DÁIL ÉIREANN

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

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

Déardaoin, 29 Samhain 2018

Thursday, 29 November 2018

The Select Committee met at 10 a.m.

MEMBERS PRESENT:

Deputy Joan Burton,	Deputy Pearse Doherty,
Deputy Michael D'Arcy (Minister of State at the Department of Finance),	Deputy Michael McGrath,

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

Central Bank (National Claims Information Database) Bill 2018: Committee Stage

Chairman: The first item on the agenda is Committee Stage of the Central Bank (National Claims Information Database) Bill 2018. I welcome the Minister of State at the Department of Finance, Deputy Michael D'Arcy.

Section 1 agreed to.

SECTION 2

Chairman: Amendments Nos. 1, 2, 5 and 6 are related and may be discussed together.

Deputy Pearse Doherty: I move amendment No. 1:

> In page 3, lines 23 and 24, to delete "an Irish-based risk" and substitute "a risk in the State".

This amendment is grouped with amendments Nos. 2, 5 and 6, so I will speak to all four. Amendments Nos. 1 and 2 are similar. The objective is to have consistency within the Bill. The change proposed in amendment No. 1 would need to be made again in section 3. Amendments Nos. 5 and 6 are linked because they replace the definition in question with a different one. These amendments are about consistency. The Minister of State will recall the Insurance (Amendment) Act 2011, passed recently by these Houses, which makes provision for claims to be made for those who had insurance with Setanta or claims relating to that company. I understand the payments are to be made later this week or early next week, which is very welcome. The phrase "risk in the State" is consistently used throughout the Insurance (Amendment) Act 2011. Therefore, it would seem logical to use the same wording here rather than the phrase "Irish-based risk". Amendment No. 6 defines this as per the 2011 Act. Amendment No. 5 deletes the definition in the Bill and replaces it with the one in the 2011 Act, the purpose being to have consistency in how we interpret risk.

The Minister's definition, which amendment No. 5 deletes, states that an Irish-based risk means "a risk, falling within a relevant class of non-life insurance, that, by virtue of regulations under section 7(1), is regarded, for the purposes of this Act, as a risk based in the State". The current text ends up defining the subject as a risk based in the State. The definition I am suggesting is that used in the 2011 Act. If my amendment is not accepted, this Bill will define Irish-based risks and another two Acts would be defining risks in the State. There is a lack of consistency.

Section 7, which we will discuss in more detail later and which refers to risks based in the State, allows the Central Bank to make regulations specifying what counts as risk based in the State, but we already have a definition. The only reason for a redefinition, which is what is included in this Bill, is to limit the range of insurance types that would be caught by the definition. It seems confusing given that we have two Acts that define the risks as risks in the State as opposed to Irish-based risks, which we are now trying to introduce. The amendments make the point that we should be using the definition already established and used in numerous Acts. Is there any reason non-life insurance should be excluded from the database?

Minister of State at the Department of Finance (Deputy Michael D'Arcy): I shall read my note and then deal with the Deputy's comments. Amendment No. 1 is opposed on the basis that it travels with a substantive amendment to section 4, which is also opposed. It is intended that risks in the State would be defined by regulation, rather than in the primary legislation, to minimise the need to amend the legislation in future.

Amendments Nos. 5 and 6 are opposed on the basis that the incremental way in which relevant classes of non-life insurance will be provided for by in the database over time – we are starting with motor insurance - means that much of the text of the amendments would not be initially relevant or appropriate.

The definition of a "risk in the State", which is used by the Deputy, is that which is used in the Insurance Act 1964 in respect of the framework for compensation in the event of an insurance insolvency or administration. That 1964 Act definition is split out in terms of what risks are excluded and uses categories that may not be contemplated in terms of the database - for example, travel insurance. The current drafting requires the Central Bank to provide for the definition of an Irish-based risk in this Bill to be analogous to the 1964 Act definition while providing flexibility to vary it where appropriate. The Office of the Parliamentary Counsel believes the current drafting better serves the purpose of defining risk in the State for this Bill rather than using the definition in the 1964 Act.

It is matter of whether or which. The Office of the Parliamentary Counsel believes that what we have in place is better than what the Deputy is proposing. The aim is certainly is not to limit the definition in the legislation concerning what will be calculated by the Central Bank. It is quite the opposite. Rather than being prescriptive, we want to leave it open in order that all information from different streams can be calculated by the Central Bank.

Deputy Pearse Doherty: Would it not then follow that we should be amending the previous Acts, of 1964 and 2011, to be consistent in what we are saying? We are now introducing a different category of risk, namely risk that is Irish based as opposed to what is already established, which is a risk to the State.

Deputy Michael D'Arcy: We are satisfied that it is not required. The Bill is doing exactly what we require it to do, which is to provide for the collection and collation of the information for all the areas of insurance that might be relevant. We are starting with motor insurance and over a period we will flow between other areas where calculation is required. We are satisfied that what the Deputy proposes is not required. We are satisfied there is no issue of consistency. It is a matter of whether or which. The Office of the Parliamentary Counsel believes what we are doing and how we are doing it comprise the better approach.

Deputy Pearse Doherty: Is that solely to allow for more categories of insurance to be captured?

Deputy Michael D'Arcy: Yes.

Deputy Pearse Doherty: Is that the sole purpose?

Deputy Michael D'Arcy: Yes. It is open in order not to be prescriptive. Regulation can subsequently be used, if required, but the Act will be sufficient and we do not need any more or less.

Deputy Pearse Doherty: Notwithstanding that the Minister of State has put his views

on the record, I ask that a note be given between now and Report Stage on the two different categories, setting out the Minister of State's reason "Irish-based risk" would allow for a more expanded version of insurance to be captured.

Deputy Michael D'Arcy: The example I am using is travel insurance when one travels out of the country. The Deputy is proposing to delete "Irish-based risk". We would be able to use this formulation for travel insurance but "risk in the State" potentially may not be usable.

Deputy Michael McGrath: To clarify, would the current wording, "Irish-based risk", encompass travel insurance for an incident that arises abroad?

Deputy Michael D'Arcy: Yes.

Deputy Pearse Doherty: I would like the note. The Minister gave the example of travel insurance, which sounds fine, but amendment No. 6 defines "a risk in the State", which is what is already included in the legislation. It is not coming from my pen but from what we have already passed. Subsection 2(f)(c) of the 2011 Act refers to "a risk relating to travel or holidays where the policy holder took out the policy in the State and the duration of the policy is 4 months or less". How does that stack against the fact that the Minister of State is suggesting the existing criteria do not actually include travel insurance given that it is explicitly stated that they do?

Deputy Michael D'Arcy: It is included but the point I am making is that if the Deputy's amendment flows, that could be excluded.

Deputy Pearse Doherty: How could it be excluded? This is what is defining the risk in the State.

Deputy Michael D'Arcy: No, it could be excluded.

Deputy Pearse Doherty: Amendment No. 6, which draws on existing legislative provisions, states:

> "risk in the State" in relation to risk under an insurance policy, means a risk that is not an excluded risk and that is—
>
> [...]
>
> (c) a risk relating to travel or holidays where the policy holder took out the policy in the State".

Deputy Michael D'Arcy: That would be the case if the Deputy's amendment is accepted.

Deputy Pearse Doherty: We are dealing with the group of linked amendments. There is no point in changing the criteria without including the definition relating to them. It would obviously be necessary to delete section 5 because then there would be criteria for something that does not exist and, as a result, amendment No. 6 would have to be accepted.

Deputy Michael D'Arcy: That is just one that could be used in the future. I am only talking about amendments Nos. 1 and 2 and risks to the State. I use that as an example of what would happen if the Deputy's amendments were accepted. We are trying to leave it as open as possible and cover as much as possible. Others could potentially be excluded by the Deputy's definition.

Deputy Pearse Doherty: Which ones would be excluded? We have established that travel

insurance would not be excluded because what is the risk to the State is explicitly outlined.

Deputy Michael D'Arcy: That would be if amendment No. 6 were accepted. The purpose is to leave it open so that we can bring in others. The full focus for now is motor insurance, employer liability insurance and public liability insurance. If others come into scope subsequently, that can be used. I do not know if travel insurance will be used in the future - perhaps it will.

Deputy Pearse Doherty: We tabled a number of amendments to improve the Bill; no ideological issue is involved. I have outlined what I need in a note to be furnished before Report Stage. My intention is to revisit this and press the amendments. I feel strongly about it but I want to give the officials a-----

Deputy Michael D'Arcy: It might go in or it might not. The Office of the Parliamentary Counsel believes its wording is better than being as prescriptive as the Deputy wants. We do not want to have the legislation prescriptive to allow any future change that might be required to happen by regulation. If it is prescribed in the primary legislation we would need to change the primary legislation in the future.

Deputy Pearse Doherty: That works both ways. When Members of the Oireachtas prescribe something, it needs to be captured. When we do not prescribe something, it does not need to be captured.

Deputy Michael D'Arcy: The Office of the Parliamentary Counsel is very clear that it is captured. We will compose a note.

Chairman: The Department will provide the committee with a comprehensive note on the issue.

Amendment, by leave, withdrawn.

Section 2 agreed to.

SECTION 3

Amendment No. 3 not moved.

Question proposed: "That section 3 stand part of the Bill."

Deputy Pearse Doherty: Are amendments Nos. 3 and 7 relevant to this section?

Chairman: We have to agree section 3 before we deal with amendment No. 3.

Deputy Michael McGrath: In the context of the scope of the database, it will start with motor insurance claims. Relevant non-life insurance business is defined in section 3. How quickly can it be expanded to deal with other forms of non-life insurance, particularly employer liability and public liability?

Deputy Michael D'Arcy: To date, the focus of our work and that of the Central Bank has been on motor insurance claims, which represent the majority of claims. I hope it can be expanded sooner rather than later. I do not want to put on the record a date if I am unsure it can happen. The Central Bank is carrying out a feasibility study incorporating a ten-year look-back at settlement channels and different categories of motor insurance claims. This would include windscreen damage, theft, fire, accidents and personal liability. There is a large body of work to get through in the context of that exercise. When it is completed, the database will be updated

annually. I cannot say for certain when it will be possible to expand beyond motor insurance into the next section.

Deputy Michael McGrath: Will the data from that ten-year look-back be brought into the database?

Deputy Michael D'Arcy: Yes. Effectively, it will revert to 2008 data to be calculated for the establishment of this structure.

Deputy Michael McGrath: It will be included in the database.

Deputy Michael D'Arcy: It will go into the new database. The database will not start with data from 1 January 2019 and flow from there; there will be ten years' worth of historical data. That information must be compiled. There is a large body of work to be done beforehand. The Central Bank is carrying out a feasibility study on when it will be able to move from motor insurance to other areas.

Deputy Michael McGrath: Is that ten-year dataset available and in the format required to make its way into the database and be usable?

Deputy Michael D'Arcy: The Central Bank has been working with insurance companies for that information flow. As the legislation has been in preparation, it was doing some of that work.

Question put and agreed to.

Section 3 agreed to.

SECTION 4

Chairman: Amendments Nos. 3 and 7 are related and will be discussed together.

Deputy Pearse Doherty: I move amendment No. 3:

In page 4, line 7, after "insurance business" to insert the following:

"including but not limited to:

(a) management expenses, including all general and administrative expenditure;

(b) commissions, including amounts payable to brokers, payable to reinsurance brokers, as well as any other sundry commissions paid (including fronting fees); and

(c) fees related to the MIBI, including levies paid annually to MIBI in respect of claims paid arising from the use of uninsured or untraced vehicles".

As the Chairman has said amendments Nos. 3 and 7 are grouped, although I do not see that they are closely related at all. That said, I will deal with them together.

The blue book contains specific headings defining business expenses. This is a critical issue because it sets the parameters insurers must follow. Otherwise we would effectively be allowing them to self-declare. For example, returns in respect of non-life insurance business must not be distorted by agreements between the companies concerned or by arrangements which could affect the apportionment of expenses. Management expenses should not be charged to underwriting accounts, including directors' fees and foreign exchange gains or losses related to

investments other than those attributable to the underwriting account.

The amendment seeks to tighten up on what can be declared as expenses and to distinguish between what are genuine business expense costs and what are distortionary bookkeeping exercises. I will give an example of how they can be inflated. We need to do this in primary legislation. It is important that parameters are set down here at this time. Responsibility should not be delegated to the Central Bank; we need to decide on certain parameters.

When dealing with people trying to get insurance, we must do everything to ensure that the database helps them get insurance at a reasonable price. This is about tightening up and ensuring that there cannot be an inflation of or a bookkeeping exercise in terms of expenses that can be declared.

As stated, I do not believe amendments Nos. 6 and 7 are related. Amendment No. 7 outlines a number of steps which can be counted in the context of the section. It deals with the issue of transparency which is at the core. It also deals with out-of-court discussions through unofficial channels that are not recorded in any way. By adding these two additional non-formal steps I am trying to ensure the data collected include these informal discussions which are not captured in the Bill at the moment. The additional informal discussions to be captured if the amendment is accepted would be:

> (c) direct negotiation after registration of the claim by the claimant under the Personal Injuries Assessment Board Act 2003 but before the respondent consents or declines a formal assessment progressing,
>
> (d) direct negotiation after consent by the respondent to a formal assessment but before a final award is made under the Personal Injuries Assessment Board Act 2003 or final determination of the claim by the acceptance of both parties, or by default of rejection by the respondent, of the formal award under the Personal Injuries Assessment Board Act 2003.

These areas are not currently captured by the Bill. It is important to have the full data available in order that we know what is happening through informal channels and other parts of resolutions to ensure all of the data are captured in the database.

Deputy Michael D'Arcy: The items mentioned in amendment No. 3 already fall within the existing definition. The approach of individually specifying this level of detail is not in keeping with the general drafting approach taken in the Bill. We propose to set down in primary legislation a framework within which the Central Bank will establish an administrative claims database that will allow the specific approach to evolve over time. It is intended that the data to be collected from insurers will be defined by regulation, rather than in the primary legislation, to minimise the need to amend the legislation as the level of data collected in the future becomes more detailed. The Central Bank has informed me that it will take the substance of the amendment into account when it finalises its data specification in order that the data outlined are collected in this way.

On the Deputy's point about distortion in bookkeeping exercises, they are not going to be acceptable to anybody, let alone the Central Bank. It is a sharp practice that certainly could not be accommodated anywhere.

Amendment No. 7 is being opposed on the basis that it comprises detail which is unnecessary to drill down into the primary legislation and that is appropriately covered in the existing text. In that regard, the existing provision which provides for "the employment of the proce-

dures under the Personal Injuries Assessment Board" covers all of the cases which come within its scope, including those set out in the amendment. It is similarly covered already.

The Office of the Parliamentary Counsel has also highlighted in respect of this provision that there are deficiencies in the terminology used in the amendment. As such, it does not properly reflect the wording of the original Personal Injuries Assessment Board Act 2003 which is referenced. In addition, in trying to break down the Personal Injuries Assessment Board process into a series of component parts we run the risk of missing out on certain elements. For example, having consulted directly with it, we understand the proposed amendment may not cover cases that the board releases almost immediately under section 17 of the Personal Injuries Assessment Board Act 2003 where consent has not been sought from the respondents. These may be cases such as psychological bullying, abuse, etc. that may ultimately be settled after concluding the Personal Injuries Assessment Board process. This means that there is a possibility that it would not allow for all settlements made in the Personal Injuries Assessment Board process to be captured, thereby unintentionally decreasing the scope of the information that might be requested. On the basis that the existing text captures all scenarios within the Personal Injuries Assessment Board process, I do not think it advisable for the committee to accept the amendment.

Deputy Pearse Doherty: On amendment No. 7, what section of the Act already covers the two subsections I want to include?

Deputy Michael D'Arcy: Section 3(b) of the original Personal Injuries Assessment Board Act 2003.

Deputy Pearse Doherty: I will come back to what the Minister of State has said on that issue. On being prescriptive, the reality is that insurance companies are not to be trusted. They are under investigation for engaging in cartel-like activities and were raided by European authorities. I have no qualms in saying they are ripping people off. I received an email late last night from a person who was being fleeced in seeking to get motor insurance. It is not possible to pay insurance premiums upfront. The insurance companies are then allowed to add additional charges because people pay in monthly instalments. No matter what way they turn, they feel under serious pressure. To tell the Minister of State God's honest truth, I would not trust insurance companies as far as I could throw them. We know that this happens. We know that businesses and accountants look at how expenses can be offset from a subsidiary here to one elsewhere to present figures in a different way and that best suits it. Amendment No. 3 would not limit how business expenses would be defined, but it sets out clearly what needs to be included. I do not, therefore, hear any reason it should not be included. The Minister of State, rightly, talked about it not being in keeping with the Bill, as drafted. He will see, however, in a number of my amendments, that I believe that, as legislators, after what we have come through and given the reasson we know that this is needed, we do not need to agree to loose legislation that allows the Central Bank which I trust to interpret what we would like to do. The Central Bank is independent in implementing Acts and using powers passed by the Houses of the Oireachtas. There is interaction where we set down the ground rules for how this issue will be dealt with. Therefore, we do need to be more prescriptive. The reality is that this has been happening and the Central Bank has not been the great protector of consumers who have witnessed increases of 70% over a period of three years. The Central Bank was also not the great protector of consumers when it came to the scandal of tracker mortgages, etc. There is, therefore, an onus on us to be prescriptive to a certain degree. That is what amendment No. 3 attempts to do. It tries to ensure, in so far as is possible, that we will not see the industry using its accountants to try to cook the books. I refer to the use of business expenses as a way to reduce the figures that

the industry will present in the claims database.

Deputy Michael D'Arcy: The Deputy might be shocked to hear that I agree with him on some of what he said. I will not pretend that I am pleased with the method by which the Central Bank has taken consumers into its bosom. The reality is that it is much more concerned about prudential regulation than consumer protection. I think the Deputy's criticism is fair and I agree with his point.

On business expenses, I do not have the exact figure offhand, but awards account for more than 90% of funds paid out by insurance companies. In talking about business expenses the Deputy used the term "cooking the books". It is not one I will use, but in the scheme of things business expenses actually come to a small amount. In this jurisdiction awards constitute the much larger amount. We have had this conversation before and I have made the point to the Deputy. If he is satisfied, I am prepared to give a commitment that what he is asking for can be captured by regulation, rather than primary legislation. The legislation has been designed in that way in order that we do not have to be prescriptive. There is flexibility to enable the Central Bank to capture everything we want it to capture in the future. It is much easier to alter a regulation rather than legislation.

Chairman: How stands the amendment?

Deputy Pearse Doherty: I will withdraw it, but I may resubmit it on Report Stage.

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 4:

> In page 4, line 13, after "counsel" to insert "by either the claimant or the insurance undertaking or by both".

Again, this amendment attempts to capture what happens informally back and forth that may lead to settlements not being recorded. The current definition of "direct negotiation" in subsection (4) is very limited. It is more a definition of formal negotiation than direct negotiation.

I believe we need a full picture. What the amendment does, simply, is make clear that this would involve not only negotiation involving in whole or in part the services of a solicitor or counsel as happens at present and would add "by either the claimant or the insurance undertaking or by both". This will make it clear that if there is only one side with a solicitor or counsel, then it is deemed as direct negotiation and it can be captured.

Deputy Michael McGrath: Why is the definition of direct negotiation limited to the formal type of negotiation involving legal representatives? Some people do their own negotiations with these firms. Is that captured elsewhere and, if so, where?

Deputy Michael D'Arcy: The amendment is opposed on the basis that the Office of the Parliamentary Counsel has given legal opinion that the provision is unnecessary as a generality of the current drafting already provided for it. The Bill is designed in a particular way so that if alterations are required in the future then regulations can be changed far easier than the legislation. The Office of the Parliamentary Counsel, OPC, is satisfied that the point is already covered.

Deputy Pearse Doherty: The definition cannot be changed by regulation. The definition

can only be changed by the approval of the Houses of the Oireachtas. The definition in this case has direct negotiation as including in whole or in part the services of a solicitor or counsel.

I appeal to the Minister of State to reflect on this. The amendment does not take away from the provision unless I am unaware of some legal issue arising from the Office of the Attorney General. If that is the case I would be happy to hear it. In any case, this amendment makes clear that this is by either the claimant or the insurance undertaking or by both. The interpretation of the provision could lead to what would be defined as a more formal negotiation between two sets of counsel or solicitors, as opposed to an individual making contact with an insurance solicitor or insurance company's legal representatives in an agreement or settlement that would not be captured.

Deputy Michael D'Arcy: The Bill refers to direct negotiations involving in whole or in part the services of a solicitor or counsel. However, direct negotiations means any direct negotiations and that is not limited to a situation involving a legal person. It refers to all direct negotiations.

Deputy Pearse Doherty: That is not what the Bill states. I appreciate that that is the intention of the Minister of State but we have to look at what is stated in the legislation. The provision does not refer to all negotiations. It refers to negotiations involving in whole or in part the services of a solicitor or counsel.

Deputy Michael D'Arcy: That is included but direct negotiations are not limited to this situation involving a legal person representative. Direct negotiations cover all negotiations.

Deputy Pearse Doherty: Where? That is not in the text. It does not say that in the legislation.

Deputy Michael D'Arcy: The interpretation of direct negotiations is where one person negotiates with another. That is direct negotiations.

Deputy Pearse Doherty: We know what direct negotiation is but when we are drafting law we put in the words "direct negotiations" and then we define the term for the purposes of the Bill. For the purpose of the Bill, direct negotiations, as the Minister of State has outlined it, is not what is stated in the Bill. It is not stipulated in the Bill that what he has referred to is what direct negotiations involve. It actually states that it includes negotiations involving in whole or in part the services of a solicitor or counsel. It says nothing else.

Deputy Michael D'Arcy: Yes. The OPC is very clear that direct negotiations correspond to any negotiations that occur on behalf of a person. The OPC is satisfied that it covers the point raised by the Deputy.

Deputy Pearse Doherty: I am not satisfied with that answer. I tabled the amendment because I wanted to hear what the Minister of State and his officials had to say. I think that is rather loose and it does not appear to be what is in the legislation. Having said that, I will withdraw the amendment and then we can review it.

Chairman: Before you do that, we are discussing amendments Nos. 4 and 8 together. Do you want to pick up on anything else?

Deputy Pearse Doherty: Amendment No. 8 relates to mediation. The point is similar to the point I was making with amendment No. 4. It relates to the Mediation Act. I wish to reflect

on the Long Title and what it tells us about the purpose of it. It refers to an Act "to facilitate the settlement of disputes by mediation, to specify the principles applicable to mediation, to specify arrangements for mediation as an alternative to the institution of civil proceedings or to the continuation of civil proceedings that have been instituted". The question arises as to why this would not be included in the Bill as a step to take into account. Basically, the amendment inserts in page 5 an additional term: "or mediation as per the Mediation Act 2017". Obviously the process is now legally underpinned by statute and should be included as part of the steps that would be taken into account.

Deputy Michael D'Arcy: The OPC opposed the amendment on the basis that the provision is not necessary and the point has already been covered. We could work with the Deputy to try to include a Report Stage amendment if he wants the measure inserted in the Act.

Deputy Pearse Doherty: I appreciate that.

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 5:

In page 4, to delete lines 16 to 18.

We discussed this already. I will withdraw the amendment and will consider bringing it forward on Report Stage.

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 6:

In page 4, between lines 36 and 37, to insert the following:

" "risk in the State" in relation to risk under an insurance policy, means a risk that is not an excluded risk and that is—

(a) a risk relating to a building in the State or, if a building and its contents are covered by the same insurance policy, to the building in the State and those contents,

(b) a risk relating to a vehicle of any type that is registered in the State,

(c) a risk relating to travel or holidays where the policy holder took out the policy in the State and the duration of the policy is 4 months or less, or

(d) in any other case, unless the risk is a risk relating to a building or its contents that is situated in another Member State, a vehicle that is registered in another Member State or a risk relating to travel or holidays where the policy is for a duration of 4 months or less and the policyholder took out the policy in another Member State and that the risk would therefore be a risk that is situated in another Member State, a risk where—

(i) if the policy holder is an individual, the habitual residence of the policy holder is in the State, or

(ii) if the policy holder is not an individual, the establishment of the policyholder to which the policy relates is in the State;".

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 7:

In page 5, between lines 21 and 22, to insert the following:

"(c) direct negotiation after registration of the claim by the claimant under the Personal Injuries Assessment Board Act 2003 but before the respondent consents or declines a formal assessment progressing,

(d) direct negotiation after consent by the respondent to a formal assessment but before a final award is made under the Personal Injuries Assessment Board Act 2003 or final determination of the claim by the acceptance of both parties, or by default of rejection by the respondent, of the formal award under the Personal Injuries Assessment Board Act 2003,".

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 8:

In page 5, line 27, after "arbitration" to insert "or mediation as per the Mediation Act 2017".

Based on what the Minister of State has said about looking at this prior to Report Stage I will withdraw it.

Amendment, by leave, withdrawn.

Section 4 agreed to.

Section 5 agreed to.

SECTION 6

Chairman: Amendment No. 9 is out of order because of a potential charge on the Revenue.

Amendment No. 9 not moved.

Question proposed: "That section 6 stand part of the Bill".

Deputy Pearse Doherty: I wish to comment on section 6. Section 6(1) states that the relevant information will be made available to the State to enable us to identify factors that influence the cost of insurance. To what end? Who will actually get this information? What are such persons going to do with the information? That is my first point and it is a fundamental issue. There must be transparency. Will a potential new competitor have access to the information referred to in section 6(1)?

The section also brings up questions of delegation. This is the trend in the legislation. The language of this section includes phrases like "in the opinion of the bank", "special consideration of any views expressed by the Minister" and "shall be carried out from time to time as occasion requires". This is the opposite of what we need to be doing, which is to bring in far more robust legislation that is not as opaque as this section appears to be. There is concern – it arises throughout the Bill – that notwithstanding my support for the purpose of the Bill, the language is rather opaque. My fundamental question relates to the information in section 6(1). What is the State going to do with this information upon getting it? To what end will the State collect the information? Will new competitors have access to the information referred to?

Deputy Michael D'Arcy: The section provides the Central Bank with powers to specify classes of non-life insurance that are relevant by way of regulations, without having to name the class of non-life insurance within the primary legislation. This allows for the extension of the scope of the database to different classes of non-life insurance in future on foot of an assessment by the Central Bank of the appropriateness of such an extension after consultation with the Minister for Finance without requiring further amendments to the legislation. The section, therefore, provides for several principles and policies, in which one of the guiding principles in any potential extension of scope relates to the cost of that class of insurance. As per the recommendations of the cost of insurance working group, it is intended, in the first instance, that the database will focus on the private motor insurance sector. Consequently, it is proposed that this area will be the subject of the first set of regulations to be developed by the bank. It is important to give this matter appropriate consideration before expanding into other classes of insurance.

A report will be published at least once a year. When the first report is published, we will have a decade of information. Some 20%, 30% or 40% of cases might be settled without a medical report. If a significant number are being settled without a medical report, it falls to those of us who set policy, namely, the Department of Finance and the committee, to examine why insurance companies are settling injury claims in such a way. They have different methodologies for calculating what they pay out and at what stage. Some settle claims very early, while some do so without a medical report. Some settle them too early, while others challenge people with a very clear and obvious case for damages through no fault of their own every step of the way. We are trying to access the data to understand the flow of information. We have information on 30% of claims which are publicly settled in court or by the Personal Injuries Assessment Bureau but none on the remaining 70% of settlements.

Question put and agreed to.

Section 7 agreed to.

SECTION 8

Deputy Pearse Doherty: I move amendment No. 10:

In page 7, line 34, to delete "use its best endeavours to".

The amendment seeks to delete from the legislation the words "use its best endeavours to". Section 8(3) states: "In relation to the data to be collected by the Bank from an insurance undertaking under *subsection (2)*, the insurance undertaking shall use its best endeavours to provide the information to the Bank in such a form so that no individual is identifiable from it". That gives significant latitude to the insurance industry. It is not held to any standard in providing the information. As a company has the information, for what reason does the section state it "shall use its best endeavours" to provide it? It should read, "the insurance undertaking shall provide the information to the Bank in such a form so that no individual is identifiable from it". Why are we letting insurance companies off the hook by allowing them to state they have used their best endeavours but that it was difficult and that they could not find the file? We should make it very clear insurance companies have a responsibility to provide the information in the required form.

Deputy Michael D'Arcy: The amendment is opposed on the basis that the words highlighted for removal were specifically drafted by the Office of the Parliamentary Counsel to provide for the fact that it may be impossible for insurers to completely anonymise the information they provide for the database. It might be easy to identify a very large claim settled publicly by a

small insurer. If we were to set the very high threshold suggested in the amendment, it could cause insurers to take an overly conservative view of the information they were comfortable in sharing with the bank, which would result in a deficit in usable data. The amendment is also opposed on the basis that it is unnecessary in the context of data protection, as an appropriate safeguard has been included in the section to protect personal data. Where an insurer provides information from which an individual is identifiable, the Central Bank is mandated under subsection (3) to ensure the information is not disclosed by it. That requirement is in addition to, rather than in substitution for, any other data protection requirement in the Bill or the Data Protection Act 2018. We do not want insurance companies to propose giving aggregated information to the Central Bank in order to avoid the potential identification of an individual from among a smaller number of claims, bearing in mind data protection requirements. That is why the section provides that insurers shall use their best endeavours to provide the information.

Deputy Pearse Doherty: I acknowledge what the Minister of State has stated and will reflect on the wider implications of the words within the section.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 11 to 14, inclusive, have been ruled out of order because they involve a potential charge on the Exchequer.

Amendments Nos. 11 to 14, inclusive, not moved.

Question proposed: "That section 8 stand part of the Bill."

Deputy Michael McGrath: Section 8(6) provides that "The Bank shall, from time to time and at least once a year following the year in which this section is commenced, publish a report that relates to relevant non-life insurance business" for certain purposes. Is the output from the database to be a published report from the Central Bank rather than various stakeholders with real-time access to the database and so on? What the world will see is what will be published once a year by the Central Bank, which I presume will be in aggregate form.

Deputy Michael D'Arcy: Yes.

Deputy Michael McGrath: Is it for the purposes of the Department and policy makers?

Deputy Michael D'Arcy: It is to inform departmental policy and any insurance company which may wish to enter the market. They will have all of the information flows. On motor insurance, they will see the levels of windscreen cover or theft cover, for example, the number of cases, the average claim per case and everything that flows around it.

Deputy Michael McGrath: Will the level of detail included in the report be determined by regulations?

Deputy Michael D'Arcy: Yes.

Deputy Pearse Doherty: I am disappointed that my amendments, Nos. 11 to 14, inclusive, were ruled out of order, particularly amendment No. 13 which simply sought to delete a paragraph that stated that a published report should not identify any particular insurance undertaking. It is not appropriate to include that provision as we should be facilitating transparency. The identification of an insurance undertaking is appropriate in certain circumstances. I accept that as a result of the blanket deletion proposed in the amendment, it would also delete the protection for individuals, which is not its aim. I will, therefore, examine the issue further on

Report Stage.

We have discussed the issue of "best endeavours" in the context of the provision of data under the section. The Minister of State will be aware that under recommendation No. 4 made in the report of the cost of insurance working group, a data template was sent to the insurance industry in May. The intention was that it would respond to him by quarter 3 in order that the data could be published before the end of the year. However, it told him that that would not be possible but that it had begun to collect the data. In certain respects, I do not trust the industry as far as I could throw it. There is language in this Bill that we need to examine on Report Stage that looks at some of these issues.

An amendment of mine on this section that was ruled out order would have given a greater breakdown of each expenditure type in the settlement channels and would have empowered the Central Bank to correct public statements from insurers that are not accurate. I think those amendments should be considered by the Department. The Minister mentioned consumer protection. The Central Bank should be empowered to correct public statements by insurers that are not accurate because they are deeply misleading.

Another amendment of mine was ruled out of order. The Chairman is becoming very strict in respect of disallowing all my amendments and is becoming very soft on the insurance industry. I have the letter with his signature to prove it. I am only joking. I know it is not the Chairman.

Chairman: It was not me.

Deputy Pearse Doherty: I know it is not the Chairman. It is whoever is pulling his strings. A number of amendments were ruled out of order. One of them was ruled out of order for reasons beyond my understanding. The official response as to why it was ruled out of order was that it would impose a charge on the State. This was to specify that motor insurance or public liability insurance would be subject to this database. We all know here that the intention is that motor insurers would be subject to this database but it does not say that in the Bill. That is what the amendment sought to do. It sought to ensure that the Central Bank does do that because it is not in the legislation. It was ruled out of order because it would be a charge on the State. How the hell could it be a charge on the State unless it was not intended to do it in the Bill in the first place? If this is what the Bill is all about, let us state the obvious and say that under no circumstances can motor insurance not be included in respect of this database. The amendment has been ruled out of order because that could be a charge on the State. It cannot be a charge on the State if it is going to happen. When this legislation passes through the Houses of the Oireachtas and signed into law by the President, it goes to the Central Bank. No harm to it but we cannot go in and go through this again. This is our opportunity to be tight and to make sure that what we want is there. I will talk to those responsible for ruling these amendments out of order and get a better understanding of the reasons for doing so but I make those points to say that the Minister of State should look at clarifying these issues by looking at some of the amendments that have been ruled out of order. I ask the Minister of State to look at them before Report Stage.

Deputy Michael D'Arcy: I am strongly of the view that every person who participates in the conversation about insurance has one objective, which is to improve the sector. I accept everybody's bona fides on that. I am happy to work with anybody who has a view that they want to improve matters. I cannot say I will accept it but I am certainly open to listening to somebody else's view. That offer is there between now and Report Stage.

Deputy Joan Burton: What kind of amendment would be acceptable to the Department that would focus on cost comparisons, information in respect of other European countries and comparative cost details? After all, the Central Bank is part of the European system of banks. The problem with Central Bank reports is that from the point of view of ordinary people, many of them are inevitably highly technical. Would the Minister of State be agreeable to providing broadly based information and comparators, including all other countries in the European banking system because they all collect data, so that is not putting any big burden on anybody? In respect of the ongoing conversation about insurance and how expensive it is, it would enable us to build up comparators over time that would be useful to policymakers here and give us insights into how much value for money is provided by insurance in Ireland compared with how much it costs. We have a lot of anecdotal information. In many European countries that are part of the same European central banking system, financial services like insurance are simply not as expensive as they are in Ireland. Would the Minister of State be open to discussing or even showing us what this report is likely to look like? Given that the Central Bank is a member of the European system, can we not see how it shapes up in terms of this kind of regulation compared with other European banks? Would the Minister of State accept an amendment like that? I appreciate that this is a Finance Bill so the ball is entirely in the Minister of State's court as to whether he accepts or rejects an amendment.

Deputy Michael D'Arcy: I would not accept an amendment of that nature. The Bill is about doing a job, namely, to collect the Irish information - not information relating to France, Spain, Germany or anywhere - and make comparisons. The Deputy made the point that insurance value in Ireland is poor compared with other jurisdictions. There is a single reason for that. We have the highest awards in the world. That is the reason it is expensive here and much less expensive in other jurisdictions.

Deputy Joan Burton: How do we know that?

Deputy Michael D'Arcy: Everything we are doing is aimed at reducing premia. In terms of motor insurance, we are down 23% since the peak, according to the CSO. This will be a very important aspect of further reducing premia. The Deputy asked me how I know about the awards. We have benchmarked awards in Ireland through the report of the Personal Injuries Commission chaired by Mr. Justice Nicholas Kearns. On average, a soft tissue award in Ireland is 4.4 times greater than elsewhere, so if a person gets €10,000 in the UK, he or she will get €44,000 here. This is not an attractive jurisdiction for insurance companies. How do I know that? Quite a few of them have left. They have left because the sector is expensive, the awards are high and many of those companies were not profitable. It is very easy for them to move their capital and go to another jurisdiction where things are better operationally. This is important legislation to get through the Houses.

According to Mr. Justice Kearns, the recalibration should be undertaken by the judicial council when it is established. I met the Minister for Justice and Equality and the expectation is that all of that will be concluded - the legislation for the establishment of the judicial council, the establishment of the council and the work on recalibrating the book of quantum, which will reduce the awards. This is when we will see a further decrease in premia. That is the objective of everybody in this room.

Question put and agreed to.

Section 9 agreed to.

SECTION 10

Question proposed: "That section 10 stand part of the Bill."

Deputy Joan Burton: I want to ask the same question about this section. What amount of information will the public - ordinary consumers - be given regarding this section? If we are setting up a database under which we will eventually have anonymised data, I cannot understand why it would not be part of the Central Bank's function to put information about what has been gleaned into the public domain regularly, as is done in many European countries. I am not asking for personal details about anything. I am asking for information that is useful to consumers. The Minister of State's concern, I understand, is with the insurance industry but there needs to be concern about the consumers who are paying high premiums here.

Deputy Michael D'Arcy: Had Deputy Burton been here earlier, she would have heard me agree with Deputy Pearse Doherty's view about consumer protection with the Central Bank. The information flow will benefit the consumers based upon policy direction. As I stated a moment ago, we have sight of 30% of the settlement channels. We have no sight over exactly how the awards are affecting the premia but we will have sight over them when this legislation is passed.

When we pass the legislation, potentially, there will be more information. The 70% of the settlement channels of which we have no knowledge at present will be available and we will be able to see whether a percentage of companies are settling too earlier and whether some companies are settling without a medical report because it is probably cheaper commercially. If that is the case, it falls within the ambit of the Oireachtas to do something about it. We will not see until we get the information flow. The information flow will be a ten-year look backwards. Some of that work, in terms of the types of insurance and the types of flow, is done already.

Question put and agreed to.

SECTION 11

Deputy Michael D'Arcy: I move amendment No. 15:

In page 10, line 20, to delete "may" and substitute "shall".

This amendment is proposed, on foot of our consultation with the European Central Bank, to set out in clearer terms that the Minister shall provide funding to the Central Bank to carry out its functions under the Bill in the event of a shortfall in funding.

Members will recall that I outlined in the course of my Second Stage speech that the Minister consulted with the ECB in July to seek its assessment of the Bill in respect of the prohibition on monetary financing under Article 123 of the Treaty on the Functioning of the European Union, as the Bill confers new tasks on the Central Bank with regard to collecting data that seek to improve transparency in the insurance sector. In response, the ECB invited the Minister to clarify through appropriate amendments that any anticipated or actual shortfall of funds to defray the bank's expenses under the draft law will always be granted by the Minister on a regular and prompt basis as the costs arise to ensure that the bank does not have to fund the cost of its task under the draft law from its own funds. Further information on this was provided to members in the briefing sent to the committee.

As a result, I am introducing this technical amendment to section 11(3) to reflect that the Minister shall, rather than may, on the written request of the bank, advance to the bank such

sums he or she thinks proper to enable the bank to defray all of its expenses, arising in that year, associated with the function the bank is required to perform under the legislation.

I believe that this amendment, on balance, is sufficient to address any hypothetical concerns around future monetary financing raised by the ECB in its opinion.

Amendment agreed to.

Section 11, as amended, agreed to.

Chairman: Amendment No. 16 in the name of Deputy Pearse Doherty is ruled out of order.

Amendment No. 16 not moved.

Section 12 agreed to.

NEW SECTION

Chairman: Amendments Nos. 17 and 18 are related. Amendment No. 18 is consequential on amendment No. 17. Amendments Nos. 17 and 18 may be discussed together.

Deputy Michael D'Arcy: I move amendment No. 17:

In page 11, between lines 6 and 7, to insert the following:

"Amendment of sections 8 and 14 of Civil Liability and Courts Act 2004

13. (1) In this section "Act of 2004" means the Civil Liability and Courts Act 2004.

(2) Section 8(1) of the Act of 2004 is amended by:

(a) the substitution of "one month from the date of the cause of action," for "2 months from the date of the cause of action, or as soon as practicable thereafter,", and

(b) the substitution of "the court hearing the action shall" for "the court hearing the action may".

(3) Section 14 of the Act of 2004 is amended by the insertion of the following subsection after subsection (4):

"(4A) Where there is a failure to comply with subsection (4), the court hearing the personal injuries action concerned shall—

(a) draw such inferences from the failure as appear proper, and

(b) where the interests of justice so require—

(i) make no order as to the payment of costs to the party responsible for the failure, or

(ii) deduct such amount from the costs that would, but for this subsection, be payable to the party responsible for the failure as it considers appropriate.".".

Amendment No. 17 is designed to amend the Civil Liability and Courts Act 2004 to give ef-

fect to recommendations made by the cost of insurance working group.

The amendment was considered carefully by the Department of Justice and Equality and the Office of the Attorney General during the formal drafting process. This consideration took into account the need for balance and constitutional proportionality and has been signed off by the Attorney General. Therefore, while legislation can always be challenged, we are satisfied that constitutional issues should not arise in the context of these two limited amendments and that there should not be any unintended negative consequences for genuine claimants.

On section 8, the amendment deals first with the letter of claim and the potential consequences of a failure to serve a notice in writing on the alleged wrongdoer within a prescribed period from the date of the cause of action – currently two months. The cost of insurance working group formed the view that section 8 should be amended to enhance the effectiveness of this statutory requirement.

The key aim of this amendment is to reduce the notification period for the serving of a letter of claim from two months to one month, to align the time period with data protection legislation and the new general data protection regulation, GDPR, which came into force on 25 May 2018 and which provides that data shall not be kept for longer than is necessary for the purposes for which it is obtained – generally no more than one month.

However an exception to this rule is where information on CCTV footage, video footage or digital footage is held in the context of an investigation, such as a personal injuries claim. Consequently, by requiring a plaintiff to notify a defendant within one month of an alleged incident under section 8, the defendant will be given the opportunity to identify within the data protection time limits any footage the defendant may have of the incident, and keep it beyond the one-month period for investigation purposes where the defendant believes the claim is questionable. This earlier notification period will also help a defendant prepare his or her defence in a range of other ways such as being able to put together more accurate employee witness statements where this is relevant. It also may help the defendant in accepting his or her liability as early as possible, thus enabling the claim to be settled quickly with minimal legal fees incurred.

The existing wording of section 8 needs to be strengthened in order to ensure it is used more effectively by the courts. In this regard, it is proposed that instead of a court having the option to draw inferences from the failure to serve a letter of claim on the alleged wrongdoer within the prescribed period of time through the use of the word "may", it should be required to do so as a matter of course through the use of the word "shall". It should be noted that these inferences may not always be negative as the court may conclude that there was reasonable cause for the delay in notification. However, where the inference is negative, the court may make no order as to the payment of costs to the plaintiff or deduct such amount from costs that would, but for this section, be payable to the plaintiff as it considers appropriate.

Finally, on this part of the amendment, the working group believes that the words "or as soon as practicable thereafter" should be deleted as this allows arguably too much latitude to a plaintiff to delay unnecessarily before notifying the defendant. The working group, however, is of the view that with the deletion of these words, sufficient protection still remains for the plaintiff in this section, as only where there is a failure "without reasonable cause" can a court draw a negative inference. That refers to section 8.

Deputy Pearse Doherty: This amendment to reduce the notification period for the serving of a letter of claim from two months to one month, in the context of data protection and GDPR, seems sensible. I do not have an issue with that as such.

I have an issue with the other parts of what the Minister of State has done here. The Minister of State has removed the words "or as soon as practicable thereafter", which allows for the court to decide whether it is practicable.

The Minister of State has then determined in law that the court shall draw an inference and while the note he provided to us states that such inference can be positive, the language is negative and it is designed to be a negative conclusion. The court has the power, if it so wishes, to draw an inference. The reason it is written in that way is because inferences are negative so that it can draw a negative view in relation to this. Now the Minister of State is saying they shall do it but it kind of states this is good and there is nothing negative there. There is a serious issue in that regard. The amendment to section 14 of the 2004 Act is tinkering around the edges. I am not sure about it. I have not heard any reasonable explanation for why a fraudulent claimant would delay his or her own proceedings. I do not understand why that would be the case, but that is not the core issue, which relates to a number of steps that are being taken in the amendment. We all want fraudulent claims to be stamped out. I will give the Minister of State the opportunity to outline to us his conversations with Garda Commissioner Drew Harris on the establishment of a funded insurance fraud squad within the Garda force. The official position is that such a body should be funded by the industry. A number of steps are specified in the amendment. It specifies a reduction in the notice period from two months to one month and proposes the deletion of the phrase "as soon as practicable thereafter". Another phrase is used that is still more restrictive. A further proposed change is that the court "shall" as opposed to "may" draw an inference. The penalty for genuine claimants who fail to fulfil the terms of subsection (4) is that an order of costs could be made against them or the costs for that part could be made against them. The change is far-reaching and for this reason, I cannot support the amendment.

I support the core principle of the amendment, namely, the proposed change in the term from two months to one month. I do not have a problem with that, but the Minister of State needs to revisit the amendment on Report Stage. If a court decides there is a reason for the claim not being been served on an individual, it is up to the court to draw a conclusion. Courts are empowered to draw conclusions and we should allow them to make such decisions rather than dictating to them by using the word "shall". The problem is that the change would make it harder for genuine claimants.

We are correctly coming at the legislation with the intention of stamping out fraudulent claims and driving down insurance premiums. However, there is also a responsibility on us to look through the lens of people who are making genuine claims. We must ask whether this is proposal will create three further hurdles that will allow insurance companies, which are multi-billion industries with lawyers akin to Goliath, to go up against individuals who were genuinely injured having been involved in a motor or other accident. The Bill provides additional ammunition for the industry to tackle fraudulent claims but the approach would also have an effect on genuine claims. We have got the balance wrong here.

Deputy Joan Burton: Will the Minister of State give us a copy of his detailed note because we only recently received information about this amendment? It has been customary for Ministers for Finance to provide detailed notes if Members request them. We received the text of the amendment at short notice. This is potentially a very big change. Did the Attorney General give advice on it? It is a very overt direction to a court. If, for instance, an honest claimant is caught out by the proposed change, does he or she have a mechanism to appeal what is becoming an automatic process which the Minister is trying to impose on the court? If we could get

the detailed note, we could get advice on it.

What mechanisms, if any, does the Minister of State have in mind to ensure that honest claimants do not lose out? The vast majority of people are honest. We all have a problem with fraudulent claims and we are united in wanting to stamp them out, but this is a big step up and we did not hear much about it beforehand. We were handed copies of the proposed amendment the other day. I would like more detailed information from the Minister of State. Will he outline what will happen to an honest claimant who, for whatever reason, does not meet the one month deadline? What recourse, if any, will he or she have? Usually in such cases there is an inbuilt system akin to an appeals mechanism which would allow someone to seek a remedy if, for some reason, it was not possible to comply with the regulation.

Deputy Michael McGrath: In broad terms, I support this amendment as a number of caveats will remain in place. The change which requires a court to draw inferences is subject to the caveat that if there is a reasonable cause for the delay, the provision mandating the court to draw inferences does not apply. The implication of the court drawing inferences relates to costs, as set out in subsection 3(*b*)(i) and (ii), but that is only where the interests of justice so require. That is a matter of interpretation and judgment for the judge. Accordingly, there are caveats and safeguards. However, it is important that the measure is properly discussed and teased out.

What practical difference will this make in a scenario where a claimant does not notify a business owner of an incident and waits until the eve of the two year anniversary to lodge a claim? That could be the first the policyholder would have heard of it. This practice will still be permitted and a claimant will still not have to notify a business of an alleged incident and may still take a claim on the eve of the second anniversary of the alleged incident. In practical terms, what difference will this change make in such a scenario?

Deputy Michael D'Arcy: I will respond first to Deputy McGrath's questions and work backwards. Many business owners have informed me of claims being made against their businesses 18 months after the event. This practice is common in the hospitality sector, for example, in respect of nightclubs. A business is not able to defend itself in cases where no report of an incident of any nature has been made to a staff member. I will tie this in with Deputy Doherty's point about why a fraudulent claimant would delay proceedings. The best ploy available to a fraudulent claimant is to make a late claim because there may no evidence of an incident on the part of the business owner and, subsequently, to drag out the case for between three and five years. This potentially leaves an open claim on a business's books for that entire period. Business owners have frequently told me it is cheaper to pay off a claimant, even though they have no knowledge of any incident having taken place because as long as there is an open claim on their books, their insurance premium will increase.

Deputy Pearse Doherty: To clarify my point, when I stated that it benefits a fraudulent claimant to delay I did not mean in the case outlined by the Minister of State, where there is an obvious benefit. For this reason, Deputy McGrath's question is relevant. I was referring to section 14 and cases where proceedings have already been served.

Deputy Michael D'Arcy: That is the affidavit.

Deputy Pearse Doherty: This requires an affidavit to be sworn to say that what is in the pleadings is an accurate and true reflection. If a fraudulent claim has begun, why would it be to the advantage of a fraudulent claimant not to swear their pleadings? They have to do so before the court anyway at some point. All it does is delay the case. That is my point; I was not

referring to the delay. A period of one or two months is beneficial, notwithstanding the impact of this.

Deputy Michael D'Arcy: I will discuss section 14 afterwards, if the Deputy does not mind. In my view and in the view of several businesses who have presented to me, this is almost 100% complete. The number of occasions when fraudulent claims show up and they have no evidence that an incident did not happen is significant. Heretofore, before the change in the data protection laws on 25 May, they could keep the footage for as long as they wanted - months, two years, whatever. Now the law of the land says that footage must be deleted after one month. It is only appropriate that we equalise the period for which the footage must be retained and the period within which people have to be notified of a case.

We are in no way removing the court's flexibility in dealing with somebody making a legitimate claim. It is important to put on the record that whenever I meet businesses or groups who are concerned about insurance, everybody wants to ensure that the legitimate claimant is compensated, as we in this House do. We provide for reasonable cause in the section to ensure that if somebody has a legitimate and reasonable cause for not notifying the party against whom they are making a claim, the court will consider that. This does not impact upon that.

However, the matter of inference arose in the working group. In this amendment, the inference pertaining to the plaintiff remains in cases where there has been a failure to notify without a reasonable cause. If somebody rocks up with an insurance claim one year, 11 months, three weeks and three or four days later, we are again in a situation where the person against whom claims are being made has no evidence. Staff members might be gone. The respondent might not even know who was working on the night in question. This situation could last for two, three or four years. Drawing a negative inference in cases where there is no reasonable cause is a matter for the court. It is important that we have enough protection for claimants with a reasonable cause for not giving notification. We are here to protect the individual who has a legitimate case for damages against his or her person. We are all at one in wanting to protect those people. However, we have to move to a new space. The period of one or two months and the provision for inference is crucial to make an impact. We could pretend to make an impact and make a provision that is not legitimate. I am not about that and I do not believe this committee is. If we want to make an impact, this section is crucial.

We are not imposing on the courts. Yesterday, the Attorney General gave his opinion and he is comfortable with this. I am meeting Garda Commissioner Harris on 11 December. I continually have to say that I am not opposed to the establishment of a Garda insurance section within the Garda National Economic Crime Bureau. As a personal view which I aired a long time ago, very early in the job, I am opposed to the industry funding the section directly. If the industry provides the money to the Minister and the Minister provides it to the Garda Síochána, I am 100% comfortable with that. That arrangement does the same thing. Funding is provided to the Exchequer, which, in turn, provides the same funding. I would look for additional funding to establish the insurance section. That is what I would prefer. The cost of insurance working group, which was present before I came into the job, also highlighted that. It is the UK model. However, it is a matter for the Garda Commissioner. He will speak with the Minister for Justice and Equality about the establishment of the section and how it is funded.

Deputy Joan Burton: From historical experience, the deterrent to fraud is the capacity to investigate it and for the perpetrators of the fraud to be prosecuted. That is the critical issue, whether we are talking about company directors or bankers misbehaving or fraudulent insurance claims. I do not understand why a structure that allows action has not been developed. We

hear all the time about cases where a person comes into a restaurant, stages an incident some time later and then makes a claim. As the Minister of State said, nobody has much knowledge of the incident at issue. The only way to deter that is for the fraudsters to be prosecuted, as happens with fraud in other areas of business. I do not know if the Minister of State has addressed that. It is a scandal. Judges openly say it in court and claims are withdrawn. We must bear in mind that the vast majority of people are honest, but they see fraudulent claimants being admonished by judges and then just walking away. We do not know, but it does not appear as though everything ever happens to them.

Deputy Pearse Doherty: I agree with the principle of the Bill. We need to get this up and running as quickly as possible. As we have talked about in reference to section 14, personal injury claims should not be delayed. That needs to be part of the database. Personal public liability needs to be part of it, not just motor insurance.

I have made one point on a number of occasions to the Minister of State's predecessor and to the line Minister. Any instance of big private business directly or indirectly funding our police service is inappropriate. It does not matter if it passes through the Minister's hands before it gets to the Garda. It is not acceptable. It would also not be acceptable if a philanthropist came to the Minister and offered to fund a section of the Garda to investigate rogue or corrupt politicians, or if a big businessman decided he wanted something investigated and passed money through the Department of Finance. It would not be done. We need to establish this as a matter of principle. Everybody on this committee and in the Houses of the Oireachtas believes the Garda should have an insurance fraud squad. Then we need to publicly resource it. Before the Minister of State meets the Garda Commissioner, he should get a commitment from the Minister and make it clear to him that the Houses of the Oireachtas stand four-square behind him. The Garda Commissioner is independent in how he structures the Garda. However, it is the view of the Oireachtas and of this committee that there should be such a unit within the Garda and the necessary resources should be made available. Whether we want to raise additional money through taxes or levies on the insurance industry should be a secondary issue. I welcome the Minister of State's comments about his personal view on this. From my point of view, even if funding passed through the hands of the Minister before getting to the Garda, a precedent would be created. It is just not right.

I can understand how frustrating it is to see people who have had their claims dismissed as fraudulent by a judge and who have taken up court time walking away without a worry in the world because they are not going to be prosecuted. We need to deal with this quickly. I ask the Minister of State to take that issue off the table and to get a commitment from his Cabinet colleagues to make the resources available. I can only speak for my own party but the Minister of State will have its full support because this needs to be done urgently.

Amendment agreed to.

Section 13, as amended, agreed to.

Section 14 agreed to.

TITLE

Deputy Michael D'Arcy: I move amendment No. 18:

In page 3, line 11, after "Act 2013;" to insert the following:

"in relation to personal injuries actions, to amend, in certain respects, the Civil Liability and Courts Act 2004;"

I thank the Chairman and the committee for its efforts on this. We are all on the same pathway and it is appreciated.

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

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Finance, Public Expenditure and Reform, and Taoiseach has completed its consideration of the Central Bank (National Claims Information Database) Bill 2018 and has made amendments thereto.

The select committee adjourned at 11.40 a.m. until 2 p.m. on Tuesday, 4 December 2018.