish.

**An Cathaoirleach:** With respect, I cannot have Senators talking over my head. I am the Cathaoirleach. Senator Devine, address your issues through me to the Leader and not to anyone else.

**Senator Lorraine Clifford-Lee:** On a point of order, Fianna Fáil was well represented. It is a fairly low blow for the Senator to point me out in particular for not being at it. I am on the picket regularly with the nurses.

**An Cathaoirleach:** Senator Clifford-Lee, that is not a point of order. Resume your seat, Senator. That is not a point of order.

**Senator Máire Devine:** I think the 50,000 people and the public who were there on Saturday will want to know why. They were questioning where they were and why they were not there.

**Senator David Norris:** I doubt it.

**An Cathaoirleach:** You are being unhelpful now, Senator.

**Senator Lorraine Clifford-Lee:** We were there.

**Senator Máire Devine:** The Senator should go and answer to those 50,000 who were asking that question.

**An Cathaoirleach:** Please, Senator Devine, do not address an issue to another Senator. Address the Chair and the Leader will respond, not someone else.

**Senator Máire Devine:** Okay, I will do so. Gabh mo leithscéal.

**An Cathaoirleach:** I am trying to be fair here. This is not helpful.

**Senator Máire Devine:** This morning, the Minister for Health, Deputy Harris, said that he was going into the Cabinet to put before it the proposals by the Labour Court that saw the suspension of the industrial action, including this strike and the three days due. I put it to the Minister that it is not really up to the Cabinet to agree or disagree to this. It is up to the 50,000 members of the Psychiatric Nurses Association and the Irish Nurses and Midwives Organisation to agree or disagree. We await their deliberations, which are taking place now, and we will respect the results of those deliberations.

The motion of no confidence arises because of the fiasco or debacle, or whatever we want to call it, ongoing in health. Two Fianna Fáil Deputies, Deputies Cowen and Donnelly, said yesterday that they were misled and that no one could have confidence in the Minister for Health, Deputy Harris. However, today again - this is not lost on the public - those in Fianna Fáil are still sitting in their huddle. They should give us an apology because the polls are not right. It is not simply that the polls are not right.

**Senator Lorraine Clifford-Lee:** I am sorry: we are doing better in the polls than Sinn Féin.

**Senator Máire Devine:** They reckon that because Brexit is coming they cannot upset the nation.

**Senator Lorraine Clifford-Lee:** That is the typical Sinn Féin *modus operandi*.

**An Cathaoirleach:** Please, Senator.

**Senator Máire Devine:** The two-year period of Brexit is extended-----

**An Cathaoirleach:** Senator Devine, please conclude.

**Senator Lorraine Clifford-Lee:** They want to cause chaos.

**An Cathaoirleach:** Please, Senator Devine, you are being unhelpful. I have admonished you before. If you want me to suspend the sitting for 15 minutes, the blame will be on you. Please conclude now, Senator Devine. You have had almost four minutes.

**Senator Máire Devine:** The excuse we are getting is that Brexit is coming. Brexit is probably going to be extended by two years. We wait then. Is this the excuse until the polls are in-----

**Senator Jerry Buttimer:** How does the Senator know that?

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**Senator Lorraine Clifford-Lee:** How does the Senator know that?

**Senator Máire Devine:** -----their proper order and the atmosphere is correct?

*(Interruptions).*

**Senator Aidan Davitt:** Is the Senator texting Theresa May?

**An Cathaoirleach:** Leader.

*(Interruptions).*

**An Cathaoirleach:** Matters affecting the other House should not be discussed here. If there are motions in this House, we deal with them. What happens in the other House stays there and is dealt with there.

**Senator Jerry Buttimer:** Would the Cathaoirleach ask Senator Devine to give us the lotto numbers tonight?

**Senator Máire Devine:** There is no point.

**An Cathaoirleach:** Senator Buttimer is the Leader. He will have ample time to respond. I call Senator Grace O'Sullivan.

**Senator Grace O'Sullivan:** Last week I visited a number of primary schools in Tramore, Glór na Mara, Holy Cross, Gaelscoil Philip Barún, Educate Together and Fenor national school. Right now Fórsa estimates that 10% of the country's approximately 3,500 school secretaries are paid directly by the Department of Education and Skills, with their salaries varying from €24,000 to €44,711 per year. The other 90% are paid through their schools' ancillary grant leaving some of the salaries as low as €12,000 per year. This grant is decided by the Department of Education and Skills and is sent to the school each year. It then has to be paid out to the secretaries. The majority of schools are forced to employ their school secretaries through their ancillary grant.

This two-tier system means that in some schools there can be two secretaries doing exactly the same job in the same office, but one is paid €44,000 per year and the other €12,000 per year. In any other walk of life this discrimination would be illegal. Currently the majority of Ireland's school secretaries have to work for poor pay and without the most basic of employment rights such as sick pay or secure contracts, and they are mostly let go for the summer months and have to sign on for social welfare. I know school secretaries who have been signing on for the summer or Easter breaks for years. It is degrading to have to go to a social welfare office every July, and it is frustrating as the money they are entitled to can take up to six weeks to process.

Approximately 90% of all school secretaries have no pension rights. These are people we all know in our communities. This is a scandal. I am crying out to all parties in the House to please support the school secretaries. There is a Fórsa Support Our Secretaries campaign. In addition, will the Leader please ask the Minister for Employment Affairs and Social Protection, Deputy Regina Doherty, to come to the House to discuss this issue? This is absolute, sustained discrimination.

**Senator Gabrielle McFadden:** The Organisation of National Ex-Servicemen and Women, ONE, started when three veterans died on our streets. These people served the Tricolour with

pride, often in places of conflict, as the UN's most distinguished peacekeepers, and often in the North of Ireland during the Troubles. It is a charity and it needs support. Former members of the Defence Forces are going to highlight the plight of homeless veterans by camping on the streets of Dublin in sleeping bags made of fabric in the colours of the national flag. It is atrocious that anybody who wore the Army's uniform would have to do this to raise funds for their veterans. ONE has houses in Donegal, Athlone and Dublin. It provides 44 beds per night and has looked after more than 900 veterans in its time, and 16,000 bed nights in a year. I urge all Members to go online and support the campaign. I also ask that we contact that Minister and ask him to support this charity. It should not have to be a charity in the first place; it should be supported. It receives funding from the Department of Defence, but it is obviously not enough. This has to be addressed. No veteran who has served his or her country should have to rely on charity.

**Senator David Norris:** I propose an amendment, that item No. 11 of non-Government motions, regarding Shane O'Farrell, be taken at the end of the-----

**An Cathaoirleach:** After item No. 2.

**Senator David Norris:** Yes, after item No. 2, and that we have a one hour debate at that point.

I would like to refer to the demands that the Minister for Health and the Minister for Finance should withdraw. It is absolute and utter nonsense. In my 30 years of experience, the Minister for Finance, Deputy Donohoe, and the Minister for Health, Deputy Harris, are two of the best Ministers this country has ever had. They are quite outstanding. Members of the Opposition have instanced the case of Deputies Fitzgerald and Naughten. They were rather foolish to bring them up, because both Deputies Fitzgerald and Naughten were subsequently vindicated. They were got rid of unnecessarily, and it is an absolute waste of talent that excellent Ministers should be the victims of these demands for heads on a plate. It is nonsense. We should start thinking in terms of the good of this country and not just party politics. I certainly will be supporting the Minister for Finance and the Minister for Health, both of whom have done extremely good jobs in very difficult and trying circumstances.

**Senator Aidan Davitt:** As much as I like Senator Devine, I have to say that I will take no lectures from a party that is elected to two parliaments and will not take its seats, yet claims massive expenses and wages in both. When the gauntlet was put down-----

**Senator Rose Conway-Walsh:** That is not true.

**Senator Máire Devine:** That is not true. The Senator should get his facts right. He stands up all the time and does not know the facts.

**Senator Aidan Davitt:** I did not open my mouth when Senator Devine was talking. When the gauntlet was thrown down to Sinn Féin to form the Government here it ran away. We will take no lectures from Sinn Féin; its words are shallow.

I would appreciate it if the Leader could ask the Minister for Communications, Climate Action and Environment to come to the Chamber to discuss the need to protect local and regional newspapers. I am calling on the Minister to set up a commission to review local and regional print media before it is too late. The Cairncross review was recently published in Britain. It came up with logical answers to protect credible local journalism, which is so important for the

health of local democracy and local news. The Cairncross review also found that finding a way to support local news is now a matter of urgency. It recommended a study of online advertising, often called “news feeds”, which are widely known from Facebook and Google. These often contain anything but news.

I recently discussed these findings with Mr. Johnny O’Hanlon, who most of us know from Local Ireland, which represents 35 local newspapers and printers throughout Ireland. He is adamant that an immediate review and revival plan for local media is urgently required. The Leader might ask the Minister, Deputy Bruton, to come to the Chamber to discuss local and regional print media with us. I know that the issue is close to the Leader’s heart, and that he has commented on it here before.

**Senator Paul Coghlan:** As a frequent user of trains I have become concerned, on a few levels, about the staffing of stations and trains, where unfortunately incidents of anti-social behaviour are on the increase. I am disturbed that Irish Rail is proposing that stations such as Banteer, Millstreet-Sráid an Mhuilinn, Rathmore and Farranfore will be left without any member of staff.

**Senator David Norris:** What will I do with my luggage?

**Senator Paul Coghlan:** That is exactly the point. Who will help the Senator with his luggage? This will affect disabled people and elderly people, who need assistance from time to time. It is not going to be a runner. By contrast, the larger stations are well manned. Given the extent of anti-social behaviour, it is essential to have one train host on every train. I wonder what Irish Rail’s policy is on drinking. I recently met a group of four who went on board with drinks in their hands. I do not know if they got more drink on board but they were certainly boisterous. They upset everybody else in the carriage but there was no train host to deal with them. I took this up with Joe, my own train host, on an early train this morning and he told me the story of a customer who used the intercom to communicate with the driver and got him to deal with it at the next station. There was an altercation, the driver suffered an injury and the train was held up for two hours while they waited for a substitute driver. CIÉ does a good job but the company has to be very careful about staffing levels at certain stations. A train host on every service is essential.

I support Senator Ó Céidigh in his request for a debate on the worthwhile report in which he has been very much involved.

**Senator Victor Boyhan:** I second Senator Norris’s proposal to amend the Order of Business. I do not intend going into any great detail on Shane O’Farrell because I hope we will have the support of the House to make that amendment. Investigations are needed into his untimely death. I support the family’s request for a commission of investigation into his death to be carried out. I acknowledge the enormous work that Fianna Fáil’s Deputy Jim O’Callaghan has done on this. He spoke in the Dáil in great detail on 12 March 2018 and has, along with Senator Norris and others, championed the case. I ask Members to reference his words if we have this debate. His contribution in the Dáil was succinct and clearly set out a compelling case for the Government to act. I am happy to second the amendment and I hope that colleagues support this move.

**Senator Gerry Horkan:** I saw quite a number of photographs of Fianna Fáil local authority members at the rally online. I was not tracking everybody’s Twitter account but I saw the

Dublin Central candidate, Ms Mary Fitzpatrick, Councillor Paul McAuliffe from Dublin North West, and Councillor Frank O'Flynn from Cork. We do not necessarily assemble in a militaristic fashion-----

**Senator Jerry Buttimer:** They must be plumpers.

**Senator Gerry Horkan:** -----like some other parties do.

**Senator Máire Devine:** Who would that be?

**Senator Gerry Horkan:** Enough said. Senator Richmond mentioned passports, which I was going to raise myself. Last Wednesday, I helped somebody apply online for a passport renewal. The office was reluctant to accept the photograph but we managed to produce one of sufficient quality. They said it would take ten working days, which would mean Wednesday of next week, but it arrived in the post this morning, after less than four working days. I commend the Minister, the Department and the staff who work in the production facility in Balbriggan. I urge anybody who is remotely able to use technology to use this service. I urge those who are not able to use it to ask somebody to help them. The process is incredibly simple and it is cheaper at €75 instead of €89.50 through Passport Express. It is much faster and it saves a lot of work.

I ask the Leader for a debate on the immediate skills shortage in secondary schools. Many school principals, particularly in Dublin, and across the country are finding it difficult to recruit teachers of many subjects, including physics, chemistry, home economics, languages, especially Spanish, French, German and Irish in particular. I ask the Leader to arrange for the Minister for Education and Skills, who is fairly new to his brief, to come into the House to discuss this matter. Senator Norris might not want to interrupt the Leader when I am trying to talk to him.

**Senator Jerry Buttimer:** I called him, to be fair.

**Senator Gerry Horkan:** I would like the Leader to schedule a debate regarding what the Minister for Education and Skills and his Department plan to do to relieve this situation. It is becoming incredibly difficult to find teachers to fill vacant posts when they arise.

**Senator Aodhán Ó Ríordáin:** Last week in this Chamber I was critical of the Minister for Justice and Equality in terms of the inability of Senators to get an adequate debate on Garda resources and the responsibility of the Minister for Justice and Equality over An Garda Síochána as a result of a number of incidents that happened on the north side of Dublin.

*(Interruptions).*

**Senator Aodhán Ó Ríordáin:** I cited the issue of a pipe bomb in Edenmore and the upsurge in anti-social behaviour. Since I made that contribution last week, we have had a fatal shooting in Darndale. In his response to my request for a debate with the Minister for Justice and Equality, I appreciate the Leader was minded to do that. I want to get an assurance from him that he will see to that request.

I have expressed my frustration at an inability to get further than the suggestion that the Minister has no responsibility for operational matters in An Garda Síochána. I encourage the Leader to arrange such a debate in the House and to see how we can work together to ensure that people in communities across the city, northside, southside, outside Dublin and across the country, can feel safe and secure. It is not normal for somebody to be shot dead at 6.30 a.m. and

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then for children in that community to go to school as if it is something perfectly normal and for it not to feature that heavily in the news cycle of that day. When an incident occurs where somebody gets shot dead at 6.30 a.m. and it does not rock the foundations of these Houses, then something has gone very badly wrong. I suggest, respectfully, and perhaps I was not respectful last week-----

**Senator Paul Coghlan:** That is for sure.

**Senator Aodhán Ó Ríordáin:** -----that we would have a debate in this House with the Minister for Justice and Equality on the issue of crime, criminality, anti-social behaviour and fatal shootings.

**Senator Paddy Burke:** I support Senator Coghlan on the issue he raised regarding services on trains and at various stations throughout the country. My station in Castlebar is no better. We have a station master, Mr. Noel Hogan, who is very approachable and does a great job but when he is off at various times during the week or at the weekend there is no cover for him.

As Senator Coghlan pointed out, if people board the train carrying booze and there is no train host onboard anything can happen. He outlined an incident where a train driver was injured and the train was held up for two hours. I support Senator Coghlan's call for the Minister for Transport, Tourism and Sport to come to the House to address the services provided at train stations and by train hosts. Such abuse in this respect brings the issue of ensuring passenger safety into disrepute.

**Senator Paul Coghlan:** Hear, hear.

**Senator Paddy Burke:** We need the Minister to come to the House to discuss this matter.

**Senator Ivana Bacik:** I wish to speak in support of Senator Norris seeking a debate on the death of Shane O'Farrell. We debated this issue on 14 June 2018 on the same day that the Dáil voted by a clear majority on the basis that the matter did warrant a public inquiry. I and others have been in correspondence with the Minister, Deputy Flanagan, since then. He said in the Seanad on 14 June last year that he would reflect on the comments of Senators, that he would reflect on the Dáil vote and that he would repeat a commitment given to Lucia O'Farrell, Shane O'Farrell's mother, and the O'Farrell family regarding the question of a further investigation. I know that Senator Norris has been proactive on the matter, as have others.

**An Cathaoirleach:** Senator Norris is like a hen with an egg today. He has been very restless.

**Senator David Norris:** I am looking after my colleagues' eggs.

**An Cathaoirleach:** Senator Bacik to continue, without interruption, please.

**Senator Ivana Bacik:** I am sure Senator Norris was being as proactive as usual on the issue. Nearly one year after the vote, we still have not received a response, or at least I have not.

**Senator Jerry Buttimer:** There has been a response.

**Senator Ivana Bacik:** I have not received a response to my correspondence with the Minister, in which I asked him what he would do about the motion and so on. Will the Leader accede to Senator Norris's request for a debate on the issue in order that matters can be progressed? It

is important for the family and to ensure public confidence in the policing system, particularly in dealing with road accidents. I ask the Leader to look favourably on Senator Norris's request.

**Senator Jerry Buttimer:** I thank the 20 Senators who spoke for their contributions on the Order of Business.

Senators Craughwell, Conway-Walsh and Devine raised the issue of the national children's hospital. The Minister for Health has appeared before the Dáil and apologised. For some, it is now a question of who said what and who knew what when, rather than whether the hospital will be built, whether it will be the best hospital in the world and whether a political head on a plate will be demanded. The Sinn Féin Party has reverted to its usual playbook in seeking a resignation or dismissal, but that will not help to build the hospital.

**Senator Máire Devine:** It is called accountability.

**Senator Jerry Buttimer:** I will respond to the Senator's comment. I reiterate that all Senators are disappointed, frustrated and annoyed at the cost overrun. It should not have happened, but it did. We must now ensure there will be value for money in building the hospital which will be the best children's hospital in the world, although it will not be the most expensive. We need to maintain a sense of perspective, rather than hysteria, in our debate. We are reprofiling a figure of €100 million out of a capital budget of €7 billion. Having regard to the cancellation of €27 million in funding for the A5 to Derry road project, I ask the Sinn Féin Senators to reflect on their lack of involvement and engagement at Stormont. On the question of accountability and apologies, we know well that Sinn Féin's approach to them is non-existent, unless its members are dragged in and forced to apologise. We know well how they behave.

In response to Senators Conway-Walsh and Devine on the nurses issue, I welcome the intervention of the Labour Court and its recommendation. I acknowledge that Senator Devine is trying to play to her gallery and constituency, but I am sure she knows that the Government has no part to play in the INMO process and its executive council which will now begin to ballot its members. It is independent of the Government-----

**Senator Máire Devine:** On a point of order, I did not say that.

**Senator Jerry Buttimer:** The Senator did.

**Senator Máire Devine:** I know more about the issue than the Leader is suggesting.

**Senator Gerry Horkan:** It was not a point of order.

**Senator Máire Devine:** In any case, the Leader was wrong.

**An Cathaoirleach:** The Leader to continue, without interruption, please.

**Senator Jerry Buttimer:** The Government believes the agreement reflects three principles, namely, that it is fair to taxpayers, public servants and nurses. I hope nurses will accept the recommendation of the Labour Court. We all recognise their value, centrality and importance in the health system.

To respond to Senator Higgins's question, I will be happy for the Minister for Communications, Climate Action and Environment to come to the House to discuss the ecological matters she raised. The new EU-Singapore trade deal will lead to the creation of hundreds of jobs in

this country. The House voted on a non-binding motion dealing with the CETA which was not necessarily related to concerns about investor quotas.

**Senator David Norris:** It certainly was.

**Senator Jerry Buttimer:** Those on the Fianna Fáil benches still do not know on what they abstained or what they stand for, but, in fairness, we had a good debate in the House. The CETA is already a success, despite the misplaced concerns of others who should perhaps know better.

Senators Clifford-Lee, Humphreys, Reilly, Coghlan and Paddy Burke all referred to the issue of transport. I would be happy to have the Minister come to the House to discuss the issue and will come back to the issues that individuals have raised.

Senator Humphreys should recognise that under regulation 12 of the Social Housing Allocation Regulations 2011, a household that refuses two reasonable offers of tenancy in any 12 month period other than an offer in the choice-based letting procedure will not receive any further offers from any housing authority for a period of one year from the second refusal. That is already *in situ*. We need to get some perspective on the issue of housing. People refuse housing for a variety of issues. Some are serial refusers. Others have particular reasons and we accept that, but we must try to get a balance.

Senator Gallagher raised the issue of food supplements. It is an interpretation of the tax code by Revenue which is independent of Government. The Minister, Deputy Donohoe, has a tax advisory group. As I said in the House last week, some people are peddling a specific line but should also recognise that certain medicines, folic acids, vitamins and mineral products, as licensed by the Health Products Regulatory Authority, are still zero and will remain at that. We should have balance in what we say about the matter here. I hope that we can have common sense with regard to some of the issues addressed by Senator Gallagher.

Senator Ó Céidigh will be the author of a very fine report regarding small and medium enterprises. The Minister, Deputy Humphreys, coming from the Border, is well aware of the complexities and importance of small and medium enterprises. I would be happy to have her to come to the House to address the matter.

Senators Richmond and Horkan raised the issue of passports and the need for debate on the passport system, which I would be happy to have.

Senator Grace O'Sullivan raised the issue of the Fórsa campaign to support school secretaries. It is an important issue which requires clarity and parity. We would all support it.

Senator McFadden raised the ONE campaign. To be fair to the Senator, she has raised the matter on many occasions, both in and outside this House. There is an issue relating to bed nights. We need to compliment ONE which has provided 44 bed nights, which I think the Senator said has covered 900 veterans and includes approximately 16,000 bed nights per annum. It is important that we support it and that we work to ensure that visibility and recognition is given to our veterans. To be fair to the Senator, she has raised this in the past.

Senator Norris raised the issue of the inquiry into Shane O'Farrell's death. We want the O'Farrell family to have full information, there has to be due process, and there has to be full accountability for those involved. On completion of the Garda Síochána Ombudsman Commission inquiry, the Minister appointed Mr. Justice Haughton to carry out a scoping exercise.

From any point of view, that should be able to continue and to carry out its work rather than having a debate on that. I am cognisant of the involvement of Senator Norris and do not want to be seen as offensive or unhelpful to the O'Farrell family and the need for full action. I know the Minister is not available today and he is certainly not available tomorrow, because if he was, he would be having more debate on the very important Judicial Appointments Commission Bill 2017, about which I will speak to Senator Craughwell. I am prepared to offer Senator Norris a debate on the matter tomorrow afternoon without the Minister being present, if the Senator is amenable to that. I do not want to be unhelpful and do not want to be seen to be obstructionist. That is not my style. A scoping inquiry has been put in place. A process has been established. I do not think that we should have debates in the House in parallel with that. If Senator Norris is amenable to having a debate for an hour tomorrow without the Minister, I would be happy to do that, but otherwise I do not think that I can ask the Minister to come to the House at such short notice, knowing that he is not available today or tomorrow.

**Senator David Norris:** Will the Government oppose the motion?

**Senator Jerry Buttimer:** On the basis of Senator Norris wanting the Minister to be here today, I will oppose it.

**Senator David Norris:** The Government will oppose it tomorrow.

**Senator Jerry Buttimer:** No. I am offering Senator Norris an hour's debate tomorrow, without the Minister's presence, to allow the Senator the opportunity in the Seanad to have-----

**Senator David Norris:** I am asking the Leader whether the Government will oppose the motion tomorrow.

**Senator Jerry Buttimer:** I am making an offer to the Senator of an hour's debate tomorrow on the Senator's motion without the Minister's presence.

**Senator David Norris:** Yes.

**Senator Jerry Buttimer:** I cannot answer the Senator's question right now.

**Senator David Norris:** The Leader does not know whether the Government will oppose the motion.

**Senator Jerry Buttimer:** As of right now, I do not, but I will make-----

**Senator David Norris:** I see. I thank the Leader. That is helpful.

**Senator Jerry Buttimer:** I am trying to be helpful to the Senator in terms of having-----

**Senator David Norris:** I know.

**An Cathaoirleach:** Perhaps if the Leader could clarify his position on tomorrow morning's Order of Business, the Senators could decide-----

**Senator Jerry Buttimer:** The motion, as far as I understand, is just to have a debate on the Shane O'Farrell case. Is that correct?

**Senator David Norris:** Yes.

**An Cathaoirleach:** The motion, as worded, is to have the debate today, so it is a matter for

Senator Norris-----

**Senator Jerry Buttimer:** I would be happy to have the debate tomorrow without the Minister's presence.

**Senator David Norris:** I understand that, but what concerns me is whether the Government will vote against the motion.

**Senator Jerry Buttimer:** I cannot answer the Senator right now.

**Senator David Norris:** That is fine.

**An Cathaoirleach:** The Senator has the option to press the amendment or not. I do not think the Leader can say any more about it.

**Senator Jerry Buttimer:** I would be happy to have the Minister come before the House to discuss the issues Senator Davitt raised about newspapers. His colleague, Senator Leyden, last week very eloquently and very colourfully debated the matter of local radio stations.

Senator Coghlan raised the very important issue of our small stations. I almost closed my eyes as Senator Coghlan was speaking about Banteer, Millstreet, Rathmore, Mallow and parts of Kerry. It was like going to the Munster football final long ago, when we were young. Senator Paddy Burke raised the issue as well. I am not sure we will be travelling to Killarney much with the Cork footballers at present, but we live in hope. Senator Coghlan might be best advised to table a Commencement matter on the issue, but in essence I would be happy to have the Minister come to the House to discuss the matter.

Senator Horkan raised the skills shortage in education. We had a debate on education recently but we will have one again soon. I would be happy to discuss that element with the Senator in the House.

Senator Ó Ríordáin respectfully asked that the Minister for Justice and Equality come before the House. We have put the request in. It is important to recognise that the Minister has been in the House dealing with the Judicial Appointments Commission Bill. Contrary to what Senator Craughwell believes, it is very important legislation which is a central part of the programme for Government. It is the obfuscation and filibustering of some of the members of the Senator's group that is causing the Minister to be here inordinately to discuss the Bill rather than having it passed-----

**Senator David Norris:** I am the one who is filibustering. I am not part of Senator Craughwell's group.

**Senator Jerry Buttimer:** -----which then precludes the Minister from being able to come back in to discuss other justice issues. Senator Craughwell might talk to his own group about allowing the Bill to be fast-tracked.

**Senator Gerard P. Craughwell:** It is doomed.

**Senator Jerry Buttimer:** I ask Senator Norris to accept my olive branch to him. If not, I will have to oppose today's Order of Business on that basis.

**An Cathaoirleach:** I will put the matter to Senator Norris. He has proposed an amendment to the Order of Business, that No. 83, motion 11, be taken for one hour on the conclusion of No.

2. In view of what the Leader has said, is the Senator pressing the amendment?

**Senator David Norris:** The Leader is very amenable but he cannot tell me whether he will vote against the motion. He obviously will vote against it. I have the numbers today. I am not sure I will have them tomorrow. I must therefore press the amendment.

**Senator Jerry Buttimer:** On a point of information, I have offered Senator Norris a debate tomorrow. Whether the motion is put tomorrow is immaterial. We can oppose it tomorrow or oppose it today. It does not matter. The point is that he wants a debate on the issue.

**Senator David Norris:** Yes.

**Senator Jerry Buttimer:** To be fair to the Senator, I do not want to put him in a position but-----

**An Cathaoirleach:** I think there is an impasse here.

**Senator Jerry Buttimer:** The impasse is solvable, though, because the Senator is getting what he wants tomorrow.

**An Cathaoirleach:** Yes, but Senator Norris is in pole position because he has proposed an amendment-----

**Senator Jerry Buttimer:** Today he is not in pole position at all.

**Senator David Norris:** That is true. I am prepared to take the chance.

**An Cathaoirleach:** The Senator is pressing the amendment then.

**Senator David Norris:** I am.

**An Cathaoirleach:** The question is that the amendment be made-----

**Senator Jerry Buttimer:** Senator Horkan wants to speak.

**Senator Gerry Horkan:** I think this is genuinely a point of order because we are discussing the Order of Business. Senator Norris seems to be concerned that tomorrow he will not get an opportunity to debate the motion because it will be shot down. However, my understanding from what the Leader has said - he might clarify - is that he is offering, without any vote-----

**Senator Jerry Buttimer:** Correct.

**Senator Gerry Horkan:** -----to put on the schedule tomorrow an hour's debate, without the Minister, on the matter, and tomorrow morning he will read out the Order of Business, including an hour of debate on the case of Shane O'Farrell-----

**Senator Jerry Buttimer:** Correct.

**Senator Gerry Horkan:** -----and he will not try to avoid doing that.

**Senator Jerry Buttimer:** That is what I said.

**Senator David Norris:** But he will oppose it.

**Senator Gerry Horkan:** He will not - not tomorrow.

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**Senator Jerry Buttimer:** I did not say I would oppose it. To help Senator Norris, I have offered him an hour's debate tomorrow-----

**Senator Gerry Horkan:** And the Leader will not oppose it.

**Senator Jerry Buttimer:** -----on the issue he proposed.

**Senator David Norris:** The Leader will not say that he will not oppose it.

**Senator Ivana Bacik:** On a point of order the Senators are at cross purposes. Senator Norris is concerned that the Leader may oppose the motion to be debated tomorrow.

**Senator David Norris:** Yes.

**Senator Jerry Buttimer:** I am offering Senator Norris the motion tomorrow, without the Minister, for an hour.

**An Cathaoirleach:** I think the nub of the issue-----

**Senator David Norris:** But the Leader will not say whether he will vote against it.

**Senator Jerry Buttimer:** I am offering-----

**Senator Ivana Bacik:** It is a motion on the Order Paper that Senator Norris wants to debate. It is not just statements.

**An Cathaoirleach:** The nub of the issue is that Senator Norris wants an answer, which the Leader may not be able to give, on whether, if the motion is debated tomorrow, he will oppose or accept it. Senator Norris is still in pole position. Does he want to move the motion?

**Senator David Norris:** I do.

**An Cathaoirleach:** That is very clear. The Senator may be wrong or otherwise. The question is that the amendment be made-----

**Senator Jerry Buttimer:** Can I ask a question before it goes to a vote? When does Senator Norris propose to have the motion put tonight?

**Senator David Norris:** Immediately after the Order of Business.

**An Cathaoirleach:** The proposal is that it be taken after No. 2.

**Senator David Norris:** The Minister, Deputy Flanagan, is around anyway.

**An Cathaoirleach:** We are going around in circles.

**Senator Diarmuid Wilson:** On a point of order, if the Leader really wanted to be helpful to Senator Norris he would suspend the Judicial Appointments Commission Bill 2017 this evening and take Senator Norris's motion.

**An Cathaoirleach:** That is another option. I will put the question. Senator Norris, is the amendment being pressed?

**Senator David Norris:** Yes.

Amendment put:

The Seanad divided: Tá, 25; Níl, 19.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Black, Frances.	Burke, Paddy.
Boyhan, Victor.	Butler, Ray.
Clifford-Lee, Lorraine.	Buttimer, Jerry.
Conway-Walsh, Rose.	Byrne, Maria.
Craughwell, Gerard P.	Coffey, Paudie.
Daly, Paul.	Coghlan, Paul.
Davitt, Aidan.	Conway, Martin.
Devine, Máire.	Hopkins, Maura.
Gallagher, Robbie.	Lawless, Billy.
Gavan, Paul.	Lawlor, Anthony.
Higgins, Alice-Mary.	McFadden, Gabrielle.
Horkan, Gerry.	Mulherin, Michelle.
Humphreys, Kevin.	Noone, Catherine.
Kelleher, Colette.	O'Donnell, Kieran.
Leyden, Terry.	O'Mahony, John.
Marshall, Ian.	O'Reilly, Joe.
Nash, Gerald.	Reilly, James.
Norris, David.	Richmond, Neale.
O'Donnell, Marie-Louise.	
O'Sullivan, Grace.	
O'Sullivan, Ned.	
Ó Céidigh, Pádraig.	
Ó Donnghaile, Niall.	
Wilson, Diarmuid.	

Tellers: Tá, Senators David Norris and Diarmuid Wilson; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared carried.

**An Cathaoirleach:** Is the Order of Business, as amended, agreed to?

**Senator Jerry Buttimer:** No.

**Senator David Norris:** It is most unusual, in a vote like this, to defer an item to a later time in the evening. I have never known it done.

**An Cathaoirleach:** Well-----

**Senator David Norris:** I am sorry, I just want to finish this. When this proposal came from the bench, I remember wondering why the debate was to be after No. 2. I thought it must have been because something was going through without a vote. I am going to check the record to

see what happened here.

**Senator Jerry Buttimer:** On a point of order-----

**An Cathaoirleach:** Hold on a second.

**Senator Jerry Buttimer:** The Order of Business-----

**An Cathaoirleach:** Please-----

**Senator Jerry Buttimer:** Can we just clarify-----

**An Cathaoirleach:** It is a matter for me to clarify. Senator Norris has posed a question. My understanding is clearly that our very esteemed and learned Clerk believes that what was put is exactly what the Senator proposed.

**Senator David Norris:** Well, it is not.

**An Cathaoirleach:** It may not have been what the Senator intended, but the Clerk is quite clear on it. We cannot undo what is done.

**Senator David Norris:** I know.

**An Cathaoirleach:** Is the Order of Business, as amended, agreed to?

**Senator Jerry Buttimer:** No. To be helpful, and to be fair to Senator Norris, while I do not want to aggravate the situation, it is still the case that the Minister is not available. What Senator Norris proposed was to be after No. 2. I am prepared to have the debate without the Minister tomorrow. I am also prepared to allow for debate on the motion subject to the availability of a Minister, if the House will agree to that.

**An Cathaoirleach:** Can we agree the Order of Business now?

**Senator David Norris:** I am quite prepared to be moderate on this issue. Will the Leader give me an undertaking that he will at least attempt to find a Minister for tomorrow?

**Senator Jerry Buttimer:** I will talk to the Members and to Senator Norris and I will do my best, but I cannot give a guarantee now.

**Senator David Norris:** I understand that. In that case, I will accept the Leader's proposal.

**Senator Jerry Buttimer:** I will do my best but I cannot guarantee anything. I have offered the Senator the option of having the debate without a Minister tomorrow.

**An Cathaoirleach:** The amendment has been passed. The Leader can consider it but if, as he has suggested, he opposes the Order of Business, the whole Order of Business for today will collapse. He should think clearly. I asked whether the Order of Business, as amended, was agreed to and the Leader opposed it.

**Senator David Norris:** On a point of order, is it possible for me to accept the Leader's offer at this stage? We can then pass a revised Order of Business.

**An Cathaoirleach:** I suggest that we agree the Order of Business, as amended. The Leader can then come back in an hour and tell the House that he has agreed with Senator Norris to do

X or Y.

**Senator Gerry Horkan:** It should only take five minutes.

**Senator David Norris:** All right. He can come back in five minutes.

**An Cathaoirleach:** Is the Order of Business, as amended, agreed to?

**Senator David Norris:** The Leader will come back inside five minutes with his suggestions.

Order of Business, as amended, agreed to.

*Sitting suspended at 5 p.m. and resumed at 5.15 p.m.*

### **Gnó an tSeanaid - Business of Seanad**

**An Leas-Chathaoirleach:** Before we move on to No. 1, I call on the Leader of the House to make an announcement.

**Senator Jerry Buttimer:** In light of the vote on the Order of Business today on an amendment proposed successfully by Senator Norris, to be equally fair to the Senator and the Minister, the Minister is agreeable to come to the House tomorrow between 3 p.m. and 4 p.m., and I thank him for his co-operation. If Senator Norris is agreeable to that, I suggest we take that motion tomorrow.

**An Leas-Chathaoirleach:** Notwithstanding anything in the Order of Business.

**Senator Jerry Buttimer:** Yes, notwithstanding anything in the Order of Business today, I propose that No. 83, motion 11, not be taken today but be taken tomorrow between 3 p.m. and 4 p.m.

**Senator David Norris:** I thank the Leader for his diplomatic skills and I particularly thank the Minister for agreeing to come into the House. That is very welcome.

**Minister for Justice and Equality (Deputy Charles Flanagan):** I acknowledge the importance of the motion to be taken tomorrow. I advise Senator Norris and others that I would be very anxious to deal with the matter myself. The time proposed for taking the motion happens to coincide with a window in my diary. I would be happy to be here for 3 p.m. or 3.30 p.m. whichever time would suit.

**Senator David Norris:** That is very much appreciated.

**An Leas-Chathaoirleach:** Is that proposal agreed? Agreed.

### **Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)**

12 February 2019

**An Leas-Chathaoirleach:** We have concluded amendment No. 86d and we will move on to amendment No. 86e, proposing a new section, in the names of Senators McDowell, Boyhan and Craughwell. It has already been discussed with amendment No. 86c.

#### NEW SECTIONS

**Senator Michael McDowell:** I move amendment No. 86e:

In page 28, between lines 25 and 26, to insert the following:

#### **“Function of Attorney General under Article 30 of Constitution**

**41.** Nothing in this Act affects, limits or inhibits the function of the Attorney General under Article 30 of the Constitution to freely advise the members of the Government at a meeting thereof in relation to the suitability for appointment to any judicial office of any person whether or not such person has been recommended by the Commission to the Government in respect of any judicial appointment.”.

**An Leas-Chathaoirleach:** Is the Senator pressing the amendment?

**Senator Michael McDowell:** Yes, I am pressing it.

Amendment put.

The Committee divided by electronic means.

**Senator David Norris:** In view of the extraordinarily narrow margin separating the two sides, I call for a walk-through vote.

**Senator Jerry Buttimer:** I oppose that.

**An Cathaoirleach:** The Senator is entitled to do that but his definition of “narrow” seems perplexing.

**Senator David Norris:** Yes, it is.

**Senator Jerry Buttimer:** It is a pity those who want Seanad reform are not so good at reform now.

**Senator David Norris:** There is only one digit between us, the number 1 - one, zero.

**Senator Jerry Buttimer:** It is a pity those who want Seanad reform are not in favour of real reform.

**Senator David Norris:** We know how eager the Leader is for Seanad reform.

**Senator Jerry Buttimer:** Sure the Senator is one of his-----

**Senator David Norris:** Under Standing Order 62(3)(b) I request that the division be taken again other than by electronic means.

Amendment again put:

The Committee divided: Tá, 13; Níl, 23.
-----------------------------------------

Tá	Níl
Bacik, Ivana.	Burke, Colm.
Boyhan, Victor.	Burke, Paddy.
Craughwell, Gerard P.	Butler, Ray.
Davitt, Aidan.	Buttimer, Jerry.
Gallagher, Robbie.	Byrne, Maria.
Horkan, Gerry.	Coffey, Paudie.
Humphreys, Kevin.	Coghlan, Paul.
Leyden, Terry.	Conway-Walsh, Rose.
Marshall, Ian.	Conway, Martin.
McDowell, Michael.	Devine, Máire.
Norris, David.	Gavan, Paul.
Ó Céidigh, Pádraig.	Hopkins, Maura.
Wilson, Diarmuid.	Lawlor, Anthony.
	Lombard, Tim.
	McFadden, Gabrielle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Michael McDowell and David Norris; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

**Senator Michael McDowell:** I move amendment No. 86f:

In page 28, between lines 25 and 26, to insert the following:

**“Authorisation of Commission**

**41.** Nothing in *section 11(8)* shall be construed as authorising the Commission to appoint any person, consultant or advisor to evaluate or assess the suitability of any person holding a judicial office for appointment to any other judicial office or to advise the Commission in respect of that matter.”.

This amendment serves to make something clear. By the way, I am absolutely confident that the Minister will accept this because rejecting it would have extraordinary consequences.

**Minister for Justice and Equality (Deputy Charles Flanagan):** Is the Senator referring to profound constitutional issues?

**Senator Michael McDowell:** No.

**Senator David Norris:** Yes, Minister.

**Senator Michael McDowell:** There are simply questions as to whether common sense has evaporated completely from the legislative process.

**Senator David Norris:** No, that is Senator McDowell's aftershave.

**Senator Michael McDowell:** I wish to draw the attention of the House to what is provided in section 11(8), which we have already discussed. Section 11(8) provides for the functions of persons who can be appointed under section 11(7) as persons, consultants or advisers. Section 11(8) provides:

Any contract or arrangement with a person, or appointment of a consultant or adviser, referred to in *subsection (7)* may enable the person, consultant or adviser to—

(a) advise and assist the Commission in its consideration of applicants at a preliminary stage in the course of the selection procedures, and

(b) provide an evaluation or an assessment of an applicant's suitability for appointment that would assist the Commission in making any decision in the course of carrying out those procedures,

but shall not enable the person, consultant or adviser, for the purpose of performance by the Commission of that function, to do any other thing (other than a thing which facilitates such performance).

The Minister is insisting that members of the Judiciary, for example, those at High Court or Court of Appeal level, can only effectively become ordinary judges of the Supreme Court by applying to the commission under the terms of this Bill. Given that is the policy position, it occurred to me that it was absolutely appropriate to make very clear that nothing in section 11(8), which is the section I have just read out, shall be construed as authorising the commission to appoint any person, consultant or adviser to evaluate or assess the suitability of any person holding a judicial office for appointment to any other judicial office or to advise the commission in respect of that matter. What does this mean? It means that under no circumstances can a sitting judge of the High Court or the Court of Appeal be sent to or have his or her curriculum vitae evaluated by a person who is not even on the commission by way of a suitability test.

We cannot accept this proposition that a sitting High Court judge has to be evaluated by an outside person who will then submit a report to the commission as to his or her suitability. Are we going to oblige sitting senior members of the Judiciary, who are day in, day out functioning as members of the High Court, to be vetted by people who are not even on the judicial appointments commission? Are we going to oblige them to be the subject of a report as to their suitability? If we cannot accept that, then the mind boggles as to what is going on in the collective minds of those proposing this legislation. Is it to be the case that a Court of Appeal judge is to be evaluated as to his or her suitability to be made an ordinary judge of the Supreme Court by some outside expert engaged by contract with the commission? This is the question. There is either a "Yes" or "No" answer to that. If the Minister cannot accept this amendment, I wonder whether we are living in an "Alice in Wonderland" world in which sitting members of the High Court or the Court of Appeal would have to be evaluated by some third party and would be the subject of a report to the commission. It seems to me to be a strange scenario. Therefore, let us rule it out and say that is not the purpose of the legislation and that it can never have the effect

that a judge should be evaluated by a third party or be the subject of a suitability preliminary screening test to be promoted to the Court of Appeal or the Supreme Court.

I hope other Members will support me in this amendment and that the Minister will accept it. Rejection of the amendment raises many questions about the motivation of those who are proposing this legislation.

**Senator David Norris:** In answer to Senator McDowell's appeal for support from his colleagues, I certainly will support it. First of all, this curiously inelegant phrase "other than a thing which facilitates such performance" is used. I am not at all sure what it means. Can the Minister assist me by explaining what the meaning of this inelegant phrase is?

I completely agree with Senator McDowell. It seems to me to be the height of absurdity that a member of the High Court or the Court of Appeal would be subjected to this scrutiny by an unnamed consultant or advisor. Will the public know who these people are? Is there any process by which the public can find out who the people are who are making this judgment, and what their qualifications are? Will the ordinary citizen in Ireland be made aware of this situation?

It occurs to me that we have the benefit of Senator McDowell's remarkable legal insight, but there is only one member of the Government here, along with our very distinguished colleague from Northern Ireland. We should have a quorum; I am sure the Minister would agree.

*Notice taken that 12 Members were not present; House counted and 12 Members being present*

**Deputy Charles Flanagan:** On a technical point, it must be said in the first instance that, whatever about the merits or otherwise of amendment 86(f), I have no doubt that it would sit better if it were closer to section 11(8), to which it more appropriately relates. I am happy to have a look at it in that context.

I have listened to Senator McDowell and I am somewhat concerned about the motive for the amendment. On one view - and I invite Senator McDowell to agree with me - it would appear that the intentions of the Senator are simply to ensure that serving judges should not be subject to an evaluation or assessment of their suitability for appointment to a particular judicial office, where such assessment is conducted by advisors or consultants who may, from time to time, be assisting the commission. If that is the case, I believe there is merit in so exempting serving members of the Judiciary from any such assessment or evaluation. I will reflect further on it between now and Report Stage, with a view to bringing forward an amendment.

However, any amendment will be to section 11(8) because I believe it is a more appropriate location for such a subsection in the Bill. If Senator McDowell was to accept that there is no other motivation for such an amendment, I would be happy to accommodate him by way of an appropriate draft on Report Stage, taking on board the importance of what he had to say.

**Senator Michael McDowell:** What the Minister has said is half encouraging. However, I have to say that, on the other hand, I do not know what the gloss about my motivation has to do with this.

*6 o'clock*

Nor do I accept it is in the wrong place. The reason I say it is in the right place is we are

now dealing with a large series of amendments centred on the issue of whether serving judges should or should not be forced to go to the judicial appointments commission for appointment to the position of ordinary judge of the Court of Appeal or the Supreme Court. It is in this context that the amendment arises.

If the Minister keeps rejecting all efforts to exempt the Judiciary from having to apply to the commission for appointment to a position as an ordinary member of the Supreme Court, then of course, if he evinces this attitude, we must look back at the text of the entire Bill to see what this section actually means. One of the things it potentially means is that the envelopes of all of the applicants for consideration will be sent off to some person, consultant or adviser, before the commission actually processes them at all, to give a report on their suitability. I regard this as repugnant. It is bad enough that the Minister should stick to what I believe is the wholly wrong-headed view that every member of the High Court or Court of Appeal who wishes to be considered for appointment to the position of an ordinary judge of the Supreme Court should have to apply at first instance to the judicial appointments commission but if this entails, as a preliminary step, some person - and, as Senator Norris said, we do not know who this person will be but he or she will be chosen by the commission - going through the applications and making a preliminary check as to suitability, and this process is envisaged for sitting members of the Judiciary then, as I said earlier, all common sense has fled from this entire procedure.

I have said it before so I will not repeat it at length but there is a serious constitutional issue when it comes to the interference this procedure amounts to in the function of the Executive, in the form of the Government deciding to fill a position of ordinary judge on the Supreme Court. I have said this before and it does not really require repetition. What is wrong with the Bill, and what is fundamentally flawed about it, is the commission will be required to apply entirely different criteria to the consideration of such an appointment from that which the Government is required to apply. The Government is entitled to say, as I have said before, that Mr. Justice So-and-So or Ms Justice So-and-So is conservative or liberal, or has one set of attitudes on social issues, European issues, civil liability, judicial activism or whatever, and then state on that account it wants or does not want that person on the Supreme Court. This is the type of decision the Government of the day makes. The judicial appointments commission will not be entitled to evaluate candidates by these very criteria. It will be obliged to use its so-called "merit" regarding representation of the diversity of society, gender balance or other criteria in making a recommendation. It will be obliged to devise a three-person shortlist by reference to criteria that have nothing to do with the Government's view of the matter. Merit in this context can mean a host of things. One can be a very meritorious lawyer and yet still be somebody whom the Government would prefer not to be on the Supreme Court, or it might prefer a less meritorious lawyer to be on the Supreme Court, because of that person's attitude.

It is absurd and nonsense that all judges who want to be considered for such an appointment will be forced to go through hoops in the judicial appointments commission process, in which criteria are applied to them that are irrelevant to the Government's choice. In particular, if we force all judges through all of these hoops, the very notion they in any sense should be open to evaluation by non-members of the commission as to their suitability is especially repugnant.

The Minister says he can see some merit in the amendment, depending on my motivation for moving it. I do not know what question mark he has over my motivation for moving the amendment. To me it is so blitheringly obvious that it is inappropriate that third parties should be looking at judges and sending in reports to a commission on their suitability for appointment. The wider point is who, in the name of goodness, outside of the commission will look

at an appointment as an ordinary judge of the Supreme Court and sit down and start ticking off people and saying “yes”, “no”, “suitable” or “unsuitable” before the commission even sees the application? Who will carry out this function? What possible justification is there for this function being carried out? Who is there? Is there some genius out there who will be given €5,000 or €500 per evaluation and who will state this person would make a good member of the Court of Appeal prior to the judicial appointments commission actually seeing the application to consider it? It will get a preliminary report. Is a position on the Supreme Court or Court of Appeal really going to be the subject ever of an evaluation of this kind?

I must say I find it very strange that the Minister should persist with the notion that serving judges should be sent through any of these hoops or evaluated by criteria that are simply none of the business of the judicial appointments commission and entirely the business of the Executive.

If I propose something that is plain simple common sense, I cannot see how my motivation comes into it, unless the Minister thinks-----

**Senator David Norris:** The Senator’s motivation is the public good.

**Senator Michael McDowell:** It is to get rid of rubbish out of this legislation and to prevent rubbish from being in the legislation. I have explained my motivation and it is a bit strange, in those circumstances, to be asked, as I am being asked, to explain my motivation and then to be told that depending on my motivation, the Minister may try to replicate the effect of the amendment on Report Stage in the House. I wonder what is afoot.

**Deputy Charles Flanagan:** It is perfectly reasonable to question the motivation of the Senator in any amendment. However, I go back to the import of what Senator McDowell has said as far as particular positions are concerned. I will look at the issue between now and Report Stage and draft an amendment more appropriate to section 11. If the aim of the amendment - this goes to the motivation of Senator McDowell - is to exempt serving members of the Judiciary in their entirety from assessment or evaluation, I have a problem with it because that goes against the policy and fundamental thrust of the Bill, namely, that every applicant or interested person, be they a practitioner or a serving member of the Judiciary, will apply to the commission, as provided for in section 39. If Senator McDowell is referring to an individual position, I will be happy to take a look at it. He reminds me in many respects of the best cow in the dairy herd-----

**Senator David Norris:** He has big udders.

**Deputy Charles Flanagan:** -----that is producing the finest cream to such an extent that before all of the milk is produced, it kicks over the bucket. I am willing to go along with him as far as an individual position is concerned, but I will not contemplate an amendment that would offer a blanket exemption across the board for serving members of the Judiciary. I regret that he commenced his contribution by saying he was half encouraged and then removed the positive half-encouragement over a period of ten minutes with a long submission of a type that we had heard on each and every occasion since the warm weather departed the country last July. I am willing to examine the issue as far as an individual placement or position is concerned, which is why I believe it is perfectly valid for me to question the motivation behind the amendment.

**Senator David Norris:** The Minister’s analogy in comparing Senator McDowell to a milk-laden cow is a little unfortunate. I am in the House 32 years and cannot recall other occasions

12 February 2019

when Ministers questioned the motivation of a Senator. Any Senator has the perfect right to table whatever amendment he or she likes without a Minister raising questions about what I am sure Senator McDowell would call the *mens rea*, or state of mind, of the Senator in tabling it. Whatever Senator McDowell motivation is - it is something to which I cannot speak, as I simply do not know, as I am not in his mind-----

**Deputy Charles Flanagan:** Is the Senator sure?

**Senator David Norris:** ----- I am perfectly certain. Are we going to have a conversation and ignore the Leas Chathaoirleach?

**Senator Jerry Buttimer:** That is up to the Senator.

**Senator David Norris:** It is not up to me because I respect the Chair. I always address my remarks through the Chair.

**Senator Jerry Buttimer:** That is a first.

**Senator David Norris:** Ahem; please excuse me while I clear my throat. I strongly support Senator McDowell in this matter. Whatever his motivation is, the Seanad discusses the matter on its merits, which is how it should be decided. I will be supporting Senator McDowell enthusiastically.

**Senator Michael McDowell:** The Minister has just said he is concerned about whether I am trying to achieve a blanket effect or an effect in relation to individual jobs or levels of jobs, or individual appointments or levels of appointment, in the Judiciary, but I am not clear. It is intended to be a blanket provision that no sitting judge who applies for any other position in the courts should be the subject of a preliminary report to the judicial appointments commission on his or her suitability for appointment. Let us take a very simple example. Let us take an ordinary judge of the Court of Appeal or the Supreme Court. It seems that no judge should be subject to an outside person running the rule over him or her as to whether he or she is or is not suitable for appointment to such a position. That is my proposal. There is no motive behind it, except to rule out the grotesque alternative that the commission might state it had received 12 applications for a vacancy for an ordinary judge in the Supreme Court and that before it would ever get to look at them, it was appointing some expert consultant - I do not know who it would be - to examine the applications and give it a preliminary view on whether any or all of them should be accepted. I regard that as a grotesque possibility. Therefore, it was with some confidence that I moved the amendment to exclude it.

Let us consider a judge of the District or the Circuit Court who is applying for a position in the next court in the hierarchy of courts. Why, in Heaven's name, should the application received from such a judge who had made it because the Minister insisted on it being made be sent to be vetted by some so-called consultant who would report to the commission on his or her findings on the suitability of the judge? That is reprehensible and grotesque at any level. What would this consultant say about a District Court judge? What would an outsider say - that the judge was unsuitable? What would an outsider say about a Circuit Court judge - that he or she was unsuitable? Would they winnow them out and say they were not good enough for consideration and that the commission should not look at them? The same applies to a Circuit Court judge in looking for a High Court position, to a High Court judge in looking for a Court of Appeal position or to a Court of Appeal judge in looking for a Supreme Court position. Why have a situation where an outside expert would look at applications and start to put ticks and

an X on them, ruling them suitable or unsuitable in a preliminary report to the commission? I cannot imagine any circumstance in which that would be done.

The Minister may talk about the best cow in the dairy herd kicking over the pail-----

**Senator David Norris:** “Bucket” was the word used.

**Senator Michael McDowell:** The bucket.

**Senator David Norris:** We hope the Senator does not kick the bucket.

**Senator Michael McDowell:** The Minister seems to think I am trying to drive at some general exemption for members of the Judiciary from consideration by outside experts of their suitability in any application and I am. If he is talking about narrowing it down to specific appointments - he says he is of a mind to accommodate this in a Report Stage amendment - I would like him to indicate the specific appointments or types of appointment he thinks he could accept such an exemption?

**Senator David Norris:** I refer to the people who have applied for promotion. Whatever about the Government not knowing about his or her application, the individual applicant would certainly know. I do not know if it is impossible to contemplate a situation where such a person might take legal action and force discovery of the reasons he or she was disbarred. If the person was told that he or she was useless as a judge, or was an old drunkard or something like it, he or she could take an action for libel. I do not believe that is beyond the bounds of possibility. Perhaps my esteemed colleague Senator McDowell might enlighten me on whether this scenario is a possibility. If an individual had put his or her name forward and was refused on the grounds of being inappropriate, could he or she take an action to force discovery and then a libel action? I would be very interested in knowing the answer to that question. It would expose the Government to a risk.

**Senator Michael McDowell:** I am grateful to Senator Norris for his kind words, but I defer to him in matters of the law of defamation because sometimes he has more experience of it than I do.

**Senator David Norris:** Very successful.

**Senator Michael McDowell:** I am talking about more practical experience of it. I do not believe the law of libel would be the issue. I do, however, believe there could be a judicial review if some member of the Judiciary was to find that he or she had been reported on adversely by an outside expert to the judicial appointments commission by whatever means. Taking Senator Norris’ point seriously, any such report would occasion qualified privilege. It is very unlikely, therefore, that any action for defamation would lie. For there to be a challenge to the judicial appointments commission’s procedures, it is quite possible that a judge whose application was farmed out to a third party for a preliminary examination would seek to discover this or make some argument based on his or her premature rejection in a report to the commission. The Minister has said he would see it applying to a narrower category of appointments. I would like him to indicate the narrower category he would be willing to accommodate in his proposed Report Stage amendment that would exempt sitting members of the Judiciary from being vetted by third-party strangers in this way.

**Deputy Charles Flanagan:** I would certainly be looking at the High Court or courts that

might be regarded as the higher courts.

**Senator Michael McDowell:** As I see it, the Bill is actually making members of the District Court eligible to be appointed to the High Court, the Court of Appeal and the like. That is one of the terms of the Bill, as it stands. Is the Minister creating a two-tier approach to members of the Judiciary, which he has always accused me of doing, or is he now saying he might amend the law to have no preliminary examination of High Court judges or candidates for appointment to the High Court? I am not quite clear what he is saying. Is he saying members of the High Court in seeking appointment to the Court of Appeal or the Supreme Court would be positively excluded from the possibility of being vetted by a third party on a preliminary basis? I seek clarity on that issue. Is the Minister also saying it would be for appointments to the High Court? I also seek clarity on that issue. I would like an explanation for why Circuit Court judges, for example, would be evaluated by third-party assessors in a preliminary evaluation process before the judicial appointments commission would come to look at and decide on their application. Why would it be justified in the case of Circuit Court judges?

**Deputy Charles Flanagan:** As I have indicated, I am prepared to reflect on the matter in the light of what Senator McDowell said, with a view towards tabling an appropriate amendment on Report Stage to section 11 or thereabouts.

**Acting Chairman (Senator Gerry Horkan):** Is Senator McDowell pressing the amendment?

**Senator Michael McDowell:** I have said everything I have to say about it. I was partly encouraged by the Minister in saying he could see some merit somewhere in the amendment, depending on my motivation. It seems that section 41 just makes plain and simple, obvious common sense and the Minister should be in a position to accept it. If he wants to shift it later to a different place in the Bill, let him do so, but there is nothing in the section that offends common sense. In demurring, or kicking the can down the road, on the proposed section-----

**Senator David Norris:** I ask Senator McDowell to repeat what he said. Did he say there was nothing in section 41 that would offends common sense?

**Senator Michael McDowell:** No.

**Senator David Norris:** I think that is what the Senator said.

**Senator Michael McDowell:** I am saying that. There is nothing in my amendment that would offend.

**Senator David Norris:** The Senator said in section 41.

**Senator Michael McDowell:** I am sorry; I meant to say in the amendment.

**Senator David Norris:** I was not sure and wanted to clarify the position.

**Senator Michael McDowell:** The Senator is 100% correct.

**Senator David Norris:** I thank the Senator.

**Senator Michael McDowell:** I was referring to amendment No. 86f which seeks to introduce a new section 41. There is nothing in it that would offend common sense. That is what I meant to say. In the circumstances I cannot really believe it would be rejected at this stage. It is

one thing if the Minister wants to accept it at this stage and move it later, but it would be deeply regrettable if it was not even being accepted at this stage.

Amendment put:

The Committee divided: Tá, 7; Níl, 23.	
Tá	Níl
Boyhan, Victor.	Burke, Colm.
Craughwell, Gerard P.	Burke, Paddy.
Horkan, Gerry.	Butler, Ray.
Marshall, Ian.	Buttimer, Jerry.
McDowell, Michael.	Byrne, Maria.
Norris, David.	Coffey, Paudie.
Wilson, Diarmuid.	Conway-Walsh, Rose.
	Conway, Martin.
	Devine, Máire.
	Gavan, Paul.
	Hopkins, Maura.
	Lawlor, Anthony.
	Lombard, Tim.
	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Michael McDowell and David Norris; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

**Senator Michael McDowell:** I move amendment No. 86g:

In page 28, between lines 25 and 26, to insert the following:

**“Right of Government to advise President**

**41.** Notwithstanding the provisions of *section 40*, nothing in this Act affects, limits or inhibits the right of the Government in any case where it advises the President to appoint any member of the Supreme Court, the Court of Appeal, or the High Court to any judicial office in any of those courts, at its discretion, to further advise the President to appoint any other member of those courts to the vacancy thereby created without seeking any recom-

mendation from the Commission.”.

I emphasise that this amendment concerns a very significant problem with the legislation.

I understand that a senior member of the High Court has today called on the Government to appoint judges. I hope the Minister will hear that call. This amendment goes to the heart of the workability of the Judicial Appointments Commission Bill. It states:

Notwithstanding the provisions of *section 40*, nothing in this Act affects, limits or inhibits the right of the Government in any case where it advises the President to appoint any member of the Supreme Court, the Court of Appeal, or the High Court to any judicial office in any of those courts, at its discretion, to further advise the President to appoint any other member of those courts to the vacancy thereby created without seeking any recommendation from the Commission.

What am I talking about here? It sounds legalistic and formulaic. The Bill in its present form will mean that when three names come before the Government, and if it elects to recommend to the President one of those three names who is the holder of a senior judicial office, it will create a hole in terms of the position of the judge it has recommended for appointment. If the Bill is left in its present appalling and messy form, the Government will have to notify the commission that it wants to start the whole ball rolling to fill that vacancy.

Let us take an example. Ms Justice So-and-so is an ordinary member of the Supreme Court. She is one of three people recommended by the commission. The Government says it is going for Ms Justice So-and-so and making her Chief Justice or whatever the case may be. The result is that her position as an ordinary member of that court becomes vacant as soon as she is appointed. Under this legislation, as now proposed, which is quite different from the existing legislation, whereby in those circumstances sitting members of the Judiciary never go near the Judicial Appointments Advisory Board, JAAB, and nothing happens, it is possible for the Attorney General, the Minister for Justice and Equality and the Taoiseach to arrange the business of Cabinet such that if the Government chooses Ms Justice So-and-so for the job, there will be a vacancy and the Government will fill it with someone from the Court of Appeal or the High Court. If the Government makes the decision to go for that particular candidate, there will be a consequential vacancy and the Government will fill it at the same time. This is the way in which the system works at present. If someone is appointed to a senior position, for example, a Court of Appeal judge is appointed to the Supreme Court, the question that then arises is who will be appointed to fill the resultant vacancy. Without going back to the Judicial Appointments Advisory Board, the Government customarily produces three appointments to deal with the situation it has just created. This works perfectly well and ensures there is no undue delay.

This ridiculous Bill, however, if it becomes law, will mean that in such circumstances someone must step on the emergency brake, everything judders to a halt in respect of the position vacated, and the Government must go off through an advertisement process to the commission, and all the members of the High Court and the Supreme Court who are interested in this position must submit further applications to the commission and the whole process must be gone through again, advertising the vacancy among all eligible practitioners and going through the entire panoply of provisions because a vacancy has arisen by a decision of the Government. No one seems to have understood the huge problem this will create. One need not be Einstein to see that if, for instance, a Supreme Court judge is appointed as Chief Justice and, in the end, having gone through the judicial appointments commission, a Court of Appeal judge is appoint-

ed to the Supreme Court vacancy and a High Court judge appointed to fill the Court of Appeal vacancy, it will take six months or a year to deal with the trickle-down effect of an appointment. No one has put his or her brain into first gear on this issue. If all these appointments and all the judicial replacements, if I may use that phrase, must go through this system, everything will be thrown into complete chaos because one appointment has a necessary knock-on effect in creating a vacancy, the Government cannot cure that vacancy on the day and it must go off and tell the judicial appointments commission a vacancy has arisen.

The funny thing is that the Bill attempts in another way to deal with situations in which the Minister reasonably anticipates that a position will become vacant. He can ask the commission to advertise the matter and seek applications. This is where someone is coming up to retirement or whatever. It cannot possibly be the case, however, that this applies where, say, one out of three shortlisted persons is a judge and the Minister decides to go for Ms Justice So-and-so and then asks the commission to get on with the job and take applications-----

**Senator David Norris:** There are a frightful number of so-and-sos in the legal profession.

**Senator Michael McDowell:** Whatever.

**Senator David Norris:** Is that on or off the record?

**Senator Michael McDowell:** This cannot apply where the Minister says, "I anticipate that we will choose this judge; therefore, I will ask the commission to seek applications for the vacancy she will leave behind her." That is not provided for in this legislation and it will not work.

There is method in people's madness sometimes and there are reasons things are as they are. One very good reason the Judicial Appointments Advisory Board procedure did not apply to serving judges is that it enabled a Government to recommend the appointment of a certain judge to a certain position on a given day, the consequence of which would be two further vacancies down the ladder, and to fill those vacancies that day, and that would be the end of the matter. The Government did not have to start successive advertised processes each time each of the vacancies on that ladder was filled.

Let us take the example of an ordinary judge of the Supreme Court who is appointed to fill a vacancy as Chief Justice, which is a perfectly likely scenario. There has been for some stupid reason a shortlist of three. The Government has decided to appoint one of the serving ordinary judges of the Supreme Court to the position of Chief Justice. The result is that there is a vacancy for an ordinary judge of the Supreme Court. The Government cannot, according to this Bill, appoint a judge from the Court of Appeal to that position and appoint someone else to the resultant vacant position in the Court of Appeal and keep those courts functioning. At present this is exactly what the Government does. It does not just create holes and then sit down and ask, "God, what will we do about filling them?" It makes the judicial appointments. If the procedures have been changed-----

**Deputy Charles Flanagan:** That is not necessarily the case. There must be a vacancy.

**Senator Michael McDowell:** Yes, but-----

**Deputy Charles Flanagan:** It cannot be filled without a process.

**Senator Michael McDowell:** Sorry, I ask the Minister to hold on a second. I know what I am talking about here, and that is-----

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**Deputy Charles Flanagan:** No. There must be a process.

**An Leas-Chathaoirleach:** I am afraid, Senator, that the time-----

**Senator David Norris:** Let him finish the sentence.

**An Leas-Chathaoirleach:** No.

*7 o'clock*

**Senator Michael McDowell:** If the Leas-Chathaoirleach would let me finish this sentence I will then report progress.

**Deputy Charles Flanagan:** I am introducing a process here. That is what it is all about, not the “ad hocery” or the tap-on-the-shoulder practice that the Senator has been supporting.

**Senator Michael McDowell:** It has nothing to do with “ad hocery”.

**Deputy Charles Flanagan:** It is “ad hocery”.

**Senator Michael McDowell:** It is a considered Cabinet decision making provision for the situation it has just created. I want to make it clear that what the Minister is proposing will create a six-month delay where there are two follow-on appointments. We will be dealing with it at great length on the next occasion so the Minister can relax as he will have plenty of time to deal with it.

**An Leas-Chathaoirleach:** With respect, we are not going to argue about it now.

Progress reported; Committee to sit again.

### **Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018: Second Stage**

**Acting Chairman (Senator Gerard P. Craughwell):** I welcome the Minister to the House. She has the floor of the House.

Question proposed: “That the Bill be now read a Second Time.”

**Minister for Business, Enterprise and Innovation (Deputy Heather Humphreys):** I am pleased to bring the Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018 before the Seanad. This is an important Bill as the Personal Injuries Assessment Board, or the PIAB as it is commonly known, facilitates the objective assessment of damages at a much lower delivery cost and in a far shorter timeframe than through litigation.

The cost of insurance working group report on the cost of motor insurance published in January 2017 suggests that the delivery costs for cases settled outside PIAB continue to be more than 40% of compensation costs. As Senators will be aware, pricing in the insurance sector has been the subject of much volatility in recent years. Many commentators have suggested that the cost of personal injury claims is a contributing factor to the high cost of insurance premiums and, as Minister for Business, Enterprise and Innovation, I am very aware of the serious impacts on businesses of high insurance costs. Therefore, encouraging more claimants to finalise their

cases through the PIAB model rather than resorting to litigation should lead to cost savings in the claims environment. This is good for businesses, consumers and society as a whole as it delivers compensation more quickly, with lower costs and predictable outcomes.

The primary objective of the Bill is to amend the existing legislation, the Personal Injuries Assessment Board Acts 2003 and 2007, to strengthen PIAB in terms of operational issues to ensure greater compliance with the PIAB process and encourage more claims to be settled through the PIAB model. The Bill is one element of the Government's response to facilitate cost savings in the personal injuries claims environment.

The PIAB operates an administrative, paper-based process and assesses damages on the same basis as the courts in accordance with the laws of tort. Effectively, this means that the PIAB assesses amounts for general damages, this is the amount for pain and suffering, and for special damages, which is the amount for financial loss such as wage loss, medical treatment costs or out-of-pocket expenses. The PIAB does not determine liability. With the exception of claims for medical negligence, intending applicants must make their personal injury claim through the PIAB unless they settle the case directly with the other party.

In assessing cases, the PIAB usually requires the claimant to attend an independent medical practitioner for an up-to-date medical examination and final prognosis. Within a legislatively defined time period of nine months, the PIAB's assessors make an award and issue it to both parties. If the award is accepted by both parties, an order to pay is issued against the respondent who then pays the compensation to the claimant. If either party rejects the award, then the PIAB issues an authorisation to the claimant. An authorisation by the PIAB is necessary before a claimant can initiate proceedings in court. Under the legislation either party can reject a PIAB award. Award acceptance is not compulsory as this would impinge on a person's constitutional right of access to justice which is delivered by the courts. The PIAB makes awards in approximately 12,000 cases annually with around 60% of claimants accepting them. The acceptance rate has remained broadly consistent in recent years. These cases are dealt with speedily and at a low cost. The current delivery cost is approximately 6.5% of the value of the compensation and this mainly comprises the fees paid by the claimant and respondent, and the costs of the medical reports required to assess the case.

In making its awards, the PIAB uses the book of quantum so that awards reflect what is likely to be achieved through litigation but at a much lower cost of delivery. The overall average award made by the PIAB in 2017 was €24,879 with the average motor liability award being €23,234, the average employer's liability award being €32,015 and the average public liability award being €27,638. Award values vary depending on the nature and severity of cases received. Today's PIAB non-adversarial model delivers settlements to claimants without the need for litigation.

In 2014, a public consultation was held to examine the operation of the legislation and to identify any areas relating to the scope, powers or operation of the 2003 Act that required change. Some 29 submissions were received. The cost of insurance working group report made a number of recommendations in regard to strengthening the PIAB model, namely, to address issues of non-cooperation with the PIAB and the frequency of the publication of the book of quantum. The report on the rising costs of motor insurance produced by the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach of November 2016 also recommended enhancing the powers of the PIAB.

The outcome of the public consultation process and the two reports referred to have informed the content of the Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018. Encouraging more claimants to avail of the PIAB model rather than resorting to litigation should lead to cost savings in the claims environment and this should ultimately lead to reductions in insurance premiums, thereby benefiting consumers and businesses.

I will summarise the main provisions of the Bill. Section 2 amends section 13 of the 2003 Act regarding the documentation required by the PIAB before the formal notification shall be served on a respondent to ascertain his or her wishes regarding an assessment by the board of the claim. A formal notice will only issue to a respondent when an application, a report prepared by a medical practitioner in respect of the personal injuries and the fee have been received from the claimant by the board. This amendment will not affect the operation of section 50 - the statute of limitations will continue to be paused upon the making of an application to the board, irrespective of whether it is accompanied by a medical report and fee. If the application is not accompanied by a medical report and-or the fee, the board may issue a preliminary notification to the respondent that a claim has been received identifying them as the person the claimant holds responsible for his or her injuries. However, the respondent will not be obliged to consider consenting to an assessment being made in the absence of a medical report and-or the fee being submitted to the board.

Section 4 amends section 17 of the 2003 Act regarding the discretion of the board not to arrange for the making of an assessment in certain circumstances, as set out in section 17. These include circumstances where there is insufficient case law on the type of injury and the assessors cannot quantify the value of the claim or, in the opinion of the board, there is such complexity in issues regarding assessment of the claim, including, for example, issues involving multiple injuries or a pre-existing injury, that it would not be appropriate for the claim to be assessed, or where the injuries consist in whole or in part of psychological damage and it would not be appropriate for the assessors to assess the claim given the limited means afforded to them by the Act as to how they are to assess a claim. The assessors, unlike a court, cannot hear oral evidence from the claimant or observe the claimant undergoing cross-examination which may be appropriate in determining the value of a psychological injury in certain circumstances.

It is proposed to extend the categories listed in section 17 of the 2003 Act. This, for example, will include circumstances in which the board is unable to serve statutory documents, where the respondent has notified the board of his or her intention not to accept any assessment when made, or where a settlement has been negotiated in respect of a minor or persons of unsound mind to be approved by the court.

Section 5 amends section 22 of the 2003 Act to provide for different levels of charges levied by the board on claimants and respondents for submitting electronic and paper formats of documents to it. As it is cheaper to submit and process documents electronically, this should be incentivised. There is also provision for the PIAB to levy staged charges on the respondent for the various stages of the claims assessment process.

Section 7 amends section 50 of the 2003 Act to ensure consistency in the disapplication of limitation periods under the Statute of Limitations within the PIAB process and to rectify any discrepancies arising from interpretations of the *Renehan v. T & S Taverns* judgment, 2015 IESC.

Section 8 amends section 51 of the 2003 Act by the insertion of a new section 51C to deal

with cases of non-compliance with a request by the board under sections 23 or 24. The 2003 Act provides that where a claimant fails to supply details of his or her claim for special damages or fails to attend a medical examination arranged by the PIAB or where the claimant has failed to assist or co-operate with retained reports, the board is obliged to carry out the assessment. The assessment will not reflect the appropriate value of the claim and may therefore be rejected by the claimant. Upon rejection, the board releases the case and issues an authorisation to the claimant that allows the claimant to bring legal proceedings. To deter non-compliance with the PIAB process, section 8, by the insertion of section 51C into the 2003 Act, introduces a deterrent in any subsequent legal proceedings in terms of legal costs whereby the court may, in its discretion, taking into account any failure to comply, make an order on what costs, if any, it will allow the claimant. The court can also order the claimant to pay all or a portion of the costs of the respondent.

The amendment also provides a deterrent regarding legal costs for non-compliance by a respondent to a request by an assessor for information or documents or to assist or co-operate with retained experts. The court may, in its discretion, taking into account any failure to comply, make an order on what costs, if any, it will allow a respondent. This should contribute to maximising the use of the PIAB model, encouraging higher levels of consent to assess claims and increasing acceptance rates of awards. The Bill, including this section, has been drafted in consultation with the Office of the Attorney General.

The general scheme of the Bill published in 2017 provided that, where the claimant has failed to comply with a request by an assessor under section 23 or 24, the court would also have discretion as to what evidence would be admissible in court, in terms of claims for special damages or medical evidence that was available but not submitted by the claimant to the board prior to the making of the assessment. The general scheme also provided that where a respondent failed to comply with a request under section 23 for additional information, the court would have discretion to determine what evidence would be admissible in the proceedings. On the advice of the Attorney General, the Bill has been drafted taking into account that the function of the court and the constitutional duty of any judge is to hear all the available evidence and arrive at a decision on foot of that evidence, and to determine issues of liability and quantum.

A plaintiff also has a right to tender evidence before the courts. The court must retain discretion in any given case to ensure constitutional rights are vindicated and fair procedures are followed. This section of the Bill, by providing for potential financial consequences to be applied for non-compliance with requests by PIAB assessors, should encourage parties to adhere to the requirements set out in the Act.

Section 9 amends section 54 of the 2003 Act to provide that the board shall review and update the book of quantum every three years, or sooner if the board decides it is necessary. The 2003 Act did not make it clear that the book of quantum should be updated at regular intervals. The book of quantum was first published in 2004 and updated in October 2016. Section 10 amends section 54A of the 2003 Act to give the board power to obtain information from individuals or bodies to provide data for the purpose of the board fulfilling its functions in terms of preparing and publishing the book of quantum, and collecting and analysing data in relation to amounts awarded or agreed in settlements, and not just in relation to the board's function regarding the making of a cost-benefit analysis.

Sections 11 and 12 amend sections 56 and 57 of the 2003 Act regarding the composition of the board to fully reflect Government policy that, in so far as appropriate, appointments to

the board of non-commercial bodies are appointed following a Public Appointments Service process. The Bill also provides that board members cannot serve more than ten years on the board. This is in line with the 2016 code of practice for the governance of State bodies. Provision is also made in the Bill that where a board member is nominated to the Seanad, or becomes an elected representative of the Oireachtas, the European Parliament or a member of a local authority, he or she may no longer serve as a board member.

Section 13 inserts a new section 74A to provide for a reserves policy for the PIAB. Legal advice obtained by my Department is to the effect that legislative change is required for the board to remit surplus moneys to the Exchequer. The PIAB shall now remit to the Minister, for the benefit of the Exchequer, any moneys in excess of those authorised to be retained by the Minister, with the consent of the Minister for Public Expenditure and Reform. The Bill specifically provides that the Minister will have regard to the operational, capital and contingency costs of the PIAB when determining the sum to be retained. At present, there is no legislative provision which provides that excess moneys can be remitted to the Exchequer. This amendment rectifies the position and implements a recommendation to the Department from the Comptroller and Auditor General that appropriate legislation be introduced to deal with excess funds held by the PIAB.

Section 14 amends section 79 of the 2003 Act regarding the service of documents by the board. It is proposed to legislatively underpin the use of electronic portals to enable the board to serve documents electronically where consent has been provided. The use of portals will also reduce administrative costs for all parties engaging with the board and introduce further efficiencies into the process. The Bill provides that the PIAB will have the facility to serve documents by using a document exchange mail service and this amendment will provide for this. This brings me to the end of the provisions of the Bill and while some sections are technical, there are important changes being made.

I know there is significant interest in the Bill. The recommendations from the reports of the cost of insurance working group and the Personal Injuries Commission are, alongside this Bill, important measures in the Government's response to facilitate cost savings in the claims environment. I look forward to working with all Senators and having their support for the Bill to enable its speedy enactment. This is important legislation. Settling more claims through the PIAB rather than resorting to litigation should lead to cost savings in the claims environment and this should ultimately lead to reductions in insurance premiums, thereby benefiting consumers, businesses and society as a whole. I commend the Bill to the House.

**Senator Aidan Davitt:** The Minister and I are doing quite a few late evenings here together. I am delighted that Fianna Fáil is able to support the passage of this Bill. St. Valentine's Day is nearly upon us. Unfortunately, we still have a few differences to address in respect of things in here. There are a couple of things that we have been disappointed about. I hope the Minister will take them into consideration. We have yet to establish a national claims information database or tackle insurance fraud in a meaningful way. As has been pointed out here on quite a number of occasions, particular practising solicitors would be well aware that they have fraudulent cases but there has been no effort made to address it. Some might sigh but that is the reality of it. Judges are throwing several cases out and there have been no cases brought forward from cases that have been dismissed. That is certainly something we could address. It might make people think twice before bringing some cases in the first place. We have yet to establish an anti-fraud unit in the Garda Síochána, as we have discussed before, or to set up a business insurance premium index that would track prices over a given period. We have yet

to take any action towards stabilising personal injuries claims, although the Minister has addressed part of that today. We have yet to establish a judicial council to compile guidelines for general damages relating to personal injuries. They are just a few of the issues we would gladly see fleshed out further in addition to the Bill that is before us.

**Senator Pádraig Ó Céidigh:** I will not take ten minutes. It will be much shorter than that. I welcome the Minister and strongly congratulate her and the Government on bringing forward this legislation. It is very important. Its purpose is to encourage co-operation with the board. As the Minister says, it will make things a lot more streamlined and efficient. In some cases, its purpose is to disincentivise fraudsters and clean up the whole process. At the moment, there is a lot of entanglement and a need for clarity in respect of evidence and proofs of evidence. The legislation requires a claimant to bring a lot more solid evidence in front of the PIAB a lot earlier so the board can do its job as it is set out, with which it has been having difficulty. As a result, we should have reduced legal and insurance costs. All in all, the legislation should start giving small and medium-sized businesses in Ireland a little bit more of a fighting chance. That is very much to be welcomed. The Minister has a particular passion for SMEs, and I very much appreciate that. The fight has only begun in respect of small and medium-sized businesses. We really have to keep our focus on it.

I note that the Minister mentioned the law of tort. The PIAB uses the law of tort. That started with the law of equity back in the day and moved on to tort. In respect of tort, there are two or three pieces that defendants must show. They must show they have suffered as a result of a foreseeable loss and that the person against whom they are claiming had a duty of care and breached it. It is pretty straightforward and widely used, even though it is a common law action. There are many precedents in court in this respect. That is very important because we are working on precedent. The Minister is giving a structure to the PIAB to carry out its work effectively, which was being inhibited in the past.

I have one request. I introduced the Perjury and Related Offences Bill 2018 in the Seanad a number of months ago with the support of my Technical Group. It is due to be debated on Committee Stage this term. It will strongly support the present Bill. If I may say so, I also believe it will help Senator Davitt with some of the queries he has raised. It is going to clean out the system so that a defendant will have to be pretty confident that he or she has suffered loss and that there is a duty of care and that, as a result, he or she is entitled to a claim. Those who are entitled are right to claim but we have to clean it up. I would very much appreciate the support of the Minister and the Government for the perjury Bill. I believe both Bills go hand in hand.

**Senator James Reilly:** Lest there be any accusations of a conflict of interest, I wish to state at the outset that, as a practising GP, I see many people who are injured in road traffic and other accidents. I remind the House that pain is subjective and very difficult to assess objectively, although we can assess loss of function. It is a complex area.

I am very pleased Senator Ó Céidigh was here to speak to the perjury issue. While I welcome the Bill, I wish first to raise some of the issues raised by Senator Davitt. Many of the issues he mentioned are outside the scope of the present Bill and belong in other Departments, particularly insurance fraud, which is not just a case of what happens in court but sometimes how the accident happened in the first place. We have all seen the videos, the two-car accidents with eight participants and all the rest of it. In those situations, from a medical practitioner's perspective, all I can do is record the injuries and complaints. All else is beyond my remit. The anti-fraud unit is not something the Minister can address in her area but it is a Government is-

sue. It is a suggestion that I strongly support, by the way. An anti-fraud unit in the Garda would make a hell of a difference. I am mindful of the many discussions we had on this issue in the Oireachtas Joint Committee on Business, Enterprise and Innovation when we had the Insurance Alliance in. It pointed out that hardly anybody has been convicted of perjury in this area for years. Clearly, we need to strengthen the law, so I welcome Senator Ó Céidigh's Bill.

Judges are like everybody else. They are not infallible. One of the requests made was that, where a judge did feel it was appropriate to exceed the book of quantum, he or she would give a written explanation. There are many areas this Bill cannot address, but insofar as it can address those issues which are within the Minister's remit, I very much welcome it. It is notable that 40% of compensation costs lie in the cost of the delivery of the case. That has to be serious food for thought for all of us. Going through the PIAB is certainly the way forward. The book of quantum is an important area and I am glad the Minister has emphasised that it is not just to be reviewed every year but can be reviewed sooner if the board decides it is necessary. Many would feel it is very necessary when we are paying out four to five times more for a whiplash injury here than in the United Kingdom. I especially welcome that.

I also welcome the issue of the boards. There should be competency-based individuals on the boards. We have heard a lot of talk of boards recently. One of the first things we did during my time in the Department of Health was to start putting people on boards who had expertise in law, HR and accountancy. That is very appropriate and welcome here. Members not serving more than ten years ensures that the board is kept refreshed and reflects the changing times we live through.

On the issue around moneys in excess of those authorised to be retained by the Minister, it is just common sense in my view. The only other area I wished to speak to was non-compliance. In her opening remarks, the Minister stated:

To deter non-compliance with the PIAB process, section 8, by the insertion of section 51C into the 2003 Act, introduces a deterrent in any subsequent legal proceedings in terms of legal costs whereby the court may, in its discretion, taking into account any failure to comply, make an order on what costs, if any, it will allow the claimant.

That is very important. We have to try to make it easy for those who are injured and have suffered loss and pain to be compensated in an expedient fashion, notwithstanding that cases sometimes take a while to settle in terms of uncertainty of the prognosis in more serious injuries.

The longer somebody is out of work and the longer a case goes on, the more likely a person is to develop psychological problems. There has been much work on this, regarding how a person can begin to feel the pain is worse, then after a settlement he or she may suffer guilt because he or she feels the pain was not so bad. It is a complex area. If a matter can be settled more quickly through PIAB, it is, in most cases, the preferable way to go. I accept what my colleague, Senator Davitt, has said about the areas not covered but I do not believe it is appropriate to this Bill. I hope that the Government will address those issues. It is clear that people go into court who make false claims and there is absolutely no consequence or fear of consequences for them. They can come again with a scéal eile mar a deireann siad. I welcome the Bill and look forward to its speedy passage.

**Senator Colm Burke:** I welcome the Minister. The insurance industry has brought about and lobbied for a substantial change in the law. We have a situation where insurance compa-

nies still make substantial profits from premiums and we have not seen a significant reduction in insurance premiums over the years. There have been many changes, including the abolition of juries, the changes of procedures in courts and the setting up of PIAB. I have come across instances where insurance companies have collected premiums but have then come up with issues with regard to paying out on claims, which is a problem from time to time. It is not all on one side.

There is a robust process for fraudulent claims. In fairness to PIAB and the courts system, if a defendant believes a claim to be fraudulent, it can decide not to accept the recommendations of PIAB and can leave it to go into the courts system. The courts have been upfront in dealing with claims where they believe the claim is fraudulent, especially where it is identified that there are a number of claims arising from a single accident. The legal profession also has a duty of care. Any solicitor takes a high risk if he or she has any indication that fraud is happening. One problem that I have to be careful of as a practising solicitor is making sure that, when I get the evidence, it is given to me at face value. If I have any doubt, I would certainly refuse to act further and would come off record in the case. I have done so where I have thought that was the appropriate way to deal with it.

On delays in claims, while I acknowledge my colleague is a medical practitioner, an issue that can arise is a delay in getting medical reports from time to time. It is not because there is a delay by the general practitioner but because he or she is waiting to receive a report and it is not possible to give a final conclusion on the long-term effect of an injury. Not all injuries can be assessed in a short timeframe. I have come across cases where, two years down the road, there still was a question about what the long-term effect would be and the reports sought from medical practitioners and consultants still were inconclusive. I remember dealing with cases where we were in settlement negotiations in which there was significant disagreement over what the medical people were saying on behalf of the plaintiff and on behalf of the respondent and then not coming to an agreement but getting further reports merely to support the claim.

People do not deliberately delay progression of cases. There are genuine reasons. I have come across cases which were settled too early, when, for example, someone suffered an injury, whether a hip or knee injury, and there is a question of whether there will be arthritis in the long term. Such issues have to be looked at. It is about getting a balance. The PIAB system is working. There is a procedure for people who are unhappy with the offer from PIAB. There are sufficient checks and balances and the Minister is bringing forward these changes. It is important that people who suffer injuries are adequately compensated for the loss that they have suffered. I have seen people who have come through the legal process, have not been able to go back to the type of work they were involved in previously and are not able to do the additional hours that they were able to do prior to the accident. They should not have to suffer because of the negligence of someone who caused the accident. It is important to have that balance.

Our court system has worked well in identifying fraudulent claims and ensuring they have not gone through the system. While I find that insurance companies are able to give an impression that a large number of cases are fraudulent, I do not accept that. Fraudulent cases are easy enough to identify and many of us, certainly in the legal profession, will walk away from them from an early stage and make sure they do not get anywhere in the system because they only cause problems for genuine claimants where genuine injuries are suffered. If a person succeeds at a fraudulent claim, it then reduces credibility if there is a genuine case at a later stage. We need to watch that carefully. I welcome the changes that the Minister is talking about. She has given a full explanation. We need to get balance in this regard as the insurance companies are

not always right.

**Senator Máire Devine:** I welcome the Minister. I am speaking on this debate on behalf of my colleague, Senator Mac Lochlainn, who is on Government business. I thank the Minister for bringing forward this Bill to introduce changes to how the Personal Injuries Assessment Board works. It is a small step in addressing the escalating insurance costs, which are really hurting motoring and business owners across Ireland. In my area, Dublin South-Central, I hear from many small business owners and motorists, both young and not so young, who are crippled by insurance costs. Just last week, a local club in Crumlin got a grant via social inclusion to allow older people to access the first floor of a building to do a small job on it. They then received the insurance costs because there was a claim from two people attending there. Following the claim by two people, the insurance cost went up from €28,000 to €55,000. It cripples people, especially those trying to do their work or to offer a service to a community.

Insurance companies hold a special place and it is not one of smiles and laughter. They hold that place because it is a legal requirement for motorists and businesses to purchase their services. It guarantees the business and it is a great benefit. The profits should therefore come with some additional oversight. Far more work needs to be done by the Government to challenge the industry, to make operations more transparent and to ensure that Irish customers are protected. With regard to house insurance, my back wall fell in during a storm and it cost a couple of thousand euro to rebuild it. I was charged this excess and that excess and just gave up in the end because I got so frustrated about my insurance claim going up by several thousand euro, so I just stopped. Unless it is really damaged by fire or somebody else has damaged one's property or car, one will not do anything because the companies make it so difficult.

I acknowledge the spirit of this Bill, which seeks to introduce a number of changes to how the board works. The main provisions are to clarify documents required from claimants; to provide it with the power to obtain information from any person; changes to the composition of the board; different levels of fees to be levied by the board and claimants; for the book of quantum to be published every three years; and for several other important issues to be addressed.

While I agree that most of the provisions relay the functions of the PIAB and speed up the process for compensation claims, Sinn Féin has a couple of concerns. Our main objection is to the power being sought by the Minister to take the reserves of the PIAB, which stand at €17.5 million. The reserves, which were accrued by the PIAB, should be retained by the body to ensure its independence is protected and allow it invest in the efficiency of its processes. As the Bill passed through the Dáil, we tabled one amendment which sought to remove section 13 in its entirety. Section 13 inserts a new section in the 2003 Act and will provide that the PIAB shall remit to the Minister for the benefit of the Exchequer any moneys in excess of those authorised to be retained by the Minister with the consent of the Minister for Public Expenditure and Reform. The latest figures, according to a reply to a parliamentary question which was received at the end of December 2018, show reserves of €17.5 million.

The PIAB is an independent State body which assesses personal injury compensation claims. Since its establishment, it has been a successful self-financing organisation. In 2011, the PIAB repaid the Exchequer the almost €7 million it cost to establish the organisation, which shows it is prudent. The successful self-financing structure should be maintained to ensure the body remains fully independent of Government, which is our overall concern given the quasi-judicial service that the PIAB provides. In addition to protecting its independence, the reserves could be reinvested to improve the operation of the body by, for example, reducing the length of time

it takes to assess a claim, which is currently 7.3 months.

Furthermore, the functions of the PIAB could be extended by using the money. For example, the PIAB could be given the power to deal with Garda compensation. Currently, every Garda compensation claim, regardless of its value, is heard in the High Court, resulting in considerable legal cost to the taxpayer. We need to examine every aspect and area of public or independent organisations to streamline them and prevent an unnecessary charge to the Exchequer and the people's taxes. The Minister emptying the reserves of the PIAB will not benefit it or the people using its services. We will consider, therefore, retabling the amendment on Committee Stage.

Of the 40% of cases which refuse the offer from the PIAB and take the case to court, does the Minister know how many are successful and whether any of them result in less compensation than the PIAB had offered? How many does the PIAB designate as false or bogus claims? In any effort to regulate insurance and improve the industry, the default position is always that insurance is expensive because there are many bogus claims. I do not know the detail behind that but it seems to be the default response when we complain about insurance costs.

I thank the Minister for introducing the Bill. As I stated, however, Sinn Féin is considering tabling amendments on Committee Stage and we ask the Minister to engage with us in order that we can strengthen the Bill in its passage through the House. I hope this is the beginning of a wave of action by the Government that will include challenging the insurance industry directly, resulting in lower premiums for consumers and businesses.

**Senator Anthony Lawlor:** I, too, welcome the Minister to the House. I have examined the Bill with keen interest since it was first introduced in the Dáil. I will focus on one aspect of the Bill, namely, the book of quantum. I recognise that the first book of quantum was published when the legislation was introduced and it was subsequently reviewed in 2016. The intention of the Bill is that the book of quantum will be reviewed by the PIAB every three years, which must be welcomed. Given that 60% of the cases before the PIAB relate to injuries sustained in motor vehicles, however, and given that 80% of those cases relate to whiplash, my problem is that there is a significant difference between the payouts for whiplash injuries in this country and those of other countries.

Furthermore, the number of whiplash injuries in this country is far higher than that of France or Germany and, therefore, one wonders whether there is a connection between the average quantum that is paid and the number of whiplash injuries. In the UK, for example, the maximum payment for a minor whiplash injury is £3,000, whereas in this country, for the same type of injury, the payment can be up to €15,700. Will the Minister indicate why there is such a discrepancy? Are the costs associated with making a claim so high that it leads to such a difference between payments in this jurisdiction and in the North of Ireland, where the guidelines for the assessment of general damages in personal injury cases are outlined in the green book?

Can the number of injuries covered in the book of quantum be reduced or does it have to increase? Is there a stipulation which requires the number to rise or can the Minister stipulate that it should decrease to reflect what our neighbours in the North of Ireland pay out? It seems ridiculous that as a result of the high payouts, there is a possible association with higher insurance premiums, which affect each and every one of us, whether in the retail sector or all of us who drive through motor insurance and so on.

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I am concerned about the average quantum that has been paid out since the book was published in 2016 and the difference between it and that of our neighbours. Will the Minister outline the reasoning for such a large difference? Is it because our legal fees or medical fees are too high or because it allows the insurance companies to charge so much for everyone's insurance?

In general, I welcome the Bill and other parts of it, such as the fact that a number of the board members will be selected through the public appointments process.

**Minister for Business, Enterprise and Innovation (Deputy Heather Humphreys):** I thank Senators Davitt, Ó Céidigh, Reilly, Colm Burke, Devine and Lawlor for their contributions to the debate on the Bill. I welcome the general expressions of support for the overall objectives of the Bill and will try to address a number of the issues that were raised.

On the Judicial Council Bill 2017, it is a legislative priority for the Government, and the Minister for Justice and Equality, Deputy Flanagan, hopes to make significant progress on the Bill in the coming months. It has completed Second Stage in the Seanad and, due to the time required to enact and operationalise the Judicial Council Bill 2017 and the urgency of implementing these new guidelines, my colleague, the Minister of State, Deputy D'Arcy, chairman of the cost of insurance working group, wrote to the Minister for Justice and Equality in 2018. The purpose of the letter was to request the Minister for Justice and Equality to engage with the Judiciary to seek its agreement on convening an interim judicial council with the purpose of preparing these guidelines in line with the Personal Injuries Commission's recommendations for an interim measure of this type. The Department of Justice and Equality is working with the PIAB on a process that will deliver an interim guideline related to the priority area of soft tissue injuries and whiplash. Options to achieve this will shortly be proposed for discussion with the Judiciary and the Courts Service, as appropriate. Judicial guidelines should lead to greatly increased levels of consistency in awards, enable early resolution of claims and reduce costs.

I would like to speak about the Garda fraud unit. The second and final PIC report, like the working group report on the cost of motor insurance, recommended that the possibility of establishing a specific unit within the Garda National Economic Crime Bureau to tackle insurance fraud be explored. On 13 December 2018 my colleague, the Minister of State at the Department of Finance, Deputy D'Arcy, met the Garda Commissioner to discuss matters related to insurance fraud, including this recommendation and the work of the cost of insurance working group. I understand that at the meeting the Commissioner indicated his preference that, in principle, An Garda Síochána not be funded from any source other than the Exchequer for the purposes of tackling insurance fraud. I am informed that the Commissioner undertook to consider further the establishment of an insurance fraud investigation unit within the Garda National Economic Crime Bureau. Senators will appreciate that the Commissioner is responsible for the allocation of resources within An Garda Síochána and that the Minister for Justice and Equality has no role in such operational matters.

More broadly, I am aware that considerable progress has been made in enhancing the level of engagement and co-operation between An Garda Síochána and the insurance industry, partly through the fraud round-table group that was established under the cost of insurance working group and which involved wide stakeholder consultation. A notable output of the fraud round-table engagement is the commitment made by the Garda National Economic Crime Bureau and Insurance Ireland's anti-fraud forum to meet on a regular basis to discuss and act on current and ongoing general issues which arise in the area of insurance fraud. I welcome the enhanced co-operation which will be very important as we tackle the issue of fraudulent claims into the

future.

The Oireachtas has determined through the Central Bank (National Claims Information Database) Act 2018 that the Central Bank of Ireland is responsible for hosting a national claims information database. The legislation was enacted by statutory instrument to come into effect on 28 January last. It gives the Central Bank of Ireland the additional function of establishing and administering the national claims information database. It involves the collection and study of data from insurance undertakings for the income and expenditure associated with the carrying on of the business of the classes of non-life insurance which the Central Bank of Ireland specifies as relevant having regard to the policy set down in the Act. The legislation provides for the Central Bank of Ireland to produce a report at least once a year based on its findings and, subject to certain restrictions, to share information with requesting persons. It also provides for other related matters.

I am aware that a Private Members' Bill, the Perjury and Related Offences Bill 2018, has been introduced by Senators. It was published on 17 October 2018 and the debate on Second Stage took place on 24 October. The Bill was not opposed by the Government. The issue of perjury has been considered by the Government in the context of the work of the cost of insurance working group which is chaired by the Minister of State, Deputy D'Arcy, in the Department of Finance. The Private Members' Bill I have mentioned is a welcome development as we examine this matter which is one for consideration by my colleague, the Minister for Justice and Equality, Deputy Flanagan. The impact of this detailed and wide-reaching legislation will extend beyond court proceedings. I think all Senators will agree that Senator Colm Burke is right when he says it is important that people who suffer genuine injuries as a result of accidents be compensated for them, but it is important that we strike a balance.

As Minister, I cannot ignore a recommendation made by the Comptroller and Auditor General who is a constitutional officer of the State. The Comptroller and Auditor General provides independent assurance that public funds and resources are used in accordance with the law, managed to good effect and properly accounted for and contribute to improvement in public administration. Under Article 33 of the Constitution, the Comptroller and Auditor General is appointed by the President on the nomination of Dáil Éireann. The Bill implements a recommendation from the Comptroller and Auditor General. Section 13 inserts a new section 74A into the 2003 Act. The Comptroller and Auditor General recommended that the Department and the PIAB agree an appropriate level of revenue reserves to be retained by the PIAB and the basis for holding such a reserve. The Comptroller and Auditor General also recommended the introduction of appropriate legislation to deal with excess funds held by the PIAB. Legal advice obtained by the Department and independently by the PIAB is to the effect that legislative change is required to enable the board to remit excess moneys to the Exchequer. The board of the PIAB is anxious for the legislative change to be made in order that moneys can be remitted to the Exchequer as soon as possible. I am confident that the wording of section 13 which provides that the Minister will have "regard to the operational, capital and contingency costs of the Board" when determining the sum to be retained will ensure the PIAB will have sufficient funds to carry out its statutory functions. This is extremely important. There are other checks and balances in the system to ensure the PIAB will have sufficient funding to carry out its statutory functions. For example, the Oireachtas Select Committee on Business, Enterprise and Innovation has an oversight role when the Minister presents the Department's Estimates during the year. Another example of the checks and balances is the role of the board of the PIAB. I am confident that the PIAB will have sufficient funds to carry out its statutory functions. The

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amount to be retained will be agreed with it, having regard to its operational, capital and contingency costs.

The book of quantum is a record that reflects the prevailing levels of awards for particular injuries. The purpose of the book of quantum is to distil settlement and awards data in the personal injuries process in Ireland and present the results in a logical and user-friendly format. If the prevailing levels of awards are reduced, the book will reflect this, as long as provision is made for it to be updated. The Bill provides that the book of quantum will be reviewed every three years. As the book of quantum reflects prevailing compensation rates in the market, its regular publication and adherence to it by all stakeholders should have a stabilising effect on compensation awards across the market. It should also bring consistency and predictability to the cost of processing personal injury claims, which is a factor in the cost of insurance. The most recent update of the book of quantum is based on a representative sample of over 51,000 closed personal injury claims from 2013 and 2014. It includes compensation awards from court cases, insurance company settlements, State Claims Agency cases and PIAB data. While there are many requests for more granularity, it is important to note that the book of quantum provides for quite a high level of granularity, where possible, particularly compared to similar publications such as the UK Judicial Studies Board guidelines. When the UK guidelines were last published in September 2017, damages across injuries were reviewed and increased in line with the retail price index, rather than simply reflecting the prevailing levels of damages paid. The UK guidelines are published at two-year intervals.

I reiterate that very few cases proceed to court following the PIAB process. This shows that the process works effectively. I want to strengthen the powers of the PIAB to enable it to do its job more effectively. I thank Senators for their time and ask them to support the Bill as a priority. I hope we can bring it through the Seanad efficiently, with a view to having it enacted as soon as possible. I look forward to the continuing engagement of Senators on this practical and important legislation.

Question put and agreed to.

**Acting Chairman (Senator Gerard P. Craughwell):** When is it proposed to take Committee Stage?

**Senator James Reilly:** Next Tuesday.

Committee Stage ordered for Tuesday, 19 February 2019.

The Seanad adjourned at 8 p.m. until 10.30 a.m. on Wednesday, 13 February 2019.

