

# ALLIANCE FOR INSURANCE REFORM

The logo features a stylized graphic of two overlapping curved lines, one yellow and one green, positioned above the text.

## SPECIAL UPDATE – 22<sup>nd</sup> April 2020

Our work to date has focused on and will continue to focus on insurance reform, highlighting the negative impact of persistently high premiums and calling for real reforms that will quickly reduce liability and motor insurance premiums to affordable levels and keep them that way.

However, we could not ignore the insurance-related impacts of the COVID-19 crisis and the following is an update of what we are doing in this area as well as an update on our ongoing insurance reform campaign.

### CORONAVIRUS/COVID19

Three insurance-related issues have emerged as this crisis has developed and the Alliance is campaigning on all three:

- **Business interruption cover:** while this is most likely only relevant to a minority of members, it is very important for those whose policies cover the pandemic
- **Forbearance:** for any organisation currently closed, or motorist not travelling, rebates or extensions to policies are a reasonable and practical support that insurers should offer
- **Suspension:** some policies factor in the suspension of cover if a premises is closed for more than a specified number of days

In recent weeks we have had teleconferences with Minister for Finance Paschal Donohoe, the Department of Finance and the Central Bank. We have written twice to the Financial Services and Pensions Ombudsman and have had numerous contacts with relevant media and politicians.

Developments on the issues so far include:

The Central Bank responded to our request to intervene by issuing a statement which included that:

- Regulated firms have an obligation to act honestly, fairly and professionally in the best interest of consumers
  - Including, where relevant, alerting their customer to policy terms and conditions that may be of benefit to the customer
- Insurers must ensure that claims are appropriately assessed, and where there is insurance cover in place, that claims are accepted and paid promptly
- Where there is a doubt about the meaning of a term, the interpretation most favourable to their customer should prevail
- For Irish-authorized insurance undertakings, the CEO of each firm shall take responsibility for the oversight of how their firm is managing determinations of whether claims are covered or not in the context of COVID-19
- For freedom of services / freedom of establishment firms insuring from abroad, a senior person of each firm shall take responsibility for the oversight of how their firm is managing determinations
- Insurers must develop consumer-centric solutions to the handling of insurance payment breaks and policy rebates in light of the COVID-19 emergency as a matter of urgency.

Following our telephone conference with Minister Donohoe and commitments he made at that stage he has now issued two statements that in summary:

- Express concerns that “blanket” rejection of all business interruption claims are being adopted by some insurers
- Stress that insurers must deliver on their commitments made regarding Forbearance (rebates and extensions) and Business Premises (policy suspension).
- Make a strong case for some type of refund of premium package for motor insurance policyholders
- State that Insurance Reform “remains his priority and will be also be a priority for the new Government and the industry needs to actively engage on the reform agenda.”
- Repeated the clarification that “where there is ambiguity in the policy... insurers will interpret it in favour of the consumer”
- Repeated that Insurance Ireland members recognise that the Government advice to close is the same as a direction to do so.

However there is no compulsion in any part of this and it only applies to Insurance Ireland members. We have raised these issues with the department of Finance and await an update on both evidencing the commitments made so far and on extending those commitments to other insurers.

On the bigger picture, it is worth noting that Minister Donohoe said that he needed to engage directly with our organisation with regard to insurance reform and that if insurance reform is not resolved, “it will hamper our ability to recover from the pandemic via SMEs.”

With regard to specific Covid19-related issues:

### **BUSINESS INTERRUPTION**

We are triaging member policies to determine whether individual policies qualify for business interruption cover in the COVID-19 pandemic, with the assistance of insurance expert Dorothea Dowling and barrister Martin Canny. While every policy is different, we have seen 5 separate policy wordings so far that quite clearly offer cover in the current circumstances. We have also seen many policies that clearly do not cover the pandemic; as well as many that *may* do so (for these, see Paschal Donohoe comment regarding ambiguity above. This issue is also covered by the legal principle of *Contra Proferentem*).

If you have a member who thinks they might be covered, advise them be very careful of the advice of a broker, as most brokers appear to have adopted the insurers’ blanket rejection of all BI claims. Equally, if in doubt, make a claim. And if doing so, seek professional help from a claims assessor or other qualified person.

We have twice written to the Financial Services Ombudsman (FSPO) asking him to introduce a fast track process for resolving rejected business interruption claims but so far he is sticking to the two processes normally available from the FSPO for individuals and SMEs with a turnover of up to €3m:

- Dispute Resolution Service: a non-binding, informal mediation process with a target completion timeline of 12 weeks.
- Legally Binding Decision following formal investigation with no fixed timeline.

Businesses with a turnover over €3m must use arbitration or the courts.

We have separately asked Insurance Ireland to dramatically reduce that 40 business day internal dispute resolution procedure before they issue a final refusal. We wrote to them on 9<sup>th</sup> April and still await a reply.

### **FORBEARANCE**

The majority of Irish-based insurers have agreed with the Department of Finance to:

- reduce premiums for business customers to reflect reduced levels of exposure as a result of COVID-19 restrictions for Employer Liability/ Public Liability and Commercial Motor
- allow up to 28 days after renewal for payment

This agreement applies to customers of Allianz, AIG, AXA, FBD, RSA, Liberty Insurance, Travelers Insurance and Zurich, but not to Aviva or underwriters insuring from abroad.

Please make sure your members ask for appropriate forbearance from their insurers and let us know if they are unsuccessful.

### **POLICY SUSPENSION**

The majority of Irish-based insurers have agreed with the Department of Finance to:

- Maintain cover for unoccupied commercial buildings/ premises not in use due to COVID-19 restriction (for a maximum of 90 days). Appropriate supervision and security of the premises is required.
- support requests for a change of property use during the crisis

Again, this agreement applies to customers of Allianz, AIG, AXA, FBD, RSA, Liberty Insurance, Travelers Insurance and Zurich, but not to Aviva or underwriters insuring from abroad.

Please make sure your members confirm with their insurers that they have extended cover and let us know if they are not successful.

## **INSURANCE REFORM**

An outline Government Framework Document was published by Fianna Fáil and Fine Gael on April 14th. While light on detail, it did say that the incoming Government will:

*“Tackle issues that will potentially undermine our recovery, such as the cost of insurance”.*

This commitment must now be leveraged into specific, detailed policies in the Programme for Government (PFG). The PFG will evolve from discussions between FF, FG, the smaller political parties and independents over the next few weeks.

Over the next weeks we will be running a campaign aimed at the key negotiators, seeking specific reforms to be written into the PFG.

Here is an update on the key reforms we are seeking:

### **1. Reduce general damages on minor, fully recovered injuries.**

We have asked for confirmation that the Personal Injuries Guidelines Committee (PIGC) still plans to meet officially for the first time within one month of its establishment on the 28<sup>th</sup> April. We await that confirmation. In any case, the PIGC is obliged by law to submit its first draft personal injury guidelines to the Board of the Council by the end of October 2020.

What happens next remains unchanged since our March update:

What happens next depends on the attitude of the board of the Judicial Council which has up to 12 months to mull over the draft guidelines before adopting them, but may choose to fast-track them as they have the whole PIGC process to date. We continue to endorse this judicial approach but it must deliver major reductions to general damages for minor, fully-recovered injuries. If it does not, it should be noted that a legislative approach is being examined as well.

With regard to the legislative approach, the Alliance made a submission to the Law Reform Commission Issues Paper on the issues surrounding a legislative fix to this problem, as did several other member organisations including ISME. A final report on this approach will be published at the end of 2020 earliest.

### **2. Review and re-balance the “common duty of care” to require the occupier to take a duty of care that is reasonable, practical and proportionate**

JUDICIARY: We wrote to the Interim Secretary of the Judicial Council requesting a meeting with the Judicial Studies Committee to discuss their approach to duty of care and the implications for policyholders. In reply the Secretary made it very clear that the committee has no intention of meeting us. So for now we will rely on the media to make the need for reform clear to the judiciary.

DISCLAIMERS: Michael D’Arcy is now a FG Senator. At our last meeting with him as a Minister, he committed to asking the incoming Government to *“Consider changes to the Occupiers Liability Act and the Civil Liability Act, to strengthen waivers and notices to increase protections for consumers, businesses, sporting clubs and community groups.”* We will hold him to this commitment as well as asking the incoming Government to address.

Other than that, the situation remains as it was in March:

LEGISLATION: While Fianna Fail was quite non-specific on this issue in their GE2020 manifesto, the party assures us they are committed to amending the Occupiers Liability Act 1995 to help in rebalancing the Duty of Care.

Both Fine Gael and Sinn Féin also expressed a desire to address the duty of care issue in their manifestos.

INSURERS: We plan to meet the main insurers regarding their settlement strategies, particularly with regard to interpretation of the duty of care, as well as a list of other issues. This will now happen once the coronavirus issue has settled down.

COMMUNICATION: We have started to highlight duty of care issues in recent court decisions on our social media platforms and will ramp this up as we move forward with the project.

### ***3. Fully-funded Garda response to insurance fraud***

The situation remains as it was in March:

No concrete developments yet again - no funding has yet been allocated to the Garda response to insurance fraud. The Gardaí are reporting that they do not have funds to even purchase computers or pay analysts to assist their insurance fraud response. It is up to the new Government to fund this.

### ***4. Insist on insurers committing to a schedule of forecast reductions for reforms***

The situation remains as it was in March:

We must have some clarity from insurers on the scale of reductions we can expect from the various reforms being pushed through. This is all the more pressing since the December publication of [motor insurance statistics](#) by the Central Bank which show that for motor insurance at least, insurers have been doing quite well in recent years. The Department of Finance continues to work on this with Insurance Ireland. We await a result.

### **5. Cabinet Committee:**

The situation remains as it was in March:

We have asked the parties negotiating to form the incoming government to establish a Cabinet committee chaired by An Taoiseach to coordinate action and ensure the necessary reforms are put in place urgently; with An Taoiseach reporting to the Dáil on a monthly basis on progress.

## **CONSUMER INSURANCE CONTRACTS ACT 2019**

The situation remains as it was in March:

This Act was signed into law just after Christmas but has still not been commenced by the Minister for Justice.

It is a wide-ranging Bill based on the 2015 Law Reform Commission report; sponsored by Pearse Doherty (SF) and supported by Michael McGrath of FF and Min. Michael D'Arcy. *When commenced*, it will adjust the balance of power between insurers and policyholders. It will apply to 'natural persons' as well as 'incorporated bodies', 'sole traders, partnerships, trust clubs or charities with an annual turnover in its previous financial year of €3 million or less'.

The Alliance has engaged extensively with Sinn Féin on the development of elements of this legislation. Equally, the Department of Finance has actively taken our views into account.

The legislation is not expected to bring down the cost of insurance in the short term but will make purchasing and using insurance products and dealing with insurers easier going forward.

## **WHAT YOU CAN DO IN THE MEANTIME?**

1. Contact your local [TDs and Senators](#). Ask them to push for the five actions listed above (reduce general damages, rebalance the duty of care, Garda response, commitments from insurers and cabinet committee) to be added to the Programme for government and dealt with as a matter of urgency. This is all the more urgent as we plan our recovery from the COVID-19 pandemic.
2. Tell us your stories! Contact the Alliance if you can help at [peter@insurancereform.ie](mailto:peter@insurancereform.ie)
3. Continue to Like, Share, Comment and Retweet our posts on Twitter and Facebook

## **MEDIA SUMMARY**

**Personal Injuries Guidelines Committee page on Judicial Council Website:**

<https://judicialcouncil.ie/personal-injuries-guidelines-committee/>

**Donohoe weighs in as insurers reject Covid-19 claims. 23<sup>rd</sup> March.**

<https://www.irishtimes.com/business/financial-services/donohoe-weighs-in-as-insurers-reject-covid-19-claims-1.4209738>

**The Alliance for Insurance Reform said the insurance crisis could not be meaningfully addressed without reducing general damages for personal injuries. 7<sup>th</sup> April.**

<https://www.independent.ie/irish-news/courts/second-lawyer-body-argues-against-cap-on-injury-awards-39112282.html>

**Peter Boland from the Alliance for Insurance Reform says some clarity will be needed on the measures for business customers. 10<sup>th</sup> April. (Also Newstalk, Midlands 103)**

<https://www.lmfm.ie/news/lmfm-news/coronavirus-update-25-new-deaths-cases-rise-above-7-thousand-restrictions-extended-by-three-weeks/>

**Irish insurers urged to partially refund motor premiums as US companies return millions to policyholders. 10<sup>th</sup> April.**

<https://www.independent.ie/world-news/coronavirus/irish-insurers-urged-to-partially-refund-motor-premiums-as-us-companies-return-millions-to-policyholders-39119233.html>

**The Alliance for Insurance Reform has welcomed the developments. "We welcome this initial response by the insurance industry to the crisis policyholders are facing right now." 10<sup>th</sup> April.**

<https://www.rte.ie/news/business/2020/0410/1129874-insurers-agree-measures-to-ease-covid-19-burden/>

**"The central bank stepped in after an Irish pressure group criticized a refusal by insurance companies to pay out on claims for losses caused by business interruption over the coronavirus outbreak. The Alliance for Insurance Reform urged the country's central bank to intervene" 14<sup>th</sup> April.**

<https://www.law360.com/articles/1263317/irish-insurers-relax-rules-during-covid-19-crisis>

**The Alliance for Insurance Reform has called on insurers to share the financial burden of the crisis. 15<sup>th</sup> April.**

<https://www.irishexaminer.com/breakingnews/business/bad-news-for-irish-pubs-as-uk-watchdog-stays-clear-of-covid-19-insurance-payments-row-994218.html>

**Insurers risk regulatory backlash on rejecting Covid-19 claims over fine print. 16<sup>th</sup> April.**

<https://www.irishtimes.com/business/financial-services/insurers-risk-regulatory-backlash-on-rejecting-covid-19-claims-over-fine-print-1.4230504>