

ISME,
17 Kildare Street,
Dublin 2.

17th December 2018

Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach,
Leinster House,
Dublin 2.

Re: Progress made to address the Rising Cost(s) of Motor Insurance since 2016 (Your ref I 2018/661)

Dear members of the Committee,

Firstly, ISME wishes to thank you for the invitation to make a submission to you on the recent CSO statistics on motor insurance costs.

We do not intend, in long form, to rehash our previous submissions to the Oireachtas and to the Department of Finance on the issue, but in brief, the actions that are required to produce real and sustained reductions in motor insurance costs in particular, and insurance costs in general, are as follows:

1. We require primary legislation to cap general damages. If the Government is in possession of legal advices to the effect that this requires constitutional change, this Committee should request them to publish it. Our advices are that a referendum is NOT required. We have had sight of documentation released under FOI that suggests the Personal Injuries Commission was willing to suggest a legislative cap on damages¹, but was opposed by the legal representatives on the PIC. (This is precisely why ISME sought, membership of the PIC, which we were refused. Policy holders were not represented on the PIC)
2. General damages MUST track those in other common law jurisdictions. This matter is in addition to the first action above. There is no point in capping damages by law if those damages are of an order of magnitude of almost five times those in the next nearest jurisdiction.
3. The legal profession MUST be reformed per Troika/EU/IMF strictures. At our regular meetings with the EU Commission and the OECD, it remains a matter of astonishment to them that the legal profession has yet to be meaningfully reformed.
4. In most personal injury cases, an insurance company stands between the defendant motorist and the plaintiff. This tends to have the effect that the plaintiff is treated more deferentially than the defendant. The Cost of Insurance Working Group has ventilated this issue in its reports, but we remain of the view that the legal system does not treat defendants and plaintiffs equally. Defendants MUST

¹ <https://www.thetimes.co.uk/article/new-law-to-limit-irish-whiplash-payouts-blocked-rs5rg50cb?>

have 'equality of arms' before the law. Therefore costs MUST follow losing plaintiffs². The latitude extended by the courts on this issue remains far too great, and results in manifest injustices to defendants.

5. False and exaggerated claimants MUST bear moral hazard. Someone who has initiated a false personal injuries claim is engaged in serious white collar crime, but that is not how they are treated in this country. While some have called for a specialist Garda unit to be set up to investigate insurance fraud, we think there is an arguable case now to set up an agency exclusively dedicated to the investigation and prosecution of white collar crime.
6. Claims to PIAB MUST be sworn on affidavit at point of entry into the PIAB system. This is because too many of the change materially from the point where they are initiated, and an assessment upon them is made by PIAB; and when they are taken to court. Where claims are settled by PIAB, administrative outlay by the defendant is less than €1,000. When settled in court, costs are in the region of 40%.
7. We MUST enact a statutory offence of perjury. It is farcical that Ireland is the only common law jurisdiction in the world without a statutory offence of perjury.
8. While we appreciate that the introduction of Solvency II has altered the data-set required for Central Bank reporting, we emphasise the need to have transparent profit and loss data from underwriters. The Central Bank will announce its new reporting regime for underwriters on 18th December, but the cost data will not be as granular as heretofore.

General pricing issues.

The recent CSO data suggested that motor insurance has declined by 7.6% in 2018, and has had an 18% fall since 2016. While there have been recent reductions in motor insurance costs for consumers, this has been from an exceptionally high base. Therefore, there is much further correction required. We append at rear a chart showing the index of both motor car insurance and general consumer insurances since 2003 (when PIAB was introduced). As can be seen, the introduction of PIAB had an immediate downward effect on insurance costs, particularly those for motor car insurance. The steady rise in motor car insurance from 2008 reflects the fact that an increasing number of cases from that time were settled outside the PIAB system, either in, or on the steps of court.

The low point for the motor insurance index was January 2008, when it was 54.1 (2016 = 100). It is currently at 82.1 (October 2018) a rise of 52% from its lowest value. CPI over the same period has increased by 3%. The CSO does not produce analogous indices for Employers' Liability insurance or for Public Liability insurance, but we understand that these products, which most SMEs are required to pay, continue to inflate strongly. We suspect that they have risen *at least as quickly* as those of general consumer insurance in the attached chart. From a low of 46.8 in August 2005, the index currently stands at 95.1 (October 2018), an increase of 103%. CPI over this period rose 13%.

It is obvious from the CSO data that insurance costs have detached themselves entirely from consumer price inflation. It is obvious that other factors are at play besides normal cost inflation. We also wish to point out

² <https://www.independent.ie/irish-news/courts/policyholders-will-pay-up-to-50k-in-legal-bills-after-man-who-lost-finger-climbing-luas-fence-loses-high-court-action-37585326.html>

that insurance is about more than the absolute cost of insurance. There are substantive non-cost issues at play now when businesses, crèches playgrounds and sports clubs seek underwriting. These issues are discernible only in the 'small print' of the insurance contract. For example, we understand from members in the child-minding services that owners are being advised that indemnity for children only applies for indoor play, and that outdoor play cannot be indemnified. Similarly, many primary schools are enforcing no-run policies in school yards, and require that ball play may only take place on pitches, and under the supervision of a teacher. It is not difficult to understand the reluctance of underwriters to insure broad ranges of school activity when a school in Kilmallock recently settled a claim for €5,000 from a student who sued over ashes placed on his forehead on Ash Wednesday.³

Thus ISME cautions the members of the committee that there remains a very great deal of work to do before insurance cost inflation gets anywhere near general price inflation. Fortunately, most of the measures required to do so are legislative, and thus entirely within your ability to tackle. We commend you to do so.

Yours sincerely,



Neil McDonnell
Chief Executive

³ <https://www.limerickleader.ie/news/home/353185/cash-for-ash-5k-damages-for-unsightly-mark-on-limerick-boys-forehead.html>

Insurance Indices: Motor and General Consumer 2003-2018

INDEX

120

110

100

90

80

70

60

50

40

30

20

Consumer Price Index (Base Dec 2016=100) Source CSO

— Motor car — Insurance

2003M01 2003M04 2003M07 2003M10 2004M01 2004M04 2004M07 2004M10 2005M01 2005M04 2005M07 2005M10 2006M01 2006M04 2006M07 2006M10 2007M01 2007M04 2007M07 2007M10 2008M01 2008M04 2008M07 2008M10 2009M01 2009M04 2009M07 2009M10 2010M01 2010M04 2010M07 2010M10 2011M01 2011M04 2011M07 2011M10 2012M01 2012M04 2012M07 2012M10 2013M01 2013M04 2013M07 2013M10 2014M01 2014M04 2014M07 2014M10 2015M01 2015M04 2015M07 2015M10 2016M01 2016M04 2016M07 2016M10 2017M01 2017M04 2017M07 2017M10 2018M01 2018M04 2018M07 2018M10

