



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Déardaoin, 28 Márta 2019

Thursday, 28 March 2019

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Gnó an tSeanaid - Business of Seanad

An Cathaoirleach: I have received notice from Senator Frank Feighan that, on the motion for the Commencement of the House today, he proposes to raise the following matters:

The need for the Minister for Transport, Tourism and Sport to provide an update on the provision of a high-speed rail network between Dublin and Belfast.

I have also received notice from Senator Mark Daly of the following matter:

The need for the Minister for Transport, Tourism and Sport to allow code 115 information on driver licences to be shared with the national transplant unit and the HSE for the purpose of organ donation.

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

The need for the Minister of State at the Department of Housing, Planning and Local Government with special responsibility for local government to make a statement on the decision to remove the Cahir local electoral area from the Clonmel borough district.

I have also received notice from Senator Robbie Gallagher of the following matter:

The need for the Minister for Public Expenditure and Reform to make a statement on the confirmation by EUROSTAT that the Border, midlands and western region has moved from a developed region to a region in transition.

I have also received notice from Senator Paul Gavan of the following matter:

The need for the Minister for Justice and Equality to make a statement on the arrest and continued incarceration of two peace activists at Shannon Airport on 17 March, 2019.

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

The need for the Minister for Health to make a statement on the current system of hormone replacement therapy administered by the HSE in relation to transgender patients, in light of the World Professional Association for Transgender Health guidelines on standards of care and WHO declassification of gender dysphoria as a mental illness.

The matters raised by Senators Feighan, Daly, Ó Domhnaill and Gallagher are suitable for discussion and will be taken now. I regret that I have had to rule out of order the matter raised by Senator Gavan on the ground that the Minister has no official responsibility in the matter.

Senator Warfield may give notice on another day of the matter that he wishes to raise.

Nithe i dtosach suíonna - Commencement Matters

Rail Network

An Cathaoirleach: Cuirim fáilte roimh an Aire Stáit.

Senator Frank Feighan: I thank the Minister of State, Deputy Brendan Griffin for coming to the House. As always he is prompt and I appreciate his presence in the Chamber.

There have been a number of plans and proposals for a high-speed rail service between Dublin and Belfast on both sides of the Border. The objective is that the journey time between Dublin and Belfast would be reduced to 90 minutes. The direct train between Belfast Central Station and Connolly Station in Dublin takes more than two hours at present. One of the proposals is that the Northern Ireland transport company, Translink, and Iarnród Éireann would work to provide a non-stop, 90-minute service, departing at hourly intervals. The Project Ireland 2040 plan also commits to a feasibility study for a high-speed rail link between the two largest cities on the island.

Mr. Keith Moffat, the former chief executive of Translink, has said that the cost of such a service involving 125 mph trains and an upgrade of the track would be in the region of €733 million. A proposal for this cross-Border service was contained in one report confirming that a high-speed, high-frequency service could be economically viable. There is some momentum behind this. Five local authorities - Dublin City Council, Fingal County Council, Louth County Council, Newry, Mourne and Down District Council and Belfast City Council - also commissioned their own report. That report states that the improved rail connectivity offers the opportunity to tackle some of the challenges facing the island of Ireland in the future, which include the impact of Brexit and attracting foreign direct investment. The report notes that the current service between Dublin and Belfast is slow and infrequent. It outlines that there are currently eight trains a day in each direction, taking two hours and 15 minutes to make the 100 mile journey. The report notes that by international standards that this is slow for a railway connecting two major cities and its vision is for a 60-minute journey time to bring the service to a level on a par with the train service between Frankfurt and Cologne, a service on which I have travelled many times.

The local authority also examined other case studies such as the high-speed rail service between Lisbon and Porto in Portugal and the service between Amsterdam and Rotterdam in Holland. If we want an agreed Ireland, by having a high-speed rail network between the two

largest cities in this country, we would send a signal that we have an objective in connecting the two main cities on this island.

Minister of State at the Department of Transport, Tourism and Sport (Deputy Brendan Griffin): I thank the Senator for raising the matter. I am glad to have the opportunity to address this issue in the House. The Minister for Tourism, Transport and Sport, Deputy Ross, has asked me to convey his apologies as unfortunately he could not be in the Chamber this morning.

The Senator rightly highlighted the importance of the Dublin-Belfast corridor. It does not just connect the two largest cities on the island but it also has a broader all-island context through strengthening linkages between Belfast, Dublin and Cork. Those linkages are well served by high-quality road and rail links and can play a critical role in supporting economic growth and competitiveness. I am glad that Project Ireland 2040 recognises its importance and sets out a number of proposals on how we can build on the corridor's existing strengths and promote its economic potential further. These proposals are a mixture of short, medium and longer-term measures but, collectively, they have the potential to improve the passenger experience for all those who use rail along the corridor. First and foremost, Project Ireland 2040 states that the priority funding objective in respect of the mainline rail network is appropriate maintenance and renewal of the existing network. While this funding objective might not strike people as particularly exciting, I assure the House that it is critical to improving passengers' journey experience in the short to medium term. The increased levels of funding that the Department of Transport, Tourism and Sport has secured mean we are now in a position to fund the rail network to a steady-state level and provide a degree of certainty in respect of that funding for the next five years. This is a significant and recurring contribution from the taxpayer of €200 million every year over the next five years and is a significant improvement on recent years. This increased funding will allow for increased ballast cleaning, more rail milling and greater levels of track renewal on the Dublin-Belfast line. It is these sorts of initiatives which can result in a smoother journey for the passenger, with improved journey times to boot.

We are also providing funding towards the development of a new national train control centre, which will allow for the better management of the entire network, including the Dublin-Belfast line. Construction on this project is expected to start later this year. Our colleagues in the North are currently working on a package of track improvements around the Lurgan area which will benefit the Dublin-Belfast main line and are expected to be completed later this year. This type of track renewal and investment on both sides of the Border will potentially allow for improved speeds on those sections of the track where they are not currently possible. However, in the longer term, Project Ireland 2040 commits towards an evaluation of high-speed rail, as raised by Senator Feighan, between Dublin and Belfast, Dublin and Limerick Junction and Dublin and Cork. This study will evaluate the economic benefits and value for money of high-speed rail against improvements to existing and planned line speeds along the lines. It can be confirmed to Senator Feighan that it is planned to commence this study during 2020.

As the Senator can see, a number of measures are under way and planned which are designed to further improve the rail network between Dublin and Belfast. The Minister is confident that these measures will improve and enhance services over the short, medium and longer term and further strengthen links between North and South.

Senator Frank Feighan: I welcome the proposed national train control centre, which will allow for better management on the entire network, including the Belfast-Dublin line, and also the works being done around the Lurgan area, which, as the Minister of State said, will benefit

the Dublin-Belfast line. I look forward to seeing the 2020 study being expedited as quickly as possible. As I said, however, I was in China nine months ago, and from Shanghai one can travel the same distance as that from Dublin to Belfast in 20 minutes. If we are serious about an agreed Ireland and about transport links on this island, we must start with the cross-Border Dublin-Belfast line. I look forward to the report being implemented.

Organ Donation Data

Senator Mark Daly: I thank my county colleague for coming before the House to take this matter on behalf of the Minister. I raised it over six months ago and I raise it again today. Two weeks ago, I tabled the matter for a Commencement debate and then received a reply by email from the Minister. He was only able to come in on that occasion. In the reply to which I refer, he explained why it is not possible for his Department to share on driver licences held by people in this country information to the effect that they want to be organ donors. A person is asked this question as part of the application process, and the response is printed on the licence in the form of a code, 115, which indicates that the person wants to be an organ donor. The Minister stated that under EU rules on data protection, we would need the permission of applicants to share their data. He also indicated that the difficulty was that people had not been asked if they were willing to have this data shared with a third party such as the HSE and that it would not be possible to share it without their consent. He was obviously unaware that he had already allowed his Department to share data from the driver licence registry with private companies such as eFlow and people who clamp vehicles. The Department had also shared the data with the Garda and the Courts Service, as it should have done. However, he stated at the time that data protection rules would not allow him to share the data with the HSE. That was not true. I have with me a copy of the statutory instrument that would allow him to share the data with the HSE. He has signed similar instruments for all the other bodies, including the courts, clamping companies and private operators such as eFlow to which I referred.

We have discovered from the Irish Kidney Association that sharing these data with health-care professionals is important because of their ability to share the data with the families of loved ones who are potential donors. Only approximately 300 families find themselves in this situation in any given year. If specialist nurses are not involved in talking to families, only 22% will offer their loved ones' organs to be donated. If, however, a specialist nurse who is a transplant co-ordinator asks a family, the figure increases to 52%. Furthermore, if the family is informed, and it is shown, that their loved one wanted to be an organ donor, this increases to 92%. We would therefore go from about 50-50 to 92% if the Minister would only sign the statutory instrument to allow the HSE access to this information. Since we have highlighted this issue in the media, the change in the Minister's response has been interesting. At first he stated that because of European rules, he cannot share the data. Then it was pointed out that actually he had shared the data already. He has now come back with a new reply stating it is up to the Department of Health to ask for the data.

Our request, and I hope the Cathaoirleach will allow it, is that during Organ Donor Awareness Week, which is next week, the Minister for Health would come in and indicate why he has not requested the information from the Minister for Transport, Tourism and Sport. Perhaps the Minister of State might use his good offices to ask that this simple process whereby the Department of Transport, Tourism and Sport would share the data and the Department of Health would ask for the data in order that when families are faced with the traumatic situation whereby

they lose a loved one, they would have the information at hand to the effect that their loved one wanted to be an organ donor. The number of people who have indicated on their driver licences that they want to be organ donors is reaching 1 million. This information is available to everyone else - claspers, the courts and the Garda - but it is not available to the families of the loved ones facing a decision that is traumatic and extreme but that can transform and save the lives of many people.

Deputy Brendan Griffin: I thank Senator Mark Daly for raising this matter. In fairness, he has been pressing the issue of organ donation for a number of years and has been very passionate about it. I commend him on his work in respect of the matter. As we know, organ donation saves many lives and is critically important. Again, I convey the apologies of the Minister who cannot be here.

As the Senator stated, in replies given to him last May, the issue of the general data protection regulation, GDPR, and data protection in general were raised as being an impediment to progress being seen on this matter. One of the issues about which the Minister is concerned is that we need to be very careful about this. One of the suggestions is that it may be possible to add a question to the application form asking whether people consent to the sharing of the information. As a licence is valid for ten years, it would then take a decade to work through the system to cover everyone in this regard. As for the HSE and the Department of Health, there is a significant body of work to be done before it can be established whether the statutory instrument to which the Senator referred could be effective. If it is intended that the HSE could look up lists of potential organ donors, for example, where a patient died and the HSE wanted to know quickly if the patient had signed up to be a donor, there could well be benefits. However, the Minister still needs to hear the HSE's views on this, as well as those of the Road Safety Authority, RSA, before he can take action. There are at present many pressing issues within the Department, particularly in the context of Brexit. As acknowledged since last May, this matter has not received the priority or attention it needs in view of the other constraints currently affecting the Department. However, I will go back to the Minister on the specific question of the statutory instrument to which the Senator referred - perhaps he could give me a copy of it - and ask him to look particularly at the legal issues surrounding it. If it is the case that a simple statutory instrument, if signed, would address this issue, that would be a major step forward. I will commit to see if we can make progress on it. None of us knows who will be affected by this or whose life could be saved in the short term as a result. This is deserving of further scrutiny and attention, and if a quick solution can be found here, that would be major progress.

An Cathaoirleach: I rarely comment on these matters. I am aware Brexit is a headache for the Government, for Westminster and for much of Europe, and it is an important issue of State, but comparing this matter, which is one of life and death, to Brexit is a difficult one to swallow having regard to the issue.

Senator Mark Daly: I am glad the Minister of State did not read out the full reply, which, I know, was not written by him. It is ridiculous to say that under current EU rules on data protection we need the permission of the applicant to share the data because the Minister has already shared the data with eFlow, the courts and the Garda. The Minister can do it, and has done it.

I refer to the Minister giving the reply he gave two weeks ago. It is different from the reply he gave last Friday, 22 March in which he stated he had not been asked for it, which I accept. We are making progress. The Minister is still unaware he is sharing the data already. It is unfortunate that the Minister is unaware that he has signed the statutory instrument for private

companies to have access to that data.

People indicate they want to be organ donors because they want others to know. They do not want it to be a secret. That is why it is there to be shared.

The issue for next week - hopefully, the Cathaoirleach will allow the debate - is for the Minister for Health to come in and ask why we have not asked for the data. In essence, the Minister is acknowledging that he will share the data if he is requested to do so by the Department of Health. It is obviously of concern to the Minister that what the Department of Health does with it is appropriate. He outlined that it would be the national transplant unit of the HSE, if it makes a formal application, and how that information would be used and how it would be accessed by healthcare professionals.

To use data protection as an excuse when the Minister has already shared this data from the driver licence with others is not an acceptable answer as to why there is inaction. People die on our transplant waiting list because there are not enough organs. It is a systems failure. Countries such as Croatia and Spain have surplus organs because they have better systems. This will help. If it saves one life, it is worth doing.

An Cathaoirleach: One cannot shoot the messenger. The Minister of State has given a commitment that he will go back to the Senator.

Senator Mark Daly: I am not shooting the messenger.

An Cathaoirleach: I am sure, too, he will be heading for Croke Park on Sunday.

Deputy Brendan Griffin: I may fire a few shots over the Senator's head, though.

An Cathaoirleach: I am sure the Minister of State and the Senator will head for Croke Park on Sunday with linked arms. I would suggest the Minister of State has made a commitment that he would go back to the Senator.

Deputy Brendan Griffin: I commit to going back on that issue, specifically the statutory instrument.

An Cathaoirleach: As next week is Organ Donor Awareness Week, no doubt Senator Mark Daly will raise it. I do not have total discretion on what I can allow or not. It is something on which progress could be made for humane reasons.

Local Authority Boundaries

An Cathaoirleach: I welcome the Minister of State, Deputy Finian McGrath. I was listening to a similar debate with Deputy Mattie McGrath in the other House recently. Without pre-empting the debate, I ask Senator Ó Domhnaill to outline his case.

Senator Brian Ó Domhnaill: I thank the Cathaoirleach for selecting the matter for discussion.

This is an issue which relates to the Department of Housing, Planning and Local Government and a decision taken by the Minister of State, Deputy Phelan, which would remove the Cahir local electoral area from the Clonmel Borough District following the local elections in

May.

Since the amalgamation of Tipperary County Council in 2014, Clonmel and Cahir were joined together as one district. The subsequent review of boundaries by the independent boundary commission recommended that the borough be split into two wards: the Cahir electoral area, with four councillors; and Clonmel, with six elected representatives. However, the borough continues to meet as one unit in accordance with the submission made by the local authority at the time.

Notwithstanding this, it is my understanding from local authority councillors that prior to Christmas the Minister of State, Deputy Phelan, signed a ministerial order removing Cahir local electoral area from the Clonmel borough. Instead, the Cahir local electoral area, LEA, is being joined with the Cashel Tipperary Municipal District. Local councillors have submitted a notice of motion to the March meeting of Tipperary County Council expressing their dismay and concern at this decision. The motion called on the local authority to insist that the Minister review the decision, for the Department to liaise with the local authority CEO and local authority officials to best address the concerns of the current elected members of the borough district regarding the geographical size of the proposed new super district of Tipperary-Cashel-Cahir.

The logistics of removing Cashel LEA, in terms of staffing and funding, and the negative effects this would have on members of the public seeking services and assistance have been highlighted by local councillors. This is clearly in stark contradiction to the recommendations made by the boundary commission. It appears that it is a solo run being taken by the Minister of State at the Department of Housing, Planning and Local Government.

The motion, which was unanimously passed by the councillors in Tipperary, was jointly signed by the former mayors, Councillors Andy Moloney, Pat English and Martin Lonergan, and the current mayor, Councillor Richie Molloy. This motion was submitted due to their deeply held and serious concerns around this issue.

There has been a linkage between Clonmel and Cahir going back 204 years to the time when Charles Bianconi established a transport connection between Clonmel and Cahir. This link is being severed now by the Minister of State at the Department of Housing, Planning and Local Government and that is regrettable. It goes against the wishes of the local people and the local elected councillors. Therefore, it is not the democratic wish of the local communities in Tipperary. The matter has been raised in the Dáil by my colleague, Deputy Mattie McGrath.

What the councillors seek here is a simple rational intervention by the Minister, namely, to proceed with the recommendation of the independent boundary commission that both would remain as one entity with separate wards or, alternatively, put the decision on hold pending a review and consultations with all key stakeholders and re-engagement with the boundary commission. That is a reasonable request.

The Minister of State, Deputy Finian McGrath, is not at that Department, and he probably will be coming here with the civil servants' response to the issue.

This decision goes against local democracy. It is a ministerial interference at a local level which is not being welcomed by councillors, on a cross-party basis, from Fine Gael, Fianna Fáil, Sinn Féin and the Independents. No one welcomes it. The Minister should put this on hold pending further consultations.

I thank the Cathaoirleach for allowing me the opportunity to elaborate on the matter.

An Cathaoirleach: I am always trying to be helpful. Before I allow the Minister of State in, I welcome my local Deputy, Deputy Michael Collins, from Cork South-West, and his special guests, the O'Mahony family from Kealkill. I am a little short-sighted from this distance but they are also my neighbours. I wish them a very pleasant day in the House. I am a little nervous when I see Deputies from my area coming into the Chamber because they might be watching my position down the road. I wish them a lovely day.

Minister of State at the Department of Health (Deputy Finian McGrath): I also welcome the visitors to the Seanad.

I want to thank Senator Ó Domhnaill for raising this issue and for the opportunity to outline the position on behalf of the Minister of State, Deputy Phelan.

A municipal district is an administrative sub-division of a local authority designated by ministerial order and is therefore separate and distinct, although obviously linked to LEAs. Local authority members and the Association of Irish Local Government had raised concerns regarding a number of issues in respect of LEAs. A concern was raised about the need to ensure large urban centres were adequately represented.

The Minister of State, Deputy Phelan, established two independent local electoral area boundary committees, No. 1 and No. 2, in December 2017 to review and make recommendations on local electoral areas.

In response to the concerns raised, the committees were specifically asked to have regard to, among other things, the need to ensure adequate representation for large urban centres. The committees were not specifically tasked with defining municipal districts, MDs, save *11 o'clock* where it was considered necessary, as it was intended that MDs would largely remain unchanged. The recommendations made by each committee in their respective reports in respect of local electoral areas were accepted in full and were reflected in the statutory instruments signed on 19 December last. The overall policy objectives, particularly regarding large urban electoral areas with populations in excess of 15,000, have been largely met.

In considering how best to configure the MDs in Tipperary, and to ensure Clonmel is adequately represented, the Minister of State, Deputy Phelan, varied the recommendation to designate a distinct MD entitled "Borough District of Clonmel". Clonmel is the largest town in Tipperary. It is a former borough town with a population of more than 17,000 people. The LEAs of Cahir and Cashel-Tipperary were aligned in a single MD. The MDs designated in Tipperary largely deliver the key requirements of good local government. The interaction the Minister of State has had with local councillors has been positive on this front. He has engaged with both the elected members and the executive of Tipperary County Council and visited Clonmel and Tipperary town recently to discuss the MDs with local members.

The boundary committees, having fulfilled their remit and presented reports of recommendations, now stand dissolved and, therefore, no longer exist. As a result of his engagement with elected representatives, the Minister of State is considering a proposal to change the name of the Cahir-Cashel Municipal District to the Tipperary-Cahir-Cashel Municipal District. Municipal districts have been largely welcomed by councillors and representative groups. They have been effective since the 2014 elections. With changes to the LEAs, to ensure the areas covered are not too big and large urban areas are well represented, they will be even better following the

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next local elections. In that context, the Minister of State, Deputy Phelan, is currently examining ways to increase the autonomy of MDs and the number and extent of functions carried out at district level.

Senator Brian Ó Domhnaill: This is the response I was expecting. It would appear the Minister of State has made his decision. This will have drastic consequences for the town of Clonmel. Councillors in the Clonmel borough area have told me this will reduce the funding available to the local government unit there. As Clonmel has a population of 17,000, there will be a big impact not just on Tipperary but also on the wider region. This is a retrograde step. I appeal again to the Minister of State, Deputy Finian McGrath, although I know this is not his brief, to use his good offices to try to influence the Minister of State, Deputy Phelan, to cease from pursuing this decision.

I also ask that he engage in further consultations and put off the implementation of this decision until those consultations have concluded. I know he was in Tipperary recently and met elected members and staff. Following that, however, the council passed a motion at its monthly meeting. That was because it did not accept what the Minister of State was stating. He was informing the councillors and not consulting them, as was outlined in the response. I ask the Minister of State to have another look at this issue.

Deputy Finian McGrath: I thank the Senator for raising an important matter. I will convey his points to the Minister of State, Deputy Phelan. As the Senator stated, the Minister of State visited Clonmel but circumstances have changed. There was a discussion locally afterwards and a motion was passed by the democratically-elected members of the council. As a former city councillor myself, I think those voices should be listened to. I will bring these concerns back to the Minister of State.

Regional Development Funding

An Cathaoirleach: Cuirim fáilte roimh an Aire Stáit. The Minister of State, Deputy O'Donovan, is my namesake. I call Senator Gallagher who has four minutes.

Senator Robbie Gallagher: Go raibh maith agat. Ba mhaith liom fáilte a chur roimh an Aire-Stáit go dtí an Teach seo. I thank the Minister of State for taking time out of his schedule to be here. As he knows, the Border, midlands and western, BMW, region has now moved back from what is called a developed region to a region in transition. This reflects the two-tier economy on the island of Ireland. Dublin, the east and Munster are growing while the west and the north flatten. I will be interested to hear what plans the Government has to address this. After 2020, the BMW region will be recategorised as a region in transition while the southern and eastern part of the country will continue to be described as developed.

EUROSTAT has confirmed that funding to this country will continue under three categories of region in the post-2020 period. These are less developed, transition and more developed. That certainly is good news. The European Regional Development Fund, ERDF, has been delivering on providing funding to the regions in Ireland since as far back as 1999. It was also important that there was regional representation at both national and EU level.

However, the regions have taken a backward step over the past number of years. That is proved by this recategorisation backwards from what is called a developed region to a region in

transition. The EU has stated and confirmed what we have been saying in this part of the world for a long time. The BMW region has been left behind in recent years. It is no surprise to anybody living there. People living in the Border region are at a greater risk of poverty compared with the rest of the country. A recent report from the Central Statistics Office, CSO, showed that 25.7% of the residents in counties Monaghan, Cavan, Donegal and Leitrim struggled financially in 2017. The report also outlined that several counties within the Border region suffer compared with other parts of the country regarding access to broadband, transport, disposable income and housing vacancies.

The good news, however, is that the EU has recognised this. Our recategorisation means there is an opportunity for increased funding from the EU to address this underinvestment in the region. This is a serious opportunity for us to address that underinvestment and I will be interested to hear the Minister of State's plans to address that particular issue. There is also an opportunity for the regional assembly to address the legacy of underinvestment and increased EU Exchequer funding post-2020. It is vitally important that the regions take, and continue to have, control over the allocation of funds to their regions.

Brexit is staring us in the face. People wonder why the British community decided to make the decision it did. I suppose some people may feel disconnected and distant from Europe. It is important that the EU has a connection with people on the ground, so that no matter what part of the world or this country they live in, it is possible to see a tangible connection with the EU. From that point of view, I understand the Minister of State's Department is conducting a review of the delivery of European investment funds to the regions with a view to, perhaps, removing responsibility from the regional assemblies to a centralised system. That would be a serious backward step. I hope he will confirm that will not be the case.

Minister of State at the Department of Public Expenditure and Reform (Deputy Patrick O'Donovan): I apologise at the outset on behalf of my colleague, the Minister for Public Expenditure and Reform, Deputy Donohoe. I am taking this Commencement matter on his behalf. The BMW region is one of Ireland's two regions for the purposes of EU funding. During the 2014-2020 period, the ERDF alone will deliver more than €320 million worth of investment to the region. This investment is concentrated primarily on research and innovation, information and communication technologies, ICT, small and medium-sized enterprises, SMEs, and promoting a low-carbon economy.

These are the types of investments that can make a difference to inclusive growth and regional development. The region also receives support through a range of other EU programmes including the European Social Fund, ESF, the European Agricultural Fund for Rural Development, EAFRD, and the European Maritime and Fisheries Fund, EMFF. I agree with the Senator on the importance of achieving balanced regional development and I note the recent data released by EUROSTAT regarding levels of GDP per head for the regions of Ireland. The development of all of the regions of the country is something that this Government takes very seriously. In 2018 the Government launched Project Ireland 2040, an ambitious, strategic vision for Ireland's investment in critical infrastructure in the future. It consists of two core elements: a national planning framework and the investment of €116 billion over a ten-year period. For each regional assembly area, regional, spatial and economic strategies are being developed to support the implementation of the national planning framework and the economic policies and objectives of the Government by providing a long-term strategic planning and economic framework for the development of the regions. The national development plan envisages investment across a range of areas aimed at delivering public infrastructure over the coming years

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including increased investment in broadband, roads, tourism and agriculture and an investment of €4.5 billion in our regional and local roads.

The year 2018 saw the launch of the rural regeneration and development fund. With a total budget of €1 billion over the period to 2027, the fund will promote rural renewal in order to enable towns, villages and outlying rural areas to grow sustainably as vibrant places in which to live and work. The first call for proposals under the fund was launched in July 2018. Some 84 projects have been announced with a total value of €117 million. The newly-established Department of Rural and Community Development has made considerable progress with €237 million invested across a package of supports to strengthen our rural economies and communities. By promoting development in all regions we can bring new life back into towns and villages which were previously neglected.

Given the potential impact on rural and Border areas of this country arising from the departure of the United Kingdom from the European Union, a Brexit resilience package of €78 million was announced for the agrifood sector for 2019 in the last budget. This includes a range of measures to support farmers and industry against the background of the challenges that lie ahead. I also acknowledge the special role of the PEACE and INTERREG programmes in the Border region. Ireland and the United Kingdom are currently partners in two EU-funded cross-Border co-operation programmes which incorporate the Border counties with a total value of €550 million over the period up to 2020.

In conclusion, the Government is extremely committed to balanced, sustainable development in all regions, including the Border, midland and western region. This is demonstrated by investment in sectoral strategies. It is underpinned by the national development plan which will deliver modern public infrastructure over the coming years which, it is to be hoped, will improve the lives of people throughout the country and allow our companies and economy to continue to thrive in a globalised world. I will bring the points the Senator has raised to the attention of the Minister, Deputy Donohoe.

Senator Robbie Gallagher: I thank the Minister of State for the response. I appreciate that this is not a matter for his Department, but the increased EU funding of 55% for any particular project is a serious opportunity for Government to invest in the region. I ask the Minister of State to stress to his colleague that it is vitally important that the regions should be responsible for the allocation of that funding and that the system should not be centralised. Perhaps the Minister of State could get a response to that question for me. I thank him for his time here this morning.

Deputy Patrick O'Donovan: I am a Minister of State in the Department of Public Expenditure and Reform, so it is my Department that looks at this issue. With regard to the areas to which the Senator has primarily referred in respect of economic development, it is important to point out that unemployment in all of the regions, particularly in those outside Dublin, has fallen. That needs to be recognised. Every labour exchange, as we previously called them, across the regions has noted a huge drop in unemployment from the high point in 2012 and 2013 to where we are now.

There is a role for local authorities with regard to some of the investment that is available to access. We all need to examine our individual local authorities and their county managers to see whether they are putting projects forward for the various funding streams. In the last round there were massive disparities in respect of the projects allocated funding. It really calls into

question what our local authorities are putting forward. The money is there and the schemes are there. I am a former local authority member, as are some Members of the House. We need to scrutinise what our local authorities are putting forward.

A number of different Departments have a role in the matter to which the Senator is referring. The Minister, Deputy Donohoe, is very important as the keeper of the purse, but others are involved in respect of the regional strategies that have been outlined, for example the Minister, Deputy Eoghan Murphy. With regard to the economic throughput, the Ministers, Deputies Ring and Humphreys, are also involved. This has been taken as a whole-of-Government issue and it is being taken very seriously. A more co-ordinated investment by Government is already being seen in all of the regions in parallel with the drop in unemployment across the country but there is always more that needs to be done. We are very cognisant of that. That is why we are going to continue on the path we are on.

An Cathaoirleach: I thank the Minister of State for his very expansive response.

Teachtaireachtaí ón Dáil - Messages from Dáil

An Cathaoirleach: Dáil Éireann passed the Civil Registration Bill on 27 March 2019, to which the agreement of Seanad Éireann is desired. Dáil Éireann passed the Aircraft Noise (Dublin Airport) Regulation Bill 2018 on 27 March 2019, to which the agreement of Seanad Éireann is desired.

Sitting suspended at 11.15 a.m. and resumed at 11.30 a.m.

Order of Business

Senator Catherine Noone: The Order of Business is No. 1, Private Members' business, Civil Liability (Capping of General Damages) Bill 2019 - Second Stage, to be taken at 12.45 p.m. with the time allocated for the debate not to exceed two hours.

Senator Mark Daly: I am sure colleagues will join me in wishing one of our most esteemed members of staff, Mr. Donal Hickey, well in his retirement tomorrow. He has been courteous to all of us in our time here. We wish him a long and happy retirement. He is retiring to Kerry, which is always a great idea. When he gets there, I will be sure to show him the bakery run by the three Moriarty brothers which shut down after 49 years of business. When they retired, they wrote a lovely thank-you note on the window of the bakery in beautiful script and gave a piece of advice to others who seek to retire. The note in question stated that the brothers would have to learn how to spend time without spending money. I hope Donal Hickey masters that art as well.

Under this Government, we have reached the tragic landmark of 10,000 people being homeless. I note the continuous activity masquerading as action on the part of the Minister with responsibility for homelessness. I would call him the Minister for Housing, Planning and Local Government if he was providing any, but we will just have to call it as it is. On his watch, homelessness has become an acceptable face of Government policy. We will be looking for another debate on this issue. It goes with other promises like Fine Gael's pledge to end the trolley crisis. We need to hear what the Minister has to say for himself about this issue.

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In the coming weeks, Fianna Fáil will propose an amendment to the Order of Business in respect of the issue of corporate manslaughter. The relevant legislation was first proposed by the Law Reform Commission in 2005 as a result of the hepatitis C scandal in which blood products which were contaminated with hepatitis C were knowingly distributed to women. Thousands of women were infected and hundreds died as a result, yet no one went to prison. The man who knew the blood products were contaminated did nothing about it. I raise this issue again because we have brought our Bill forward again. The officials in the Department of Justice and Equality have refused to meet me, despite the Minister's pledges that they would do so. They have concerns about the Bill. The part they are concerned about is that under which people would actually go to prison as a result of corporate manslaughter. In the North, there were arrests over incidents at a nightclub. We have seen court action resulting from the Hillsborough tragedy in which nearly 100 Liverpool fans died as a result of corporate neglect on the part of the police. The person in charge is facing prosecution and possible conviction. If the hepatitis C scandal happened again, nobody would go to prison because the Government has refused to allow the legislation to move forward. I wish to ask the Leader why that is the case. I suspect it is because many senior officials in a lot of Departments are afraid that at some stage they might face prosecution under the legislation as a result of their inaction.

An Cathaoirleach: I concur with the previous speaker's remarks in bidding farewell to Mr. Donal Hickey, one of our senior ushers. He is extremely courteous and professional and has always been pleasant to me throughout my long years of service. He will be missed in this House. Senator Mark Daly notes that he is returning to his native Kerry. If one cannot retire in beautiful west Cork, Kerry is the next best place to go, so I will forgive him for that. I am sure he will be at Croke Park next Sunday, shouting for his native county. I call on Senator Craughwell. I almost addressed him as an officer.

Senator Gerard P. Craughwell: Go raibh míle maith agat, a Chathaoirligh. It would be nice indeed to be promoted to the commissioned ranks. Sadly, that was not an option during my time. It is interesting that the Cathaoirleach mentions them. We frequently discuss issues relating to the Defence Forces in this room. Some work has been done with respect to the retention of commissioned officers. It is not really working, but some effort is being made in that area. I have been contacted recently by a number of non-commissioned officers, including sergeants, quartermaster sergeants, company sergeants, sergeants major and a barrack quartermaster sergeant. They are all highly experienced and approaching retirement age. Sergeants are retiring at 50 years, some with 20 years' service, and have vast experience that is available to the State. Could the Deputy Leader examine the strategy in place on retention? Is there a strategy on retaining non-commissioned officers, from the rank of corporal upwards, who have vast experience and do not want to retire early or at a young age? Is there a policy in place? I cannot find one. If there is none, could we have one put in place?

The Deputy Leader will know I have been supportive of the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, throughout the homelessness crisis. The figures today are quite shocking. I am sure they are attributable, to a large degree or at least in some cases, to Airbnb. My colleague, Senator Kevin Humphreys, has constantly referred to the Airbnb scandal, which is leaving families homeless while landlords are making a killing. I will let the Senator speak for himself on this in a few minutes. He has been the champion in the House in this area and has brought much pressure to bear right across the Oireachtas on the short-term profiteering that is taking place.

We are told there is a shortage of building capacity in the country. I sit on the Luas in the

morning on my way in and count the number of cranes. We are building offices at a phenomenal rate. If one goes to Sandyford today, one will see hoardings all over the place showing offices with 220,000 sq. ft here or 230,000 sq. ft there. If we are able to build offices, for God's sake why are we not able to build homes? Why are we not able to put people into homes? Are there empty office blocks, particularly around the city of Dublin, that could be converted into homes? There is no point in having offices for businesses setting up in this country if there is nowhere for their staff to live, or if the enormous multinationals are renting properties at inflated prices in order to accommodate their staff. It is acceptable in the short term but it will be detrimental to the country in the longer term. Therefore, I ask that the Minister be invited to the House at the earliest possible date to have a discussion on the difference between commercial housing and non-commercial housing. I still support what the Minister is trying to do through Rebuilding Ireland but it is becoming increasingly difficult.

An Cathaoirleach: I welcome to the Visitors Gallery the visitors from St. Clare's primary school in Cavan town. The teachers include Ms Simmons, Ms King, Mr. Walsh and Ms Shannon. I welcome, in particular, Senator Wilson's twin daughters, Niamh and Maeve. Many of the children have a big occasion on Saturday week. I wish them every success. I hope they have a lovely day in Oireachtas Éireann. Sometimes we have a falling out with Senator Wilson but the visitors, particularly Niamh and Maeve, can be very proud of their local Senator. He is a long-standing and well-respected Member of this House.

Senator Rose Conway-Walsh: I welcome all the students from Cavan. There was a group in earlier also. I hear some of them will be budding politicians. Niamh and Maeve might be Diarmuid's daughters but I hope they do not take any notice of Daddy and join the right party.

I wish to say farewell to Donal Hickey and thank him for his exceptional work. I wish him well in the future. I apologise in advance as Kerry will be beaten on Sunday by Mayo. I am sure he will get over that.

I commend the report issued this morning by the Joint Committee on Justice and Equality, which is chaired by Deputy Ó Caoláin. I ask the Deputy Leader for a debate on the report's recommendations and outputs. It would be very interesting. I will not get into the details of the report; suffice it to say that some of the content is very good and some of it needs to be expanded in respect of rural crime. I would appreciate it if the debate could be facilitated as soon as possible.

This morning, it was reported that only 7% of women who had repeat smear tests for cervical cancer have received their results. That leaves around 2,370 women still waiting on repeat test results, despite being promised priority testing and results within four to six weeks. IT problems in the laboratory company, Quest Diagnostics, and the unexpected high volume of samples have all been mentioned as reasons for the delay. That is absolutely unacceptable. It shows the system is not working and is broken. I call on the Minister for Health, Deputy Simon Harris, to rectify this immediately. If it were not bad enough that these women have had to go through the harrowing process of getting tested again, they are now forced to wait for unacceptably long periods to find out the results. We recently had statements in the House on this issue and all sides agreed that the highest priority was to ensure those who still needed screening completed would be a priority. Screening works and saves lives, as we know, but the Minister must ensure that such a vital service is properly resourced and fit for purpose. Yesterday's figures show the system is still chaotic.

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Yesterday, we saw that the number of people homeless in the State reached over 10,000. Other figures suggest the number is much greater. Three thousand seven hundred and eighty-four children have no home to go to tonight. We have become immune to increasing numbers of people with no place to call home.

I want to nip something in the bud. Homelessness is not an ideological battle with Sinn Féin on one side and the Government on the other. On RTÉ radio last night, my colleague, Deputy Ó Broin, had to remind the programme's host that when it comes to homelessness, there are no sides. We want to offer solutions in opposition and are more than happy for Fine Gael, backed by Fianna Fáil, to implement them. We have a Bill that would make it illegal for a landlord who benefited from a buy-to-let tax break to evict tenants and families in order to sell the property. The landlord would have to sell it with the tenants *in situ*. Eviction is the main cause of family homelessness. The legislative proposals should be made law urgently but on "Morning Ireland" this morning, the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, showed that he simply does not get it. He said Rebuilding Ireland is working, even if the homelessness figure continues to increase. That is completely contradictory. He refused to answer directly the question on how many homes Dublin City Council built last year. He also could not give a timeline for ending child homelessness. The message from the Government is that the policy response is working, and this is all happening because Deputy Micheál Martin and his party, Fianna Fáil, are facilitating budgets and refusing to express no confidence in the Minister. It is time that action was taken.

Senator Kevin Humphreys: I thank Senator Craughwell for his kind remarks on my views on Airbnb. Addressing this issue will not solve the housing crisis but at least if the proposal is implemented, it will result in approximately 5,000 new homes in the Dublin area. This is much more than what the Minister has achieved in his term of office.

There is genuine concern about evidence-based policy on housing across the country. Senator Craughwell was correct to comment on the number of cranes on the skyline. Most of the developments in question have traffic management plans. One has to submit a traffic management plan for a major development but an accommodation plan is not needed. The Taoiseach's Department is heading up a project for an innovation centre in the south inner city that will employ approximately 10,000 people. Of those, 7,000, will come from abroad and will need accommodation. Is there an accommodation plan? No, there is not.

The Minister stated this morning the issue is one of supply. I fully agree with him but the problem is that his policies are worsening the supply problem because he calls for review after review. There is a review of apartment sizes, a review of car parking spaces, and a review of the height strategy. Let us examine what these reviews have meant. They have meant withdrawals of planning applications from An Bord Pleanála and the city council to increase the numbers of units on sites and produce new applications. That was fine. The target is to increase the density, but then he changed the height strategy and we had a further withdrawal of planning applications and no build starts. We then had a review whereby planning applications could be made directly to An Bord Pleanála if they were for more than 100 units. We had another withdrawal of planning applications but the outcome was that nothing was built.

An example of that is the strategic development zones, SDZs, three of which are in the Dublin area. Pressure was put on Dublin City Council and the Department, which was well covered by *The Sunday Business Post*, by a certain developer and now we have an announcement of a review of the North Lotts strategic development zone. We have sterilised the planning applica-

tions for accommodation there because they will wait for the review in respect of the height. We could probably survive one strategic development zone review but we may be led now into reviews of three strategic development zones, which is the North Lotts, the South Lotts and Poolbeg West. Poolbeg West could probably provide 3,500 homes. An Bord Pleanála has not made a decision yet on whether it will give it the go-ahead but I bet the Minister €1 to €100 that when that decision is made it will seek another review because of the Department's change to the height guidelines. The end result of all of that is that nothing has been built. It is review after review. That is not good policy.

I want to be associated with the remarks about Donal Hickey. I will conclude on this point. The National Transport Authority, NTA, announced the MetroLink but there is a marked difference in the way various groups were dealt with regarding the review of the NTA's proposal on MetroLink. That is down to political pressure. I hate to say it but I believe that because residents in the south inner city are probably socially disadvantaged, they did not have a proper input into the alignment of MetroLink. I fully accept that we need a station in the city centre. Proposals were put forward on that and I believe they were ignored because members from the south inner city did not have the same access to senior Ministers and the Taoiseach. It is the case that because of their social and economic backgrounds they have been very much ignored in the entire process.

Senator Frank Feighan: I am sure Members of the House will join me in sending our condolences to the family of the late John Browne. John Browne was nominated to this Seanad in 1983 and was a Deputy from 1989 to 2002. Any time I met him I found him to be a very decent man who imparted of his knowledge. His son Fergal was a colleague of mine in the Seanad from 2002 to 2007. Our sympathy and condolences go to his wife, Nancy, his daughters Carmel, Deirdre and Geraldine, and his son Fergal.

We saw in Westminster last night the Members of Parliament negotiating with themselves again. It is nice to see that the prospect of a no-deal Brexit has diminished somewhat but I would be very concerned that Brexit has created huge divisions, certainly in Northern Ireland and on this island. I read a news item recently about Trevor Ringland, who played rugby for Ireland. At the height of the Troubles, he and Hugo MacNeill were champions of co-operation and breaking down barriers on the island of Ireland but I am very concerned that Trevor Ringland has stated that there is no space in a very nationalist Ireland for even moderate unionists. I know the work that Trevor Ringland, Hugo MacNeill and many in the British Irish Association have done since the early 1970s in Oxford and Cambridge every second year but I am very concerned about that kind of rhetoric about a Border poll and nationalists being emboldened because of Brexit uncertainty. Nationalists have every right to aspire in that regard but these are difficult and dangerous times when we see somebody like Trevor Ringland, who was at the vanguard of cross-Border co-operation, coming out with a statement like that. We have to be very careful to ensure that we do not send out the message that we do not care what happens as a result of Brexit. We have to work very closely together on that. I was very concerned to see someone with the pedigree of Trevor Ringland coming out with a statement like that.

Senator Ian Marshall: I am sure everyone watched with interest the ongoing proceedings in Westminster last night. Although it is not conclusive on any strategic plan, what they did achieve was to clearly demonstrate that a no-deal Brexit or crash out for the UK is well and truly off the table.

As I indicated to this House a number of weeks ago, reading between the lines of the discus-

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sion that was going on at Westminster and the language that was used, the supremacy of Parliament over Government was key, and last night clearly demonstrated that. The outcome of last night's vote indicated that the favoured proposition is a close alignment with Europe, a softer Brexit and support for close management of this situation. Interestingly, even though the vote on a public vote to approve a Brexit deal was lost, the margin was tight at only 27. It must be remembered that only 563 votes were cast so that position could evolve next week.

I am disappointed that a number of key individuals are changing their position on a daily basis to achieve Brexit at all costs. It begs the question about the integrity of the argument they have made and their motivation. Furthermore, to put the head of a prime minister on the block to satisfy the baying pack serves no purpose, especially at this point when she has already given a commitment to vacate her position at a later stage.

I listened to the argument about respecting the result of a referendum but I would like to clarify that by a process of discussion, negotiation, dialogue, debate and public engagement, as well as the UK, Irish and European discussion, we have already completely respected a referendum. What we have done is interrogate the information, have the negotiation and demonstrate that the ideology that was sold to the British people was undeliverable, and it is still undeliverable. The past two years have proved invaluable. They have challenged the process of democracy and will give the UK Government an opportunity to re-establish its position as a full member of the European community.

Due process is taking place and, as I urged this House previously, we must give it space to do so. The statutory instrument to change the date for withdrawal from today's date was passed last night. Ireland and the EU have done all they could be expected to do in this discussion. It is now in the hands of the elected representatives in Westminster. For Ireland, this is now a waiting game, with next week determining the next steps. I therefore urge the Government to refrain from commenting too much at this stage and not to distract from the debate that must take place within Westminster.

Senator Fintan Warfield: It is no longer tenable for the Government to claim that the housing policy or Rebuilding Ireland is working.

Senator Paul Gavan: Hear, hear.

Senator Fintan Warfield: The number of children in homelessness is up 490% since Fine Gael took office. Those figures are much more than disappointing. It cannot in one breath claim that those figures are disappointing and in another suggest that Rebuilding Ireland is working yet the Taoiseach, Deputy Varadkar, spent the weekend lying about Sinn Féin's record on policy and has the neck to mock our policy on housing. As Focus Ireland has suggested, is it time to draw-----

An Cathaoirleach: Senator Warfield, we have a protocol in this House. You may find fault with the Taoiseach but it is a very serious charge to accuse him of lying.

Senator Fintan Warfield: Serial-----

An Cathaoirleach: I might use another verb. I am not curtailing your contribution but that is a word that we are not to use here against the Taoiseach.

Senator Fintan Warfield: Spin.

An Cathaoirleach: The Deputy may feel strongly about it but he might find another adjective to explain what the Taoiseach said at the Ard Fheis. I do not particularly like the word “lying” because he is the Taoiseach.

Senator Fintan Warfield: It was on “The Week in Politics” actually.

An Cathaoirleach: I apologise for interrupting the Senator. He can continue.

Senator Fintan Warfield: To reflect on what Focus Ireland has said, is it time to draw a line in the sand? This is a symbolic moment and I use “symbolic” for want of a better word - 10,000 people in homelessness. The Minister also said on “Morning Ireland” that rent caps have led to rents falling but Dublin rents have increased by 8% since 2017 according to the RTB. We can do something about this. Members of the other House will have an opportunity to vote for a Bill that, if passed, would prevent many families from losing their homes - families at risk of homelessness. The Bill, which is based on a Focus Ireland amendment, would prevent buy-to-let landlords from issuing vacant possession notices to quit to tenants when they are selling their property. This is the single biggest issue and cause of family homelessness so I call on Senators to talk to their colleagues in the other House, particularly Fianna Fáil, which blocked this measure in 2016, to support this very small but important measure that would help people facing imminent homelessness.

Senator Joe O’Reilly: I join with Senator Feighan in offering our condolences to the family of John Browne, a former Deputy and Senator and an absolute gentleman. He was also a former primary school teacher. He was a man who gave public service of the highest quality in the classroom, Seanad and Dáil for many years. Ar dheis Dé go raibh a anam dílis. I am very happy to second the call by Senator Feighan for the House’s sympathy to be conveyed to his family.

I want to raise an issue related to our conversation this morning that would go a good bit towards solving the housing problem. Could we have a debate on remote working incentives and people working from home? With advances in technology, it is easier for employees to accomplish work and communicate with their employer from home. There is accessibility everywhere with the Internet. I know there is an issue with some rural areas but, hopefully, that will be resolved. We need to deal with the areas that have it at the moment and get people working there. Video chatting is easy. Cloud computing makes accessing company data handy. The costs associated with transportation, commuting, fuel and work wardrobes would be reduced. Of course, it would make a big dent in the housing problem. It would leave workers free to create their own schedule and give people the choice to live outside the city, which is so relevant here. It would bring about better local communities and cut down on the need for office space and possibly free up some of that for housing. Getting people to work in their local communities is a win-win situation and should be incentivised. I ask the Acting Leader for a debate on that issue. We should look at where a Government function could be sublet in that regard. We could show leadership because we could allow people to fulfil some Government functions by working from home thereby creating space in the city. It is one of a menu of solutions to the housing crisis but in itself, it is the right thing to do. I ask the Leader to take this up. I am convinced that this is the way forward and must happen.

Senator Paul Gavan: I want to, again, raise the issue of Shannon Airport. Earlier this week, ten Afghan children from one extended family were killed - murdered by a US air strike in Kunduz in Afghanistan. There is no doubt that this country is complicit in that killing and

the range of killings by US forces in Syria, Iraq and the aforementioned Afghanistan. I have asked for a debate on this issue countless times. It has been denied each time. I can understand why it is being denied. It is because the Government has no defence for our complicity in handing over our airport. I raise it this morning because on St. Patrick's Day, two US veterans made a peaceful protest at Shannon Airport - Ken Mayers, who is aged 82 and Tarak Kauff, who is aged 77. They were arrested, put in prison and denied bail the next day and they remain in prison. These are two elderly men making a peaceful protest who are no threat to anybody. They were making a peaceful, legitimate protest about the appalling use of our airport in Shannon and this is how our State has treated them. They have a High Court appeal regarding bail this morning. I am calling for their release and hope that everyone here would join me in calling for their release so that they would be allowed to return home. The idea that our State would victimise these peaceful protesters in this way should be abhorrent to all of us. It just goes to show the lengths to which this State will go to threaten anyone who stands up to speak out about the atrocities that are being supported through Shannon Airport. I am calling once again for a debate. I wonder whether Fine Gael will hide as a party throughout the full length of this term rather than confront the shameful use of Shannon Airport.

Senator Colm Burke: Like my colleagues, I join in wishing Mr. Donal Hickey well and thank him for his contribution and work in the Houses of the Oireachtas over a long number of years. I wish him well in his retirement.

I refer to the issue of housing. One of the issues that is being missed in this debate is the reason we have a significant demand for housing is because there has been a significant increase in the numbers of jobs delivered. A total of 2.28 million people are now working, which is the highest level of employment in this country. I remind Senator Mark Daly that when Fianna Fáil left office, there was net outflow from this country of over 50,000 per annum. There is now a net inflow because the jobs are here. It is interesting to see the economic analysis. I was at a presentation at the economics society in UCC on Monday night. Seamus Coffey, chair of the Irish Fiscal Advisory Council, was there. He presented some very interesting figures. One statistic was that earnings per capita in real terms in this country are ahead of other European countries because there has been growth in jobs and areas that are very specialised and that generate higher income. Therefore, there is a demand for housing.

A total of 25,000 new units will be delivered this year. In addition, a significant amount of new student accommodation will be completed, which is extremely welcome because it will take students out of dwelling houses and into proper accommodation. This needs to continue. Yes, there are challenges that must be met. Likewise, I agree to an extent with Senator Craughwell about where office space is built. It just shows how Cork is developing. The 1 Albert Quay complex was built in the past two years and 1,700 people now work there. A further three commercial units are being built that will accommodate an additional 8,000 to 8,500 people. Yes, there will be a challenge regarding providing housing for the people who work there but these offices are within five minutes walking distance of the train station, therefore, people could live in Mallow, Cobh or Midleton and get to work by train without having to drive. A lot of good work is being done.

We must deal with the challenges posed by housing but we must deal with them in a progressive and constructive way. It is interesting how some people speak about housing yet people in those same parties have objected to housing projects and local authorities proceeding with housing projects in their own local authority areas. We do not hear them talking about that. Let us look at it. We all have to work together to resolve the problem. A lot of work is being

done. Many new dwelling houses are being delivered and that process will continue.

Senator Rónán Mullen: I would like to be associated with the tributes to Mr. Donal Hickey, who we would all agree has been a friendly and helpful presence in this House over the years. I hope he will enjoy good health and be able to spend both time and money *ad multos annos* in his years of retirement. I also wish to be associated with the expressions of sorrow for the former Member, Mr. John Browne. My sympathies also go to his son, Fergal, and the family.

I was listening to Ms Arlene Foster on the radio this morning. Given her position and the goals she wishes to protect and obtain, I was quite struck by the reasonableness of her tone and perspective. The history books may be kinder to the Democratic Unionist Party, DUP, than many of us have been tempted to be. Many people calculated some time ago that a no-deal Brexit would not take place, and if the party made that calculation, it would have the best of both worlds in staying with Brexiteers while being quite comfortable in the knowledge that way end up with a much softer Brexit than even Prime Minister May's plan entails. I am hopeful of that but time will tell.

One of the Brexiteers, Mr. Jacob Rees-Mogg, used the term “terminological inexactitude” recently, although he was not the first to use it. This was when the word “lie” was considered to be unparliamentary. It struck me while listening to my friend and colleague, Senator Warfield, that perhaps terminological or even “opinionological” inexactitude might serve his purposes in describing the Taoiseach's characterisation of Sinn Féin policy. I listened to Senator Warfield yesterday speaking about conversion therapy, an area into which many people fear to wade. With issues such as that, the highest value comes from what people want, provided it does not do harm. I do not know enough about it at this stage but if it can be demonstrated that this is harmful to people, there is a very good case to make it unlawful. If it cannot be shown to be harmful to people, we are back into the realm of individual choice. I say this because in these Houses we do not speak enough about the importance of an evidence base for proposals. I hope that if it is in the area raised by Senator Warfield or the very fraught and difficult area of transgender persons' rights and needs, we look honestly at the current evidence.

Many parents who I know are quite concerned about what is taught in schools in the name of equality with respect to transgender issues and they question whether children's best interests are being served by what is now often proposed. I do not know the answers to those questions but we have a better chance of getting those answers if we insist that anything we call for has a sound evidence base. As legislators, we have a particular responsibility in this respect. Perhaps we could make progress in this House on such matters by using the Seanad as a forum to establish a precise evidence base. I am not sure that our committees are serving us sufficiently in considering issues from an actual evidence base. The Seanad could have a solid and significant input in that space.

Senator Máire Devine: We are all very aware of the fragility in the negotiations regarding the United Kingdom and Brexit. I remind Senator Feighan that his party and Fianna Fáil are picking the leftovers of the Social Democratic and Labour Party, SDLP. It has been that party's continuous position that there should be a poll after Britain withdraws from the European Union, which could happen two weeks from now. There must be a nuance in being careful about these matters but we must hold our side as well. This debate has been popularised on the entire island of Ireland like never before in the two or three years in which we have heard the Brexit discussion. It is important for our confidence as a nation that we can have such a debate in a meaningful manner among ourselves and decide what we want. We should not shy away

from it. It is not about keeping quiet so the debate in Britain can continue as we must look after our country and citizens as well.

I attended the launch of the justice and equality committee's report on community and rural policing. I am delighted because two of the recommendations are associated with health, particularly mental health and vulnerability. They relate to the Garda Síochána being used as front-line or first responders, which is inappropriate in cases where vulnerable people are having episodes and the community or mental health services cannot cope. The only recourse for the professionals now is to call in the Garda. Mothers of children with autism spectrum disorder, ASD, have been told to call the Garda. I have been dealing with a case like this where the child is as young as four. I know that is exceptional but children grow up with symptoms of ASD and they can have difficulty finding treatment. The difficulty is we are criminalising people with a vulnerability, with many ending up in the prison system or Garda stations. A Se-anad team visited a hub last Monday in Derry that is dedicated to a multidisciplinary approach to the matter. I will put down a Commencement matter on the subject at some stage in order that we can learn more about it.

Senator Catherine Noone: I thank the Senators who raised matters on the Order of Business. I extend my sympathies to the family of the former Member, Mr. John Browne, and, in particular, his son, who was also a Member of this House. I wish Mr. Donal Hickey well in his retirement and he is an absolute gentleman. I hope he has a very happy and healthy retirement.

Senator Mark Daly referred to the Corporate Manslaughter (No. 2) Bill 2016, which he introduced in July of that year. As he knows, a number of issues required further consideration to ensure the best approach to the provision of a criminal law response to the type of fatalities that are the focus of the Bill. At the time, the then Minister for Justice and Equality, Deputy Frances Fitzgerald, wrote to the Senator indicating that, having considered the Bill, a number of specific issues arose. The Senator is aware of all this but I am just putting it on the record. Those issues need to be clarified or addressed. They include the range of bodies to which the Bill would apply, the range of unincorporated bodies to which the Bill would apply, the legal ingredients of any offence, including who would be liable within an organisation, exemptions to any offence, etc. Those matters continue to be considered and they have wide-ranging implications for all organisations, as the Senator noted, including voluntary bodies providing a service to the public.

Detailed scrutiny of the Law Reform Commission report is required by all invested in this process and officials in the Department of Justice and Equality are continuing to consider the contents of the report in the context of examining further amendments to the Bill. It is also worth pointing out that witnesses from the Law Reform Commission appeared before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on 26 February to discuss the report. Officials have agreed to meet the Senator to discuss this matter and the Leader's office will write to the Department to facilitate a meeting involving the Senator in the very near future. I hope that will be satisfactory. The officials have already indicated they will be happy to do it so I can ensure that it happens sooner rather than later.

The Senator also referred to homelessness, as did almost everybody else who contributed. It goes without saying that the increase in homelessness in February is hugely disappointing.

Senator Colm Burke made an interesting contribution on the jobs that have been created. I know that it is no comfort to people who do not have a roof over their heads but we are victims

of the recovery in that sense. It is more expensive than ever to build housing and housing supply is obviously at a critical level. I am not trying to defend the homelessness figure because it is extremely unsatisfactory. However, compared with 2017, the number of new homes built in 2018 increased by 25%, with more than 18,000 new homes completed. Roughly one in four of the new homes built was for social housing. The latest report from the Residential Tenancies Board also shows that average rents fell at the end of 2018. It is not a fabrication to say there are indicators that things are moving in the right direction but this glaring figure for homelessness is seriously concerning.

The housing assistance payment, HAP, will continue to play a vital role in providing families with a place to live until supply catches up. The Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, will continue to work with families to demonstrate the benefits of this scheme compared with emergency accommodation. The Minister is in constant contact with the local authorities. I have come across numerous cases in my area of politicians objecting to housing developments. This underlines the difficulty of the problem we are dealing with. We have politicians from all parties, including Sinn Féin, Fianna Fáil and Fine Gael, objecting to housing in Dublin city. How are we supposed to fix the housing crisis when Members of this House and the other House rightly complain about the housing figures and or the fact that 10,000 people are homeless when, later on the same day, the same politicians submit objections to housing plans? Councillors from all parties are objecting to planning being given in areas throughout the city. We must have integrity when we speak about this issue.

It will take time to solve the housing problem. I ask Members to look into their hearts when we talk about homelessness. To give a glaring example from my area, one individual politician has objected to between 1,000 and 1,300 new homes. We need to consider this matter in a holistic way. The figures that underpin Rebuilding Ireland continue to improve in many areas. I suggest that we invite the Minister to the House to discuss this issue in the near future. I am in no doubt that he would be happy to discuss many of the issues that have been raised today. Such a debate would be timely in the context of these figures.

Senator Craughwell raised the issue of officers in the Defence Forces. I suggest that he table a Commencement matter on the issue. He also raised an interesting issue about non-commercial and commercial housing in the context of homelessness. That issue could be discussed during the debate I mentioned in response to Senator Mark Daly's contribution.

Senators Conway-Walsh and Devine raised the joint committee's report which deals with rural crime. It would be worthwhile to arrange a debate on the issue. I was interested to hear Senator Devine's remarks on the mental health aspects of the report, which are positive. Senator Conway-Walsh also raised the issue of smear tests and cervical cancer. A discussion with the Minister for Health would be timely because, more than anything, we need to restore confidence in that process. Women who have been through that process understand where other women are coming from on the issue. I had a repeat smear test done because I was concerned when I heard about the issue, even though I knew logically that I did not need one. Such concern has, however, created a backlog, which is a natural consequence. We need to encourage people to continually engage with the process. I agree that we need a tangible statement from the Minister on the matter to help restore confidence in that area.

Senator Humphreys raised the issue of Airbnb and housing. I addressed housing when I responded to the remarks made by Senator Mark Daly. Senator Humphreys made an interesting point about the innovation centre being established in Dublin which will create 10,000 jobs. It

is a difficulty when the economy is improving so much. We have to house people and strike a balance in all areas of housing.

Senator Feighan, as always, raised the issue of Westminster and highlighted the fairly depressing issues that are unfolding daily. It is sad to watch one of the oldest Parliaments in the world, if not the oldest, tear itself apart and show itself up in the way it has done.

Senator Marshall made some insightful comments in his assessment of what is happening. I take from what he said that we must be careful not to inflame the situation. In fairness to the Tánaiste, he has been excellent in that regard. Where possible, as Senator Feighan said, we have left the British to fight it out and debate Brexit among themselves. We have done our negotiations. It has struck me in recent days that many politicians in the UK seem to be changing their minds yet they will not countenance the possibility that the British people could also change their minds. It seems fine for Prime Minister May, who was a remainer, and various other politicians to change their minds, yet a different approach is taken when it comes to the people. The British people voted in circumstances where scaremongering messages were displayed on buses. The referendum was fraught with inaccuracies, yet there is still no real talk of holding another referendum. It is hard to relate to such a situation.

Senator Warfield raised the issue of homelessness, which I addressed.

Senator Joe O'Reilly raised the interesting issue of incentivised remote working. Many employers would probably be concerned about that at an instinctive level because there is a perception that people will be at home in their pyjamas and not working. A shift in mindset is needed to get employers to buy into the idea of remote working. It is an excellent idea, particularly as the M50 is absolutely packed. I wonder how many of the people who use the M50 could potentially work from home on at least a couple of days a week. We should consider innovative ideas that would reduce the number of people on the roads and reduce demand for accommodation in the bigger cities where we are obviously struggling to provide housing.

I suggest the issue raised by Senator Gavan would be suitable for a Commencement debate. I genuinely do not know the particulars of the case he raised and I am not trying to be evasive. It would be good to discuss Shannon Airport in the context of a general debate on airports. I will suggest such a debate to the Leader, which would give Senator Gavan an opportunity to raise the issue. As I do not know anything about the case he raised, I do not wish to comment on it.

An Cathaoirleach: I remind the Deputy Leader that an attempt was made to raise that arrangement not too long ago and it was ruled out of order by the Department.

Senator Catherine Noone: I did not realise that. In that case, I would not suggest that Senator Gavan raise it as a Commencement matter. I will suggest instead that the Leader have a debate on transport and airports, which would afford the Senator an opportunity to raise the matter with the Minister.

I referred to the insightful and interesting contribution made by Senator Colm Burke. He is always very good with statistics and figures. I thank him for raising something positive on the Order of Business.

Senator Mullen is probably the only Member of the House who could move, with an even flow, from discussing Brexit to talking about conversion therapy. It was quite remarkable. I congratulate him.

Senator Rónán Mullen: It is conversion therapy that we are looking for over in Westminster.

Senator Catherine Noone: Maybe when it comes to Brexit we do need conversion therapy for the Brits at this point.

Senator Rónán Mullen: Hear, hear.

Senator Catherine Noone: Getting from Brexit to conversion therapy in an even flow certainly shows a peculiar way of thinking.

Senator Rónán Mullen: I thank the Senator.

Senator Catherine Noone: I missed Senator Warfield's contribution on conversion therapy yesterday, but I have no doubt that he would be poles apart from Senator Mullen in what he might say in response.

Senator Rónán Mullen: I live in the hope of mutual understanding.

Senator Catherine Noone: We are all in favour of evidence-based policy. I will take it no further than that. I categorically disagree with conversion therapy and the type of policies propounded in America by the likes of Vice President Pence. In a way, I do not know what Senator Mullen is talking about.

Senator Rónán Mullen: That is all right. It is not the first time.

Senator Catherine Noone: No, but Senator Mullen did go around the issue without actually stating what he meant.

Senator Rónán Mullen: I am just looking for an evidential basis for policy and legislation. That is all I am saying.

Senator Fintan Warfield: There is no scientific evidence that someone's sexuality can be changed. That is the evidential basis.

Senator Rónán Mullen: Let us agree then that evidence must be the driver for all our discussions in this and other areas.

An Cathaoirleach: We might leave that for another day, when we have the debate.

Senator Catherine Noone: I am staying out of that because I did not hear the remarks yesterday. Personally, I fundamentally and entirely disagree with any notion that conversion therapy is a way forward-----

Senator Rónán Mullen: If the Senator is speaking on the basis of evidence, I will always agree with her.

Senator Catherine Noone: -----in the case of homosexuality. I will leave it at that.

Senator Rónán Mullen: I ask the Senator to think about it.

Senator Catherine Noone: Senator Devine referred to Brexit. I understand what she has said about a Border poll. It is a discussion that needs to be had. At this particular juncture, it is not timely to talk about-----

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Senator Máire Devine: We have had this discussion for the last three years.

Senator Catherine Noone: Yes, but we need to let the situation settle. We need to get a result on the Brexit issue. I am not suggesting that we leave it for ten or 20 years, but we certainly need to wait a few months before we start having this conversation. I understand that this is the position that Senator Devine's party is pushing for, so I understand why she raises it.

I have already mentioned report of the Joint Committee on Justice and Equality this morning. I have not read it yet but by all accounts it is an excellent report. In particular, I refer to the aspect concerning mental health. There is a focus on supporting the Garda in that regard. That is very positive.

Order of Business agreed to.

Visit of Kazakhstani Delegation

An Cathaoirleach: I am sure that Members will join me in welcoming the ambassador of Kazakhstan to the United Kingdom and Ireland, His Excellency Mr. Erlan Idrissof, who is accompanied by the honorary consul of Kazakhstan in Ireland, Mr. Arthur French. On my own behalf and on that of my colleagues in Seanad Éireann, I extend a very warm welcome to the ambassador and express our good wishes for a very successful visit to Ireland. Tá fáilte romhat. He is very welcome.

Sitting suspended at 12.35 p.m. and resumed at 12.50 p.m.

Civil Liability (Capping of General Damages) Bill 2019: Second Stage

Acting Chairman (Senator John O'Mahony): I welcome the Minister.

Senator Anthony Lawlor: I move: "That the Bill be now read a Second Time."

I welcome the Minister to the debate on this Bill. I thank my colleagues in Fine Gael for allowing me bring it forward. I also thank the Minister for being present and for his advice in my discussions with him. I thank my work colleagues in the office, Fintan and Adam; the various groups with which I consulted such as the Irish SME Association, ISME, the Irish Farmers' Association, IFA, and the Vintners' Federation of Ireland, VFI; and the legal personnel to whom I spoke about this legislation. I must also acknowledge the work the Government has been doing on this. The former Minister of State at the Department of Finance, Deputy Eoghan Murphy, set up the cost of insurance working group and, following this, the Personal Injuries Commission, PIC, under Mr. Justice Nicholas Kearns, was established, which brought forward a telling report. The cost of insurance working group made a number of recommendations as well.

I will relate a couple of stories. James is a young driver. He is 22 years of age. He has his own car valued at €1,800. He goes to look for insurance on it. He cannot get fully comprehensive insurance. All he is offered is third-party fire and theft insurance. The first insurance payment he was supposed to make was €4,000. He eventually got this down to €2,000. A small publican living in the locality saw his insurance rise from €5,000 to €7,000 over four years.

Lately I have met people who own play centres. Rachael is a woman who has a business in which she ensures that everything is done properly. She has had a couple of claims against her, which she contested. On one occasion the judge mentioned the fact that she was not negligent in the business she had run and that what happened was purely accidental. The claimant, a young child, received €26,000. Her insurance has risen to in excess of €15,000. There must be some cases in which personal responsibility is carried. Some play centres have experienced insurance increases of 300% in recent years. A number of them have had to close because of this insurance increase.

When I started doing research on this, I inquired as to why premiums are so high and there are a number of reasons. I refer to insurance companies' profits, which in recent years have been excessive. The Minister of State at the Department of Finance, Deputy D'Arcy, said insurance companies must pass on some of the profits they are making back to premium holders and reduce premiums. Levies are another reason premiums are so high. Government levies on motor policies are currently 7%. This is associated with failed insurance companies in the past, such as Quinn Insurance. We will all be paying 2% *ad infinitum* to recoup the money the State paid into that. Fraud is another reason. Insurance fraud is probably at an all-time high. The Judiciary, in fairness to it, is starting to recognise this and is working with insurance companies to reduce the volume of fraud. Claims, future claims and awards happen to constitute the most costly part of an insurance premium. Up to 70% of one's insurance premium, whether it is for one's car, one's home or one's business, is associated with awards. The awards that have been made can be broken down as follows: of the awards paid out through the courts or the Personal Injuries Assessment Board, PIAB, 90% to 95% are for under €50,000. This has increased by 42% since 2011. Most of these awards come through the courts and they are mostly small claim awards. Regarding PIAB, a body that was set up in 2003 to try to reduce insurance costs, the average payout for a whiplash claim in 2018 was €18,581. According to PIAB, 70% of all claims concern whiplash.

I then looked at comparisons with other countries. The PIC under Mr. Justice Nicholas Ke-arns found that insurance awards here are 4.4 times higher than in the UK. I refer in particular to whiplash claims. In the UK, a green book is used, whereas here we use a book of quantum. The green book pays out between £500 and £3,000 for small injuries. In the book of quantum, this can rise to up to €15,700 for similar claims. The cost of insurance across Europe for small, minor injuries, general damages ranges from zero in France and Finland up to €6,000 in Germany, so our awards are way out of line. As a result of this, the cost of insurance here is higher. The average car insurance premium in the UK is £477 for all motor vehicles, in comparison with the average premium for car insurance here, which, according to AA Ireland, across all age sectors, was €998 in 2018.

PIAB was established to remove as many cases as possible from the courts. As a result, the cost of insurance dropped for the next ten years. However, PIAB is currently basing its awards on the book of quantum. The book of quantum is based on historical awards made through the courts. Sixty per cent of all cases with which PIAB deals are motor-related. Of these, 80% of the cases dealt with relate to whiplash. The PIC report makes ten recommendations, key among which is the Judicial Council Bill 2017, which will come before the Seanad next week. The PIC recommends that guidelines be instrumental. However, are guidelines strong enough, and do the courts have to take the guidelines on board? The key is consistency of awards. When a case is taken before a court, it depends on the judge as to how much is given out as an award. Judge A could award €20,000 while Judge B could award €10,000. There seems to be no consistency

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in awards. The Law Reform Commission, LRC, has been tasked with looking into legislation which may be robust so as to be able to reduce these awards.

I have considered whether or not this legislation is constitutional. The Supreme Court, in *Sinnott v. Quinnsworth*, put a cap on awards that can be made under general damages. This was done in 1984 to the tune of £150,000. Section 49 of Civil Liability Act 1961 provided for a cap of IR£1,000 on certain types of damages. Since then, various Ministers have increased this to €35,000.

The Bill itself is straightforward and simple. The first section deals with the definitions and interpretations of the various terms used throughout the legislation. The key definition relates to “general damages”. This means “compensation for non-monetary damages for pain and suffering incurred by a claimant and which is sought to be recovered as part of a claim for personal injury”.

Section 2 deals with the maximum level of damages for personal injury. This requires the Minister to make regulations.

Section 3 concerns considerations to apply to the making of the regulations, that is, what the Minister must take on board. He or she must take on board what is fair and proper and right for each claimant.

Section 4 states that the regulations laid down by the Minister must come before both Houses of the Oireachtas and be passed. The purpose of this is to ensure we scrutinise the regulations.

Section 5 deals with a review of the regulations.

Section 6 deals with the fact that the book of quantum must be brought into line with the regulations the Minister makes.

Section 7 deals with the operation of the Bill, allows for a review when it is enacted and takes into consideration those people who should be considered with regard to the review.

Section 8 sets out the Short Title.

I have outlined some of the many factors that must be taken into consideration as we seek to deal with high insurance premiums. This legislation seeks to deal with the amounts of the awards that are being paid out at the moment, which is a key factor. On the basis that it is trying to address this issue, I commend the Bill to the House.

Acting Chairman (Senator John O’Mahony): I understand that Senator Conway is seconding the proposal.

Senator Martin Conway: I welcome the Minister, Deputy Flanagan, back to the House. I was getting worried because I had not seen him all week. I was wondering what had happened to the great Judicial Appointments Commission Bill 2017.

Senator Lorraine Clifford-Lee: The Senator should not mention it.

Senator Martin Conway: The Minister is most welcome to the House. Fine Gael Senators are proud of the work done by our colleague, Senator Lawlor, to bring this Bill to the floor of the Seanad. The Senator was an esteemed Member of the Lower House for five years. Unfortunately, he was not returned there at the last election. Thankfully, he is now a Member of

Seanad Éireann. I expect that he will have a short stay here because he will be returned to the Lower House at the next election, and for good reason.

Senator Neale Richmond: Hear, hear.

Senator Martin Conway: Not every Member of this House introduces Private Members' Bills. Even though Senator Lawlor has been a Member for just a few months, he has introduced this Bill, which has its finger on the pulse. I consider the level of payouts that are being made as insurance compensation to be a national scandal. There are three elements to this scandal, the first of which is the level of compensation that is being given in certain cases. Senator Lawlor went into minute detail when he provided international comparisons. Ireland is among the most generous countries when it comes to compensation in the insurance sector.

1 o'clock

The second element of this scandal is the exceptional profit being made by all the insurance companies. If one visits the website of the Companies Registration Office, CRO, one will be able to see the extraordinary profits that certain companies are making. They are in the business of making money and - fair dues to them - they are well able to make it. Unfortunately, they do not seem to have a sense of social responsibility that would cause them to be fair to those who support their profit-making ventures. People often talk about vulture banks and vulture funds, and they are right when they say that what is going on with vulture funds is appalling. I suggest that what is going on with insurance companies is also appalling. A young driver can be charged up to €6,000 to get insured for the first time. That is discrimination against young people. We are trying to encourage young people to stay in Ireland. We often give out about nurses who go abroad. Some of them want to see the world, but many of them go abroad because they simply cannot afford things like rent and car insurance. Where will a recently qualified nurse who is starting off in the profession come up with €4,000 or €5,000 to pay for insurance? When I was knocking on doors in Corofin, County Clare, two weeks ago, a lady who answered one door told me that she runs a business in Ennis and that her insurance premium increased by an incredible 60% last year. It is difficult for businesses to keep sustaining that type of increase. Who is to say that her premium will not increase by a further 60% next year? There is nothing to stop that from happening. It is difficult for people to keep their staff employed and keep their businesses going in such circumstances. It is difficult to support the economy and to support jobs when this is going on. I have great regard and respect for people like Pat McDonagh who faced down what was going on with the insurance industry a number of years ago when a number of fraudulent claims were made.

That brings me to the third element of the scandal in the insurance industry, which is the number of fraudulent claims that are made. All citizens have a responsibility to call out people whom we suspect of submitting fraudulent claims to insurance companies. Everybody suffers when such claims are made. When we watch advertisements on television and listen to them on the radio, it is pointed out to us that everybody ends up paying as a result of fraudulent claims. The three issues I have mentioned are interwoven into one. Senator Lawlor is reflecting the desire of the people of Ireland for us to deal with the vulture insurance companies and to cap the outrageous claims. Anybody who gets injured deserves to be compensated. There is no question or doubt about that. However, it has to be fair, respectful and appropriate.

Senator Lorraine Clifford-Lee: I have listened to what Senators Lawlor and Conway have said and I agree with their sentiments. I hear all the time from people who are facing significant premiums for their businesses or their own cars. It is outrageous. However, the Bill

does not represent the way to go in this regard. It is probably unconstitutional. Perhaps the Minister can tell us whether the Attorney General has looked over it. If not, why not? If the Attorney General has not given the green light to this Bill, why are we debating it? I am highly dubious that this Bill would get the green light from him. It is curious that we are wasting time debating this Bill when we could take measures that would help to tackle the high premiums people are facing.

Senators Lawlor and Conway referred to fraudulent and exaggerated claims. The way to tackle this issue is to have a dedicated Garda fraud unit. We all know of fraudulent claims that are being thrown out of the courts but are not being tackled thereafter. Why are these criminal matters not being systematically reported to the Garda and investigated? People are chancing their arms because they know there are no consequences. This is a very real issue.

If this Bill had been introduced by Fianna Fáil Senators, we would have been accused by those on the Government benches of being populist and irresponsible. Instead, this irresponsible and populist Bill is being introduced by the Government. I am completely baffled about that. Fianna Fáil genuinely wants to tackle high premium costs. We have been to the fore in tackling high insurance premiums.

The fact of the matter is that people who are involved in accidents deserve to be compensated fairly for any injuries they incur. If we scare people away from the courts and blacken the name of everybody who brings a personal injuries claim, we will not serve the cause of ordinary people who are injured through no fault of their own and deserve proper compensation. The PIC has recommended that when the judicial council is established, the Minister for Justice and Equality should ask it to compile guidelines for appropriate general damages for various types of personal injuries. It is completely outrageous to think that the Legislature could put a cap on general damages. It is a bonkers Bill, to be honest. It is populist. I know it will get Senator Lawlor the local headlines he is looking for.

Senator Neale Richmond: That is unfair.

Deputy Charles Flanagan: It is out of order.

Senator Lorraine Clifford-Lee: I do not know whether this is what we need to be doing.

Senator Neale Richmond: The Senator should play the issue and not the person.

Senator Lorraine Clifford-Lee: We need to do something proper to help people. We should set up a dedicated Garda fraud unit to deliver some results. We need to tackle the anti-competitive practices of the large insurance companies and the outrageous profits they are making. We should stop targeting ordinary people who are injured through no fault of their own.

Senator Niall Ó Donnghaile: It is hard not to think that there is an element of truth in what Senator Clifford-Lee outlined but it is important to take the Bill as presented to us. There certainly will be different views on its intent and its constitutionality, and on whether better and more effective and practical proposals could be brought to this House. I wonder about that but we are where we are. It is no mean feat to get a Private Members' Bill to the floor of this House. Senator Lawlor has been successful in that regard and fair play to him on that.

I welcome the opportunity to contribute to the debate and to speak to the topic of insurance more generally. The Bill is one that we in Sinn Féin will lend its support to on Second Stage,

although not without reservations. We would bring forward amendments were it to progress further.

As has been stated by Senator Clifford-Lee, questions arise as to the Bill's constitutionality and how workable it is more generally, given that damages and personal injuries are more complex and specific to the person than may appear on the face of it.

I have concerns about section 2 and the limiting of any claim that can be made for general damages as defined under the Bill. While in theory it may seem a logical proposal, it does not take into account what may be considered as general damages more broadly, and how these may be fluid and how the nature of any injury incurred may change or develop with the passing of time. For example, in the case of someone who incurred life-limiting injuries and whose life expectancy had been estimated at 18 months taking a personal injury claim and the court settling on the amount there and then but two years later he or she is still alive and requires further expensive medical care, where does his or her claim sit? It is unclear in that regard. Section 2(3) appears to make an attempt to give scope to the Minister but that could become burdensome and tedious in time, and it may undermine the intention of the Bill in its totality. The same may well apply to sections 3 and 6, respectively.

On section 7(4), it should be a mandatory requirement to consult such groups rather than leaving it to the discretion of the Minister, with all respect to him or her, and I am not quite sure why such a requirement is not provided for. Either way, my party's concerns may well be unfounded, and addressed by section 3. A High Court case in the middle of last year reiterated the binding principles laid down by the Court of Appeal and by the Supreme Court, which must be applied in calculating the appropriate level of general damages for any personal injury. The case concerned a claim by a Garda for compensation in respect of a soft-tissue injury to his hand. Counsel for the applicant, in reliance on the book of quantum, suggested an award of €21,700. The court ultimately concluded that the appropriate compensation was €5,000. While this case related to the Garda compensation scheme, the judgment expressly referred to all personal injury cases. It was determined that in assessing damages the court is obliged to be "fair" to both parties and that any award must be "proportionate" within the scheme of awards for personal injury damages, and, further, that any such award must be objectively "reasonable" in light of the common good and social conditions. As I stated, the general principles of the Bill are fine and I understand the good intentions of An Seanadóir Lawlor but I hope the Bill progresses so that we could tease these matters out further.

On the insurance issue more generally, the motor insurance industry and the Central Bank have been accused of throwing consumers to the wolves over the cost of car insurance, in particular, in years gone by. I am not sure whether this trend has continued but I am aware, at least anecdotally, that many drivers are still experiencing increased premiums despite no change to their driving history.

In a hard-hitting report in 2016, the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach stated that the motor insurance industry had deliberately been hiding key information from public view and engaging in cartel-like behaviour. The report stated that all witnesses who appeared before the committee, except for the insurance industry itself, had highlighted the absence of data-sharing and a complete absence of transparency across the sector as a serious problem. The absence of this information meant it was impossible to get to the root cause of motor insurance price increases, according to the committee. The report also suggested another cause of the spikes in the cost of motor insurance which have resulted in some

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drivers' premiums going up by more than 100% in just two years was that insurance companies had been using their motor insurance books to bolster shortfalls in investment income in other areas. The Competition and Consumer Protection Commission, CCPC, and the Central Bank also came under fire in that report. The committee stated that the CCPC had insisted its remit was economy wide and limited to enforcement of competition law, something which "is of little comfort to suffering motorists who feel exploited and abandoned".

In regards to insurance fraud, Sinn Féin received documents under the Freedom of Information Acts last year, which documented a series of missed deadlines by Insurance Ireland since early 2017 to progress the proposal to set up an insurance fraud unit within An Garda Síochána funded by private industry. The independence of An Garda Síochána is essential, and a direct funding relationship with private interests undermines that independence. This is in a context where the insurance industry is under investigation by the competition authorities, in the State and at EU level, over anti-competitive practices. Any such unit should be funded by the State and, at a cost of approximately €1 million, this is more than within the capacity of Government.

It is clear now that Insurance Ireland has, despite protestations that fraud is a cause of increased premiums, decided instead that tackling fraud is not an important part of its agenda. This unit would now be up and running were it not for such delays. It is probably a conversation for another day, but an important and worthy one nonetheless.

Senator John O'Mahony: I welcome the Minister and commend Senator Lawlor on bringing forward this Bill.

I support the thrust and principle of the Bill. I am not a legal expert and I cannot speak on the constitutionality or anything else. The general thrust and principle of it is without doubt.

It is unacceptable that the personal injury payouts continue to increase at a phenomenal rate and are totally out of line, as Senator Lawlor outlined in his contribution, with the rest of Europe. As for why this is the case, there probably are other factors. I am not aware of the minutiae. There is no doubt insurance companies have many questions to answer because of the spiralling premiums. We all have plenty of examples of that. The insurance companies are not losing money but are making handsome profits.

Other factors have been mentioned, such as levies and fraud. My observation on the fraud issue is that more cases seem to have been thrown out in recent times. I very much welcome this because previous awards were mind-boggling - not only their amount but the fact that awards were made in certain cases at all. I welcome the fact that more fraudulent cases seem to have been thrown out in recent times.

I was interested in the contribution of Senator Clifford-Lee, who has left the Chamber. She accused Senator Lawlor of being populist and seeking headlines. There is a saying I will not repeat here because it might be unparliamentary. The Senator herself is certainly a dab hand at both of those topics. As somebody who observes headline seekers in both politics and sport, I note that the Senator has starred in that area. Perhaps she has left the Chamber to seek a few more headlines.

Acting Chairman (Senator Diarmuid Wilson): I note that Senator O'Mahony's colleague, Senator James Reilly, is anxious to defend his colleague.

Senator John O'Mahony: I commend Senator Lawlor, and hope that any constitutional

issues are ironed out on this and that the thrust of the Bill gets through the House.

Senator Rónán Mullen: I would love if we could have a political all-star awards for sledging around here.

I welcome the Minister. I thank Senator Lawlor for bringing this Bill forward, although I have concerns about it. We all agree that insurance premiums are far too high but I am not convinced that this Bill will address the problem. While its aims are laudable, I have a number of issues with it.

I note this is not a Government Bill, but a Private Members' Bill which just happens to be supported by all Fine Gael Senators. I am wondering why that is the case. The Government has hinted at capping general damages but it has not yet formally adopted the idea. The Minister of State, Deputy D'Arcy, suggested a couple of weeks ago that the Attorney General would need to examine the constitutionality of the proposal. Presumably we can conclude that the Government does not support this legislation but is happy for it to pass all Stages in this House in the knowledge that it will perhaps languish on the Dáil Order Paper without ever going anywhere. If that is the case, would that not do a great disservice to this House?

The Bill seeks to cap general damages by ministerial order or regulation, thus fettering the discretion of the Judiciary. Limiting judicial discretion may sound good in theory to some. It may even allow large awards to be capped. However, I have a fear that it might create a new and even worse kind of injustice, where those who endure a serious personal injury could end up being inadequately compensated. No ministerial order or regulation, no matter how carefully drafted, can possibly cover all eventualities. Each case is different and there are always unforeseen circumstances. That is why judges should be allowed some discretion. The 2016 book of quantum, for example, makes it clear several times that "every claim will continue to be dealt with on its individual merits." It seems that this principle would now be scrapped by this Bill. In future, regardless of the individual merits of a particular case, damages would be capped by regulations.

The Bill seems to ignore that the Judiciary has recently intervened to implement a fairer means of quantifying awards of general damages. Two recent cases in the Court of Appeal, *Payne v. Nugent* in 2015 and *Nolan v. Wirenski* in 2016, laid out a new formula for assessing damages so that awards would be fair, proportionate to the injury suffered and reasonable in the circumstances. Given that these cases arose just two years ago, I wonder if the Bill, in its genesis, considered how this new formula has worked within the courts in that time. Should it not do so before seeking to limit judicial discretion in relation to damages?

In a broader sense, I wonder if this Bill is a continuation in form of a pattern of populist attack on the Judiciary by Government in the recent past. We had the 2011 referendum on judicial pay. We have spent 75 days in the Seanad discovering the nonsense legislation of the Minister for Transport, Tourism and Sport, Deputy Ross, namely, the Judicial Appointments Commission Bill, which I suspect is as much an embarrassment to the Minister for Justice and Equality as it is to anybody else. We also had the absolutely daft suggestion last November by the Minister of State, Deputy Michael D'Arcy - I say this with respect for a gentleman whom I like - that high whiplash awards be dealt with by referendum to amend the Constitution so as to bring judges to heel. The common thread running through all of this is a type of "us versus them" mentality with respect to the Judiciary. Instead of seeing the courts as the third branch of Government and an important check on the abuse of power by other branches of our democracy,

there is a suggestion that judges are some sort of cosseted elite acting against the best interests of citizens. While that might be true in individual cases, it is unfair as a general attitude. Is this Bill a manifestation of this pattern that I am positing? I certainly hope that is not the case but I worry that the Government has a bit of form, to say the least, in this regard.

Where does this Bill leave the book of quantum? The book of quantum was last revised in 2016 after a comprehensive review of 51,000 personal injuries cases during 2013 and 2014. It should, therefore, give a very accurate picture of the level of awards. Section 6(2) of the Bill states that the book of quantum will continue to be revised from time to time to reflect the recommendations of the Personal Injuries Commission. What is the point in continuing to have a book of quantum to guide judges if the damages for various injuries are to be capped by ministerial regulation under this Bill? Does the Bill not do away, more or less, with the need for a book of quantum by scrapping the role of the Personal Injuries Commission in revising it and placing it effectively in the hands of civil servants, to be rubber-stamped by the Minister and each House of the Oireachtas? This is what I mean when I talk about a certain lack of regard for the proper role of the courts and a certain encroachment by one branch of our democracy on another.

One of problems highlighted in recent years has been that insurance companies are too quick to settle rather than fighting suspect claims. Somebody mentioned Pat McDonagh in a positive vein in that regard and I agree with that. In the past year or so, we have seen evidence that the mindset is changing with several suspect cases being fought and won by insurance companies in high-profile fashion. Surely we should wait to see if this trend continues before resorting to fairly drastic legislative intervention?

In summary, this Bill is well-intended but premature. It is draconian in its attempt to limit judicial discretion. It takes no account of recent case law, which seems to limit excessive damages awards, and it intervenes in cases at a time when insurance companies are finally showing a willingness to fight dubious claims. For all of those reasons, I am inclined to oppose it.

Senator Gerry Horkan: I am not here to speak on behalf of any of my colleagues, including my party colleague who has spoken, but to put a number of matters on the record, including the fact that Fianna Fáil will support the legislation moving to the next Stage. My party supports the objectives of the Bill, of which I am especially conscious as Vice Chairman of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach. The committee spent weeks dealing with motor insurance and, subsequently, employer liability and invited in representatives of vintners, restaurant owners and various other groups, including the Alliance for Insurance Reform, who outlined many of the problems raised by previous speakers. While I was not present for the earlier part of the debate, I watched proceedings in my office and missed only a small part as my made my way to the Chamber.

This is a useful debate but there is a concern, particularly in my party, that the legislation may not be permissible under the Constitution. I ask the Minister to indicate if that is case and whether the Attorney General has examined the Bill. If the Attorney General has not done so, perhaps he should before we spend more time on it.

I note Committee Stage of the Judicial Council Bill 2017 is scheduled to be taken in the House next week. This is a very positive and long overdue development. I am not speaking as a solicitor and I acknowledge that some members of the legal profession blame the insurance industry, while the insurance industry tends to blame the legal profession. The joint committee

engaged in an awful lot of toing and froing on this issue which it discussed for weeks. It also published a very good report on motor insurance towards the end of 2016, which is well worth reading. I recommend it to Senator Lawlor who was not a Member of the House at the time. Some of the report's recommendations were similar to those in the report of the cost of insurance working group.

As I am also addressing the Minister, I will wait for Senator Mullen to-----

Acting Chairman (Senator Diarmuid Wilson): As Acting Chairman, I am in charge of proceedings. I ask the Senator to continue.

Senator Marie-Louise O'Donnell: This is a disgrace.

Senator Gerry Horkan: I will resume now and I apologise to those who may be watching proceedings. I decided to wait because there is no point in talking to myself.

People blame each other for this problem. Insurance company profits, particularly in the motor insurance industry, were not particularly good for a number of years. If they were, we would have had many more entrants into the market. They have gone up in recent times, not because insurance payouts have decreased but because these companies have managed to inflict pain on every premium holder who has had to pay motor insurance or public liability insurance. The insurance companies have made money by charging all of us more. Insurance companies are not fighting cases in the way I would like them to. Perhaps that is because they feel it is more cost-effective to deal with the cases themselves, rather than risking the chance of going to court. I appreciate that one of the objectives of this Bill is to provide greater certainty. Senator O'Reilly is trying to distract me now.

Acting Chairman (Senator Diarmuid Wilson): Senator, please.

Senator Gerry Horkan: I know he does not mean to distract me, but he is doing so.

Acting Chairman (Senator Diarmuid Wilson): It is easy to distract some people when they are speaking. Please bear that in mind.

Senator Gerry Horkan: I thank the Chair for pointing that out.

Deputy Charles Flanagan: Some people are very precious.

Senator Gerry Horkan: I am easily distracted by Senator O'Reilly.

Senator Niall Ó Donnghaile: The Senator is easily distracted.

Senator James Reilly: Could I ask Senator Horkan to identify whether he is talking about Senator O'Reilly or Senator Reilly?

Senator Gerry Horkan: I am talking about Senator O'Reilly. For the record, Senator Reilly never distracts me.

Acting Chairman (Senator Diarmuid Wilson): Senator Reilly can save any comments he wishes to make for his own slot, which will be coming up in a couple of moments.

Senator Gerry Horkan: I am not going to go on long. I am going to wrap it up shortly. I notice that Senators Noone and Colm Burke have not put their names to the Second Stage mo-

tion on this Bill. To the best of my knowledge, they are both members of the legal profession. I am intrigued to know why their names are not on the list. Maybe it is just a typo. It is interesting that 18 of the 20 Fine Gael Senators have put their names to this motion, but two of them have not. Perhaps Senator Lawlor might explain why the two Senators in question have not put their names to it. Maybe it is because they are legal people. Maybe they do not think it is something they can sign up to. They might think there is a constitutionality issue or something or maybe they just did not manage to put their names to the motion.

There are many other things we can do in this area. I appreciate that the Minister, Deputy Flanagan, is not the Minister who has been dealing with insurance generally. However, I am sure this issue, like many other issues, comes across his desk. The Minister of State, Deputy D'Arcy, has been dealing with the cost of insurance working group and many other tasks, as did his predecessor, the Minister, Deputy Eoghan Murphy. Some of the group's proposals have been implemented but many of them have not. The Minister of State has said on a number of occasions that exaggerated claims are not fraud. I think he may have finally got around to the idea that they are fraud. While staging a claim is worse than exaggerating a claim, it is still fraud to exaggerate a claim. It involves claiming for money to which one is not entitled. Saying that one's claim is far in excess of what it should be is fraud in my book and I think it is fraud by any definition of fraud.

We need a Garda unit to investigate such cases. We need prosecutions. If one gets caught trying to rob a bank, hopefully one will be convicted and will get some kind of sentence. If one is proven to have made a fraudulent insurance claim, the claim is dropped and no payment is made but one does not face any sanction, punishment or penalty for making that false claim. Maybe there is a penalty somewhere in legislation, but it is not being followed through by anybody. That needs to be looked at as well. The incentive has to be removed from people making fraudulent claims. I appreciate that is why damages are being capped. If whiplash claims attracted payments of €2,000 rather than €17,000, I am sure some people would not make the claims they are making. It is a very lucrative market for those who want to get involved in it. I happen to have been rear-ended at one stage. I got the material damage claim for the car and I never even thought about whiplash. I think I am in the relative minority of people who do not pursue whiplash claims.

There is much work to be done by the insurance industry to fight cases harder. The legal profession should not be so willing to fight for every single claim, particularly if it considers it to be fraudulent. Of course nobody is trying to say that somebody who is entitled to a payout, having suffered an injury when the fault was not theirs, should not be looked after. That is what insurance is for. If one examines the statistics for whiplash payments in this country and elsewhere, one will find that no payments at all are made in respect of whiplash in other parts of Europe and the world. In some cases, cash is provided for care but payments of €17,000 or €18,000 are certainly not made to people who think they have a twinge or slight pain in their back. There are many examples in the public liability area of people who said nothing at all for two years - people are entitled to make claims after two years - only to arrive into a premises and say that they slipped there two years earlier. The staff may all have changed and the camera footage may all be gone because of GDPR.

There are many things we can do in the insurance area. I commend Senator Lawlor on raising this issue and tabling a Private Members' Bill. I worry about the constitutionality of the Bill as it stands. As a party, Fianna Fáil is happy to let this Bill go to Committee Stage. We have reservations about the legislation before the House, but we are prepared to discuss it. The

Minister might outline whether this Bill enjoys the support of the Government. Will it require a money message at any stage? I will leave it at that for now.

Senator Marie-Louise O'Donnell: I welcome the Minister to the House. I thank Senator Lawlor for bringing this Bill before us. I am sure he is absolutely delighted that the Seanad is still here. I remember him arguing violently and viably that it should be closed. If it had been closed, he might not have had a platform for the introduction of this legislation. I give the Bill a general welcome because I think manners, limitations and boundaries have to be put on how and when insurance payments are made and what amounts are paid. I welcome the Bill in that context. I would like to ask four simple questions about this legislation. The Minister may be able to answer them. If he cannot do so at this Stage, maybe he will be able to do so on Report Stage or whatever.

First, what is the objective of the Bill? I did not get an explanatory note with it. It does not appear that the legislation imposes any type of limitation on any type of personal injury. If I understand the Bill and have read it correctly, it envisages that the Minister will control the limits on damages paid to someone who gets a bruise - or soft tissue damage, in legal language - or to someone who ends up a quadriplegic as a result of an accident. Why does Senator Lawlor want the personal injury limits to be controlled by a Minister? Why is it better to have damages assessed by a Minister rather than a court? As we know, damages in various situations are very different depending on the elements of the injuries. The situations and circumstances can be very different on investigation.

Second, is it not the case that this legislation goes against Government policy? In January 2017, the Minister of State at the Department of Finance, Deputy D'Arcy, produced a significant report on the cost of insurance which contained a multitude of recommendations. It recommended that the Law Reform Commission should be asked to consider how damages could be regulated by legislation. The Bill before the House, which is sponsored and proposed by the Government, seems to circumvent that recommendation. Maybe the Minister, Deputy Flanagan, will answer that question.

Third, what is wrong with judges assessing damages? We all know about some of the jaw-dropping cases in which people receive substantial amounts of money in respect of accidents that have happened, and most of us might think such payouts are not warranted. When we also see horrendous cases coming through the Four Courts in which millions of euro are awarded on foot of tragic accidents or medical negligence which caused lives to be changed forever, we do not have the same reaction. Why is the Minister not being asked to consider the individual facts of an individual case? Why is he better suited than a judge to assess damages? These serious questions must be asked as we consider Senator Lawlor's Bill.

Fourth, is it not possible that the Judicial Council Bill, which was introduced in this House in 2017 but has not been debated since then, could fix this problem? The Bill in question provides for the creation of a judicial studies committee which would regularly examine damages awards and publish that information to ensure some people do not get more money than others simply because one judge, rather than another, happens to consider the case on the day it comes before the courts. For many years, a committee of the UK judicial council has been constantly studying the awards for damages. As I understand it, the amounts have been reduced as a consequence.

I have put these questions to the Minister because this could be a problematic area in the

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future. I have other reasons for raising the delays with the Judicial Council Bill 2017, including the provisions with regard to minimal custodial sentencing, etc. The Minister might answer the questions I have asked. If I do not get some very good answers, my belief in the Senator and his Bill could falter.

Acting Chairman (Senator Diarmuid Wilson): The next speaker is Senator Reilly.

Senator James Reilly: How much time do I have?

Acting Chairman (Senator Diarmuid Wilson): The Senator has eight minutes in total.

Senator James Reilly: I ask the Chair to alert me if I am still speaking with one minute to go. I hope not to be. I welcome the Minister to the House. He is a regular visitor. I welcome this Bill, which has been proposed by Senator Lawlor. It is an important Bill because it highlights an issue that is serious for many small businesses in this country. I want to state at the outset that victims of accidents and misadventure are entitled to proper and proportionate compensation for the pain, suffering and loss they endure. People suffer varying degrees of pain and may lose time from work and can lose valuable property. Motor insurance is a typical case.

We have to accept that we have a serious problem because our personal injury payouts are four times higher than in the United Kingdom. The payout for whiplash in Ireland is four and a half times the level in the UK. The average motor claim is almost €21,000, which compares with a payout of €4,000 in the United Kingdom, €1,500 in France and €4,500 in Germany. We are seriously out of kilter with our neighbours across the water and with our friends in Europe. There is a reason for that. I know people have different views as to the cause of these problems. I find I am in agreement with many of Senator Horkan's points. There has been a 42% rise in payout costs since 2011. This is not sustainable for business in this country. Up to 70% of the cost of the insurance premium is claim related. In other words, 70% of the cost of one's insurance is claims related. In 2018, according to the AA, the average premium in Ireland was €998 whereas the average in the UK was €477, half the cost of insurance in Ireland. There is a very obvious link in terms of what businesses have to pay for insurance, what motorists have to pay for car insurance and the way insurance claims are settled. There is a lack of oversight in certain areas.

I am very supportive of the Alliance for Insurance Reform. It has asked that a Garda fraud squad be set up. I have called for that before and I am 100% in support of it. I ask the Minister for Justice and Equality to ensure this happens. We have a problem in that as far as I know nobody has served time for fraudulent claims and very few have been prosecuted when their claims have been thrown out of the court and when they have been clearly fraudulent. I know the Garda Síochána will be very keen to pursue these people, if there were a Garda fraud squad in place. Another issue is to link sections 25 and 26 of the Civil Liability Act 1961 so that these claims are referred automatically to the Garda fraud squad. It wanted to amend section 8 of the Civil Liability Act to make it mandatory and reduce the period of reporting accidents to one month. There are views on what to do when several months or a year after something happens, a claim is submitted. Very often the evidence one might have had on CCTV is gone. It wants to regulate the claims of management companies, that is, the harvesters of claims and change the approach to calculating the book of quantum, which this Bill relates to.

Section 6 is very important in order to get consistency in the awarding of general damages among judges by requiring judges who award damages in excess of the book of quantum to set

out detailed reasoning for doing so. I do not think that is unreasonable. I do not think the Judiciary should be overly sensitive to that. Let me put on record that I support the Judiciary and its independence. It is the third estate and the court system has served us very well over the years but nothing is so good that it cannot be improved on. As a speaker pointed out, there must be an explanation as to why one waits for a certain day and for a certain judge, if one can, because one will get a better payout. That is an issue that must be addressed and we should not run away from it. I do not think the Judiciary should be afraid to say that it is not perfect. Doctors are not all perfect, solicitors are not all perfect and politicians are not all perfect, so why would judges be all perfect? There are a number of other things the Alliance for Insurance Reform wants to do but the points I have mentioned are the ones that are really important.

While I welcome this Bill, I know there may be some technical difficulties and there could be constitutional issues and so on, but it highlights this problem of the difference in what insurance companies in this country pay out for injury claims and what is happening in other countries. Let me restate, however, that any victim who suffers loss is entitled to proportionate compensation, but our compensation system is disproportionate by comparison to all our neighbours in Europe. We need to look at that and address it.

We are facing Brexit and these are times of serious concern for business. We have been very fortunate that between the efforts of the Irish people and the policies of Government we have virtually full employment again but many people are very nervous about the future. Many are holding back on investment because of Brexit and many are scared about insurance premiums. Let me give an example of a real case from Fingal. This is what happened to an independent, quality food retailer with a farm to fork system. He sells the organic vegetables he grows. He has two small shops in Fingal. He had a blemish-free record for more than 25 years but he has had a couple of claims in the past two years. One was where a customer tripped over a bag of potatoes that the customer had put back in an inappropriate place. This is a real example of a claim for €80,000 on his insurance. The result is that this year, as his broker has warned him, he may not be able to get insurance cover. If he gets insurance cover, the premium will go up substantially. This man employs 140 people in Fingal and his business is being put in jeopardy. He is a small farmer, an innovator with an independent outlet. This is what we are trying to encourage and we are proud of people like him, but his business is in jeopardy. He is not in a position to carry the risk of not being insured and if his insurance premium goes up substantially - we know what it means when brokers talk about substantial rises in premiums - he may have to go out of business with the loss of 140 jobs. This is a really serious issue. It is real and is hurting people on the ground.

Small and medium enterprises are the backbone of the Irish economy and are the backbone of our communities across urban and rural Ireland. We have to support and protect them and do something about the cost of claims and the insurance costs. I am not trying to point the finger at any individual profession but we have a problem which we have identified the problem. Senator Lawlor has come up with a part solution. If one looks at a graph of insurance claims in other countries, the more serious the injury, the greater the level of compensation. It is a straight line graph but in this country, the least serious claims go way up and then it starts to level off towards the more serious injuries. A disproportionate amount of money is being awarded for the lesser claims, for the lesser injuries. We have to address that if we are to have a sustainable industry and business environment for the small and medium enterprises.

Senator Joe O'Reilly: I join my colleague, Senator Reilly, in welcoming the Minister for Justice and Equality, Deputy Flanagan, to the House. I acknowledge the Minister's interaction

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with the Members in this Chamber. We greatly appreciate his proactive and professional approach to this very sensitive Ministry.

Before I comment on the Bill, I congratulate my colleague, Senator Lawlor, on taking the initiative and being so proactive in bringing legislation before the House. With respect to my distinguished colleague, Senator Marie-Louise O'Donnell, it is possible in a democracy to take a stance and then use the assembly for the good of the people. That said, I know the Senator made her comment in a good humoured way.

Senator Marie-Louise O'Donnell: On a point of order, I never mentioned democracy and nor did I exclude this excellent beginnings of a Bill from it.

Senator Joe O'Reilly: It is also possible to evolve in one's thinking. Anyway, I do not propose to continue-----

Acting Chairman (Senator Kieran O'Donnell): I see signs of mutual respect. Let us proceed.

Senator Joe O'Reilly: I acknowledge the great contribution of Senator Lawlor today but would make the point that nobody is suggesting that people who are injured would not be adequately rewarded. That is not a proposition that anyone here would make. We all have families and friends and none of us is suggesting that we should live in a country like that. People should be adequately compensated for loss of earnings, medical expenses and so on because there are so many dimensions in the aftermath of an accident. That is not at issue. Furthermore, what is also not at issue or being challenged by this legislation is judicial discretion. It is still possible, even if we alter the book of quantum, for individual judges to exercise their discretion. In the context of the separation of powers it is the function of the Houses of the Oireachtas to provide legislative direction. If one were to speak privately to judges in this country, many would say that the quicker these Houses give them direction, the better.

The background to this legislation merits attention. The statistics are extraordinary and have been well rehearsed at this stage. Payouts in this country are four times higher, on average, than in the UK. The average motor claim here is €21,000 compared with €4,000 in Britain, €1,500 in France and €4,500 in Germany. Statistics like that cannot be ignored, including those for third party injury claims costs. As a direct result of the size of the payouts here, the cost of insurance in this country is extraordinary. My son is learning to drive. He will be supervised during the entire process and will be accompanied by a qualified driver at all times. In order to put his name on our insurance policy, our premium will increase from just over €600 to €1,800. That is the cost of including the child, who will be fully supervised, on our policy. Were he not to be supervised, the insurance would be null and void anyway. That is the level we are talking about. My family owns a small retail outlet and the insurance on it costs at least €3,000 per year and it was as high as €6,000 at one stage. That is not sustainable. The costs of insurance generally are just not sustainable.

The need for this legislation and for a debate thereon with a senior Minister is obvious. In terms of jurisprudence, in the *Sinnott v. Quinnsworth* case in 1984 the Supreme Court found that the Oireachtas had the right to set a limit to the book of quantum or to apply upper limits to awards. While one could argue for exceptions to be made in certain High Court cases, there is no basis for this in the context of minor claims. It is a questionable proposition that we would allow uncontrolled awards. The Bill aims to cap the level of awards. It proposes the alteration

of the book of quantum and seeks to prevent excessive claims. What Senator Lawlor wants to do is establish principles and best practice in order to contribute to finding a solution to the problem of astronomical insurance costs that are closing small businesses and putting motorists off the road. There is a famous song called “No Train to Cavan”. In my county there are no trains and no buses except those that run along the main arteries so people need cars to get to and from work. Motor insurance, in that sense, is a tax on work.

Senator Lawlor’s Bill seeks to regulate the situation with regard to awards. I am sure the Senator would be happy to have his Bill amended to take account of any constitutional issues that may arise, legal advice from the Attorney General or the views of the Minister. The legislation could be amended on Committee Stage. I congratulate Senator Lawlor on this legislation which seeks to provide a solution to a significant problem. The cost of insurance, both commercial and motor, is crazy and the Senator has identified the fact that excessive awards are a contributing factor. He has used evidence from across Europe to demonstrate that payouts here are excessive. His Bill proposes a solution to this and, at a minimum, the major elements of this solution should become law.

Senator Rose Conway-Walsh: I thank Senator Lawlor for bringing this Bill before the House but would argue that there are lots of limitations around it. When one looks at the insurance industry here one sees protectionism and a fundamental lack of transparency. The figures for car insurance do not add up. On 19 October last, the Government announced the abandonment of its plan to establish a claims register of injury compensation cases. We need such a claim by claim register if we are to be able to argue the facts properly. One of the challenges when analysing the motor insurance market here is the lack of hard facts and the paucity of published data. This was highlighted by the former chairperson of the Motor Insurance Advisory Board, Ms Dorothea Dowling, who has done an enormous amount to tackle problems with the insurance sector. She said that at a headline level, the annual premium income for insurers on motor and liability is around €2.3 billion. However, only €276 million in compensation can be accounted for in 2017. This is a data black hole of approximately €2 billion every year. That is why we need a claim by claim register, separate from the proposed fraud register. Having such a register would add considerably to the transparency of the insurance sector. Until we get that transparency and stand up to an industry that is holding policyholders to ransom, we will not really tackle the problem.

According to CSO figures, insurance costs have dropped by around 23% but when I conducted my own survey, I found that not to be the case. I am not just talking here about anecdotal evidence. I received hundreds of replies, all of which showed that insurance costs *2 o’clock* continue to increase. We cannot rest on our laurels on the basis of figures from the CSO telling us that insurance costs are falling. We know that we need to implement the 67 recommendations of the Motor Insurance Advisory Board’s report. We also need to see a change in the corporate culture of the financial services sector. We need to consider the role of the Central Bank in protecting consumers. A separate financial conduct authority, as is the case in the UK, would certainly help the situation here.

We also need to know the outcome of the 2017 EU anti-trust investigation into the insurance industry. It is impossible to find the hard evidence until we do. I call on the Competition and Consumer Protection Commission to be active on the 2016 investigation in which price signalling by the insurers was identified. Insurance continues to be a huge problem not only for the motor industry but throughout the sector.

Another issue I am concerned about is Brexit and the number of people with insurance who are receiving letters. In one case, the owners of a pet farm who travel to various festivals were paying €700 for insurance from an English company but in recent weeks they received a letter telling them to look for insurance somewhere else. They cannot get insurance somewhere else. This is a small off-farm enterprise that will be shut down because insurance is not available.

We need to tackle this collectively but the Government needs to stand up to the insurance industry. The Acting Chairman knows from attending all of the hearings of the Committee on Finance, Public Expenditure and Reform, and Taoiseach that it all comes down to a lack of transparency and data. From the outset we identified there are black holes in the insurance industry. The industry knows that without having the raw data we need, we will not be able to tackle this in a meaningful way. It has the headline that it wants us to look here, there and everywhere except within the rottenness of the insurance industry that is making millions on the backs of people who cannot afford it. I welcome the Bill but we have a huge amount of work to do on the insurance industry and it needs to start with truth and transparency.

Senator Kieran O'Donnell: I commend Senator Lawlor on the Bill, which I am glad to co-sponsor along with my colleagues. I welcome the Minister, Deputy Flanagan, to the House.

I am a member of the finance committee and we have done a considerable amount of work on insurance. Insurance companies, representative bodies, brokers and people affected by high insurance have come before the committee and several features have come across. Senator Conway-Walsh mentioned the lack of transparency. We have a lack of raw data. A database is being compiled, which I hope will shed light on it.

In the past week, I met a man whose business is to recover cars. He is on call with the insurance companies. His insurance increased threefold in the past three years. This is not sustainable. Insurance now makes up a very large proportion of overheads. The insurance companies speak about insurance costs reducing, but this is after they increased considerably over the previous two years. There is a small bit of spinning going on with regard to insurance costs.

In many cases, people are only able to get insurance from one company or two at a maximum. There might be a broad spectrum of insurance companies, but when people look for cover, they can find only one or two companies. Why is this the case? Surely there should be competition in the market. I know businesses are looking to reduce risk. These are just features as it is about the lack of transparency in the area. Historically, companies came into the Irish market and undercut each other and their rates were unsustainable. They have a business model and they are there to make money. The fact they got their costings wrong is their issue and not the customers' issue.

The Bill speaks about the Minister putting in place a maximum level of general damages. Would the Minister be able to set a maximum level of damages for specific injuries while allowing judges the discretion to award a higher rate if they can justify the reason for it? This might bring about a sense of fairness and, dare I say it, a little more transparency. At least we would be working off a maximum rate and a judge would have to comply or explain. This might inform the book of quantum in a range of areas.

Section 7 states the Minister shall commence a review within three years of the commencement of the Bill and at five yearly intervals thereafter. This should be every three years. Five years is a long time. The Bill refers to including representatives of the Judiciary with regard to

the review. I assume this means the legal profession, including solicitors. I apologise. They are mentioned separately.

The insurance business tells us rates are increasing because of legal fees and the legal profession while the legal profession tells us it has nothing to do with it. If I am being honest, I am still none the wiser and I have no doubt many of my colleagues feel the same way. This shows the degree of the lack of transparency. There are serious vested interests involved. Insurance is an area where a lot of money can be made over a relatively concentrated period of time. It is making it prohibitive for many small businesses to stay in business and for young drivers and, in many cases, older drivers to stay on the road.

I commend the Bill. Senator Lawlor will take my comments in the spirit they were made. He has started a discussion on an area in which we need to find a tangible specific toolbox to get to a point where we not only reduce awards but have a reduction in insurance premiums for customers throughout the country.

Acting Chairman (Senator Gerry Horkan): I am with Senator O'Donnell.

Minister for Justice and Equality (Deputy Charles Flanagan): I thank Senator Lawlor for introducing the Bill. As he set out, this is a short Bill of eight sections intended to provide for the imposition of a cap on the level of awards that may be made in respect of a claim for general damages arising from personal injury. This is to be done by ministerial regulations to be approved by a resolution of each House and subject to review under the aegis of the Personal Injuries Commission. There is also to be a periodic stakeholders' review of the operation of the Bill when enacted.

The Government has decided not to oppose the Bill on the clear understanding that substantial amendments to the Bill may, subject to the advice of the Attorney General, be required and proposed by the Government on Committee Stage.

Senator Marie-Louise O'Donnell: Could we have a little more emphasis on substantial?

Acting Chairman (Senator Gerry Horkan): The Minister, without interruption.

Senator Kieran O'Donnell: Constructive and substantial.

Deputy Charles Flanagan: At the same time, the Government has noted that the Bill addresses a specific matter under ongoing consideration by the cost of insurance working group. Also, as has been mentioned by Senators, the Law Reform Commission is now, at the request of the working group, carrying out a detailed analysis of the possibility of developing constitutionally sound legislation to delimit or cap damages in personal injuries awards. We now have an ideal opportunity, therefore, to debate this matter with the benefit of expert analysis of the issues concerned to determine what our optimal legislative and policy responses should be. As reflected in the establishment of the cost of insurance working group, the Government recognises that we have very real challenges with both premium inflation and awards inflation in the insurance sector in this jurisdiction with the ensuing claims inflation coming between them. At the same time we have a highly profitable insurance sector, with the annual profits of our top ten insurance companies running between €6.1 million and €201 million at the end of 2017 and with the total assets of insurance corporations reported by the Central Bank to be €305 billion at the end of last year.

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The Personal Injuries Commission has found that soft tissue injury claim costs in this jurisdiction are approximately 4.4 times greater than the comparator costs in the UK, taking account of the relevant capping level that applies. Based on claims paid between 2015 and 2017, the average soft tissue claims cost in Ireland is €17,338 when considered within a €50,000 claim threshold. I assure the House, therefore, that the adverse impact of such prohibitive costs on small business and play centres and on a range of leisure and other activities at local community level is key to the Government's ongoing consideration of reform in this area.

As Members will recognise, this is also an area of the law replete with complex constitutional and legal issues, including the rights of bona fide litigants. Not surprisingly, therefore, the capping-of-damages issue covered by today's Bill is among those being considered by the cost of insurance working group established by the Minister for Finance in July 2016 and chaired by the Minister of State, Deputy D'Arcy. The objective of the working group is to identify and examine the drivers of the cost of insurance and recommend short-term, medium-term and long-term measures to address the issue of increasing insurance costs, taking account of the requirement for the need to ensure a financially stable insurance sector. The group published its Report on the Cost of Motor Insurance in January 2017 and its Report on the Cost of Employer and Public Liability Insurance in January 2018.

Moreover, in response to recommendation 5 of the working group's January 2018 report, the Law Reform Commission is now conducting a detailed analysis of the possibility of developing constitutionally sound legislation to delimit or cap the amounts of damages which a court may award in respect of some or all categories of personal injuries. This now forms part of the commission's fifth programme of law reform, approved by the Government on 20 March 2019. It is my understanding that the Law Reform Commission is giving this project immediate attention with the aim of publishing an issues paper before the end of this year.

It should also be noted that in its final report, of July 2018, the Personal Injuries Commission, chaired by the former President of the High Court, Mr. Nicholas Kearns, noted this development and expressed the belief that the commission is the appropriate body best equipped and resourced to undertake this study. While it is proposed that the commission has a review function under today's Bill, it is important to note that it was not a State body and no longer functions, having completed its work. As such, it would have to be reconstituted and resourced to function effectively as today's Bill would propose.

The decision by the cost of insurance working group to refer the capping-of-awards issue to the Law Reform Commission was not taken lightly. Indeed, as reflected in the group's published reports, this was an issue raised by several stakeholders who contributed to its work, including by reference to the comparative level of awards being considerably higher in this country than in the UK, to which I referred. The working group recognised that a fundamental consideration in any analysis of this issue is whether a legislative cap on damages, or a similar measure, is necessary for the common good. For instance, an argument can be made that broader economic and societal needs may be impacted on by lack of access to insurance as a result of the cost. A further consideration was the danger of incentivising the small minority of people who may choose to take fraudulent advantage of the high level of awards, and to negate the perception that insurance fraud is a victimless crime with no consequences. At the same time, these aspects have to be balanced by the rights of genuine plaintiffs to an appropriate level of compensation. In short, the working group recognised that the State must be cognisant of the constitutional rights of all parties and must balance those rights to ensure any encroachment on them is justified, proportionate and in the common good.

To make progress on this issue, representatives of the Department of Justice and Equality, the Department of Business, Enterprise and Innovation, and the Department of Finance, who were members of the working group's legal sub-group, engaged with the Office of the Attorney General. Arising from this engagement, the three Departments discussed the issue further with the main working group and concluded that introducing such a measure would constitute a significant development in the law, because any legislation that restricts the rights of citizens must be carefully considered and justified to ensure it would withstand constitutional challenge; that the main question for a court, if such a measure were challenged, would be whether an appropriate balance was struck having regard to the exigencies of the common good; and that the appropriate balance can only be struck once all appropriate factors have been taken into account by the Houses of the Oireachtas in considering the legislation.

Therefore, taking account of these matters, the working group concluded it was not in a position to undertake the in-depth analysis required to demonstrate to the satisfaction of a court that the correct balance of constitutional rights and principles could be struck to the common good. Consequently, the working group saw the necessity of further expert research and that the Law Reform Commission might be the appropriate body to carry it out. I confirm that these fundamental legal and constitutional concerns clearly arose in the Government's consideration of today's Bill in conjunction with the Office of the Attorney General. It will also be recalled that, for its part, the Personal Injuries Commission recommended that the future judicial council be assigned the function under its statute of compiling guidelines for appropriate general damages for various types of personal injury and that, pending the introduction of such legislation, the Judiciary participate with representatives of the Personal Injuries Assessment Board and my Department in the formulation of guidelines as to quantum in the case of claims for damages for soft tissue–whiplash injuries.

These are matters on which I am in ongoing consultation with the Chief Justice, while also working in co-operation with the Houses of the Oireachtas with a view to commencing Seanad Committee Stage of the Judicial Council Bill before Easter. I hope the Business Committee might see fit to facilitate such a debate next week.

Acting Chairman (Senator Gerry Horkan): It is on the schedule.

Deputy Charles Flanagan: That is not to say it will not be deferred.

Senator Marie-Louise O'Donnell: Substantially deferred.

Deputy Charles Flanagan: I seek the support of colleagues in that regard.

The Government is taking a range of policy and legislative actions across Departments and agencies, including the Personal Injuries Assessment Board and the State Claims Agency, as part of its strategic response to insurance costs. Most important, from the perspective of Senator Lawlor's Bill, this includes the analysis of the capping of awards from a constitutional perspective, which is being supported by the expertise of the Law Reform Commission. This will inform any further steps, including in terms of what is possible, and, above all, legally robust, legislative or other measures may be taken. Hence, the Government's position not to oppose this Bill on Second Stage in the understanding that substantial amendments to it may, subject to the advice and guidance of the Attorney General, be required and proposed by the Government on Committee Stage.

Senator Anthony Lawlor: I thank all the speakers who took part in this debate. It was

very healthy. With regard to those who state my reasons for introducing this Bill are populist, insurance costs affect everyone, from young people trying to get insured for the first time to those who have been in business for many years. I tried to identify the areas in which we could have an impact regarding insurance costs. I have identified five and have mentioned them all. Included are levies, awards, fraudulent claims, and the profits of insurance companies. These have been highlighted today. I raised the issue of awards. It has been proven that awards in this State are way out of sync with those of our near neighbours. That makes our business uncompetitive. When this occurs, there is a risk of job losses. Senators have identified today businesses that are struggling owing to insurance costs. My objective was to examine an area of the insurance sector as a whole that we could address through legislation. I hear what the Minister said with regard to constitutionality and the changes that may have to be made. I will certainly have discussions with him and the Attorney General regarding what changes can be made to the Bill.

I wish to refer to the points made by certain Senators. The Bill is not targeted at the Judiciary. Rather, it is an approach whereby we can look at the overall way in which we can reduce the insurance costs for people across the board. Some Members may think it is specifically targeted at the Judiciary but that is not the case. Ministers have highlighted other areas in need of reform, such as the profitability of insurance companies and ensuring that any excess profits are passed on in the form of premium reductions for their customers.

The book of quantum deals with historical awards made by the courts. This issue does not stem from a problem with the book of quantum. The problem is that the courts are making awards which are too high and the book of quantum must reflect that because if it did not, people would not use PIAB but, rather, go straight to the courts. The objective of PIAB was to reduce the amount of time being spent by the courts on making awards.

Senator Marie-Louise O'Donnell raised a couple of issues to which I wish to refer. I stated that the objective of the Bill is to look at an area regarding the costs of insurance premiums. I identified five areas of interest and the Bill focuses on one of them. I referred to the others in my opening address.

It is Government policy to try to reduce the cost of insurance. It is addressing that through the working group on the cost of insurance and bringing forward the recommendations of the Personal Injuries Commission. I look forward to engaging on those recommendations.

This Bill aims to support judges such that there can be consistency in awards. It is not about trying to remove the high end awards that are currently made; it aims to ensure that judges can make appropriate awards for the various injuries that come before the courts.

On the Judicial Council Bill, it is coming forward but it has been stalled for a number of years. This Bill may have a role in trying to speed up its passage.

On the issue of why judges may not assess a maximum level for damages under the Bill, in 1984 the Supreme Court introduced a cap of IR£150,000 on general damages in *Sinnott v. Quinnsworth*, thereby limiting judges' discretion in that regard.

I have no doubt that we will have further discussions on the various changes required to the Bill before it moves to Committee Stage. Its overall thrust is an attempt to reduce the cost of insurance for the ordinary person. I identified an area within that which needs to be changed. I am delighted that there is widespread support for the Bill in the House.

Question put and agreed to.

Acting Chairman (Senator Gerry Horkan): When is it proposed to take Committee Stage?

Senator Anthony Lawlor: Next Tuesday.

Committee Stage ordered for Tuesday, 2 April 2019.

Acting Chairman (Senator Gerry Horkan): When is it proposed to sit again?

Senator Anthony Lawlor: Next Tuesday at 2.30 p.m.

The Seanad adjourned at 2.25 p.m. until 2.30 p.m. on Tuesday, 2 April 2019.