

## OPENING ADDRESS

Our cost of insurance continues to rise. ISME's latest cost of insurance survey results for Q4 2018 are shown at **Appendix I**. Recent statements about moderating insurance costs refer to private motor insurance only. No one has reliable statistics on liability or other commercial insurances as the CSO does not measure them.

The continued rise in insurance costs is the outcome of a failure to make meaningful change in three areas: reducing quantum; reforming our legal system; and reforming the insurance system itself.

This issue goes far beyond the simple cost of insurance to SMEs; although that issue is already causing many businesses to fail. The cost of insurance issue is now hollowing out Irish society, it is restricting the conduct of sport, play and charitable activity, it is attracting criminal activity, it is encouraging the advancement of manufactured grievances. It is reducing the physical and moral health of citizens. We are getting to the point where suing someone for the most minor of inconveniences is socially acceptable across all educational and class strata.

While there has been a large amount of activity by the Cost of Insurance Working Group (CIWG), it has not addressed the core issues, which we do below. The CIWG has committed the cardinal sin of confusing performance (**doing lots of things**) with effectiveness (**doing the right things**). What we are left with is a veneer of progress, and the complete absence of material reform. We need:

- Quantum reduced
- The legal profession to engage honestly with a reform process
- Moral hazard for plaintiffs in our courts
- A perjury statute, and an amended defamation act
- A just, answerable judiciary, committed to continuous professional development
- Meaningful action on the detection and punishment of fraudulent claims
- Transparent, granular data on a well-regulated insurance industry

While it would be easy to call for the head of the responsible Minister of State, this would achieve nothing more than the spectacle of political theatre. We need a cabinet minister to personally take the lead on this issue. The nature of the reforms required suggests that this should be the Minister for Justice and Equality.

We appreciate that you have pressing issues with Brexit and housing to attend to, but we have suffered a lost decade on this issue. People are losing their jobs and businesses *now* because of legislative inaction. You alone are the people who can fix this, and we ask you to do so now.

## QUANTUM

Quantum paid in personal injuries cases particularly for minor injuries, remains ridiculously high. No recent (or planned) developments in the CIWG process will address this in the short or medium term.

The second and final report of the Personal Injuries Commission<sup>1</sup> (PIC) chaired by Mr Justice Nicholas Kearns, established our unjustified levels of quantum beyond challenge in July 2018. Whiplash payouts in Ireland run at 4.4 times the level paid in England and Wales, both of which are global outliers in generosity of awards.

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<sup>1</sup> <https://dbei.gov.ie/en/Publications/Publication-files/Second-and-Final-Report-of-the-Personal-Injuries-Commission.pdf>

Kearns further noted that as quantum was so high, and investigation of fraud was so poor, that it was giving rise to *'a perfect climate for abuse of the system'* leading to *'claims by both individuals and groups, some of whom are drawn to this jurisdiction by the high rewards on offer.'*

ISME notes that while it was refused membership of the PIC, the Law Society and Bar Council were represented on it, and unanimously accepted its publication.

Justice Kearns noted the need to deal with the situation as a matter of urgency. The establishment of a Judicial Council was described in the report as 'imminent' last July. On 28<sup>th</sup> March, Minister Flanagan told the Seanad that the *'Law Reform Commission (LRC) 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 the year.'* (underlining ISME's)

This is Sir Humphreyism at its cynical worst. General damages need to be capped by legislation. Despite the hot air to the contrary by those who extort rent from the current system, there is no constitutional impediment to doing so. The fiction that such an obstacle exists is constantly peddled by lawyers defending the status quo. WRC adjudicators award compensation to plaintiffs on a daily basis, which are appealable to the courts, and are entirely consistent with the law and the constitution. The Civil Liability Act 1961 has capped damages in the case of fatalities for 58 years, without constitutional challenge. In fact, the first draft of the PIC report, acquired by journalist Mark Tighe under FOI, revealed that Justice Kearns, in his **first recommendation**, asked the Government to introduce a legislative cap on damages. (See **Appendix II**). After correspondence from the Law Society representative on the PIC, this was removed from the final report (See **Appendix III**). Neither Justice Kearns nor Stuart Gilhooly mention any constitutional impediments to the introduction of a legislative cap. Justice Kearns is not known as a constitutional lightweight.

It is also noteworthy that despite a detailed, five-page discursion on the capping issue in the Report on the Cost of Employer and Public Liability Insurance<sup>2</sup> published in January 2018, which included a consultation with the Attorney General, did not conclude that a legislative cap would be unconstitutional.

However, the facts on the ground have recently changed. Senator Anthony Lawlor has recently taken his Civil Liability (Capping of General Damages) Bill 2019 to third stage in the Seanad.<sup>3</sup> Given that Senator Lawlor is a member of the governing party, we find it extraordinary that the Attorney General does not appear to have been asked to consider its constitutionality. So bizarre did we consider this turn of events that we asked Minister of State D'Arcy on 20<sup>th</sup> February whether it was the Government's intention to seek the advices of the Attorney General on this bill. We have, as yet, received no reply.

The cost of insurance continues to rise for SMEs even though they continue to improve their safety. **Appendix IV** published using HSA data shows the long-run (20 years) improvement in safety performance, and reduction in accident rates per 1,000 employees. However, as long as the honey-pot of quantum remains so high, the temptation to institute a personal injuries claim will remain.

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<sup>2</sup> <https://www.gov.ie/en/publication/e0ebbc-report-on-the-cost-of-employer-and-public-liability-insurance/>

<sup>3</sup> <https://www.oireachtas.ie/en/bills/bill/2019/20/>

## LEGAL REFORM

Anywhere the interests of the citizen and the small business collide with those of the legal profession, the latter wins.

The contributions of the legal profession to the insurance debate have been riddled with untruths. We have been forced to fact-check<sup>4</sup> them, as have journalists at the Journal.ie.<sup>5</sup>

The EU Commission's 2018 Country Report<sup>6</sup> for Ireland notes our continued failure to remove market barriers for legal and judiciary services. It is merely reiterating calls that have been made from outside (and inside) the state for a decade and more in pursuit of legal reform. It is a matter of some consternation to our EU Commission colleagues, who visit annually as part of the EU Semester reporting system, that our legal system remains materially unreformed.

The EU-IMF program<sup>7</sup> called for structural reform of our legal system in December 2010. It noted requests from our then Competition Authority to tackle legal costs. The EU Commission reiterated the call on legal costs in 2012<sup>8</sup>. And in 2013<sup>9</sup>. And in 2014<sup>10</sup>, 2015<sup>11</sup> (in extended form), 2016<sup>12</sup>, and 2017<sup>13</sup>.

Similar observations about the cost and inefficiency about our legal system have been made by the OECD in their economic surveys. See Figure 1 below from the OECD's 2018 survey.<sup>14</sup>

The Legal Services Regulation Act 2015 was intended to redress many of the failings within our legal system identified by these internal and external commentators. Yet this long-delayed, intensely lobbied<sup>15</sup> and much amended legislation was entirely de-fanged by the legal lobby in the four-year run-up to enactment. The former Director of Corporate Enforcement Paul Appleby declared that the LSRA was '*unlikely to have any material impact on the level of costs being awarded.*' Isolde Goggin, chair of the Competition and Consumer Protection Commission, said the LSRA had prioritised the interests of solicitors and barristers, had given '*little or no weight*' to the interests of consumers, and said the dilution of laws to modernise the sector and curb high legal costs was an '*alarming*' example of vested interests influencing legislation. Her comments on the passage of the LSRA through the Houses of the Oireachtas are worth consideration by the members of this Committee.<sup>16</sup>

The key, and material changes made to the LSRA watering down its powers were (1) that the Law Society retained its enforcement role in the area of financial misconduct, and (2) the Bar Council was permitted to bar from membership of the Law Library those barristers who wished to participate in new business models (barrister partnerships, legal partnerships and multi-disciplinary practices), effectively marginalising them from the mainstream profession. As the LSRA went through its final stages in the Oireachtas, it was subjected to so many amendments by the then Minister for Justice and Equality that Senator Sean Barrett described it

<sup>4</sup> <https://isme.ie/time-to-counter-the-spin-on-insurance-costs/>

<sup>5</sup> <https://www.thejournal.ie/motor-insurance-ireland-compensation-legal-fees-facts-statistics-law-society-insurance-ireland-3098074-Nov2016/>

<sup>6</sup> [https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-ireland-en\\_1.pdf](https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-ireland-en_1.pdf)

<sup>7</sup> <http://per.gov.ie/wp-content/uploads/euimfrevised.pdf>

<sup>8</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/swd2012\\_ireland\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/swd2012_ireland_en_0.pdf)

<sup>9</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/swd2013\\_ireland\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/swd2013_ireland_en_0.pdf)

<sup>10</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/swd2014\\_ireland\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/swd2014_ireland_en_0.pdf)

<sup>11</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/cr2015\\_ireland\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/cr2015_ireland_en_0.pdf)

<sup>12</sup> [https://ec.europa.eu/info/sites/info/files/cr\\_ireland\\_2016\\_en.pdf](https://ec.europa.eu/info/sites/info/files/cr_ireland_2016_en.pdf)

<sup>13</sup> <https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-reports-comm-en.pdf>

<sup>14</sup> <https://www.oecd.org/economy/surveys/Ireland-2018-OECD-economic-survey-overview.pdf>

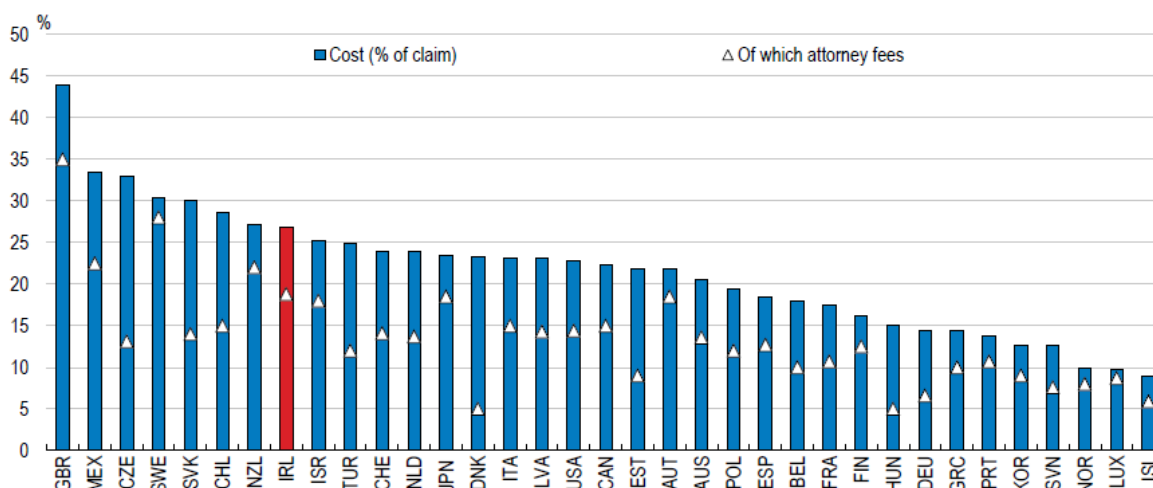
<sup>15</sup> <https://www.irishtimes.com/news/politics/legal-profession-waged-four-year-battle-against-reform-bill-1.2532389>

<sup>16</sup> <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/Does-the-law-protect-incumbents-FINAL-29APR16.pdf>

as a ‘shambles.’ He also said he had never seen a bill amended 300 times throughout its passage, and noted that one page of the bill, with 38 lines, had been amended 105 times by the Justice Minister.<sup>17</sup>

One of the reasons cited by insurance industry sources for why courts regularly award more than PIAB, is that once solicitors take a case on, they will ‘increase’ the magnitude of the injury, or its sequelae, to a material degree. In effect, the courts are right to award more, because the case that comes before them is not the same case that was presented to PIAB. It is for this reason that ISME has long campaigned for a statutory offence of perjury<sup>18</sup>, and why we have sought to have personal injuries cases submitted to PIAB sworn at the point of initiation. Currently, an affidavit of verification is only sworn once a plaintiff has rejected a PIAB assessment and wishes to take their case to court. This is absurd, and effectively allows a fresh claim to be made. We are aware that this would require some legal advice or the services of a commissioner for oaths at the start of the claims process, but this would be a small price to pay for an honest claims system. We are grateful to Senator Padraig Ó’Céidigh for his work to date on the Perjury and Related Offences Bill 2018.

**Figure 1. The Cost of Legal Services**



Note: In the case of MEX, JPN, USA, it refers to Mexico City, Tokyo, and New York City respectively.

Source: World Bank Doing Business (2017).

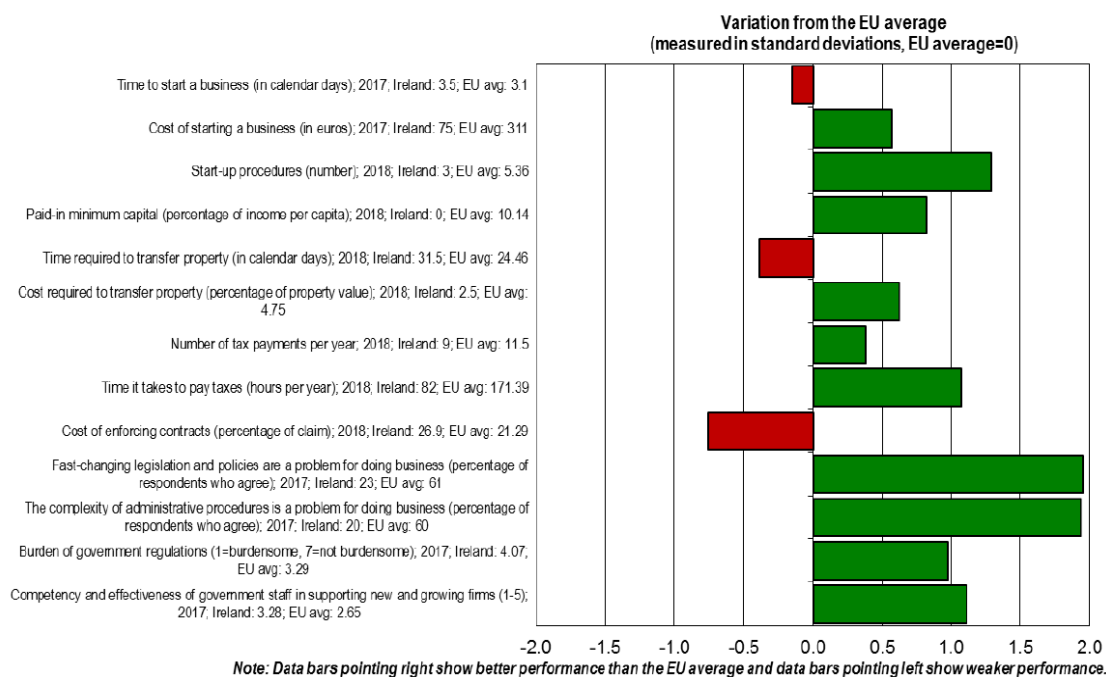
The EU Commission’s Small Business Act report for Ireland 2018<sup>19</sup> also notes the cost and duration of dispute resolution in Ireland as being substantially worse than the EU average (Figure 2). The EU has made the same observation in its 2017, 2016, 2015, 2014, 2013, 2012 and 2010/11 reports.

<sup>17</sup> <https://www.irishtimes.com/news/politics/oireachtas/senator-claims-lion-bill-on-legal-services-reform-ended-up-as-little-lamb-1.2452287>

<sup>18</sup> <https://isme.ie/lobbying/policy-submissions/the-case-for-a-perjury-act/>

<sup>19</sup> <https://ec.europa.eu/docsroom/documents/32581/attachments/15/translations/en/renditions/native>

**Figure 2. 'Responsive Administration' SBA Report 2018**



Domestically, the performance of the legal system has attracted the attention of the National Competitiveness Council (NCC). In its Competitiveness Challenge 2018<sup>20</sup> the NCC stated:

*'...as regulation in professional services sectors often limits the scope for competition by restricting entry, allowing for price fixing, granting exclusive rights to perform certain services, and restricting advertising and business structures, legal services and their cost have a bearing on Ireland's overall competitiveness. The cost of legal services also has significant knock-on effects on the cost of other vital business services – for example, on the cost of insurance. Throughout the recession, and relative to most other professions, prices for legal services remained flat and did not adjust downwards to the degree that might have been expected given economic circumstances.'* (underlining by ISME)

The President of the High Court, Mr Justice Peter Kelly, put it pithily in February 2018 when he said '*under the current system, ...the only people who can litigate in the High Court are paupers or millionaires.*'<sup>21</sup>

While we do not suggest that fraudulent actions amount to a majority of claims, as Justice Kearns pointed out, the combination of extraordinary awards levels, with no investigation or enforcement, amounts to a powerful incentive towards fraudulent claims. MOS D'Arcy has previously stated that he cannot task An Garda Síochána in this regard. This is not good enough. If An Garda Síochána is not able to commit, in a very short period, to robust investigation and enforcement action against this prevalent form of white collar crime, the Government should move to establish the type of dedicated agency more commonly used in other jurisdictions for such police work. In this regard, we have previously suggested that Government should consider an agency similar to the Italian Guardia di Finanza, reporting to the Department of Finance rather than the Department of Justice and Equality.

At the same time as SMEs fight a losing battle in the personal injuries war, defamation has arisen as a new and popular tort among those litigants who do not wish to go through the inconvenience of having to file a claim

<sup>20</sup> <http://www.competitiveness.ie/Publications/2018/Competitiveness-Challenge-2018.pdf>

<sup>21</sup> <https://www.independent.ie/irish-news/courts/legal-costs-to-face-cap-under-justice-review-36609852.html>

through PIAB, or to visit a doctor. It is not just the media that is suffering as a result of our ridiculous defamation laws. Despite the fact that the European Court of Human Rights has upheld a complaint from a national newspaper,<sup>22</sup> the Oireachtas has done nothing to vindicate our constitutional rights in respect of protection of property or freedom of expression. Into this vacuum has stepped a new breed of lawyer determined to defend the good name of those who steal (or pretend to steal) from stores.

The cynicism of the lawyers who facilitate this form of legalised extortion is breath-taking. Several firms have web pages dedicated to the incitement of litigation in cases where asking to check a receipt at a shop door can be interpreted as a 'false allegation of shoplifting' defamation case. A quick internet search reveals those who are advertising the service.

In the case of retail stores and forecourts, these allegations are frequently accompanied by allegations of false imprisonment. Business owners, many of whom can be working alone, are left with stark choices when someone is acting suspiciously on their premises. They can ignore suspicious activity, and accept potentially hundreds of euro in stock loss, or they can stop people at the door, and risk the loss of thousands in defamation. The 'going rate' for this tort is in the region of €5,000 to €30,000, although claims for far more are common<sup>23</sup>.

ISME has asked the Minister for Justice and Equality<sup>24</sup> to amend the Defamation Act 2009 to protect the owners of business premises from this latest form of action.

We are not naïve, and do not doubt that any challenge to the functioning of the money-making machine that is our legal system will be stoutly resisted. Indeed, we would expect the volume of lobbying noted above in respect of the LSRA. But this reform is urgently needed. We estimate that the amount of cash extracted by the legal profession from the personal injury system alone in 2015 was €351m (**Appendix V**). Our courts system has become an ATM for some members of the legal profession, with legal costs frequently accounting for more than the actual settlements or damages awarded.<sup>25</sup>

Is it any surprise to the Committee that the motto, since 1541, of the King's Inns is '*Nolumus mutari*' (we shall not be changed)?

In summary, we do not lack knowledge, data or objective information telling us our legal system is expensive, time consuming, dysfunctional, and designed around the practitioners, not the consumer. We simply lack the political will to do anything about it.

## JUDICIAL REFORM

A substantial minority of our judiciary is excessively, unfairly and unjustly pro-plaintiff.

The determination of the judiciary to protect defendants in criminal system from the tiniest administrative or technical slight in their prosecution (which we welcome) is in total contrast to their treatment of defendants in civil cases, who are effectively held negligent until they prove otherwise. Our courts have stretched the doctrine of duty of care to breaking point. While there have been some welcome interventions by the Court of Appeal in introducing 'common sense' into our litigation system, for example in the O'Grady V Abbott

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<sup>22</sup> <https://www.independent.ie/irish-news/courts/irish-libel-regime-criticised-in-landmark-eu-judgment-35831823.html>

<sup>23</sup> <https://www.independent.ie/irish-news/courts/woman-who-alleged-she-was-accused-of-stealing-1-shopping-bag-from-dunnes-stores-settles-defamation-case-37792897.html>

<sup>24</sup> <https://isme.ie/lobbying/policy-submissions/the-case-for-reform-of-the-defamation-act-2009/>

<sup>25</sup> <https://www.irishexaminer.com/breakingnews/ireland/state-paid-almost-9m-in-legal-fees-and-compensation-due-to-assaults-in-prisons-914492.html>



Ireland<sup>26</sup> case, the vast majority of defendants lack the financial ability to take their case to the Court of Appeal, and will be forced by the oppressive cost of justice to settle much earlier.

The difficulties for defendants in making a fair defence before the courts were ventilated in detail in the Cost of Insurance Working Group Report on Employer and Public Liability Insurance<sup>27</sup> in January 2018. A regular refrain from the legal lobby is that the Civil Liability and Courts Act 2004 gives multiple protections to defendants against false or exaggerated claims, and that the sanctions against such plaintiffs provided therein are severe.

What the members of the Committee may not be aware of is that defendants are very reluctant to suggest that a plaintiff's action is fraudulent under Section 26 of the Act because (a) prosecutions are so rare; and, (b) where a defendant fails to establish that a claim is fraudulent, the plaintiff may seek exemplary damages. To our knowledge, there has been but one single criminal prosecution under the 2004 Act since its inception, and that resulted in a suspended sentence.

The authors of the Cost of Insurance Working Group Report on the Cost of Employer and Public Liability Insurance<sup>28</sup> quoted Mr Justice Kevin Cross in his 2013 Lackey v Kavanagh judgement where he stated:

*I am of the view... since the... 2004 Act... clearly impacts upon a Plaintiff disproportionately more than on a Defendant, the issue of aggravated/exemplary damages must always be in the mind of a court where it is alleged that the Plaintiff is deliberately exaggerating his or her claim... or otherwise invokes the provisions of s.26 of the 2004 Act. I think... aggravated/exemplary damages is the only real deterrent to an irresponsible or indeed an overenthusiastic invocation of such a plea.*

The same learned Justice Cross is quoted in the same report for his 2015 Saleh v Moyvalley Meats (Ireland) Ltd judgment<sup>29</sup> where he said:

*The 2004 Act cannot be invoked against the plaintiff unless the plaintiff knows the evidence to be false or misleading and it is probable, in practice, that the section will be rarely successfully invoked. It remains to be said, however, that pleas or allegations that are in effect allegations of fraud against plaintiffs... made without justification should not go unpunished. (underlining by ISME)*

We do not suggest that false allegations against plaintiffs should go unpunished. We simply note that false allegations against defendants never are.

ISME was not surprised to see the same High Court Justice, who ironically oversees the personal injury list in the High Court, mount a stout defence of the current personal injuries system<sup>30</sup> in the press, suggesting that awards for general damages have fallen in real terms since the 1970s. Committee members will hopefully understand our view that, while we do not expect the law to be on our side, we do expect it to be blind.

Our members advise us that one of the most important considerations before they defend a case in court is the name of the trial judge. If it is one of a (small number) of judges with a pro-plaintiff renown, they will instruct their counsel to settle, irrespective of the merits and strength of their defence. This is an appalling indictment of our judiciary.

Fraudulent and exaggerated claims are significant, but are not the material issue for most defendants. The issue is the willingness to hold defendants to an unreasonably high standard in their duty of care, while

<sup>26</sup> <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/c082bc5141588259802583a1004de7a3?OpenDocument>

<sup>27</sup> <https://assets.gov.ie/6256/060219173306-502d0dda6b644e7db5d019dd44ac49b6.pdf>

<sup>28</sup> <https://www.gov.ie/en/publication/e0ebbc-report-on-the-cost-of-employer-and-public-liability-insurance/>

<sup>29</sup> <http://www.bailii.org/ie/cases/IEHC/2015/H762.html>

<sup>30</sup> <https://www.thetimes.co.uk/article/judge-hits-out-at-campaign-to-cut-insurance-claims-n57wxmmfx>

effectively vacating the need for defendants to look after themselves, and awarding them farcically high damages. At this point, ISME could bombard the Committee with links to ridiculous awards and settlements, but some recent cases will suffice to show that this injustice has not abated.<sup>313233</sup>

This asymmetry in the treatment of the parties by the courts means that there is no ‘moral hazard’ for plaintiffs in personal injury actions. They can sue many times<sup>34</sup>, with little chance of detection, and no punishment if they are caught. They may seek exemplary damages, as well as general damages, from a defendant who fails to demonstrate that their claim was fraudulent, but the reverse does not apply. Indeed, a defendant who successfully defends even a fraudulent personal injury action in the Irish courts would be very lucky to succeed in retrieving any their defence costs<sup>35</sup>.

ISME received an absurd example of this inequality last year from a member who had successfully challenged an employment law case by two former employees in the Labour Court. The gross value of the case was in the region of €27,000. Despite loss in the Labour court, the solicitor for the plaintiffs advised our member that the case could ‘go away’ with payment of a similar amount to that involved in the original (lost) case. Our member refused. The plaintiffs took the company to the High Court. The company sought an undertaking from the plaintiffs regarding their costs, as they were no longer resident in the jurisdiction; but this was refused by the High Court on access-to-justice grounds. The company successfully defended the High Court action following one day in court, and received a bill for €76,000 from their own lawyers. This they sent for taxation, and had it reduced to €36,000. The company got an order for costs against the plaintiffs, but had no hope of recovery of same. At this point, the company decided to drop its defence in a personal injuries action being taken against them by one of the defendants, despite not being satisfied with the veracity of the claim. This resulted in a settlement of that claim, which our member company was able to garnish for some, but not all of their costs because, of course, the plaintiff’s solicitors had to be paid.

The legal concept of ‘equality of arms’ is more honoured in the breach than the observance. Some members of the bench do not even bother to disguise their contempt for proposals to reform our personal injuries system. Indeed the second and final report of the Personal Injuries Commission had been published for less than a fortnight when Justice Marie Baker of the Court of Appeal criticised it<sup>36</sup>, and defended our personal injuries litigation system.

There is also a demonstrable tolerance<sup>37</sup> on the Irish bench of significant departure from the factual by plaintiffs in civil actions, either on their own direct behalf, or via their lawyers. While we acknowledge the fact that there is no statutory offence of perjury, some recent episodes of legal conduct before our courts suggest that Irish judges should be more willing to consider custodial sentences for errant solicitors.<sup>383940</sup>

In December last year, the president of the High Court, Mr Justice Peter Kelly, issued Practice Direction HC81 to all lawyers conducting business on the asylum, immigration and citizenship list. The directive required that *‘each adult applicant shall swear averments to be...included in the grounding affidavit.’* The directive was

<sup>31</sup> <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/child-awarded-20-000-for-psychiatric-injuries-linked-to-seeing-mother-bleeding-1.3799181>

<sup>32</sup> <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/girl-who-injured-lip-in-dublin-creche-awarded-30-000-1.3649064>

<sup>33</sup> <https://www.irishtimes.com/news/crime-and-law/courts/high-court/woman-injured-tram-surfing-on-luas-awarded-550-000-1.3669184>

<sup>34</sup> <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/taxi-driver-made-eight-personal-injury-claims-in-eight-years-court-hears-1.3541679>

<sup>35</sup> <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/taxi-driver-made-eight-personal-injury-claims-in-eight-years-court-hears-1.3541679>

<sup>36</sup> <https://www.irishtimes.com/news/crime-and-law/judge-defends-litigation-culture-and-criticises-personal-injuries-report-1.3636295>

<sup>37</sup> <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/musician-who-misled-medics-about-being-crippled-awarded-18-000-1.3083723>

<sup>38</sup> <https://www.herald.ie/news/high-court-chief-raps-solicitors-lies-in-debt-cases-27994273.html>

<sup>39</sup> <https://www.thetimes.co.uk/article/solicitor-swore-false-affidavit-for-high-court-rlcdvdvnd> (paywall)

<sup>40</sup> <https://www.irishtimes.com/news/crime-and-law/courts/high-court/limerick-solicitor-struck-off-over-professional-misconduct-1.3005592>



issued because of several asylum cases before the court where *'issues had been raised about the adequacy of disclosure'*. One would think there was nothing too contentious about asking someone applying for asylum here to tell the truth in their application; but no. Solicitors acting in such cases wrote to the Law Society<sup>41</sup> in January to say the changes would have *'a chilling effect'*, giving rise to *'significant access-to-justice barriers for migrants and their families'*.

The fact that solicitors have complained, in writing, to the president of the High Court, that a requirement to tell the truth in asylum, immigration and citizenship cases would have a 'chilling effect' on the submission of those cases speaks for itself.

We believe that the requirements of Practice Direction HC81 should be necessary in the grounding of every personal injuries claim.

Contrast the 'relaxed' attitude to truthfulness that applies in the Irish courts with that of our nearest common-law neighbour in the UK. An April 2018 personal injury case<sup>42</sup> before the UK High Court, where a solicitor produced falsified evidence in court saw the solicitor jailed for 15 months, with removal from the solicitors' roll for five years, and a doctor given a suspended prison sentence. That would be unthinkable here. We believe our courts should be far more intolerant of legal misbehaviour. We believe that the Committee should consider a statute analogous to the Lawsuit Abuse reduction Act (2017)<sup>43</sup> passed by the US legislature.

There is a clear consistency in the number of '€60,000 cases' appearing before the Circuit Court. While we lack the injury statistics to support a definitive thesis as to why this is so, we ask the Committee if it is more likely to indicate a preponderance of injuries in the 'moderately severe' and 'severe and permanent categories;' or is it simply a function of the jurisdictional limit in the Circuit Court?

The necessity for defendants to prove negligence is minimal<sup>44</sup> and contributory negligence is regularly ignored<sup>45</sup>. The fact of the occurrence of injury is generally enough to trigger liability on behalf of the defendant.

A minority of our judges discharge their courtroom duties in a manner below that deserved by the citizens of Ireland. In the conduct of personal injuries cases, it undermines confidence in the impartiality of the justice system in general, and the constitutional property rights in particular. At the very minimum, we need the minimal oversight and sanctions regime proposed in the Judicial Council Bill 2017 to be enacted as soon as possible, and we need judges to commit to meaningful continuous professional development, as other professionals are required to do.

## INSURANCE INDUSTRY REFORM

While we refer to the veneer of progress in other matters above, when it comes to the insurance industry, we have experienced regression.

The most significant issue here is the termination of publication of the 'Blue Book' in 2015, post the adoption of Solvency II. It is important to understand that the prime objective of the Solvency II regime is to ensure the robustness of financial institutions, and their ability to withstand external shocks. As such, Solvency II prioritises the balance sheet, and the maintenance of a substantial excess of current assets over current

<sup>41</sup> <https://www.irishtimes.com/news/crime-and-law/high-court-clarifies-practice-direction-for-immigration-and-asylum-cases-1.3764472>

<sup>42</sup> <https://www.legalfutures.co.uk/latest-news/jail-for-pi-lawyer-who-lied-in-witness-statements>

<sup>43</sup> <https://www.congress.gov/bills/115/congress/senate/bills/237>

<sup>44</sup> <https://www.irishtimes.com/news/crime-and-law/courts/high-court/woman-injured-tram-surfing-on-luas-awarded-550-000-1.3669184>

<sup>45</sup> <https://www.thejournal.ie/restaurant-damages-claim-3315415-Mar2017/>

<sup>46</sup> <https://www.irishtimes.com/news/crime-and-law/courts/high-court/man-who-slipped-on-tiles-of-council-house-awarded-105k-816527.html>

liabilities, where the old Blue Book/Solvency I regime encompassed much more profit and loss data, including data on management expenses, and commissions. Contrast the granularity of the consolidated P&L data visible in the Blue Book (**Appendix VI**) with that of the Solvency & Financial Condition Report (SFCR) report of a single major underwriter (**Appendix VII**), which is no longer consolidated by the Central Bank. Even if this data was of any use from our point of view, one would have to interrogate every one of the 201 individual SFCRs<sup>47</sup> on the Central Bank website, and would still not have the quality of data available in the old Blue Book.

The first effect of this has been a reduction in transparency. The second effect is that the requirement for higher reserves against notified accidents may be increasing the reserve provisions for those accidents, which in turn may be increasing insurance premiums. However, if these cases ultimately crystallise at sums below the reserve, this will increase profits for the insurers, if those claims are settled on the same cost basis as they were before the adoption of Solvency II. We lack the data to establish this, but the Committee may be able to progress the matter with the insurance industry.

We have brought our concerns on the effects of Solvency II and the data-gap to the Central Bank. They tell us their hands are tied by law. We have also registered our concern with the Central Bank that we are not satisfied that they cannot adequately balance their macro-prudential duties under Solvency II with their duty to protect the customer.

To put this very bluntly, an underwriter that succeeds in extracting €1,500 from a motor insurance policy that previously cost €750 is twice as good (from a Solvency II perspective). We do not believe it is possible for the Central Bank to police underwriters from a consumer perspective while regulating them under a macro-prudential perspective, and we think the consumer mandate should be removed from the Central Bank.

We remain concerned that there may be collusive or monopolistic behaviour in the Irish insurance market. The absence of underwriters in certain risk areas frightens businesses into being price takers, but is it as a result of a market carve-up? ISME welcomes the decision of the EU Commission to investigate the insurance industry here, but we voice our concern that the investigation is confined to motor insurance, where there is at least some evidence of a competitively functioning market. In leisure, commercial motor and public liability, this is not the case.

Last year, an ISME member in the Southwest approached us with a serious complaint about the conduct of their insurers. This company is a relatively large manufacturer, with a substantial, multi-risk insurance book costing in the mid six figures annually, provided through multi-national **Broker A**, and underwritten by multi-national **Underwriter B**. As they approached their annual renewal, they were advised by a business contact that **Underwriter B** had paid **Broker A** and a number of other major brokers, a substantial 'commission' to direct all their corporate clients to **Underwriter B**. He further advised that **Broker A** would shortly advise our member that the only underwriter who would accept their business for 2018 would be **Underwriter B**, and there would be a 30% increase in premium; however, if our member approached **Broker C**, they could renew their book with **Underwriter B** for the same price as before. **Broker A** duly quoted a premium increase a few days later, and our member severed their relationship with **Broker A**.

In any other jurisdiction, this type of predatory activity would attract police attention. Despite how angered the directors of this company feel, they, like many other companies, are afraid of whistleblowing because of the fear of retribution, and the fact that there are so few underwriters available, particularly in leisure, commercial motor and public liability insurance.

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<sup>47</sup> <https://www.centralbank.ie/regulation/industry-market-sectors/insurance-reinsurance/solvency-ii/solvency-and-financial-condition-report-repository/2017-solvency-and-financial-condition-reports>

We include at **Appendix VIII** the six-year claims and premium experience of one of our member companies. We believe that if all commercial underwriters were required to provide an aggregate claims and premium history table of the type illustrated here, then all parties could have a more informed conversation about the cost of insurance. All Insurance clients should get from their broker each year their five-year claims history in this format to facilitate the renewal process. This data is produced in any event by the Broker/Underwriter to enable the risk to be priced by an actuary, so any suggestion that this would be cost additive is not credible.

The NCC Competitiveness Challenge 2018 (referenced above) has a great deal to say about the cost of insurance, noting that *'Insurance costs are relevant to businesses of all sizes and in all sectors of the economy... In recent years, there has been lot of volatility in pricing in the motor insurance sector for private and commercial vehicles... Total claims costs per policy, for all claims types, based on projected ultimate costs, increased by about 2.7 per cent per year and 14 per cent over the period from 2011 to 2016.'*

The National Claims Information Database (NCID) still does not exist. The only plans in place are for a database to include private motor claims data only. There is no plan to include public liability, employer liability, or other claims data. We also need the CSO to widen its data capture on insurance to include commercial insurances.

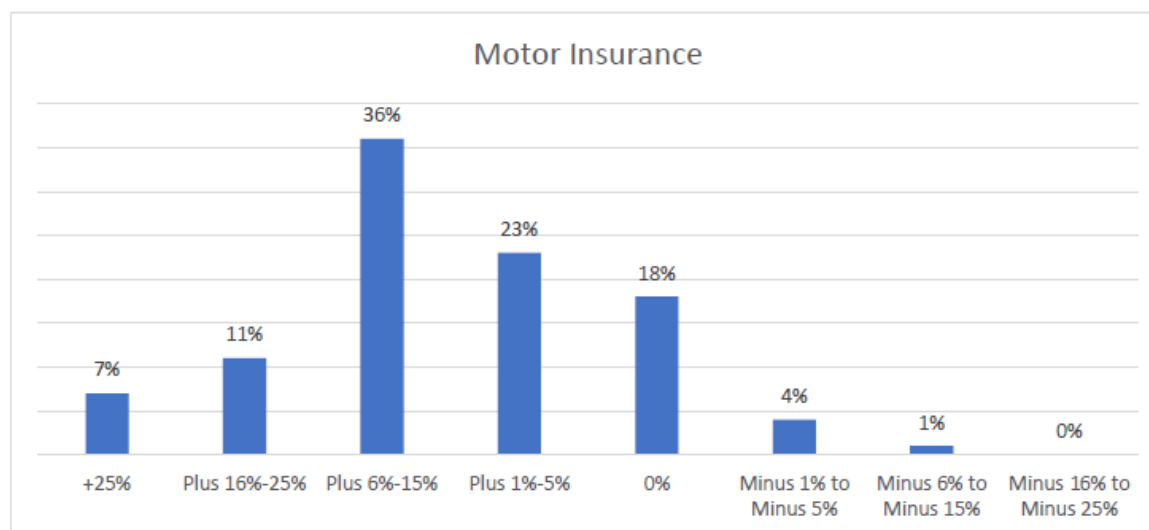
While describing the action as 'COMPLETED,' (See Figure 3 below) the CIWG has ruled out the formulation of a claim-by-claim database. We do not accept this, as we view it essential in tackling fraudulent claims. Since the data referred to is already compiled by, and available to Insurance Ireland members, the explanation offered below is absurd. We suggest that the CIWG urgently reconsiders this recommendation in light of the second and final PIC report.

**Figure 3. Recommendation 13 re Establishment of a Claim-by-Claim Register**

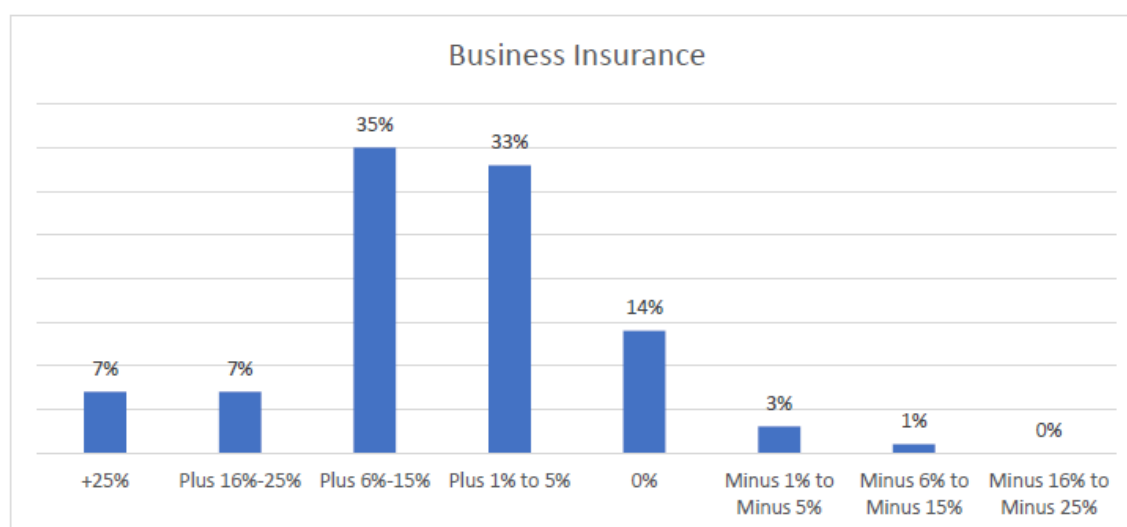
Rec. 13	<p><b>CONSIDER THE FEASIBILITY OF A LONGER TERM CLAIM-BY-CLAIM REGISTER</b></p> <p><u><b>Recommendation COMPLETED</b></u></p> <p>The data sub-group published the relevant report in September 2018 and its conclusion was that a claim-by-claim register is not feasible in light of a number of issues identified with the establishment, cost and administration of such a register, in the absence of any defined purpose above and beyond the National Claims Information Database and the Insurance Fraud Database.</p>
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## Appendix I

### ISME 'Trends' Report Q4 2018



- 7% of respondents noted an increase of +25%.
- 11% experienced increases of plus 16%-25%.
- 36% of respondent's premiums increased between plus 6% to 15%.
- 23% of those who responded recorded increases of plus 1%-5%.
- 18% reported no increase to premiums.
- 5% reported a decrease.



- 33% reported increases of between 1% and 5%.
- 35% stated increases of plus 6%-15%.
- 6% reported increases of plus 16%-25%.
- 7% reported increases of +25%
- 14% reported no change.
- 4% reported a decrease.

## Appendix II

### PIC RECOMMENDATIONS

(20)

1. Having regard to the significant discrepancy between Irish payments for whiplash type injuries and those in other jurisdictions, the PIC, in recognition of the impact of these payments on both consumers and the business community who require insurance cover recommends that the Government introduce in early course legislation to regulate the amounts or ranges of compensation for the categories of injuries identified in the first PIC Report and thereafter consider the introduction of further legislation to regulate general damages in all personal injury claims. This approach will achieve a greater level of consistency in the assessment of general damages generally.

2. In recognition of every citizen's right of access to the courts, the PIC recommends that any such legislation contain a provision whereby, in exceptional cases, a court may award an increased payment, subject to such maximum percentage as may be determined by the legislation

3. As an alternative to, or in conjunction with, the steps outlined in Recommendation No. 1, the PIC believes that a shared approach between the Executive and Judiciary in finding the best solution to fixing appropriate levels of compensation is desirable. This would permit guidelines for general damages in soft tissue injury cases - and indeed all other injuries - to be drawn up by the proposed Judicial Council - when it is established. This would enable the judiciary to take shared "ownership" of the process by advising on appropriate levels of compensation and in producing a revised Book of Quantum and



## Appendix III

**From:** Stuart Gilhooly  
**Sent:** 27 June 2018 12:07  
**To:** Etain Finn; Derval Monahan; Breda Power; Eoghan Coyne; 'Stephen Watkins';  
**Subject:** RE: Draft Second Report of the Personal Injuries Commission  
**Attachments:** proposed amended draft report.docx

Dear All,

I have carefully reviewed this report and have discussed this matter with Sara. We thought it was important we would share our views with you before Thursday so as everyone would have a chance to consider what we regard as important adjustments.

In the first instance, let us be clear that we are under no illusion that this report must be strong and pack a punch. I believe the executive summary certainly does that. We also appreciate that the PIC encompasses a broad church of representation and can't keep everyone happy. For that reason, although there is certain wording and phraseology with which we would be very uncomfortable, we have only focussed on three red line issues which we regard as very problematic, not just for us but for the PIC as a whole. Dealing with them in order of appearance in the draft:

1. Reference to Ireland being higher than other European countries (apart from the UK) is, in our opinion, inappropriate and without any proper evidential basis. It is accepted that no comparison of any empirical nature with any other country has been provided and making reference to Ireland as "virtually unique" is simply without evidence. We believe the reference to comparison should only be made with the UK.

2. The reference to the discussion of and rejection of legislative tariffs should be omitted for reasons I will elaborate on Thursday.

3. A cap on damages was never discussed in any detail at the PIC and we are not in favour of any cap at all as it would inevitably lead to injustice for genuine claimants who form the vast majority of those who make claims. It was never part of our terms of reference and we would need to have a detailed discussion of what this would involve before we could consider any reference to it in the report.

We have taken the liberty of a proposed amended report which would encompass these changes (I was unable to open the updated draft report this morning so couldn't amend that version but I have no great difficulty with the extra wording).

Kind regards

Stuart and Sara



## Appendix IV

### NEWS ANALYSIS

March 2018

business representative organisations and acknowledging that there are many reasons why the cost of insurance may be rising – High Court awards, the cost of claims, the EU Insolvency II Directive (which is concerned with the adequacy of insurers' capital) – it is reasonable, given the consistently improving EL claims experience, to argue for reductions in EL premiums.

The point was made by HSA in its submission to the Government's Working Group on the Cost of Insurance. In the *Report on the Cost of Employer and Public Liability Insurance*, it is recorded that the HSA identified a connection between good practice workplace health and safety and the cost of insurance as an area where there is scope for the insurance industry to do more to support business to improve safety.

The report notes a view expressed by many businesses, that insurance pricing needs to give greater recognition to the practice of good risk management and health and safety. As brokers opined, this would help their clients to see health and safety as an investment rather than a cost.

Whatever about other markets, the insurers' own figures for EL claims make the case to treat EL as a special category and reward the efforts of Irish businesses to improve safety standards.

#### The HSA's role

While the HSA politely and deftly side-stepped the opportunity to comment on the fall in EL claims, it would be remiss not to recognise the crucial role the Authority has played by promoting, fostering and encouraging the prevention of accidents.

TABLE: Employer Liability Claims – a 20-year perspective

Year	No of claims	Numbers employed	Rate per 1,000	Gross written premiums
1997	9,758	1,472,300	6.63	€120.7m
1998	9,270	1,578,100	5.87	€123.1m
1999	9,211	1,698,200	5.42	€127.5m
2000	10,175	1,758,400	5.79	€140.0m
2001	11,752	1,809,800	6.49	€226.1m
2002	6,860	1,840,200	3.73	€348.4m
2003	7,222	1,874,000	3.85	€431.2m
2004	7,352	1,925,900	3.81	€382.6m
2005	7,393	2,018,100	3.66	€373.7m
2006	7,456	2,110,500	3.53	€381.6m
2007	7,611	2,213,400	3.44	€310.8m
2008	7,071	2,220,100	3.18	€254.4m
2009	8,343	2,029,300	4.11	€207.8m
2010	9,089	1,938,000	4.69	€173.1m
2011	7,121	1,900,100	3.75	€161.9m
2012	6,467	1,877,800	3.44	€162.1m
2013	6,143	1,926,200	3.19	€160.2m
2014	6,847	1,970,200	3.48	€172.3m
2015	6,707	2,050,100	3.27	€179.8m
2016	5,550	2,127,700	2.58	€194.4m

Sources: Insurance Ireland Fact File and the CSO's Labour Force Survey Time Series

## Appendix V

### ISME ESTIMATE OF HOW MUCH LAWYERS EXTRACT FROM THE INSURANCE SYSTEM

		€000's
Accident & Health Claims Paid 2015*:		1,000,798
Exclude: VHI	880,763	
Exclude: Irish Life Health	81,761	
Claims Paid net of 'Health'		38,274
Motor Vehicle Claims Paid 2015*:		1,006,091
Total 'Accident' Claims Paid 2015*:		<b>1,044,365</b>
Percentage of claims handled outside PIAB system (1):	80%	835,492
Average legal costs per claim (2):	42%	<b>350,907</b>

**(That's €351m...)**

Number of practicing certificates (Solicitors) 2017 (3):	10,122
Number of practicing Barristers 2018 (4):	2,300

Average accident/injuries income per practising lawyer: **28,249**

\*Excludes claims outstanding at year end.

Note:

- (a) the figures quoted are three years old;
- (b) the average personal injuries award rose 10% between 2015 and 2017
- (c) approximately 20% of solicitors practice solely in-house;
- (d) approximately 24% of solicitors practice in the Top-20 firms, and are generally not involved in personal injuries litigation;
- (e) many barristers operate exclusively in specialist areas other than personal injuries.

Therefore, the amount earned by those lawyers who normally practice in personal injuries will therefore be multiples of the (approximately) €28,000 per annum calculated above.

- (1). Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach Report on the Rising Costs of Motor Insurance, November 2016
- (2). Cost of Insurance Working Group First Motor Insurance Key Information Report, July 2017
- (3). <https://annualreport.lawsociety.ie/>
- (4). <https://www.lawlibrary.ie/About-Us.aspx>

# Appendix VI: 'Blue Book 2015'

TABLE 15 - MOTOR VEHICLE IRISH RISK INSURANCE BUSINESS - NET UNDERWRITING REVENUE ACCOUNTS FOR THE YEAR 2015 (€000)																								
NAME OF UNDERTAKING	Opening Provision		Closing Provision		Earned Premium Income	Other Income	Total Income	Claims Paid	Claims Outstanding				Cost Of Claims Incurred	Movement In Equalisation Reserve	Commission	Management Expenses	Movement in Deferred Acquisition Costs	Other Expenditure	Total Expenditure	Foreign Exchange Gain/ Loss	Underwriting Profit/ Loss	Investment Income Attrib. to U/W A/C	Result on Technical Account	
	UPR	URR	UPR	URR					Opening Provision		Closing Provision													
									Reported	Not Reported	Reported	Not Reported												
Undertakings with their Head Offices in Ireland - Solvency supervised in Ireland																								
Allianz Plc	50,794	0	60,168	75,314	0	144,646	2,443	147,088	85,579	84,924	82,899	20,032	83,541	82,259	0	109	22,894	-2,738	0	84,328	1	-47,237	4,685	-42,552
AXA	54,571	0	316,658	83,562	0	277,947	3,811	281,758	221,159	82,686	9,952	697,852	11,029	298,202	0	26,143	33,465	-2,833	0	324,977	0	-43,339	5,384	-38,475
Beech Hill	0	0	0	0	0	0	0	0	80	144	88	0	0	-92	0	0	0	0	-92	5	87	0	87	
Catalina Insurance	0	0	0	0	0	0	0	0	140	980	0	752	0	-88	0	0	0	0	-88	0	88	0	88	
Electric Insurance	0	0	0	0	0	0	0	0	0	0	1	0	0	-1	0	0	0	0	-1	0	1	0	1	
Euro Insurance	1,207	0	452	219	0	15,200	0	15,200	5,441	8,334	6,077	7,734	6,238	4,982	0	1	0	80	0	5,143	0	-3,823	0	-3,823
FBD	70,627	0	69,557	70,811	0	67,573	2,022	69,595	309,327	7,398	394,044	7,628	208,538	0	1,220	52,008	399	0	261,255	0	-10,760	8,062	-92,768	
GD Insurance	0	0	2	0	0	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0	2	0	2	
Irish Public Bodies	1,498	298	6,334	1,952	289	6,210	47	6,259	6,518	6,232	5,85	11,050	2,891	2,410	0	44	699	0	3,425	0	2,894	1,033	4,887	
Liberty Insurance Ltd	63,720	0	39,396	3,161	-17,692	80,094	20,094	103,188	174,465	270,455	252,320	103,945	83,226	0	3,733	39,651	769	0	97,678	1,533	-17,007	601	-8,409	
RSA Insurance	69,716	1072	-11,033	66,500	0	-40,455	28,849	-52,786	359,832	53,142	9,027	0,854	-49,854	0	8,539	20,281	698	0	-58,638	0	-35,946	7,541	-8,307	
UPS	0	0	21	0	0	21	0	21	0	0	0	0	16	-1	0	0	2	0	1	0	20	0	20	
Zurich Insurance plc	22,969	0	48,833	22,291	0	48,881	14,883	63,764	57,002	93,071	63,855	92,894	62,233	55,833	0	9,883	6,430	568	80,394	0	-17,420	3,883	-8,537	
TOTAL (a)	423,502	1,340	616,005	442,020	-17,703	616,430	69,389	685,819	1,841,865	354,114	1,750,275	325,083	837,875	0	70,982	85,210	-2,857	0	841,110	1,539	-253,752	32,489	-221,663	
Undertakings with their Head Offices in other EU Member States																								
ACE European	0	0	0	0	0	0	0	0	-501	0	-402	0	-1	0	-18	1	0	0	-18	0	18	0	18	
AIG Europe Limited	34,211	0	69,796	52,697	0	81,940	22	81,962	44,416	62,560	14,846	83,102	34,946	86,236	0	12,811	12,623	-2,865	0	107,940	0	-26,076	4,400	-21,778
Aviva Insurance Limited	84,411	0	89,347	103,926	0	174,632	1,375	175,207	107,045	335,321	40,036	327,692	37,480	27,800	0	23,889	16,598	-471	0	170,463	0	5,744	14,728	20,470
Chubb Insurance Europe	608	0	1,069	884	0	14,410	0	14,410	388	168	358	83	595	647	0	977	222	-28	0	1018	-14	381	71	462
Ecological	0	0	0	0	0	0	0	0	0	0	2	0	2	0	0	0	0	0	0	0	0	0	0	
Highway	0	0	0	0	0	0	0	0	8,493	0	2,685	-418	-48	-88	0	0	0	0	-48	0	69	0	69	
RSAP Plc (Irish Branch)	145	0	41	33	0	83	0	83	51	70	107	89	15	80	0	0	2	0	82	0	91	0	91	
Travellers	2,338	0	6,864	3,100	0	5,902	0	5,902	6,555	8,328	13,983	14,848	7,584	2,268	0	588	2,735	-27	296	5,628	0	74	109	83
TOTAL (b)	122,510	0	307,847	165,520	0	263,340	1,397	265,337	425,811	65,554	428,882	80,202	215,324	0	41,441	31,106	-3,191	266	285,026	-14	-9,703	9,306	-397	
GRAND TOTAL	546,015	1,340	923,852	607,740	-17,703	880,370	70,786	951,656	1,006,691	419,668	2,179,557	405,295	913,199	0	112,423	216,316	-6,148	266	1,226,136	1,525	-273,455	51,795	-221,660	

## Appendix VII

### S.05.01.02 Premiums, claims and expenses by line of business

Line of business for: non-life insurance and reinsurance obligations (direct business and accepted proportional reinsurance)																
Line of business for: accepted non-proportional reinsurance													Total			
	Medical expense insurance	Income protection insurance	Workers' compensation insurance	Motor vehicle liability insurance	Other motor insurance	Marine, aviation and transport insurance	Fire and other damage to property insurance	General liability insurance	Credit and suretyship insurance	Legal expenses insurance	Assistance	Miscellaneous financial loss	Health	Casualty	Marine, aviation, transport	Property
	C0010	C0020	C0030	C0040	C0050	C0060	C0070	C0080	C0090	C0100	C0110	C0120	C0130	C0140	C0150	C0160
Premiums written																
R0110																
Gross - Direct Business																
R0120		4,050,725.00		443,270,042.00	94,813,990.00	38,505,522.00	411,616,159.00	221,714,276.00	852,425.00	29,632,362.00	55,668,034.00	269,594,067.00				1,551,707,602.00
Gross - Proportional reinsurance accepted																
R0130													7,311,600.00	131,445,709.00	51,760,742.00	338,995,984.00
Gross - Non-proportional reinsurance accepted																
R0140				4,762,411.00			754,614.00	41,837,966.00	477,846.00		624,437.00		1,443,320.00	25,465,525.00	5,530,095.00	55,669,060.00
Reinsurers' share																
R0200		4,050,725.00		420,507,631.00	94,813,990.00	38,505,522.00	410,821,545.00	179,876,310.00	374,579.00	29,632,362.00	55,043,597.00	269,594,067.00	5,668,280.00	105,965,182.00	46,230,646.00	282,320,916.00
Net																1,543,615,352.00
Premiums earned																
R0210																
Gross - Direct Business																
R0220		3,124,096.00		316,579,343.00	92,479,559.00	39,250,224.00	317,141,381.00	169,034,749.00	402,445.00	20,591,656.00	55,392,545.00	205,047,096.00				1,219,043,246.00
Gross - Proportional reinsurance accepted																
R0230													7,264,100.00	136,210,019.00	51,114,104.00	329,351,059.00
Gross - Non-proportional reinsurance accepted																
R0240				2,846,748.00			376,528.00	29,301,851.00	220,713.00		575,430.00		1,443,320.00	24,955,652.00	4,032,954.00	55,215,044.00
Reinsurers' share																
R0300		3,124,096.00		313,732,595.00	92,479,559.00	39,250,224.00	316,765,853.00	139,232,896.00	181,732.00	20,591,656.00	54,817,115.00	205,047,096.00	5,820,780.00	111,253,367.00	47,091,150.00	1,523,413,268.00
Net																
Claims incurred																
R0310																
Gross - Direct Business																
R0320		2,474,422.00		273,397,692.00	60,867,741.00	30,687,656.00	145,262,085.00	137,701,167.00	-1,615,563.00	12,145,328.00	31,489,332.00	159,389,125.00				871,797,985.00
Gross - Proportional reinsurance accepted																
R0330													6,007,276.00	135,925,089.00	128,365.00	36,975,296.00
Gross - Non-proportional reinsurance accepted																
R0340							4,755,332.00	21,720,489.00			750,116.00		1,239,870.00	16,678,372.00	587,105.00	9,031,190.00
Reinsurers' share																
R0400		2,474,422.00		273,397,692.00	60,867,741.00	30,687,656.00	140,476,753.00	115,980,668.00	-1,615,563.00	12,145,328.00	30,739,216.00	159,389,125.00	4,767,405.00	119,246,717.00	-688,740.00	995,579,516.00
Net																
Changes in other technical provisions																
R0410																
Gross - Direct Business																
R0420								965,547.00								965,547.00
Gross - Proportional reinsurance accepted																
R0430																
Gross - Non-proportional reinsurance accepted																
R0440																
Reinsurers' share																
R0500								965,547.00								1,989,577.00
Net																
R0550		1,099,861.00		80,735,777.00	13,877,598.00	11,079,174.00	142,899,393.00	46,999,310.00	61,090.00	7,033,547.00	24,747,122.00	33,080,495.00	29,625.00	13,229,722.00	7,343,067.00	50,912,217.00
Expenses incurred																
R1200																
Other expenses																
R1300																443,097,998.00
Total expenses																

## Appendix VIII

Actual claims and premium costs of an ISME member company.

Year	Liability * insurance premium	Property Misc premium	Total insurance premium	Claims	Loss/ Reserve	Surplus/** unused reserve
2013/14	29,416	19,227	<b>48,642</b>	1	13,056	<b>35,586</b>
2014/15	27,526	19,227	<b>46,753</b>	2	4,367	<b>77,972</b>
2015/16	81,375	13,000	<b>94,375</b>	0	0	<b>172,347</b>
2016/17	81,375	12,993	<b>94,368</b>	0	0	<b>266,715</b>
2017/18	81,375	12,993	<b>94,368</b>	1	27,500	<b>333,583</b>
2018/19	79,875	17,325	<b>97,200</b>	0	0	<b>430,783</b>
			<b>475,706</b>	4	44,923	<b>430,783</b>

\*95% of the liability premium is public liability, 5% employee liability.

\*\*Surplus represents effectively Gross Profit before re-Insurance Costs & Overhead