



Our ref: FIN-MoS-00133-2019

30 May 2019

Mr. Neil McDonnell
neil@isme.ie

Dear Mr. McDonnell,

I refer to your letter of 20 February 2019 regarding the legislative capping of general damages.

I am aware that there are a range of opinions on whether there are constitutional implications for legislating on this issue. In this regard, I note ISME's view that legislation capping general damages, which does not infringe a citizen's right of access to the courts is constitutional. However, what became clear to the Cost of Insurance Working Group (CIWG) was that there are many people who hold the contrary view to that of ISME and believe that the capping of award levels is unconstitutional. In examining this issue, the CIWG concluded that it was not in a position to undertake the in-depth analysis required to demonstrate to the satisfaction of a court that the correct balance of constitutional rights and principles could be struck to the common good. Consequently, the CIWG saw the necessity of further expert research and recommended that the Law Reform Commission (LRC) would be the appropriate body to carry it out.

In relation to Senator Anthony Lawlor's Private Members Civil Liability (Capping of General Damages) Bill 2019, you will be aware that the Government did not oppose the Bill at second stage on the understanding that substantial amendments to it may, subject to the advice and guidance of the Attorney General, be required and proposed by the Government at Committee Stage. You will appreciate that this Bill is a matter for my colleague, the Minister for Justice and Equality, and any decision to seek legal advice on the Bill is a matter for him.

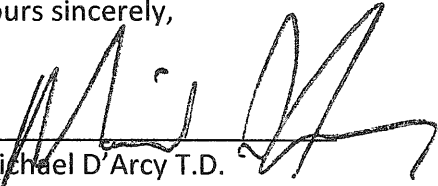
However, it is fair to say that the outcome of the work of the Law Reform Commission (LRC) on the constitutionality or otherwise of the capping of award levels by the legislature is an important part of the overall consideration of this issue and that was emphasised by the Minister for Justice and Equality during his response to Senator Lawlor's Bill.

You should also be aware that as part of the review process by the LRC on the capping of general damages issue, stakeholders such as ISME will be provided with an opportunity to provide their opinions on this matter.

In conclusion, any decision to legislate on the capping of damages has to be supported by the necessary body of evidence to justify such an approach as otherwise, such legislation is likely to be subject to significant legal challenge, which would be in nobody's interest due to the uncertainty it would cause.

I hope this clarifies the matter for you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael D'Arcy', written over a horizontal line.

Michael D'Arcy T.D.
Minister of State for Financial Services and Insurance