

COST OF INSURANCE WORKING GROUP

REPORT ON THE COST OF MOTOR INSURANCE

JANUARY 2017



An Roinn Airgeadais
Department of Finance

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PART 1

EXECUTIVE SUMMARY AND ACTION PLAN

FOREWORD BY MINISTER OF STATE



Throughout the country people are paying dramatically higher premiums for insuring their motor vehicles. In investigating the reasons as to why, it is clear that there is an overwhelming need to reform our insurance sector. The operation of any insurance market is complex, however the market in Ireland is further impacted by practices that are outdated and which also appear to be unique to the market here.

This report sets out a detailed set of recommendations and actions to tackle those factors that are influencing the increasing cost of motor insurance by introducing a comprehensive suite of reforms for the insurance sector.

The recommendations have been established through in-depth consultation with the relevant stakeholders in the industry. The Action Plan that implements these recommendations is set to a detailed and ambitious timeline.

It should be clear from this report, and also the work of the Joint Oireachtas Committee, that there is no single policy or legislative “silver bullet” to immediately stem or reverse premium price rises. Some of the necessary reforms will take time to implement. That being said, cooperation and commitment between all bodies and individuals with a stake in a stable and accessible insurance market can deliver fairer premiums for consumers without unnecessary delay.

The implementation of our recommendations will lead to greater stability in the pricing of motor insurance and will help prevent the volatility that we have seen in the market in the past (both up and down). It will also better facilitate potential new entrants to the market.

The Government is providing a road-map for reform to stakeholders in the industry. The Government and Working Group will drive its implementation in line with the detailed Action Plan contained within this report. New initiatives, such as the National Claims Information Database and the Personal Injuries Commission, will require a particular commitment from the State to new resources. Existing legislation and practices around the claims environment are also in need of reform.

The burden for reforming the insurance sector naturally rests with the industry. I believe that participants in the industry recognise this and I am sure they will deliver the necessary reform to ensure a stable, transparent and open market place for motor insurance. The Government will vigorously oversee this reform in the interests of the consumer and citizen and, where necessary and appropriate, will not hesitate to implement legislation.

We can fix the many problems that face the insurance market here in Ireland. With the publication of this report I hope the public “blame game” for the current state of affairs will come to an end. Success requires the various stakeholders working together to address the various issues in a concerted manner.

The Working Group which produced this report will continue its engagement with industry and the Department of Finance will take the lead in co-ordinating the overall implementation of the Report. The Working Group will prepare quarterly reports on the progress of the implementation of the Action Plan and these reports will be published on the Department of Finance’s website. A number of the actions will remove the potential for drag on our economic competitiveness. As such, the Working Group’s quarterly reports will likely also feed into future progress reports of the Action Plan for Jobs.

The Working Group will also continue to engage with the Joint Oireachtas Committee during this phase, while turning its focus to other areas of the non-life market and further reforms.

Finally, I would like to note that we are not coming at this from a standing start. Considerable work is already underway across Government, and a number of actions are already in progress by the Working Group. But there is still a way to travel. While the Government cannot by law set the price of a motor premium, or dictate the cost of an insurance claim determined by the courts, we have a duty to protect the interests of honest drivers and honest claimants and to ensure the functioning of a stable, transparent and fair insurance market for all.

EXECUTIVE SUMMARY

Introduction

Pricing in the non-life insurance sector has been subject to a lot of volatility in recent years, from a point where some premiums appeared to be priced at an unsustainably low level to the more recent experience of large increases, particularly since 2014. Central Statistics Office data shows that insurance prices have increased by 47 per cent since January 2011, while motor insurance prices have increased by 51 per cent over the same period. This is well in excess of EU trends and there have been conflicting messages as to the reasons for these increases.

As a result of this and other developments in the insurance sector, the Minister for Finance, Michael Noonan TD, began a review of insurance policy earlier this year. The Cost of Insurance Working Group (the Working Group) chaired by Minister of State at the Department of Finance, Eoghan Murphy TD, was established as part of that review in July 2016. The Minister of State decided that the focus of the first phase of its work would be on the rising costs of motor insurance.

The Working Group brought together all the relevant Departments and Offices and has met regularly, engaging with relevant stakeholders to understand the factors contributing to the rising cost of motor insurance and to develop a range of measures to address the situation¹.

The objective of the Working Group was to identify and examine the drivers of the cost of insurance, and recommend short, medium and longer term measures to address the issue of increasing insurance costs, taking account of the requirement for the need to ensure a financially stable insurance sector.

The Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach has also undertaken a review of the issue in parallel. The Working Group has engaged with that Committee, chaired by John McGuinness TD, and considered its recommendations, many of which are in line with the emerging recommendations previously published by the Department of Finance and further elaborated in this report. The Working Group will continue to cooperate with the Committee as its work continues.

Role of motor insurance

Insurance is a critical financial service providing policyholders with protection against financial losses from adverse events. Insurance provides a risk transfer facility for which insurers

¹ For more on the structure and engagements of the Working Group, see Chapter 1 and Appendices 1-4.

receive remuneration in the form of premium payments. In supplying insurance, the insurer is accepting a risk which can be unlimited for a price which is fixed (premium payment).

Motor insurance is particularly important because of our dependence upon the use of cars for normal day to day purposes. In Ireland, approximately three out of four journeys are undertaken by private cars.² Reinforcing the essential nature of motor insurance is the fact that the third party element of it is mandatory under Part VI of the *Road Traffic Act 1961*, both here and in the EU, which means that when the cost soars as it has over the last 18 months, it creates huge difficulties for a lot of people because they struggle to afford to pay their annual premium. These kinds of increases are very damaging to the economy because as well as affecting consumers, they erode recent gains as a result of a recovering economy, and undermine overall competitiveness.

Key recommendations

In order to provide greater clarity, certainty and transparency in relation to motor insurance costs, a series of recommendations have been made in this report. The key recommendations are summarised below with the rationale behind them set out in detail in Part 2 of the Report. A detailed Action Plan identifying the responsible bodies and the timelines for delivery is set out after the executive summary.

Under EU law, insurance companies must price premiums according to risk and the Government cannot mandate a premium price.³ However, it is possible in our view for the State to play a role in helping to stabilise what is a volatile market and this therefore is the context in which the recommendations are made and in which we seek to address the factors which have been identified as contributing to recent premium price increases and which should enable a sustainable reduction in premium prices over time.

Even if motor insurance premiums had not witnessed a recent spike, the insurance industry in Ireland would still be in need of a series of reforms. Aspects of the operation of the market in Ireland are in need of modernisation, for instance there is a need for a greater level of transparency in relation to claims data, as well as a fully functioning database to identify uninsured drivers. While all the reforms and actions contained here are seen to be necessary, not all will be directly relevant to the setting of premium prices.

² CSO, *National Transport Survey 2014*, <http://www.cso.ie/en/releasesandpublications/ep/p-nts/nationaltravelsurvey2014/keyfindings/>

³ Article 181 of the Insurance and Reinsurance Directive (Directive 2009/138/EC) (the Solvency II Directive).

Protecting the consumer

Protecting the consumer is the central theme running through all of the recommendations in the report. The Working Group considered issues that had been raised not only by consumer groups, but the public in general, as well as particular sectors such as road hauliers and taxi drivers.

The recommendations that follow are split into three broad categories:

- Firstly, those recommendations that are aimed at increasing the transparency in premiums for consumers and allowing them to compare policies and prices effectively and where possible to make the changes to their circumstances that will reduce their premium;
- Secondly, those recommendations that are aimed at ensuring effective access to insurance by closer review of the operation of the Declined Cases Agreement, and, ensure certain categories of consumer, e.g. returning emigrants, have an improved experience when seeking to purchase insurance that recognises driver history in other jurisdictions; and
- Thirdly, those recommendations aimed at improving engagement between the consumer and the insurance industry.

Improving data availability

A key area where change is required is in the claims environment. The Report reflects the need to enhance transparency and facilitate the use of data sharing and collection that we see in other jurisdictions. The Working Group recommends the creation of a national claims information database by the middle of 2018. In advance of the realisation of a national claims information database, there will be a requirement for industry to provide key metrics in relation to the market for publication by the Department of Finance at regular intervals.

The national claims information database is needed for the sector so that amongst other things we can see what claims are being made against property or for personal injuries, the legal and other costs that are being incurred, and the channel of resolution and what impact that has on the final settlement. It is expected that greater transparency in the claims environment will allow for the identification of trends and appropriate policy responses. This in turn should lead to greater stability in the pricing of motor insurance and should help prevent cycles both up and down that have occurred regularly in the Irish market in the past. It should also better facilitate potential new entrants to the market.

Improving the personal injuries claims environment

Concerns have been raised around the uncertainty of the claims process, the cost of the claims process and the method for making awards for personal injuries. The Report highlights the complexity in assessing the personal injury framework in Ireland. Ultimately, the level of awards for personal injuries are set by the judiciary.

In light of the above, a Personal Injuries Commission will be established in January and begin immediately to review a number of key issues that speak directly to the cost of personal injuries. This Personal Injuries Commission will produce its first report to the Minister of State by the end of 2017. Its terms of reference will, inter alia, include conducting a review of the average awards in other relevant jurisdictions, as well as the grading of personal injuries.

Reducing the costs in the claims process

The costs of the claims process has been highlighted by some commentators as being a key reason for the increase in the cost of insurance premiums. The Report examines the data available to it in relation to the costs associated with personal injury claims such as legal costs and non-legal costs. The Report also looks at the personal injuries legal environment.

The Working Group makes recommendations to strengthen the Book of Quantum, including exploring with the judiciary how future reviews of the Book might involve appropriate judicial involvement in its compilation or adoption, introducing more granularity in the Book, and updating it every 3 years at a minimum.

The Working Group also makes a number of recommendations to maximise the Personal Injuries Assessment Board process, including that the current review of the PIAB legislation addresses cases of non-co-operation such as non-attendance at medicals and refusal to provide details of special damages.

Finally, while the Working Group did not find that legal costs were a major contributory factor in the recent increase in premiums, it found that the proportion of legal costs and non-legal costs attributed to the overall claim settlement amount are relevant. Given the assertions by stakeholders in this regard and the introduction of the *Legal Services Regulation Act 2015*, it recommends a number of reviews to take place in relation to legal costs.

Reducing insurance fraud and uninsured driving

Uninsured driving and fraud are important issues to be tackled. With regard to fraud, the Working Group makes recommendations on improving data sharing to identify patterns of suspected fraud, through the development of a database that takes into account data

protection concerns. The Working Group also recommends that further cooperation between the insurance industry and An Garda Síochána be developed.

In relation to uninsured driving the Working Group recommends that a fully functioning insurance database, to allow An Garda Síochána to check insurance compliance through the use of technology such as Automatic Number Plate Recognition, be finalised. Much work has already been done in this area, however it is important that the rollout of such a database is expedited.

A further recommendation in this area includes reviewing Section 30 of the *Civil Liability and Courts Act 2004*.

Promoting road safety and reducing collisions

Road safety remains an important societal issue and one that is relevant to the cost of insurance. While advances have been made in this area in the last 20 years, it is important that all stakeholders remain vigilant. In this respect, the Working Group makes a number of recommendations around the use of technology while acknowledging its constraints.

Next steps

A detailed Action Plan identifying the responsible bodies and the timelines for delivery is set out in this part of the report. The next phase of the process will be the implementation of that Action Plan. It contains a range of measures, some of which can be actioned immediately or are already underway and others which will require a longer period of time to put in place.

The responsible bodies and groups will immediately begin implementing the actions assigned to them. From Q3 2017, the Working Group will prepare quarterly reports on the progress of the Implementation of the Action Plan and these will be published on the Department of Finance's website. A number of the actions have strong inter-linkages with the competitiveness agenda set out in the Action Plan for Jobs, and the Working Group's quarterly reports will likely also feed into future progress reports of this Action Plan.

The Working Group will continue to engage with the Joint Oireachtas Committee during this phase⁴.

While these measures will require a co-ordinated effort across government, state bodies and industry and a commitment of resources, the Working Group expects that a harmonised approach to implementing the recommendations of this Report will settle the current

⁴ It should be noted that from January 2017 the Working Group will turn its focus to other areas of the non-life market and further reforms.

uncertainty we are seeing around premium prices, improve competitiveness and have a positive impact on the insurance sector and the wider economy.

Finally, the Working Group believes that the implementation of the recommendations will lead to greater stability in the pricing of motor insurance and will help prevent the volatility that we have seen in the market in the past (both up and down). It should also better facilitate potential new entrants to the market.

ACTION PLAN

| Objective 1: Protecting the Consumer | | | | | | |
|--------------------------------------|---|------------------|---|----------|---|-------------------------|
| Rec No. | Recommendation | Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
| 1 | INSURERS TO SET OUT REASONS FOR LARGE INCREASES IN PREMIUMS TO PROVIDE TRANSPARENCY TO CONSUMERS | 1 | Develop a protocol with Insurance Ireland to facilitate the communication of the reasons for large increases in premiums to consumers | Q2 2017 | Department of Finance, Central Bank of Ireland, Insurance Ireland | Department of Finance |
| | | 2 | Develop legislation to underpin the protocol in Action Point 1 | Q4 2017 | | |
| 2 | INSURERS TO PROVIDE ADDITIONAL INFORMATION ON THE PREMIUM BREAKDOWN TO CONSUMERS | 3 | Central Bank of Ireland to undertake consultation | Q4 2017 | Central Bank of Ireland | Central Bank of Ireland |
| | | 4 | Central Bank of Ireland to amend legislation | Q2 2018 | | |
| 3 | EXTEND THE CURRENT RENEWAL NOTIFICATION PERIOD FROM 15 WORKING DAYS TO 20 WORKING DAYS TO MAKE IT EASIER FOR MOTORISTS TO COMPARE PRICING WHEN PURCHASING INSURANCE | 5 | Central Bank of Ireland to undertake consultation | Q4 2017 | Central Bank of Ireland | Central Bank of Ireland |
| | | 6 | Central Bank of Ireland to amend legislation | Q2 2018 | | |
| 4 | TRANSPOSE THE INSURANCE DISTRIBUTION DIRECTIVE | 7 | Department of Finance to transpose the Insurance Distribution Directive | Q1 2018 | Department of Finance | Department of Finance |
| 5 | SUPPORT EFFORTS AND RAISE AWARENESS OF THE NEED TO IMPROVE CROSS-BORDER INSURANCE PROVISION AT EU LEVEL | 8 | Monitor EU developments | Ongoing | Department of Finance | Department of Finance |
| | | 9 | Make representations as necessary with EU Commission and EU Parliamentarians | Ongoing | | |

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| 6 | PUT IN PLACE A STANDARD PROTOCOL FOR INSURANCE COMPANIES IN ORDER TO ENSURE A GREATER CONSISTENCY OF TREATMENT FOR RETURNING EMIGRANTS | 10 | Insurance Ireland to put in place a standard information protocol for consumers | Q4 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |
| | | 11 | Insurers to implement policies to accept driver experience from abroad when a person has previous driving experience in Ireland and is coming from a country that drives on the left side of the road (e.g. UK), and take full account of the experience in that country and previous Irish experience when pricing policy | Q2 2017 | | |
| | | 12 | Insurers to implement policies to accept driver experience from abroad when a person has previous driving experience in Ireland and is coming from a country that drives on the other side of road, and take appropriate account of the experience in that country and previous Irish experience when pricing policy | Q4 2017 | | |
| | | 13 | Insurance Ireland to submit report to Department of Finance on their implementation of actions 10, 11 and 12 | Q2 2017 and Q4 2017 | | |
| 7 | THE DECLINED CASES AGREEMENT TO BE SUBJECT TO ONGOING REVIEW TO ENSURE TRANSPARENCY | 14 | Insurance Ireland to provide information on their website | Q1 2017 | Insurance Ireland, Department of Finance | Department of Finance |
| | | 15 | Insurance Ireland to submit report to Department of Finance annually | Q2 2017 | | |
| 8 | DEVELOP A GENERAL PROTOCOL AROUND THE REQUIREMENT FOR INSURANCE COMPANIES TO NOTIFY A POLICYHOLDER OF CLAIMS MADE AGAINST THEM BEFORE SETTLEMENT | 16 | Insurance Ireland to consult with the Department of Finance in relation to the development of a general protocol | Q3 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |
| | | 17 | Insurance Ireland to put in place a general protocol | Q4 2017 | | |

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| 9 | INSURANCE IRELAND TO ESTABLISH A FORUM FOR CONSUMER AND BUSINESS ISSUES | 18 | Forum to be established by Insurance Ireland for consumer and business issues | Q1 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |
| | | 19 | Forum to meet twice yearly | Ongoing | | |
| 10 | THE ADVISORY COMMITTEE ON SMALL PUBLIC SERVICE VEHICLES SHOULD ENTER REGULAR DISCUSSIONS WITH INSURANCE IRELAND TO EXPLORE SOLUTIONS FOR DRIVERS IN THE SECTOR | 20 | Advisory Committee on Small Public Service Vehicles to meet with Insurance Ireland | Q1 2017 | Advisory Committee on Small Public Service Vehicles, Department of Transport, Tourism and Sport, Insurance Ireland | Department of Transport, Tourism and Sport |
| | | 21 | Advisory Committee on Small Public Service Vehicles to report to the Minister for Transport, Tourism and Sport | Q2 2017 | | |

| Objective 2: Improving data availability | | | | | | |
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| Rec No. | Recommendation | Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
| 11 | ESTABLISH A NATIONAL CLAIMS INFORMATION DATABASE | 22 | Specify the key aggregated metrics for immediate publication and commence the development of a national claims information database | Q1 2017 | Department of Finance, Central Bank of Ireland, State Claims Agency, CCPC, Insurance Ireland, Society of Actuaries, PIAB | Department of Finance |
| | | 23 | Legislation in place for a national claims information database | Q4 2017 | | Department of Finance |
| | | 24 | National claims information database established | Q2 2018 | | Central Bank of Ireland |
| 12 | QUARTERLY PUBLICATION OF KEY AGGREGATED METRICS, ON CLAIMS | 25 | Key aggregated metrics template to issue to insurance undertakings for completion and submission | Q1 2017 | | Department of Finance |

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| | COSTS AND TRENDS WITHIN THE MARKET | 26 | Collation and analysis of submissions received from insurance undertakings | Q2 2017 | Department of Finance, Central Bank of Ireland, State Claims Agency, CCPC, Insurance Ireland, Society of Actuaries, PIAB | Department of Finance |
| | | 27 | Quarterly publication of key aggregated metrics commenced | Q2 2017 | | |
| 13 | CONSIDER THE FEASIBILITY OF A LONGER TERM CLAIM-BY-CLAIM REGISTER | 28 | Establish sub-group to consider feasibility of a longer term claim-by-claim register | Q1 2018 | Department of Finance | |
| | | 29 | Report on claim-by-claim register delivered | Q3 2018 | | |

| Objective 3: Improving the Personal Injuries claims environment | | | | | | |
|--|---|-------------------------|---|-----------------|---|---|
| Rec No. | Recommendation | Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
| 14 | ESTABLISH A PERSONAL INJURIES COMMISSION | 30 | Establish a Personal Injuries Commission (PIC) | Q1 2017 | Department of Jobs, Enterprise and Innovation, PIAB, Department of Justice and Equality | Department of Jobs, Enterprise and Innovation |
| | | 31 | PIC to investigate and make recommendations on processes in other jurisdictions which could enhance the claims process in Ireland. Please see pages 99-101 for detailed breakdown | Q4 2017 | | |
| | | 32 | PIC to benchmark international PI awards with those in Ireland and report on alternative compensation and resolution models. Please see pages 99-101 for detailed breakdown | Q1 2018 | | |
| | | 33 | PIC to deliver their third report | Q2 2018 | | |

| Objective 4: Reducing the costs in the claims process | | | | | | |
|--|---|-------------------------|---|-----------------|---|---|
| Rec No. | Recommendation | Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
| 15 | ASSESS, WITHIN IN THE CURRENT REVIEW OF THE PIAB LEGISLATION, CASES OF NON CO-OPERATION SUCH AS NON-ATTENDANCE AT MEDICALS AND REFUSAL TO PROVIDE DETAILS OF SPECIAL DAMAGES | 34 | Review cases of non-attendance at medicals and refusal to provide details of special damages | Q2 2017 | Department of Jobs, Enterprise and Innovation | Department of Jobs, Enterprise and Innovation |
| | | 35 | Publish Heads of Bill to enhance the powers of PIAB | Q2 2017 | | |
| 16 | ASCERTAIN AND SET OUT THE MEASURES NECESSARY TO IMPLEMENT PRE-ACTION PROTOCOLS FOR PERSONAL INJURY CASES | 36 | Ascertain and set out the necessary measures to implement Pre-Action Protocols in personal injury cases | Q3 2017 | Department of Jobs, Enterprise and Innovation, Department of Justice and Equality | Department of Jobs, Enterprise and Innovation/ Department of Justice and Equality |
| | | 37 | Publish Heads of Bill to extend Pre-Action Protocols to personal injury cases | Q4 2017 | | |
| 17 | FULLY ASSESS VIABLE OPTIONS FOR REFERRING REJECTED PIAB ASSESSMENTS INTO A JUDICIAL PROCESS ON AN APPEAL BASIS SO THAT THE FACTS ESTABLISHED RELATING TO A PERSONAL INJURY IN THE PIAB PROCESS DO NOT REQUIRE TO BE RE-ESTABLISHED | 38 | Review potential legal and constitutional constraints to the appeal style system | Q4 2017 | Department of Jobs, Enterprise and Innovation and Department of Justice and Equality | Department of Jobs, Enterprise and Innovation/ Department of Justice and Equality |
| 18 | EXPLORE WITH THE JUDICIARY HOW FUTURE REVIEWS OF THE BOOK OF QUANTUM/GUIDELINES MIGHT INVOLVE APPROPRIATE JUDICIAL INVOLVEMENT IN ITS COMPILATION OR ADOPTION | 39 | Consultation with the Judiciary | Ongoing | Department of Jobs, Enterprise and Innovation, Department of Justice and Equality, PIAB | Department of Jobs, Enterprise and Innovation/ Department of Justice and Equality/ PIAB |

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|----|---|----|---|---------|--|--|
| 19 | EXAMINE THE FREQUENCY OF FUTURE BOOK OF QUANTUM UPDATES IN TERMS OF ANY FUTURE CHANGES TO ITS PRODUCTION | 40 | Implement the outcome of the PIAB legislative review | Q2 2017 | Department of Jobs, Enterprise and Innovation, PIAB | PIAB |
| 20 | INTRODUCE MORE GRANULARITY INTO THE BOOK OF QUANTUM | 41 | Consult with the Personal Injuries Commission and implement any recommendations arising from their Report | Ongoing | Department of Jobs, Enterprise and Innovation, PIAB | PIAB |
| | | 42 | Enhance the Book of Quantum upon each publication | Ongoing | | |
| 21 | IMPLEMENT THE REVIEW OF THE FRAMEWORK FOR MOTOR INSURANCE COMPENSATION IN IRELAND | 43 | Continue to implement the Review | Ongoing | Department of Finance, Department of Transport, Tourism and Sport, Central Bank of Ireland | Department of Finance/ Department of Transport, Tourism and Sport |
| | | 44 | Government approval of Heads of Bill to amend the <i>Insurance Act 1964</i> | Q2 2017 | | |
| 22 | EXAMINE THE IMPACT OF LEGAL AND OTHER FEES ON PERSONAL INJURY AWARDS | 45 | Establishment of reliable set of data and commence review | Q1 2017 | Department of Justice and Equality | Department of Justice and Equality |
| | | 46 | Report to be submitted to the Cost of Insurance Working Group | Q2 2018 | | |
| 23 | REVIEW THE IMPACT OF THE CHANGES TO THE COURT JURISDICTIONAL LIMITS AS THEY EVOLVE | 47 | Review to be commenced | Q1 2017 | Department of Justice and Equality | Department of Justice and Equality |
| | | 48 | Report to be submitted to the Cost of Insurance Working Group | Q2 2018 | | |
| 24 | EXAMINE THE SETTING OF THE DISCOUNT RATE (IN PERSONAL INJURY LUMP SUM AWARDS), | 49 | Review to be commenced | Q1 2017 | Department of Justice and Equality | Department of Justice and Equality |

| | | | | | | |
|--|--|-----------|---|---------|------------------------------------|------------------------------------|
| | WITHOUT PREJUDICE TO THE OUTCOME OF RELEVANT PROCEEDINGS, AND TO BE REVIEWED AT REGULAR INTERVALS | 50 | Report to be submitted to the Cost of Insurance Working Group | Ongoing | Department of Justice and Equality | Department of Justice and Equality |
|--|--|-----------|---|---------|------------------------------------|------------------------------------|

| Objective 5: Reducing insurance fraud and uninsured driving | | | | | | |
|--|--|-------------------------|--|---------------------|--|------------------------------------|
| Rec No. | Recommendation | Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
| 25 | ESTABLISH A FULLY FUNCTIONING INTEGRATED INSURANCE FRAUD DATABASE FOR INDUSTRY TO DETECT PATTERNS OF FRAUD | 51 | Determine the parameters of the database to be established; who is to be responsible, how it will be funded and who will have access | Q2 2017 | Insurance Ireland, Department of Justice and Equality, Department of Finance | Department of Justice and Equality |
| | | 52 | Liaise with industry and An Garda Síochána to determine what type of data will be input into the database | Q2 2017 | | |
| | | 53 | Liaise with the Data Protection Commissioner in relation to data sharing provisions | Q2 2017 | | |
| | | 54 | Prepare criminal justice legislation if required and implement the database | Q2 2018 and Q4 2018 | | |
| 26 | EXPLORE THE POTENTIAL FOR FURTHER COOPERATION BETWEEN THE INSURANCE SECTOR AND AN GARDA SÍOCHÁNA IN RELATION TO INSURANCE FRAUD INVESTIGATION | 55 | Determine mechanism for further cooperation | Q2 2017 | Insurance Ireland, An Garda Síochána, Department of Justice and Equality | An Garda Síochána |
| | | 56 | Approval of the Garda Commissioner for the mechanism chosen | Q3 2017 | | |
| | | 57 | Approval of the Minister for Justice and Equality for the mechanism chosen | Q3 2017 | | |
| | | 58 | Liaise with industry | Ongoing | | |
| 27 | REVIEW OF SECTION 30 OF THE CIVIL LIABILITY AND COURTS ACT 2004 | 59 | Review to be commenced to determine necessary amendments, if any | Q4 2017 | Department of Justice and Equality | Department of Justice and Equality |
| | | 60 | Report to be submitted to the Cost of Insurance Working Group | Q1 2018 | | |

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|----|---|----|---|---------------------|---|---|
| 28 | ESTABLISH A FULLY FUNCTIONING DATABASE TO IDENTIFY UNINSURED DRIVERS COMPELLING INSURANCE COMPANIES TO PROVIDE THE DRIVER LICENCE NUMBER | 61 | Complete Phase 1 - Go Live (in relation to privately owned vehicles) | Q3 2017 | Insurance Ireland, MIBI, Department of Transport, Tourism and Sport, Department of Justice and Equality | Insurance Ireland/ MIBI/ Department of Transport, Tourism and Sport |
| | | 62 | Complete Phase 2 - to include the driver licence number and commence the provision of the Road Traffic Act 2016 which will require insurance companies to provide the driver licence number | Q3 2018 and Q4 2018 | | |
| | | 63 | Establish a protocol with the insurance industry to advise fleet customers that their vehicle will not be covered by the fleet policy if not entered on the National Fleet Database | Q4 2018 | | |
| 29 | DEVELOP A PROTOCOL TO PROVIDE THAT INDUSTRY USE THE DRIVER LICENCE NUMBER TO CHECK DRIVER DETAILS ON THE NVDF | 64 | Establish a protocol with the insurance industry to provide that industry use the driver licence number to check and verify driver details on the National Vehicle and Driver File | Q4 2018 | Insurance Industry, NVDF, Department of Transport, Tourism and Sport | NVDF, Department of Transport, Tourism and Sport |
| 30 | EXPEDITE THE DEVELOPMENT OF MASTER LICENCE RECORD | 65 | NVDF to submit detailed project plan to the Minister for Transport, Tourism and Sport who will provide a report to the Cost of Insurance Working Group | Q2 2017 | NVDF, Department of Transport, Tourism and Sport | NVDF, Department of Transport, Tourism and Sport |
| | | 66 | Department of Transport, Tourism and Sport to expedite the implementation of the Master Licence Record | Q4 2018 | | |

| Objective 6: Promoting road safety and reducing collisions | | | | | | |
|---|---|-------------------------|--|-----------------|---|---|
| Rec No. | Recommendation | Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
| 31 | DEVELOP A GENERAL PROTOCOL IN REGARD TO INSURANCE COMPANIES REQUIRING PROOF OF NCT/CRW | 67 | Expedite the Master Licence Record - this will provide insurers with the facility to check the NVDF for proof of NCT/CRW | Q4 2018 | Department of Transport, Tourism and Sport, Insurance Industry | Department of Transport, Tourism and Sport |
| | | 68 | Insurance Ireland to put in place a general protocol in regard to insurance companies requiring proof of NCT/CRW | Q4 2018 | | |
| 32 | REQUIRE THE INSURANCE INDUSTRY TO PROMOTE COMPLIANCE WITH ROAD SAFETY LEGISLATION | 69 | Develop a protocol for the insurance industry to promote compliance with road safety legislation | Q1 2017 | Department of Transport, Tourism and Sport, Road Safety Authority, Insurance Industry | Department of Transport, Tourism and Sport |
| | | 70 | Wording to be provided by Department of Transport, Tourism and Sport for inclusion in policy documents | Q2 2017 | | |
| 33 | SUPPORT THE USE OF TECHNOLOGY TO BENEFIT CONSUMERS | 71 | Insurance Ireland to review the current use of telematics by industry and report to Cost of Insurance Working Group | Q4 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |

CHAPTER 1 – INTRODUCTION

1.1 Introduction and Background

Insurance is a critical financial service providing policyholders with protection against financial losses from adverse events. The nature of traditional insurance business – the receipt of upfront payments in the form of premiums which are reinvested in financial assets and the controlled nature of claims pay-outs – is considered to be a stabilising force within the financial system, when it works correctly. Insurance provides a risk transfer facility for which insurers receive remuneration in the form of premium payments. In supplying insurance, the insurer is accepting, often unlimited, risk for a price (premium payment).

Insurance can be divided into two main categories; life insurance and non-life insurance.

- I. Life insurance covers products such as protection and savings and investment products to assist in the alleviation of the financial implications of death, illness or disability.
- II. Non-life insurance is often termed general insurance and includes products such as motor, travel, health and home insurance.

The non-life insurance sector is an important sector, both in its own right and in terms of its relationship as a facilitator of activity, both commercial and non-commercial, in other sectors of the economy. Insurance markets provide a mechanism for businesses and individuals to transfer some of those risks to firms that specialise in absorbing risk. In so doing, businesses and individuals are better able to undertake certain activities and in particular, certain economic activities, that they would otherwise be unable to do. In this way, insurance markets facilitate higher levels of economic activity.

1.2 Terms of Reference of the Cost of Insurance Working Group

The Working Group is chaired by the Minister of State Eoghan Murphy T.D. and brings together all the relevant Departments and Offices involved with the process. Its objective is to identify immediate and longer term measures which could address increasing costs, while bearing in mind the need to maintain a stable insurance sector.

The core areas being examined by the Working Group in this first phase are:

- The motor insurance sector generally, at present and in recent years
- The effects of legal costs and litigation processes on insurance costs
- The current claims compensation arrangements and the cost of claims
- Insurance data and information
- The impact of accident rates
- The impact of unlawful activity on the insurance sector, and
- Other market issues

1.3 The approach taken by the Cost of Insurance Working Group

The Working Group was established and held its first meeting in July 2016. At that time, the Minister of State established four sub-groups to review particular issues in detail. These sub-groups were:

- Understanding the motor insurance market,
- Improved Data Availability,
- Cost of Claims, and
- Other public policy Issues.

Chairs were appointed to these sub-groups and work commenced in July. Details of the work and membership of each Sub-group is in Appendix 2 and 3.

The Working Group has met twelve times to date. The sub-groups commenced their meetings in September and have met on a weekly basis since. Their outputs fed into the meetings of the Working Group, with the Working Group acting as a Steering Group to the sub-groups.

An extensive consultation process was also commenced. The Working Group and the four sub-groups have had meetings with relevant stakeholders, including representatives from the Law Society, AA Ireland, the Irish Brokers Association, the Irish Car Rental Council, the Road Safety Authority, the Irish Road Haulage Association, taxi driver representatives, car rental companies, the Freight Trade Association of Ireland, the Society of Actuaries of Ireland, Insurance Ireland, insurance companies and the Consumers Association of Ireland.

The Minister of State has also had informal meetings with representatives from a number of key stakeholder groups including: Insurance Ireland, AA Ireland, PIAB, the Irish Brokers Association, IBEC, FBD Insurance, the Central Bank of Ireland, the Council of the Bar of Ireland and the Central Statistics Office. In addition, submissions received from all interested parties have been considered as part of the process and referred to the relevant sub-group.

Throughout the process the Working Group and the Minister of State have engaged with the Joint Oireachtas Committee on Finance, Public Expenditure and Reform and Taoiseach in relation to their parallel work on the rising cost of insurance. The Minister of State attended the Oireachtas Committee's first hearing on 7 September 2016 and again on 24 November 2016 to update the Committee on his work.

The Minister of State presented the Minister for Finance Michael Noonan TD with a set of emerging recommendations at the end of October. Since then the Working Group has continued to consider these areas to develop measures to counteract the rising cost of insurance. That consideration and the resulting measures are detailed in this report, which was agreed by the Minister of State and the Minister for Finance in December, 2016.

CHAPTER 2 – UNDERSTANDING MOTOR INSURANCE

2.1 Motor Insurance Cover

In Ireland, third party motor insurance is compulsory. The basic legislation relating to compulsory third party motor insurance is contained in Part VI of the *Road Traffic Act 1961*, as amended. There is a body of EU legislation covering third party motor insurance which has been transposed into Irish law.

The EU Motor Insurance Directive (2009/103/EC) requires all vehicles to be covered for motor third party liability (MTPL) up to a minimum amount for both bodily injury and physical damage. This ensures that if an individual causes injury or damage to a third party, there are sufficient funds available to compensate the third party. However, the directive does not regulate issues of civil liability and the calculation of compensation awards (these are decided by individual EU countries) or so-called “comprehensive cover” (for physical injury of the driver, material damage to vehicles, vehicle theft, etc.)

Given that motor insurance is compulsory, it has become a particularly important class of business for insurers. Motor insurance is the most widely purchased non-life insurance product in Europe, accounting for 27.4% of non-life business. Total motor premium income amounted to €124bn in 2014⁵. Approximately 1,000 companies provide cover for 334 million vehicles across Europe, providing a range of products to meet customer needs and local regulatory requirements.

2.2 Pricing of Motor Insurance Cover

Motor insurance premiums have been increasing strongly since 2014. This report looks at the cost of insurance and the reasons for those increases. In drawing any comparison between average insurance premiums across EU member states, it should be borne in mind that the diversity in premiums reflects factors that are linked to an individual member state’s risk, economic and regulatory environment, which all have an impact on the costs of claims and the frequency and severity of accidents. “Insurers must thus account for these factors in the calculation of their premiums in order to build appropriate financial capacity to cover their

⁵ Insurance Europe, *Report on Motor Insurance Markets, Addendum*, (June 2016), <http://www.insuranceeurope.eu/sites/default/files/attachments/European%20motor%20insurance%20markets%20addendum.pdf>. Insurance Europe is the European insurance and reinsurance federation. It represents the insurance industry in Europe.

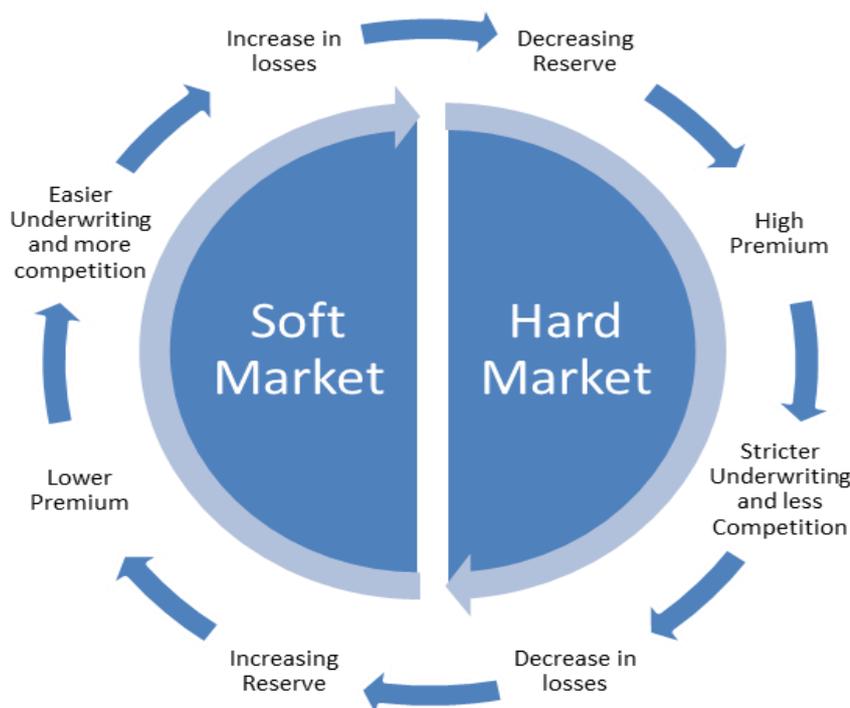
risks”.⁶ An example of one of these differences is that settlement awards for minor and moderate injuries appear to be significantly higher in Ireland than in the UK.

2.3 What is the Underwriting Cycle?

The pricing of the risk will generally depend on the position in the insurance underwriting cycle. The cyclical nature of the non-life insurance industry is well recognised. Insurance markets tend to move between "hard" and "soft" markets⁷, with periods of (relative) profitability and (relative) unprofitability alternating over a cycle of 6-9 years as illustrated below in Chart 1.

As with all markets, the general principles of supply and demand apply, however, the necessity that motor insurance be compulsory creates distortions with the traditional supply and demand practice.

Chart 1



⁶ Insurance Europe, *European Motor Insurance Markets* (November 2015) <http://www.insuranceeurope.eu/sites/default/files/attachments/European%20motor%20insurance%20markets.pdf> Insurance Europe is the European insurance and reinsurance federation. It represents the insurance industry in Europe.

⁷ A soft market is one in which there is a ready supply of insurance. Competition among insurers generally drives insurance premiums down. Conversely, a hard market is one in which the supply of insurance is restricted in relation to the demand. Premiums increase as insurers try to regain profitability.

2.4 Underwriting Risks and Coverages – how is a motor premium calculated?

As stated, the insurer is essentially trying to evaluate and accept a risk at a premium. In this regard, Insurers were consulted by the Working Group, and whilst their individual submissions contain commercially sensitive information, a simple analysis of a standard motor insurance proposal form highlights areas of interest to insurers and include the following non exhaustive list: -

- i. **Age is a clear risk factor.** The age of the driver is indicative of the probability generally of loss or damage, with younger drivers having a higher risk. The actual risk can never be specific to the actual driver, who probably considers himself/herself safe, until an accident occurs.⁸ Higher premiums are traditionally charged for younger drivers compared with middle aged ones. Older drivers can also be considered as being greater risk, depending on the insurer's prior claims experience for this class of driver
- ii. **Location of risk.** Various addresses in a proposal form can indicate the potential for theft of the vehicle based on crime statistics or a work address could indicate the vehicle is being used for commuting and the risk factors may be greater depending on the distance travelled or the nature of the work. One insurer's risk profiling and claims experience of a particular location may differ substantially from another insurer's risk profiling and claims experience of the same location.
- iii. **Title of licence and date obtained.** Insurers charge different licence holders different premiums. Certain insurers may have higher risk factors for provisional licence holders versus full licence holders, international licence holders versus PSV licence holders.
- iv. **Occupation or vehicle use.** A person's trade or profession is also a risk factor. Certain occupations may have a higher claims experience than others for a particular insurer and consequentially that insurer will charge a higher premium. An accountant driving 5 kilometres every day to and from an office versus a taxi driver travelling substantial distances with numerous fare paying passengers over a long distance would obviously attract different risk profiling and premiums.

The use of the vehicle, i.e. social, domestic and pleasure versus business use, greatly impacts on the premium charged and the risk associated with this use.

- v. **Driving history and No Claims Discount (NCD).** If a person has a large no claims discount this represents just one of the many factors that an insurer looking at the

⁸ See *Ross v Royal Sun Alliance* (DEC-S2003-116) for case law on age discrimination and insurance premium.

risk of the probability of loss, damage or injury will examine. These can vary significantly, depending on the insurer's underwriting strategy at the time of quotation. The acceptance by insurers of NCDs from overseas drivers will vary significantly. As part of their assessment, they will also consider prior driving experience in Ireland, e.g. a driver with only left hand side experience may in fact be deemed a greater risk notwithstanding a full NCD.

- vi. **Voluntary excess.** The higher the excess, the lower the liability that an insurer has and this can have an impact on the price charged.
- vii. **Vehicle details.** There are numerous risk factors involved in relation to the vehicle itself. It is evident that a higher engine size carries a greater risk. A ratings guide will provide an insurer with a relative guide to a vehicle's risk. The year of manufacture may mean a more expensive vehicle to replace if an insured has elected for comprehensive insurance. The lack of any alarm may indicate a greater risk of theft. The number of seats increases the risk of a greater number of passengers being carried and the consequence of risk of injury thereto or the older vehicle may have a greater risk of injury due to its lack of safety features compared to a modern vehicle.
- viii. **Driver details.** Each separate driver carries a certain risk and insurers will generally enquire regarding dates of birth, occupation, employer's business, type of licence. Each individual driver will be assessed against the risks that they bring in addition to the insured. Equally, prior convictions or accidents for each driver would again be assessed against the risk of the probability of loss or damage or injury and not just the fact that the driver had no prior claims. The role that penalty points has in the calculation of the premium will also vary significantly, depending on the underwriting strategy of the insurer at the time of quotation.
- ix. **Medical conditions.** Medical conditions can lead to fatal consequences not only for the driver but also for third parties. The risk of heart attacks, epilepsy, defective vision and mental or physical infirmity can all affect the risk factors in underwriting motor insurance.
- x. **Cover.** Generally speaking, one can obtain the following cover for motor insurance in Ireland: -
 - a. Comprehensive.
 - b. Third party fire and theft.
 - c. Third party only.

2.5 What is Claims reserving?

Claims reserving involves insurers predicting and setting aside funds to cover the expected settlement outcome of a claim.

A contract of insurance is where the insurer agrees, in consideration for the premium paid, to indemnify the insured against loss. This somewhat simplistic definition belies the issues that can arise. For example: the insurer may take a premium in X year, however the liability or loss may not arise until X + 1 for motor claims as policies are annual. It could be slightly longer for claims to be notified and the eventual claim may not resolve until X + 10 years. Reserving can be broken down into 2 distinct categories:

1. Incurred claims – this refers to the sum of claims payments made by the insurer and claims reserves attaching to individual claims for a particular time period; the claims reserves typically reflect the insurance company's best estimate for future claims payouts.
2. IBNR claims (incurred but not reported) – this is an amount which insurers estimate and reserve for in order to pay for claims which have occurred in a particular time period but which have not yet been notified to the insurer.

It has been suggested that reserving be based on the Book of Quantum however this would not account for legal costs in the event the matter is not dealt with by PIAB or a case is not suitable for PIAB. Prudently an insurer should reserve for the probable outcome of a case and not solely link the reserve to the Book of Quantum guidance.

The actual cost of claims is dealt with elsewhere. However, from a practical basis the following should be considered as factors in claims costs.

Comprehensive policy claims: Under a comprehensive insurance policy, the value of the vehicle is one of the influential factors in the cost of the claim. The nature of the cover offered by the insurer will inevitably dictate the cost of the claim. Certain insurers offer a replacement vehicle where the insured vehicle has been written off in an accident, rather than the pre-accident value of the vehicle. Premium earned may reflect a lower cost vehicle than the replacement vehicle which obviously can affect the eventual claims cost. Similarly, this would apply to third party fire and theft coverage.

Additionally the costs of repairs, linked to CPI, would affect the pricing of comprehensive cover. Aligned to this cost is the wage or labour rate charged by repairs and the VAT charged on any repairs. These can fluctuate over time.

Equally, the value of the vehicle involved in an accident is relevant to third party claims and the value thereof. In a growing economy, the prevalence of new vehicles⁹ which are generally more expensive than older vehicles (to both replace and repair), will obviously affect the cost of third party claims and repairs.

Third Party claims: These will accrue under all motor insurance policies, regardless of cover. When one recalls that a reserve is being applied in year X for the potential making of a claim that may not be settled until year X + 5, changes in legislation and case law, which were applicable in year X, may have changed in year X+5 and can change the potential liability under an insurance policy for an insurer which would have not been factored into the initial premium.

Examples of such changes include:

1. Increase and decrease in the jurisdiction of the Courts to deal with personal injury actions,
2. Judicial precedent setting a higher cap on general damages or introducing a new head of special damages or the manner in which such damages are calculated together with differing Judgments on personal injury actions before the Courts
3. Changes to the Book of Quantum
4. Changes in legal costs not applicable at the time the premium was priced
5. Changes in the manner in which insurers levy policyholders for MIBI contributions or insurance compensation fund levy changes
6. Changes in VAT rates are also a factor. VAT is applicable at a rate of 23% on many outlays (specifically litigation costs) for insurers and is generally non recoverable for private motor insurers

The foregoing affect the differentials on which a premium is charged as well as the eventual outcome of the claim, which in turn will have an impact on the future premiums charged by an insurer. The exact mechanics behind specifically how such changes affect each individual policy are not always reflected in the gross premium charged and how this is displayed to the policy holder which further adds to the confusion regarding the cost of insurance.

⁹ New car registrations appear to have increased for 2016 by more than 23% in the first 6 months compared to 2015.

2.6 Analysing the Cost of Claims

As noted already, an insurer may take a premium at X date, and a claim may arise in the period X+1 year. However, the settlement of that claim may not occur for some years after. Therefore, analysing settled or paid claims only does not provide a correct picture of the evolution of claims costs.

Claims costs includes both claims paid as well as an insurance company's best estimates of the final costs of claims incurred but not yet settled. Insurance companies are also required to make estimates of incurred but not yet reported claims; essentially, claims which have occurred in a particular time period but which have not yet been notified to the insurer. The picture that emerges from claims incurred can be significantly different. For instance, latest data from the Central Bank of Ireland Insurance Statistics shows claims paid gross in 2015 (per Table 22) are up 2.8% from 2014, whereas claims incurred have increased by 19% to €1,293m¹⁰. Further, such aggregate annual data on claims are limited in understanding the evolution of claims costs.

A fuller understanding would require claims paid and incurred data to be augmented with data on settlement rates, policy counts, and disaggregated by an accident year basis to be more fully informative.

2.7 Other Relevant Factors

2.7.1 Insurance distribution

Insurance distribution is relevant when considering the cost of insurance, primarily arising from the commission and fees charged by intermediaries. The Irish insurance market involves four main groups:

1. Insurance buyers – those who purchase insurance products and services, i.e. essentially the customers
2. Insurance providers – those who sell or provide insurance, e.g. insurers and the State
3. Distribution channels – the means through which customers purchase insurance from insurers
4. Reinsurers – those who provide insurance for insurers, i.e. other insurance companies or specialist reinsurance companies.

¹⁰Central Bank of Ireland, *Insurance Statistics 2015*,
<http://www.centralbank.ie/publications/Documents/Insurance%20Statistics%202015.pdf>.

Distribution channels

There are two main types of distribution channels for motor insurance: (i) insurance purchased directly from the insurer via branch offices, call centres or from their internet sites and (ii) insurance purchased via an insurance intermediary (more commonly known as an insurance broker). An insurance broker, depending on his/her authorisation, can recommend an insurance product from a number of insurers, whereas an insurer only offers from its own products.

The relevant legislative framework for insurance distribution is the recently published Insurance Distribution Directive (Directive (EU) 2016/97), which will replace the Insurance Mediation Directive 2002/92/EC and applies to the entire insurance distribution chain which includes both undertakings and intermediaries (intermediaries being distributors who are not (re)insurance undertakings selling directly). The main aim of the Directive is to facilitate market integration by the enhancement of retail insurance regulation and increasing the level of policyholder protection. The Directive entered into force on 22 February 2016. EU Member States will be required to transpose the Directive into national law by February 2018, with some transitional provisions applying until February 2019.

Fees and Commission

The majority of intermediaries are remunerated for their services to consumers through commission on the sale of financial products. The Central Bank of Ireland issued a Discussion Paper¹¹ in July 2016 with a view to stimulate discussion and obtain feedback from industry on the risks and benefits to the consumer of the practice of insurance companies paying commission to intermediaries for the sale of their products. In that report, it observed that intermediaries can sometimes charge the consumer a fee for advice as well as receive a commission for selling a product. There are a small number of independent advisors who charge fees to customers and do not take commissions. With regard to motor insurance, it found that typical commission rates of between 7.5% and 10% applied, however these were subject to pro-rata claw backs by some providers if the policy was cancelled before it expired. Non-life insurance products are typically subject to a standard commission model based on the amount of premium charged for the insurance product. A standard commission is usually a percentage of the premium paid generally as a one-off payment at the point of sale.

¹¹ Central Bank of Ireland, *Discussion Paper on the Payment of Commission to Intermediaries*, <http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Discussion%20Paper%20on%20Payment%20of%20Commission%20to%20Intermediaries.pdf>.

2.7.2 Reinsurance

Reinsurance is a practice where an insurance company (the insurer) transfers a portion of its risks to another (the reinsurer). Legal rights of the policyholder (the insured) remain unaffected by reinsurance, and the insurer remains liable to the insured for insurance policy benefits and claims. This is relevant to this report in that the cost of reinsurance will ultimately be borne by the policyholder.

The insurer will form its own strategy as to which risks or part of a risk it wishes to “reinsure” and will pay an appropriate premium to this reinsurer for the service. The cost of this reinsurance is essentially collected, proportionately, by the insurer from its policyholders.

Reinsurers come in two broad types:

- Captive Reinsurers - these reinsure the risk of the affiliate or parent company, and
- Non Captive Reinsurers – these reinsure different insurers for different risks.

Reinsurers are quite similar to traditional insurers in that they price risk. Similarly to a traditional motor insurer, a reinsurer’s pricing of a risk will be affected by the risk criteria it assigns to the business it reinsures, although the factors are mainly comprised of macro-economic risks rather than micro and include:

- Solvency II and its consolidation effect on the reinsurance market;
- Low interest rate environment and its consequences for investments;
- Claims environment and the effect forthcoming periodic payment order (PPO) legislation may have on the pricing of motor reinsurance and the capital modelling of reinsurers; and
- Fluctuations on the real rate of return and the unpredictability of catastrophic claims reinsured.

Similarly to conventional insurance, if the underlying cost of reinsurance increases, these additional costs are passed on to insurers, which in turn effects the cost of providing insurance and will ultimately result in an increase in premium for the policy holder.

As third party motor liability insurance in Ireland is not capped by legislation, (i.e. there is no maximum price for third party motor liability insurance), insurers typically purchase reinsurance to cover large losses. The large loss threshold will often depend on the risk appetite, risk profile, size and solvency of the insurer. Insurers may also purchase reinsurance to cover significant deterioration in the profitability of its portfolio or against extreme weather events. Reinsurance may be provided by a parent or other company (or companies).

CHAPTER 3 – UNDERSTANDING THE IRISH MOTOR INSURANCE SECTOR

3.1 Introduction

The Irish insurance sector is diverse, comprising life, non-life and reinsurance firms operating across a range of product and geographical markets. The Irish risk non-life market (excluding Accident & Health) had a total Gross Written Premium (GWP) of €2.9 billion in 2015. Motor (both private and commercial) is the largest non-life segment accounting for 47% of Irish risk premium. Property and Liability business account for 29% and 20% of GWP respectively. The industry is represented by Insurance Ireland, which states that it represents 95% of the domestic insurance and 80% of the international life insurance market.

There are three ways an insurance undertaking can operate within the Irish market:

- establish a head office in Ireland (authorised by Central Bank of Ireland);
- establish a branch in Ireland through Freedom of Establishment (FOE); or
- operate on a Freedom of Services basis (FOS).

Within the non-life insurance market, there are currently six companies regulated by the Central Bank plus two companies operating on an FOE basis leading the market. There have been limited changes in sector participants over the last 10 years. However, while participants¹² have remained relatively stable, there have been changes in relative market share over the last 10 years as companies compete for business.

In terms of evolution and changes in the market, there is evidence that business is shifting to FOE/FOS companies. The percentage of the market taken up by the companies that are prudentially regulated by the Central Bank is approximately 60%. This has dropped from approximately 70% in 2015.

3.2 Current Make-up of Irish Motor Insurance Sector

In 2015 there were 15 companies writing motor business in Ireland either from a head office located in Ireland or on an FOE (branch) basis. However, the market is dominated by 8 underwriters which combined account for 98%¹³ of motor premiums and 87% of total premiums, as per chart 1 below. This does not include FOS business. All insurance undertakings underwriting motor insurance in Ireland must, by law, be members of the MIBI

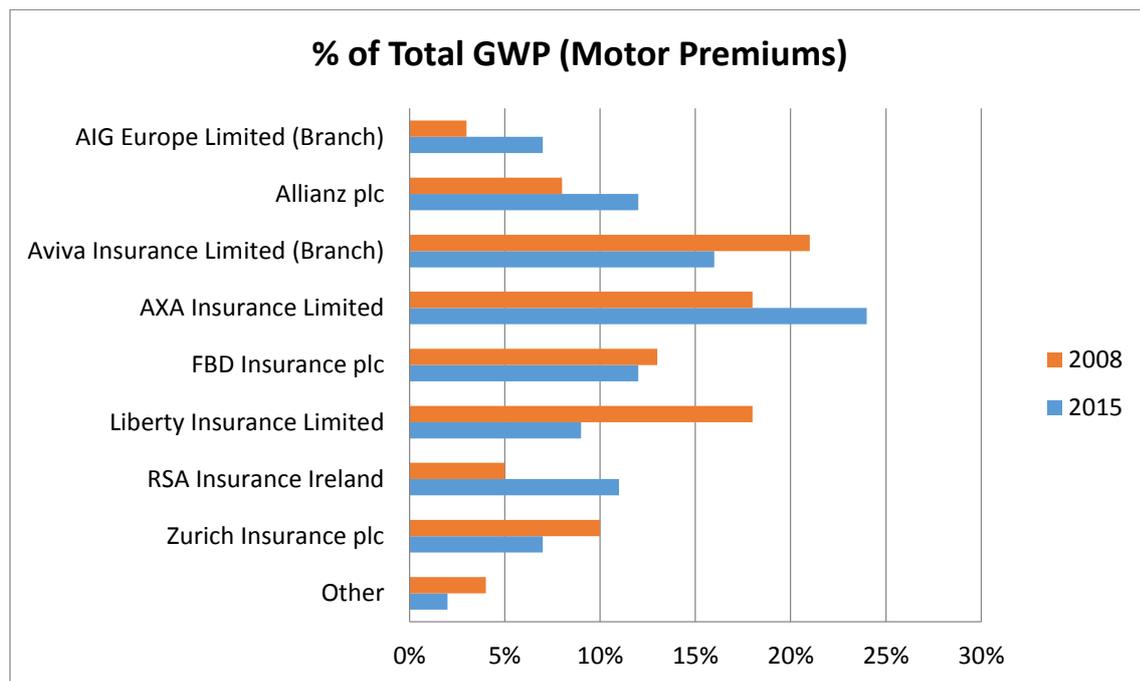
¹² Quinn Insurance entered into administration in 2010 and was subsequently sold to Liberty Insurance.

¹³ Based on Central Bank of Ireland Insurance Statistics 2015. See footnote 10.

and contribute to funding for claims in proportion to their market share. This includes those operating in Ireland on an FOE or FOS basis.¹⁴

According to Insurance Ireland, 74% of motor insurance gross written premiums is accounted for by private motor business with the remaining 26% derived from commercial motor business.¹⁵

Chart 1¹⁶



The insurance undertakings listed above, are either (i) authorised by the Central Bank to sell motor insurance or (ii) authorised by a supervisory authority in another EU Member State to sell motor insurance to Irish consumers through the FOE (branch basis). Chart 2 identifies the relevant authorising and supervising authority of these insurance undertakings.

¹⁴ Motor Insurer’s Bureau of Ireland, *Members list*, (September 2016), <http://www.mibi.ie/fileupload/Member%20list/10%20MIBI%20Members%20List%20-%20September%202016.pdf>.

¹⁵ Insurance Ireland, *Factfile 2015*, <http://www.insuranceireland.eu/media/Final%20version%20FACTFILE.pdf>.

¹⁶ Note that 2008 GWP for Liberty is Quinn (as Liberty acquired Quinn in 2011).

Chart 2

| Company | Prudential Supervisor |
|----------------------------------|--|
| Allianz plc | Central Bank of Ireland |
| AXA Insurance Limited | Central Bank of Ireland |
| FBD Insurance plc | Central Bank of Ireland |
| Liberty Insurance Limited | Central Bank of Ireland |
| RSA Insurance Ireland | Central Bank of Ireland |
| Zurich Insurance plc | Central Bank of Ireland |
| Aviva Insurance Limited (Branch) | Prudential Regulatory Authority (PRA) (UK) |
| AIG Europe Limited (Branch) | Prudential Regulatory Authority (PRA) (UK) |

3.3 Profitability of sector from 2005 to 2015

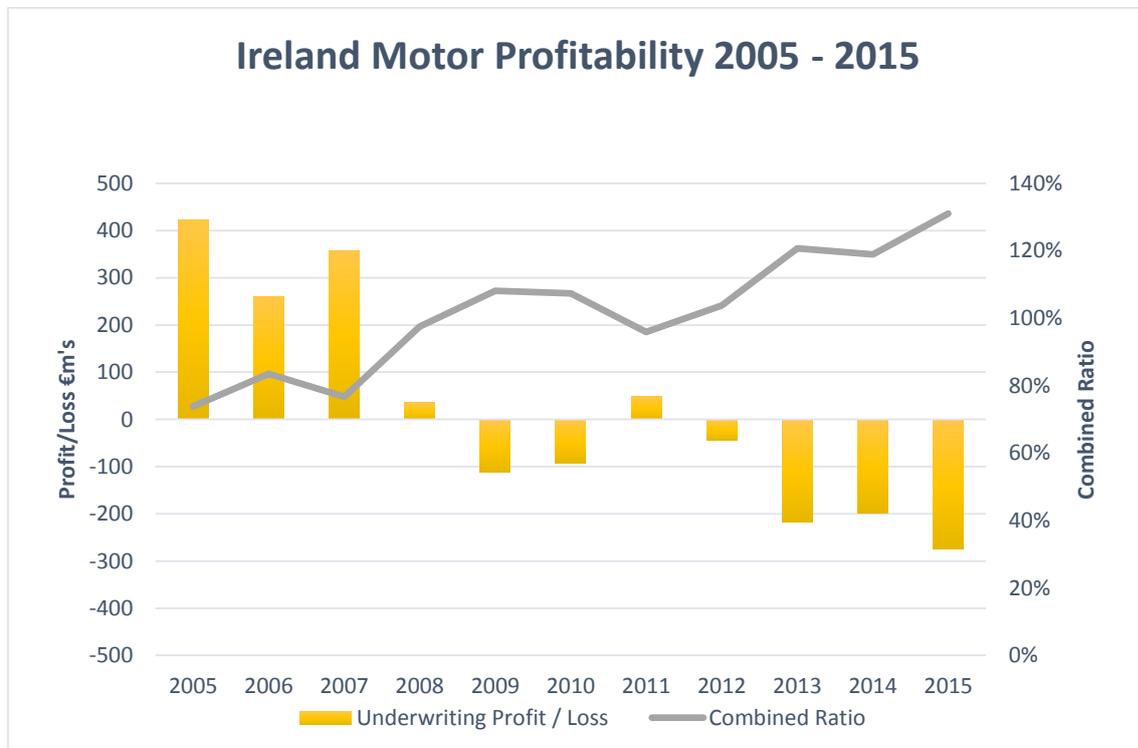
The combined ratio is a measure of profitability used by an insurance company to indicate how well it is performing in its daily operations. The combined ratio is calculated by taking the sum of incurred losses and expenses and then dividing them by earned premium. The ratio is typically expressed as a percentage. A ratio below 100% indicates that the company is making underwriting profit while a ratio above 100% means that it is paying out more money in claims that it is receiving from premiums, resulting in an underwriting loss. Even if the combined ratio is above 100%, a company can potentially still make a profit, because the ratio does not include the income received from investments.

The basic criteria behind the underwriting process is the combined operating ratio. This measures the proportion of costs to premium. The costs can be made up of the following;

- Claims (cost based on the specific insurer’s claims history, future expectations and current reserves)
- Commission
- Expenses
- MIBI contribution
- Reinsurance costs

The following chart illustrates the combined ratio for motor business from 2005 to 2015.

Chart 3

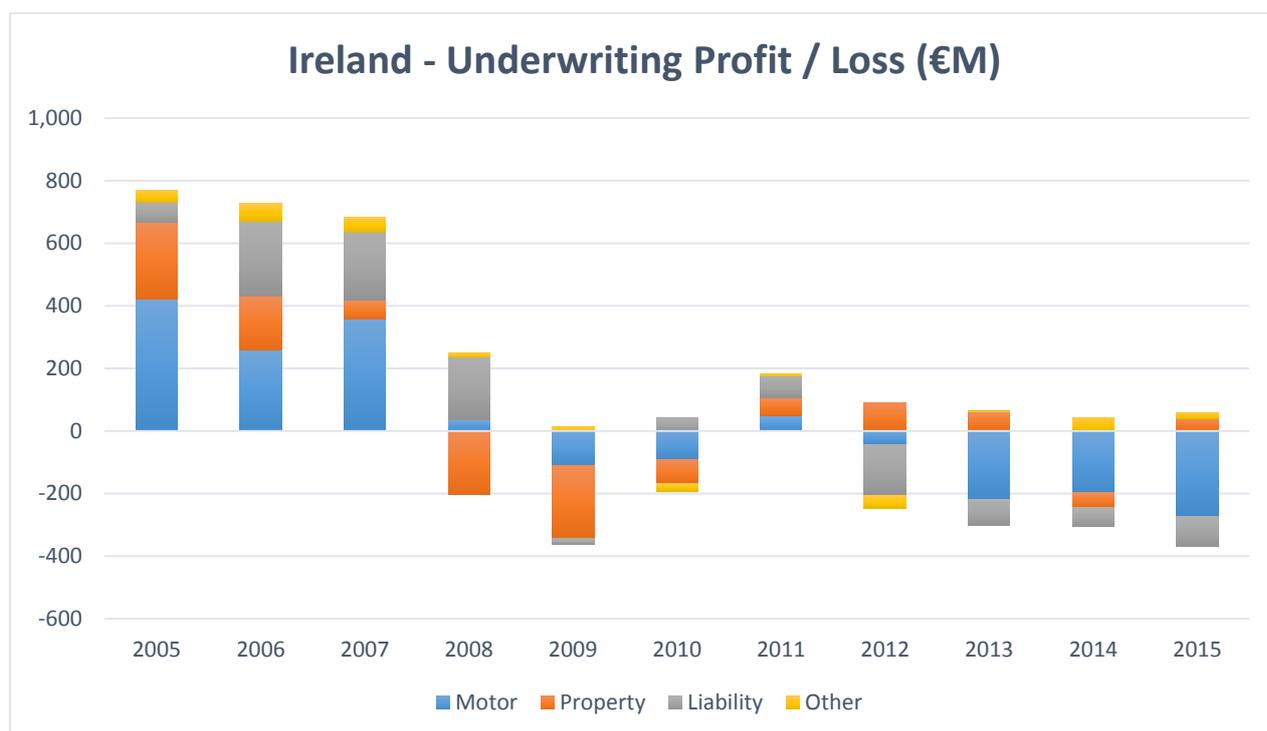


The sector made substantial underwriting profits between 2005 and 2008 (totalling €2.2 billion). Since then intense competition in the market and a challenging economic environment have put downward pressure on rates.

Over the period 2009 to 2015, total underwriting losses were €1.3 billion with motor accounting for €900 million of this. The insurance industry has suffered significant underwriting losses between 2008 and 2015 (other than 2011) as illustrated in Chart 4 below¹⁷:

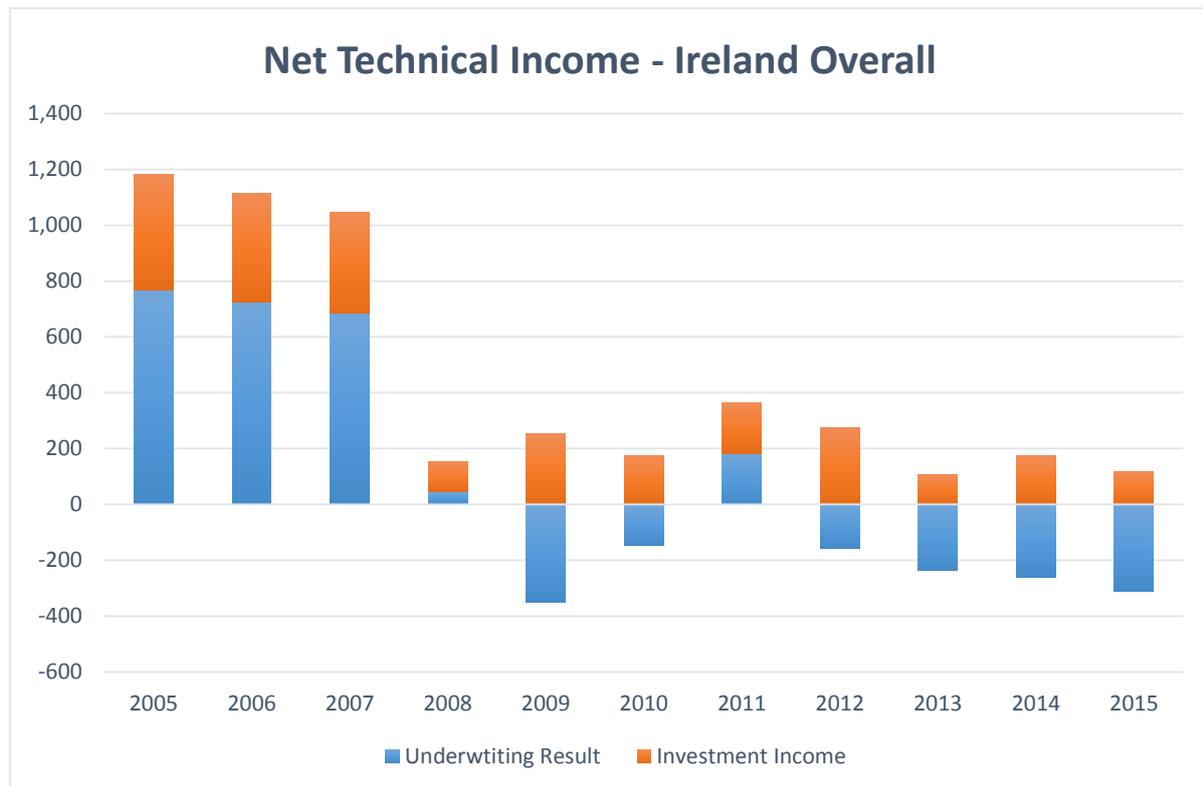
¹⁷ All figures are based on the regulatory returns filed by firms covering the period 2005 to 2015 as reported in the Insurance Statistics published each year by the Central Bank of Ireland.

Chart 4



In considering the profitability of the sector, it is also important to analyse investment returns over the period. The current low interest rate environment is materially affecting the levels of interest or investment income insurers can earn and consequently reduces their ability to use this income to compensate in part for underwriting losses as has happened in the past. The average investment return was €317 million per year for the period 2005-2008 reducing to €168 million per year for the period 2012-2015. This latter figure has been insufficient to cover underwriting losses in 2013, 2014 and 2015, as illustrated in Chart 5 below which provides an overview of net technical income i.e. an aggregation of the underwriting result and investment income for the period 2005 to 2015:

Chart 5



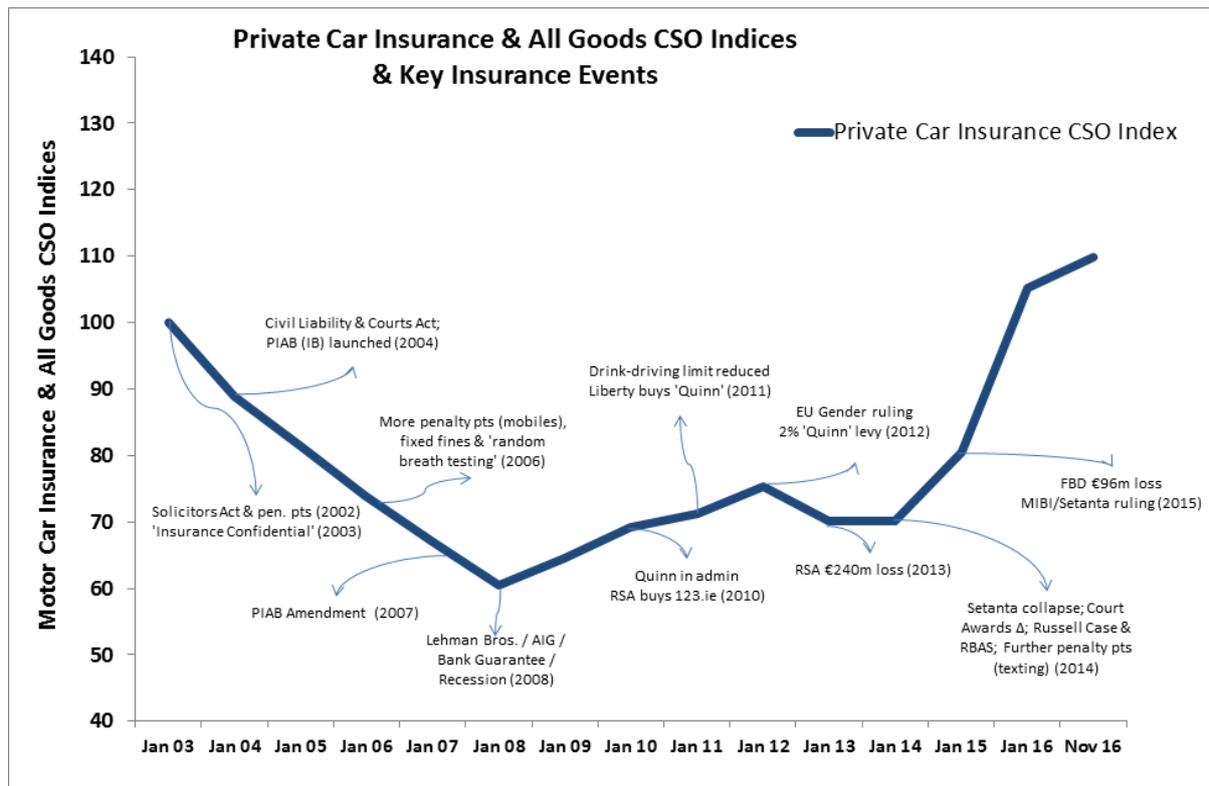
In summary, the balance of costs and revenues has been off kilter for several years and is in line with the insurance industry view that premiums and investment income have decreased while claims costs have increased, in particular incurred claims costs, leading to sustained losses. Regulatory returns submitted to the Central Bank, for companies subject to prudential regulation in Ireland or operating through branches on a freedom of establishment basis for Irish motor risk, show combined underwriting losses of close to €700 million for the years 2013 to 2015, inclusive.

The charts above also demonstrate that the current low interest rate environment is materially affecting the levels of interest or investment income that insurers can earn which has contributed to the difficulties they have faced over the last number of years.

3.4 Factors that have caused motor insurance costs to increase

CSO data shows that private car insurance prices in July 2016 were 19% higher than January 2003 (an average increase of 1.3% per annum). While motor insurance rates have increased since mid-2014, this followed twelve years of very benign pricing (from a consumer viewpoint). Chart 6 below is based on CSO data, and demonstrates the costs with associated key moments in the Irish economy and Irish insurance sector.

Chart 6



In particular, it shows that:

- Between January 2003 and January 2008, private car insurance prices fell by 40%. This has been associated with the introduction of significant industry cost-cutting measures tackling legal costs, fraud and driver behaviour (speeding etc.), the introduction of PIAB, and increased competition in the market.
- Between January 2008 and January 2010, there was a sharp increase of 14%. This has been associated with a period where insurers recognised that rates had become unprofitable at the end of a prolonged market softening.

The period which follows shows two distinct periods:

- Between January 2010 and January 2014, private car insurance prices rose by just 1%.
- Between January 2014 and July 2016, private car insurance prices rose by 70% as companies eventually reacted to deteriorating profitability positions on top of increased claims uncertainty arising from the proposed introduction of periodic payment orders and the MIBI/Setanta rulings.

The Working Group reflected on this period in particular when considering what the factors were in the increased cost of motor insurance.

- **Under-pricing:** The Working Group reached the conclusion that the small price rise identified in 2010 to 2014 showed that private car insurance prices lagged rising cost of claims over that time period¹⁸. This demonstrated that a number of insurance companies were under-pricing, which did not take fully into account potential losses in future years. This re-balancing effect, as a result of under-pricing over a number of years, combined with the current low interest rate environment is materially contributing to the increased level of premiums we have seen over the last 18 months. This view was corroborated by a number of insurers, who stated that the need for a correction in pricing is a factor in the increased costs policy holders are seeing since 2014. A number of stakeholders, including insurance companies, have also recognised that intense competition in recent years led to a position whereby motor insurance premiums were under-priced.
- **The increased frequency and cost of settled claims:** The insurance industry and other stakeholders have consistently pointed to increased claims inflation and claims frequency in recent years as the primary reason for the rise in cost of insurance. The Working Group concluded in Chapter 7 that the data available to it suggests that frequency of reported claims was relatively stable between 2013 and 2015. The data also suggests the number of motor PI claims settled increased by 10% over the same period while average compensation awarded to a claimant increased by 5%. In the context of an increase of 3.5% in vehicles on the road in 2013-2015 period, the data available suggests that the settled claims environment has had a moderate impact on premium prices over the 2013-2015 period.
- **Reserving:** In addition, insurance premiums are driven by the costs insurance companies incur in setting aside reserves for claims they expect to pay but which have not yet been settled. In the recent period data collected by the Central Bank indicates an increase in such levels of reserving. For instance, latest data from the Central Bank of Ireland Insurance Statistics shows claims paid gross in 2015 (per Table 22) are up 2.8% from 2014, whereas claims incurred have increased by 19% to €1,293m¹⁹. These levels of reserving are likely to reflect a range of factors, including uncertainty in the current environment as discussed below.

¹⁸ See Section 2.6.

¹⁹ Central Bank of Ireland, *Insurance Statistics 2015*, <http://www.centralbank.ie/publications/Documents/Insurance%20Statistics%202015.pdf>.

Amongst the factors giving rise to uncertainty in the current claims environment are the following:

- **Court Jurisdictional Changes:** Insurers stated that increases in permissible court awards have the potential to result in the average court award increasing significantly. This follows an increase in Court jurisdictional limits in February 2014 from €6,000 to €15,000 for District Court awards and from €38,000 to €60,000 for Circuit Court personal injuries awards.
- **High Awards for Personal Injury Claims:** A number of stakeholders referred to the high awards given in Ireland for certain soft tissue injuries in comparison to other jurisdictions. Linked to this, it was argued that the inconsistent use of the Book of Quantum by the judiciary was leading to higher payouts.
- **Civil Liability (Amendment) Bill 2017:** The Bill will provide for the introduction of Periodic Payment Orders (PPOs). The insurance industry has stated that this has increased uncertainty around the likely future cost of catastrophic claims on business currently written.
- **Legal challenge in relation to Setanta Insurance²⁰:** A number of insurers stated that the ongoing uncertainty with regard to the payment of Setanta claims, which is still subject to legal proceedings, was impacting the cost of motor insurance.
- **Discount Rate:** The *Gill Russell v HSE* case resulted in a reduction of discount rate from 3% to 1%. It is argued that this is having an inflationary impact on premiums as the industry considers the impact of this change on existing and future claims reserves.
- **Regulatory Requirements:** The introduction of Solvency II since the start of 2016 has been cited by the industry as another factor as companies have had to revise their reserving models to reflect its new requirements. The Working Group does not consider that this has had a material impact.

²⁰ Setanta Insurance Company Limited was authorised by the Malta Financial Services Authority and operated in Ireland on a Freedom of Services basis.

3.5 The Future of the Motor Insurance Sector in Ireland

The Working Group believes that the implementation of the recommendations will lead to greater stability in the pricing of motor insurance and will help prevent the volatility that we have seen in the market in the past (both up and down). It should also better facilitate potential new entrants to the market.

The implications of the UK's decision to exit the European Union will also pose challenges to both the UK, Ireland and indeed the rest of Europe. The domestic insurance sector in Ireland often operates as a microcosm of the larger economy and will be exposed to both the challenges and opportunities arising from Brexit. The Working Group considers that there are potential implications in the way that firms operating in Ireland are structured. As mentioned above, the freedom of Establishment (FOE) and Freedom of Service (FOS) are fundamental aspects of how firms operate throughout the EU. A number of firms operate in Ireland from the UK on this basis and there will be a need to monitor the impact of the decision to leave the EU on these firms and their operation in Ireland.

CHAPTER 4 - THE REGULATORY ENVIRONMENT

4.1 Introduction

The legal and regulatory framework for the provision of life insurance, non-life insurance and reinsurance in the European Economic Area (EEA), and the supervision of that activity, is prescribed by EU Directives. The provision of insurance throughout the EEA is on a freedom of services and a freedom of establishment basis with the mutual recognition of the authorisation of insurance undertakings by Member States.

The overarching legislative framework for insurance in Ireland is set out in European legislation transposed into Irish law, and is supplemented by specific domestic laws. This framework is further supported by requirements, guidance and policy papers issued by the Central Bank of Ireland and the European Insurance and Occupational Pensions Authority (EIOPA).

With regard to motor insurance specifically, the EU Motor Insurance Directive 2009/103/EC is relevant, however its primary purpose is to help EU residents involved in a road accident in another EU country. It prescribes minimum third-party liability insurance cover in EU countries to achieve this. Under the Directive, subscribers to compulsory motor insurance policies in all EU countries are covered for motoring throughout the EU. This Directive is a matter for the Minister for Transport, Tourism and Sport.

The overall regulatory, prudential and consumer protection framework is detailed in this chapter and the main elements of European and domestic legislation are set out in Appendix 5.

4.2 What is the role of the Minister for Finance in the regulation of motor insurance?

The Minister for Finance has responsibility for the development of the legal framework governing financial regulation in Ireland, including the regulatory environment for life and non-life insurance. This responsibility includes the negotiation of the relevant EU framework of Directives and Regulations, and their transposition into Irish law. The Minister has no role in day to day supervision of the insurance industry, as this is the responsibility of the Central Bank of Ireland.

4.3 What is the role of the Central Bank of Ireland in the regulation of motor insurance?

The carrying on of insurance business is a regulated activity in Ireland which requires a non-life insurer to obtain an authorisation.

The competent authority responsible for the authorisation and supervision of insurance undertakings in Ireland is the Central Bank of Ireland.

The Central Bank of Ireland has two specific mandates as regards insurance supervision. First, it is responsible for the prudential supervision of insurance companies authorised by the Central Bank of Ireland. Second, it is responsible for the supervision of conduct of business in Ireland, also referred to as consumer protection. As outlined above, insurance undertakings authorised by the Central Bank of Ireland may write business across the European Union (EU) on a FOE or FOS basis. Similarly, insurance undertakings authorised in other EU states may write business in Ireland on a FOE or FOS basis. All insurance undertakings operating in Ireland, whether authorised by the Central Bank of Ireland or a competent authority of another EU state, are subject to conduct of business supervision by the Central Bank of Ireland. The Central Bank of Ireland does not have a role in the setting of premiums, and like all supervisory authorities in the European Union, is explicitly prohibited by European law from doing so by Article 181 of the Solvency II Directive.

Prudential supervision seeks to ensure that insurance firms remain solvent. The Central Bank of Ireland's role is to continuously monitor and seek to ensure the solvency of insurers authorised by the Central Bank of Ireland. This is achieved through supervising regulated firms' compliance with EU legislation (e.g. Solvency II) along with domestic requirements for regulated firms (e.g. Consumer Protection Requirements and Domestic Actuarial Regime for (Re) Insurance undertakings, etc).

4.4 Central Bank's role in the pricing of motor insurance

The Central Bank cannot interfere in the pricing of insurance products, as this is a commercial matter for companies and it is prohibited from doing so by the Solvency II Directive. The Bank's role as a prudential regulator is to ensure firms assess risks appropriately and offer motor insurance at a price that adequately takes into account the risks and conditions prevailing in the market such as increasing claims costs. This ensures firms have the ability to pay all policyholders' claims in full without recourse to public or consumer funds.

4.5 Prudential Framework and Supervision

The prudential framework for insurance supervision in Europe has recently undergone significant changes with the introduction of Solvency II which came into force on 1 January 2016. Solvency II adopts a risk-based approach and introduces capital requirements that are more sensitive to the levels of risk being undertaken by an insurer.

4.6 Solvency II

The Solvency II Directive²¹ is the primary legislative framework with regard to the prudential supervision of insurance companies. It applies to all insurance and reinsurance companies with gross premium income exceeding €5 million or gross technical provisions in excess of €25 million. It was transposed into Irish national law by the European Union (Insurance and Reinsurance) Regulations 2015²² (the Solvency II Regulations).

How is Solvency II different from Solvency I and has it had an impact on the cost of insurance?

Solvency II radically overhauls the financial supervision of insurance firms, replacing the former model of supervision with a risk-based approach to prudential supervision which brings harmonisation at EEA level. It regulates risk adequacy and capital management. It further consolidates the integration of the EU insurance market with the objective of protecting policy-holders and claimants more effectively.

The Solvency II framework is based on three interlinked “pillars”.

- 1) Pillar 1 comprises quantitative or all the financial requirements of Solvency II – including risk-based capital requirements that firms will be required to meet with assets and liabilities valued on a market consistent basis. This pillar aims to ensure firms are adequately capitalised with risk-based capital with two capital requirements defining the upper and lower end of a ladder of supervisory intervention.
- 2) Pillar 2 comprises qualitative requirements focusing on governance, risk management and required functions and includes the supervisory review process. Insurers are required to carry out an Own Risk and Solvency Assessment (ORSA) and this is required to be reviewed by the supervisor.

²¹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

²² European Union (Insurance and Reinsurance) Regulations 2015, S.I. 485 of 2015.

- 3) Pillar 3 comprises reporting and disclosure requirements including a public Solvency and Financial Condition Report (SFCR) and a private Regulatory Supervisory Report (RSR). The reporting requirements are intended to increase transparency.

This combination of minimum capital standards, qualitative risk management requirements, a well-defined and rigorous review process of companies' solvency by supervisors and prescribed disclosures to supervisors, policyholders and investors has been designed to deliver a more modern and secure prudential regulatory system.

In general, for non-life companies under Solvency II, the solvency capital requirement is higher, however available capital also increases due to changes in valuation rules – particularly in respect of technical provisions. In addition, under Solvency I firms held a significant buffer over the regulatory required capital to reflect the fact that it was not a risk based calculation. This buffer is not as large under Solvency II given that the requirement is a better reflection of risk.

4.7 The Consumer Protection Role of the Central Bank of Ireland

The Central Bank of Ireland has a statutory responsibility for the proper and effective regulation of financial service providers and markets while ensuring that the best interests of consumers are protected. The importance the Central Bank places on consumer protection is reflected in the Central Bank's mission statement of Safeguarding Stability – Protecting Consumers, and forms a key part its overall mandate including financial stability and prudential supervision.

The Central Bank of Ireland has put in place a strong consumer protection framework to protect the interests of consumers, including when dealing with insurers. The framework supplements the legislative framework and includes statutory Codes and Regulations, which all firms must comply with, including requiring insurers to provide correct information to consumers when selling and renewing insurance policies and ensuring these products are suitable for their customers. The framework also covers how claims and complaints must be handled by insurers. This consumer protection framework also applies to European insurers selling in Ireland on an FOS or FOE basis.

4.8 Supervision of Consumer Protection Issues

The Central Bank of Ireland conducts an annual risk assessment process to identify key consumer risks. These annual risk assessments are based on a number of inputs, including conduct of business returns gathered from insurers on a bi-annual basis. Following this annual risk assessment process, specific risks are selected for supervisory work, including thematic inspection.

The Central Bank of Ireland is currently conducting a thematic inspection of the handling of motor damage claims by insurers, focusing in particular on how insurers control and manage the claims process in line with the statutory provisions of the Consumer Protection Code. The outcomes of this inspection will be published in early 2017.

In addition, and in order to support ongoing supervisory work, a number of research projects have been undertaken which provide insights into the behaviour of both firms and consumers. In 2016, the Central Bank of Ireland published the findings of research into the renewal of health insurance as well as complaints handling and is currently conducting consumer research into the handling of motor insurance claims.

A range of supervisory and enforcement tools, including Administrative Sanction powers, are available where the Central Bank of Ireland discovers firms are in breach of consumer protection requirements. In 2014, FBD Insurance plc was fined €495,000 in relation to breaches of the Consumer Protection Code as the firm had failed to ensure that it had the systems and controls necessary to ensure compliance with the Code. In 2016, a case against AXA Insurance Limited was concluded and a fine of €675,000 imposed, for breaches of the Consumer Protection Code regarding complaints handling and failure to ensure that staff were appropriately accredited as per the Minimum Competency Code. The Central Bank of Ireland has recently taken enforcement action against New Ireland Assurance Company for failure to comply with provisions of the Code relating to the provision of annual statements. In this case, the firm was fined €650,000.

The Central Bank of Ireland also maintains continuous engagement with Boards and Senior Management of insurers to influence a more positive consumer focused culture in those firms.

4.9 The Supervisory Framework for Firms passporting into Ireland

The freedom to write insurance business throughout the EU from an authorised undertaking in one Member State is a fundamental principle underlying the European Directives. The European “passporting” framework provides that if a firm is authorised in the EEA it is entitled to sell insurance throughout the EU/EEA. A number of insurance firms provide motor insurance in Ireland on this basis, and likewise a number of Irish firms offer insurance in other markets.

This business can be conducted in two ways – if the undertaking:

- i) establishes a branch operation and conducts business on a ‘freedom of establishment’ (FOE) basis, or

- ii) writes business from the Home State to the Host State²³ on a ‘freedom of services’ (FOS) basis

Where the undertaking operates in either of these ways, prudential supervision²⁴ of the undertaking is the responsibility of the Home Member State (i.e. the State in which it is authorised). The Host State supervisor (the State in which the FOE or FOS business is being conducted) is purely responsible for conduct of business supervision. When the Central Bank of Ireland (acting as a Host Supervisor) is notified about an insurance undertaking authorised in another EU/EEA country which wishes to do business in Ireland, they are added by the Central Bank of Ireland to its register of service providers or branch establishments (Host Register). In addition, such companies are advised of the Central Bank of Ireland’s General Good Requirements, which includes membership of the Motor Insurers’ Bureau of Ireland (MIBI).²⁵

4.10 Other relevant legislation – EU Motor Insurance Directive 2009/103/EC

Since 1972, the European Union, as part of its objective of creating a single European market for motor insurance to facilitate free movement of motor vehicles, persons, travel and trade throughout the EU and to protect the victims of road traffic collisions, has adopted a number of Motor Insurance Directives. The Motor Insurance Directives have been codified into and replaced by a single Motor Insurance Directive 2009/103/EC.

The various Motor Insurance Directives came to progressively define the obligations of Member States concerning civil liability in respect of the use of vehicles. Some of their main provisions were as follows:-

First Motor Insurance Directive (1972)

- Mandatory motor third party liability insurance (MTPL) taken out in a Member State should also cover incidents occurring in another Member State.
- For incidents occurring in another Member State the insurance bureau where the incident occurred should obtain insurance information from the state in which the vehicle is registered.

²³ The Home Member State is the Member State where the undertakings is authorised. The Host Member State is the Member State where the undertaking operates.

²⁴ Prudential supervision seeks to ensure that insurance firms remain solvent.

²⁵ Central Bank of Ireland, *General Good Requirements for Insurance and Reinsurance Undertakings*, (2012), <http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/General%20Good%20Requirements.pdf> .

Second Motor Insurance Directive (1984)

- Set out minimum indemnity levels for not just damage to persons but also damage to property.
- Required that a compensation body should be set up to compensate victims where the mandatory MTPL insurance was not in place. Such a body, the Motor Insurers' Bureau of Ireland (MIBI), had already been set up in Ireland by agreement between the Government and the insurance industry in 1955.

Third Motor Insurance Directive (1990)

- Compulsory MTPL insurance policies must cover the whole of the EU on the basis of a single premium and the policy should guarantee cover at the greater of the levels required in the state where the vehicle is registered or the state where the accident occurred.
- Passenger liability must be included in motor insurance policies.

Fourth Motor Insurance Directive (2000)

- Insurance companies must designate a local representative in each Member State to enable a victim to be able to consult with a representative of the insurer in their own Member State and language.
- A Member State must establish an information centre to provide information to entitled persons, e.g., claimants, regarding the relevant insurer of a vehicle in that Member State. The MIBI are the appointed body in Ireland.

Fifth Motor Insurance Directive (2005)

- Revised the minimum levels of compensation cover for damage to persons and property and provides that these amounts will be updated regularly in line with the Harmonised Index of Consumer Prices.
- Obligated insurers to provide a statement of claims record to facilitate a person wishing to take out a new motor insurance contract with another insurer.

'Sixth' Motor Insurance Directive (2009/103/EC)

- This Directive codifies into a single Directive (2009/103/EC) and repeals the previous Motor Insurance Directives.

PART 2
ISSUES IDENTIFIED BY THE WORKING
GROUP

CHAPTER 5 – PROTECTING THE CONSUMER

5.1 Introduction

This chapter seeks to provide an overview of a number of issues that the Working Group has received representations or submissions on, or has had consultations with stakeholders about, in relation to protecting the consumer in the insurance purchasing process. In this regard, increasing the transparency in premiums for consumers, improving access to insurance and increased involvement and engagement with consumers have been shown to be key issues.

It also reviews a number of issues raised with regard to access to insurance. Specifically, this relates to the ability of residents in Ireland to buy insurance in other Member States, the ability of returning emigrants to have previous driver history in other jurisdictions recognised and closer review of the operation of the Declined Cases Agreement. The chapter also looks at certain sectors and a number of other issues.

At the end of the chapter, the Working Group makes a number of recommendations.

5.2 Premium Transparency

5.2.1 Premium Increases

The argument has been made that there is insufficient transparency in how motor insurance policies are priced. In particular, a number of stakeholders have expressed deep unhappiness with there being no explanation from insurance companies as to why prices have gone up so significantly – in some cases there have been increases of over 100%. For a product such as motor insurance which is compulsory in nature and which is essential to people for a range of different reasons including livelihood, lack of public transport in rural areas, etc., such increases without an explanation seem to the Working Group to be unacceptable.

It is appreciated that prices can increase for a range of reasons some of which may relate directly to the policyholder such as a claim or penalty points. However, the Working Group believes that there should be a requirement for a company to explain, in instances where there is a large increase (20% or more), why this has happened. In the Working Group's view, it is reasonably standard practice in other business sectors for firms to explain a particular increase in price (most of which are considerably more modest than those in the insurance sector), therefore the Working Group believe that an explanation of some description should be provided.

5.2.2 Premium Breakdown

Another transparency issue the Working Group considered was the provision of additional information on the premium breakdown when a person first gets a quote for a policy as well as at renewal notice stage. This would provide a greater level of information to a policyholder or a potential policyholder, and enable them to shop around for a better price with a more complete understanding of the cost of the product they are buying.

The criteria for the information requirements that must be set out in the renewal of a non-life insurance policy are set out in the Non-Life Insurance (Provision of Information) (Renewal of Policy Insurance) Regulations 2007 (S.I. No. 74 of 2007). These Regulations are made by the Central Bank of Ireland under the *Central Bank Act 1942*. There are a number of specific requirements in relation to motor insurance, in recognition of the fact that it is a mandatory insurance and that drivers are required to have motor insurance cover at all times. The Regulations set out information requirements in relation to the name of the driver(s) insured under the policy, whether the policy is:

- Comprehensive
- Third party, fire and theft,
- Third party only, or
- A combination of the above

There are requirements in relation to the cost of optional cover in addition to the level of motor cover selected, for example, some insurers offer “no claims bonus protection” as an add-on. The percentage and monetary value of the no claims discount is also required to be disclosed to the consumer in the renewal notice, as well as any fees or charges applied in addition to the premium. An example of an additional charge is any fees that an intermediary may charge in arranging motor insurance.

The Working Group analysed what additional information could be of benefit to the consumer and concluded that further detail could be provided on the makeup of the premium cost.

5.2.3 Extension of Renewal period to allow for shopping around

The Working Group received representations from members of the public about renewal quotations being received that were considerably higher than the previous price paid, but when contact was made with the insurer to challenge this, revised lower quotations would issue without explanation. Such practice, while benefitting the consumer, demonstrates that there is a lack of transparency in the development of quotations. The Working Group believes that it is beneficial to consumers to shop around with regard to insurance and recognises that there is already a high degree of switching by consumers in the motor insurance sector. In

this regard, a 2015 report by the Competition and Consumer Protection Commission²⁶ that surveyed consumer switching behaviour found that motor insurance was one of the sectors where there was highest switching, around 29%. Nevertheless, the Working Group believes that extending the timeframe by which consumers can shop around may better facilitate switching behaviour.

5.2.4 Changed circumstances that lead to higher premiums

A number of stakeholders indicated to the Working Group that it was only at renewal stage that they become aware that certain circumstances, for example, the age of a car, had an impact on their motor insurance premium.

An emerging recommendation developed which set out that insurers should advise consumers upon insurance renewal that certain policies (for example, if a car was over a certain number of years old) would impact the cost of motor insurance in future years, specifically at the point of next renewal, a year hence. The thinking behind this recommendation was that if a consumer was advised in advance, they would have an opportunity to potentially take action themselves in the intervening year. The Working Group further examined the practicality and benefit to the consumer of implementing such a recommendation and concluded that this recommendation could not be progressed further for the following reasons:

- The motor insurance contract is a one-year contract between the insurer and the insured and is not forward looking. There is no obligation on the consumer's part that they must accept a renewal from the insurer they hold insurance with this year at the point of next year's renewal.
- Advising consumers of "any company policies that will affect the customer's premium at the next renewal" could result in the consumer receiving unnecessary and irrelevant information from the insurer which would not be of benefit to them.
- Information on company policies could be misleading to the consumer as policies could change from year to year and a company may not be in a position to guarantee that a particular underwriting practice would not be altered in the future.

On that basis, the Working Group does not propose implementing a recommendation in this regard.

5.2.5 Insurance Distribution Directive

As set out above in Chapter 2, the legislative framework for insurance distribution was recently revised by the publication of the Insurance Distribution Directive (Directive (EU)

²⁶ <http://ccpc.ie/consumer-switching-behaviour>

2016/97). The main aim of the Directive is to facilitate market integration by the enhancement of retail insurance regulation and increasing the level of policyholder protection. The Directive entered into force on 22 February 2016. EU Member States are required to transpose the Directive into national law by February 2018, with some transitional provisions applying until February 2019.

The Working Group recommends that this Directive be transposed in a timely fashion by the Department of Finance.

5.3 Access to insurance

5.3.1 Access to Cross-border insurance

An issue raised by one stakeholder, the Irish Road Haulage Association (IRHA), was the cost of insurance for Irish registered hauliers compared to their counterparts in other EU Member States despite many Irish registered hauliers carrying out the majority of their travelling in other jurisdictions. They queried why Irish registered vehicles cannot avail of lower insurance premium levels in other Member States and indicated that for competitive reasons some hauliers are moving their fleets abroad and re-registering them in other jurisdictions.

The Working Group considered the question raised by the IRHA and undertook to outline the requirements surrounding the sale of motor insurance between different EU Member States. This explanation is set out below.

It is possible for an insurance undertaking authorised in one Member State to conduct business in another EU/EEA state either through:

- establishing a branch operation in the host country and thus conducting business on a ‘freedom of establishment’ (FOE) basis; or
- writing business from the home country (i.e. where authorised) into the host country on a ‘freedom of services’ (FOS) basis.

In both situations there is a requirement to become a member of the national bureau and the national guarantee fund of the host Member State.

The national bureau in Ireland is the Motor Insurers’ Bureau of Ireland (MIBI). This is an important requirement as the MIBI is the body in Ireland tasked with meeting the EU requirement of compensating victims of accidents caused by uninsured and unidentified vehicles.²⁷ Claims paid by the MIBI account for approximately 7% of all motor insurance claims paid by value.

²⁷ Article 24 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

Compulsory Insurance Requirements and Restrictions it imposes on Obtaining Insurance outside the State

Article 3 of Directive 2009/103/EC²⁸ requires Member States to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in its territory is covered by insurance.

The compulsory motor insurance requirements in Ireland are set out in the *Road Traffic Act 1961*. That Act requires that an approved insurance policy or guarantee be in place.²⁹ In the case of an approved insurance policy that policy must be issued by a ‘vehicle insurer’.³⁰

Vehicle insurers are required by section 78 of the 1961 Act to become members of the MIBI, in line with the EU requirement set out above.

In order to provide a more practical understanding of these restrictions, the case of *DPP v Leipina and Suhanovs*³¹ is helpful in outlining the operation of the requirements in respect of compulsory motor insurance. The findings of that case are set out below.

DPP v Leipina and Suhanovs **[2011] IESC 3**

The accused in this case had received a policy of insurance from a Latvian insurer on an Irish registered car. He was charged under section 56 of the *Road Traffic Act 1961* (the 1961 Act) for failing to have an approved policy of insurance in place. The Latvian insurer by whom he was insured was not a member of the Motor Insurers’ Bureau of Ireland (MIBI) as required by section 78 of the Act.

The International Motor Insurance Card (the “Green Card”):

As set out above, compulsory motor insurance in Ireland must be purchased from a member of the MIBI. As the insurer in this case was not a member of the MIBI, the accused then argued that as his insurance policy had been purchased within the EU, the vehicle should be covered for use in Ireland under the Green Card system.

²⁸ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

²⁹ Section 56 of the *Road Traffic Act 1961*.

³⁰ Section 62 of the *Road Traffic Act 1961*.

³¹ [2011] IESC 3.

Article 2.2 of the First Motor Insurance Directive(72/166/EEC)³² provides that a vehicle normally based in one Member State may enter the territory of another Member State on production of a Green Card in which event the vehicle will be treated as insured for the purposes of compensating victims whether insured or not.

Article 1.4 of the First Motor Insurance Directive provides that the territory in which a vehicle is normally based is the territory in which it is registered.³³

Questions referred:

The Circuit Court referred the following questions to the Supreme Court:

- (a) whether the vehicle in question is covered for use in Ireland under the International Motor Insurance Card (hereinafter “Green Card”) system;
- (b) Whether a policy of insurance attested to by way of the Green Card for a vehicle bearing an Irish registration plate may be a defence to the charge under section 56 of the Act.

Decision:

The Supreme Court answered both questions in the negative. The Court found that the objective of the Green Card scheme is to enable the issuing of a policy of insurance in the country in which a vehicle is registered which will be valid in all other member countries of the Green Card scheme.

A vehicle registered in the state must be insured by a vehicle insurer who is a member of the national bureau, the Motor Insurers’ Bureau of Ireland.

A Green Card is a device whereby a motor vehicle is deemed to be insured whether or not it in fact is insured. It only operates in respect of a vehicle registered in one State visiting another State. It does not operate in respect of a vehicle within the state of registration of the vehicle.

³² Repealed by Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability. Article 3 of the 2009 Directive contains an equivalent requirement.

³³ The European Communities (Road Traffic) (Compulsory Insurance) (Amendment) Regulations 1987 (S.I. No. 322 of 1987), provides that reference to the territory in which a vehicle is normally based is by reference to the territory of the State of which the vehicle bears a registration plate.

Following this review, the Working Group considers that it is not possible to provide for individuals to source motor insurance for Irish registered vehicles from insurers in other Member States pursuant to EU law. The exception to this as outlined above is where the insurance is purchased through the existing channels of FOE and FOS, where amongst other requirements, the insurer contributes to the MIBI and has a claims representative in the State.³⁴

Developments at EU level

The Working Group has taken note also of developments in the EU on this matter. In this regard, it notes that in December 2015, the European Commission launched a Green Paper on retail financial services (the “Green Paper”).³⁵ The Green Paper considers the provision of retail financial services, including insurance, on a cross-border basis and the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border. It noted that “there is evidence of market fragmentation in the differing prices for identical or similar products available in different domestic markets, even from the same provider.”³⁶ The Green Paper states that when establishing branches in other markets, firms tend to adjust their pricing to local conditions and do not generally export more competitive pricing to other markets.

The Green Paper acknowledged that:

“differences in prices can be attributed to factors such as varying conditions in domestic economies, uneven levels of purchasing power, financial or institutional structures (e.g. taxation, regulation or supervision), or differing funding costs, value propositions (sometimes related to product tying or packaging) and pricing structures in local markets. For insurance (specifically motor insurance) variations in the costs and risks of providing cover can vary substantially between the different Member States, which can justify some price differences.”³⁷

The Green Paper also notes that while there is some degree of legal harmonisation across the EU there are legal differences in areas such as contract law and firms must comply with a substantial body of regulatory requirements in each Member State in which they choose to operate. In particular, it noted that, “for insurance, the applicable law is in principle that of

³⁴ Article 152 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

³⁵ European Commission, *Green Paper on retail financial services: Better products, more choices, and greater opportunities for consumers and businesses*, (COM(2015)630)(Brussels, 10 December 2015).

³⁶ See note 34 at p. 6.

³⁷ See note 34 at p. 8

the country where the insured risk is located, often where the policy-holder has his habitual residence.³⁸ The parties' ability to choose another law is heavily circumscribed."³⁹

The summary of contributions received by the European Commission notes that many firms emphasised that they do not see a business case for providing services cross-border for a number of reasons including local regulation requirements, access to data on consumers and the need for local networks for claims handling. The question of what could be done to limit unjustified discrimination on the grounds of residence also met with resistance from industry who state that residence can be a key criterion on which they price their products and offer services.⁴⁰ Further, on the 'location of risk' principle a large proportion of insurance representatives did not propose action to remove these barriers, noting that they can benefit consumers.

As part of the process, the European Parliament Committee on the Internal Market and Consumer Protection provided an opinion on the Green Paper which, has resulted in the adoption on 16 November 2016 of a Resolution on the Green Paper which, *inter alia*,

- calls on the Commission to intensify its work against discrimination on grounds of residence in the European market on retail financial services and, if necessary, to complement the planned general proposals to end unjustified geo-blocking with further legislative initiatives targeted specifically at the financial sector, bearing in mind that the price of some products and some services is linked to a range of factors (regulatory or geographic) that differ from one Member State to another; and
- asks the Commission to study further the feasibility, relevance, benefits and costs of removing existing barriers to the cross-border provision of financial services, thus guaranteeing domestic and cross-border portability in various parts of the retail financial services market, for example as regards personal pension and insurance products.

The Working Group takes note of this resolution and observes that it is relevant to the discussions that have taken place in Ireland, including the fact that it recognises that some of the price differences are linked to various factors that differ from one Member State to another. In conclusion, it is clear that this is a pan-European issue, which will only be resolved at that level.

³⁸ See Article 7 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

³⁹ See note 34 at p. 25.

⁴⁰ European Commission, *Summary of the contributions to the Green Paper on retail financial services: Better products, more choices, and greater opportunities for consumers and businesses*, http://ec.europa.eu/finance/consultations/2015/retail-financial-services/docs/summary-of-responses_en.pdf.

5.3.2 Returning Emigrants

A recurring theme during the Working Group's review of the cost of motor insurance is the difficulties that returning emigrants have in getting reasonable quotations from insurance companies. The major difficulty they have faced is the refusal of some insurers to take into account previous driver history in other jurisdictions, in addition to their previous driver experience from Ireland, thus denying them the benefits of no claims bonus discounts. The experiences of emigrants returning to Ireland with insurers were different depending on their own particular circumstances (i.e. the country they are returning from, their driving experience prior to leaving Ireland and the length of time they have spent abroad).

The Working Group raised this issue with a number of large insurance companies in order to establish their general approach to this matter. The responses received varied considerably. Factors cited for these difficulties by the insurance industry include the inability of insurers to verify experience from other jurisdictions and additional risk factors on account of a lack of recent experience of driving on the left hand side of the road. Most insurers indicated that because of the non-standard nature of these applications for insurance, their online quotation systems were not able to facilitate them and therefore generally advise customers to make contact by telephone instead.

While one insurer stated that they only consider Irish experience, most insurers indicated that they will consider UK experience, with a smaller number willing to consider EU experience or experience from other countries such as the US, Canada, Australia and New Zealand. Two insurers would only consider experience from another jurisdiction once it is validated. Two insurers allow a driver to use their previous Irish No Claims Discount on their return if it was earned within the previous two years.

The information provided to the Working Group appears to suggest that most insurers operating in Ireland do accept driver history information from other jurisdiction. However, it seems that due to the differences in how each insurer treats such customers, much of the difficulty that returning emigrants may experience is due largely to the nature of their interactions with insurers. That said, companies do believe that in some instances there are particular risks associated with returning emigrants which they need to price for, particularly if they have been driving on the right side of the road for a number of years and this is sometimes reflected in the premiums charged.

In conclusion, with regard to drivers that have previous driving experience in Ireland, the Working Group believes that insurers can do more to accept driver history from other jurisdictions, particularly where those jurisdictions drive on the same side of the road as Ireland. Insurers can also do more to improve the experience of emigrants seeking to purchase insurance by providing more upfront information on what is required in order to be able to receive a quotation that recognises previous driver history. In this regard, Insurance Ireland should develop a standard information protocol for insurers to include information about a company's policy as regards acceptance of previous driver history in other

jurisdictions, the validation process for such history, provide clarity on the relevant documentation needed, and the need to make it clear about the necessity to call the insurance company rather than get an online quotation, etc.

5.3.3 The Declined Cases Agreement

The Working Group received a number of submissions and queries from individuals about the operation of the Declined Cases Agreement. Under the Declined Cases Agreement (“the Agreement”), the insurance market undertakes not to refuse to provide third party motor insurance to an individual where they have approached at least three insurers. This is necessary given the mandatory nature of third party motor insurance in Ireland.

According to Insurance Ireland, there were 1164 cases submitted under the Declined Cases Agreement in 2015. The main categories of person approaching the Declined Cases Committee having been refused insurance included hackneys and taxis, those with convictions and those with claims. Other factors which led to submissions under the Agreement included the individuals’ occupations, details surrounding additional drivers, issues concerning non-disclosure, cases where the insured was a young driver, and the make and model of the vehicle or modifications to it.

Feedback from members of the public and certain sectors reported that while quotations were being given following complaints, the quotation received was so high that it was in their view tantamount to a refusal.

What is the Declined Cases Agreement?

The Agreement was drawn up in 1981 and is subscribed to by all motor insurers operating in Ireland. Motor insurers operating in Ireland are required by the Central Bank of Ireland’s General Good Requirements for Insurance and Reinsurance Undertakings 2012⁴¹ to sign the Agreement. This also applies to insurers passporting into Ireland. On notification by an overseas Regulator that an insurance company intends to write motor liability insurance in Ireland on an FOE/FOS basis, the Central Bank of Ireland will issue the General Good Requirements (GGR) to the overseas Regulator for issue to the insurance company.

The GGR includes the following requirements in respect of motor liability insurance (Class 10):

- Become members of the Motor Insurers’ Bureau of Ireland and provide evidence of this to the Central Bank of Ireland;

⁴¹ <http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/General%20Good%20Requirements.pdf>

- Appoint a Claims Representative in Ireland;
- The undertaking shall notify the Central Bank of Ireland of the name and address of the representative appointed and of the claims representative in the State;
- Sign the Declined Cases Agreement.

The Central Bank of Ireland does not impose the ‘signing up’ to the Declined Cases Agreement as a condition of authorisation for undertakings registered in Ireland. It is not within the scope of the Central Bank of Ireland’s powers to require an insurer (including one that may be passporting into this jurisdiction) to ratify an agreement with third parties as a pre-condition to carrying on insurance business in the State. However, the Motor Insurers’ Bureau of Ireland membership application forms requires applicants to confirm that they have signed the Declined Cases Agreement.

How does the Declined Cases Agreement operate?

Insurance Ireland operates the Declined Cases Agreement (DCA) as a means of ensuring that persons seeking motor insurance will obtain cover. Where an individual has held a policy within the previous three years, the insurance company concerned is obliged to provide the individual with a quotation. Otherwise the insurer first approached will be required to provide the quote. Where it is not possible to determine which insurer was first approached a rota system operates to allocate risks. The only ground on which the insurance market may refuse cover is where to provide insurance would be contrary to the public interest.

The Agreement provides that, in addition to refusals, the Committee may decide that a premium and/or terms are so excessive as to be tantamount to a refusal, in which case they may indicate the maximum premium and/or terms that shall be imposed. As each insurer calculates premiums based on their own models, Insurance Ireland states that due to the lack of objective criteria for what would be considered to be so excessive as to be tantamount to refusal, each quote must be considered on a case by case basis.

Who administers the Declined Cases Agreement?

The Agreement is administered by a Committee made up of representatives of each of the companies who have signed the Agreement. The Committee meets twice yearly and includes a representative of the Consumers’ Association of Ireland and the Financial Services Ombudsman’s Bureau as external observers. The Committee is supported by the Insurance Information and Administration Divisions of Insurance Ireland. In practice, Insurance Ireland state that they resolve cases referred to them without convening the Committee on a regular basis.

The Department of Finance met with Insurance Ireland to discuss the operation of the Agreement. In light of the complaints from members of the public, Insurance Ireland confirmed that the Committee can decide whether a quote is so high or the terms so excessive as to make the quote tantamount to a refusal, in which case it will review the matter. The Department understands that in practice attempts are made to resolve such referrals in advance of needing discussion by the Committee.

Insurance Ireland confirmed that the Agreement was amended in 2002. One of the main changes at that time was to reduce the number of refusal letters required from five to three. The industry does not propose to change the Agreement at present.

Does the Central Bank have a role in the monitoring of the DCA?

The Central Bank of Ireland does not have a role in monitoring the operation of the agreement and is not a signatory to the agreement. However, the Central Bank of Ireland monitors the Central Bank of Ireland Codes, i.e. the Consumer Protection Code and the Minimum Competency Code. In this regard, Provision 4.39 of the Consumer Protection Code provides that where an insurance undertaking refuses to quote a consumer for motor or property insurance, it must, within five business days of the refusal, *inter alia*, notify the consumer of their right to refer the matter to the Declined Cases Committee and the method of doing so.

The relevant provisions as regards 'Complaints Resolution' are contained in Chapter 10 of the Code. For the purposes of the Code, a complaint includes '*...an expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with... the failure or refusal of a regulated entity to provide a product or service to a consumer*'.

What recourse does a consumer have if they are not satisfied?

Where a consumer is unhappy with the service received from any regulated firm, he or she can complain to the firm concerned.

Where a consumer is not happy with the response received from the regulated entity, he or she may be in a position to raise the complaint with the Financial Services Ombudsman (FSO). In this regard, under section 57BX of the *Central Bank Act 1942*, conduct of a regulated financial service provider, in relation to a failure by it to provide a particular financial service that has been requested, comes within the remit of the FSO regime.

5.4 Consumer involvement and engagement

Consumer involvement in Claims Settlement

A complaint which the Working Group has heard from a number of stakeholders, particularly in the commercial area, is the issue of insurers settling a claim without consulting with the policyholders. In such instances, the policyholder only becomes aware of the claim on renewal of his policy. It has been suggested that in order to address such a problem, insurers should be legally forbidden from settling a claim without the permission of the policyholder.

The Working Group has discussed this matter with the industry and they have indicated that for cost reasons, it often makes sense for them to settle a claim without contesting it, even if they have doubts about it. This is because if they do otherwise and challenge it they can potentially incur large legal costs, which in some case may significantly outstrip the actual value of the settlement. Therefore, such a decision is an economic one which they believe they are forced to make in order to keep costs under control.

In the view of the Working Group, there needs to be a greater level of transparency in this area – in other words insurance companies must engage with a policyholder about a claim of this type and listen to their views. It should be noted that communicating with policyholders in such circumstances should not result in any significant additional costs for an insurance company.

Consumer engagement

Engagement with relevant stakeholders has been very beneficial in relation to the work of the Cost of Insurance Working Group. The Group thinks that ongoing engagement between stakeholders is important as part of the stabilisation of the insurance sector. In this context, the Working Group recommends that an industry-led forum for consumer and business issues would assist in improving communications between all stakeholders. It would be beneficial that such a forum would cover the life and non-life insurance sectors and meet at least twice a year. The forum should facilitate the appropriate engagement of Insurance Ireland and insurance companies with relevant business organisations, consumer associations, the Competition and Consumer Protection Commission, the Central Bank of Ireland, the Departments of Finance and Jobs, Enterprise and Innovation and other relevant stakeholders. Meetings should take place at least twice yearly. The first meeting should take place by June 2017.

5.5 Sectorial issues

The Working Group met with a number of representative bodies concerned with the availability and cost of insurance to their respective members. The issues raised included the difficulty of some taxi drivers in securing insurance for the first time, or where they rent their vehicle. The Irish Road Haulage Association raised questions on the inability to source insurance in other jurisdictions in circumstances where the majority of their travelling is done in other member states which is considered above in 5.3.1.

The Taxi Sector

The taxi sector has made representations to the Department of Finance and the Working Group that increases in the cost of motor insurance are presenting significant difficulties to drivers. In submissions to the Group, reference was made in particular to:

- concerns about a lack of choice in the insurance market, and in particular that the market had shrunk in the last 5 years, which has led to significant increases in premiums charged to owner drivers of taxis with the result that some are being forced to leave the industry,
- concerns that there was a lack of transparency in how premiums are being calculated with no explanations being provided for increases by insurers,
- claims that insurers were using changes made under the *Taxi Regulation Act 2013* to increase premiums, particularly in the taxi rental sector.

The issues raised in the first two bullet points are the key areas which the Working Group is considering as part of its overall mandate to review and make recommendations on the cost of insurance. The starting point for the Working Group's consideration of these issues in relation to the overall motor insurance area, including the taxi sector, is that it is not possible for it to make recommendations on pricing as this is primarily a commercial matter for insurers. Nevertheless, the Working Group does appreciate that the pricing issue and availability of cover is particularly significant to the taxi sector because taxis serve a social as well as an economic purpose which applies particularly in rural areas, where public transport is less available. Consequently, the concerns of the sector have been relayed to the insurance industry.

As indicated to all stakeholders throughout this process, there is no immediate solution to this issue. Nevertheless, we do believe that the implementations of the recommendations within this report should lead to a stabilisation in pricing and a reduction to more reasonable levels over time. However, due to the need to avoid the "see-saw" effect of prices increasing and falling significantly at regular intervals in the Irish market, there is unlikely to be a return to the particularly low level of pricing of a few years ago. In addition, the stabilisation of the market will hopefully make Ireland more attractive to new entrants to the market which should also help alleviate the difficulties currently being faced by the industry.

On the other issue, the Working Group was of the view that it had limited influence over this matter, as it did not come directly within its remit. Nevertheless, it did examine the issue and its views are set out below:

Taxi Regulation Act change: As the Group understands it this applies primarily to issues encountered by drivers renting taxis. The relevant regulation is Regulation 50 of the Taxi Regulation (Small Public Service Vehicle) Regulations 2015 (S.I. No. 33 of 2015). This provides, *inter alia*, that the person who holds a taxi vehicle licence and wishes to rent his vehicle to another person for the carriage of paying passengers must rent the vehicle with insurance in place for the relevant driver. The effect of this legislative change means that the renting driver will be noted under the policy as a named driver. This therefore means that he/she cannot count this as driving history for the purpose of building up a no claims bonus as it rests with the owner of the vehicle rather than the driver who may be renting the vehicle.

The Working Group consulted with industry on this matter in order to understand the background to it. The insurance Industry has indicated that a named driver does not generally earn a no claims discount. While some insurers may offer introductory discounts to named drivers, whether a named driver on a taxi policy receives an introductory discount depends on the length of their driving record and the number of taxi driving claims free years against the backdrop of each individual insurer's overall claims experience.

The Working Group also consulted with the National Transport Authority (the NTA), as regulator for the taxi sector. The NTA stated that the regulation was introduced on foot of a recommendation of the Taxi Regulation Review Group Report which was adopted by Government in January 2012. Action 39 of that report recommended that "the person/entity providing the rental also provides insurance on the vehicle for the rental period".

The rationale for, and background to this regulation arose from the fact that, at the time of the industry review in 2011, concerns existed that in some cases the correct insurance policies were not being taken out that would provide cover for passenger hire services. These arrangements had the potential to leave passengers, unknowingly, without the protection of insurance cover in respect of their journey. To address this issue, it was decided by the Taxi Review Group that it was necessary that the person renting the vehicle to another person would be required to provide the insurance cover during the period of rental. They would be expected to recover the cost of the insurance provision in their rental rates. Other options were considered but major deficiencies were associated with those options. The National Transport Authority advised the Working Group that because of the nature of the underlying issue it was not possible to re-consider this matter.

In light of the issues raised being primarily matters for the Minister for Transport, Tourism and Sport to consider further, the Working Group recommends that the Advisory Committee on Small Public Service Vehicles enter regular discussions with Insurance Ireland on possible steps that can be taken by the sector to improve the situation for drivers in the sector. This

Committee is appointed by the Minister for Transport, Tourism and Sport to advise the Authority or the Minister, as appropriate, in relation to issues relevant to small public service vehicles and their drivers.

Pricing models for vehicle repair in the event of an insurance claim

The Working Group heard some concerns about potential issues around pricing models for vehicle repair in the event of an insurance claim. An emerging recommendation included a potential recommendation to engage with SIMI to examine pricing models for vehicle repair in the event of an insurance claim. The Working Group liaised with the Competition and Consumer Policy Section of the Department of Jobs, Enterprise and Innovation (and through it, the Competition and Consumer Protection Commission) which set out a number of concerns with regard to the emerging recommendation.

Firstly, the issue of putting in place an industry-wide pricing estimation system for vehicle repairs was investigated by the Competition Authority in 2002/2003 when four motor insurance companies formed a consortium to introduce the “Glassmatix” system in Ireland. The Glassmatix system is an internationally recognised vehicle repair estimation system, which provides estimates based on internationally recognised best practice for labour times and up-to-date prices for manufacturer parts. The (then) Competition Authority was concerned that the consortium may have used the implementation of the Glassmatix system as a means to fix the price of motor vehicle repair costs and thereby restrict competition in the market for motor vehicle repairs. In addition, the Competition Authority was concerned that any such coordination with respect to costs, if it were established, would also promote conditions conducive to collusion in setting motor vehicle insurance premiums. The Authority reached an agreement with the consortium in 2003S which addressed the Authority’s competition concerns while ensuring that the Glassmatix system could be implemented in a manner that would provide potential benefits for consumers.

Secondly, to engage with SIMI to examine pricing models may bring with it a considerable risk of price fixing or other type of anti-competitive coordination when a sector is allowed a platform to create or formulate an industry price model. If the industry itself did decide to explore the issue, there would be an obligation on it to ensure that their engagement complied with competition law.

In concluding, it stated that price-fixing is one of the most egregious form of anti-competitive behaviour and anything that facilitates such a possibility should not be included as a potential recommendation.

On the basis of the views provided, the Working Group agreed that the proposed recommendation should be removed from the recommendations for the reasons set out above.

5.6 Recommendations

In view of the issues above, the Working Group is making a number of recommendations.

Recommendations 1 – 4 Improving Transparency

Recommendation 1

Insurers to set out reasons for large increases in premiums to provide transparency to consumers

The Working Group believes that there should be a requirement for insurance companies to explain large premium increases in particular where a person's circumstances have not changed. The Working Group therefore recommends that:

1. the Department of Finance should engage with the insurance industry to establish a common protocol to facilitate the communication to consumers of the reasons for large increases in premiums.
2. the Department of Finance should develop legislation to underpin such a protocol.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|---|-----------------------|
| 1 | Develop a protocol with Insurance Ireland to facilitate the communication of the reasons for large increases in premiums to consumers | Q2 2017 | Department of Finance, Central Bank of Ireland, Insurance Ireland | Department of Finance |
| 2 | Develop legislation to underpin the protocol in Action Point 1 | Q4 2017 | | |

Recommendation 2

Insurers to provide additional information on the premium breakdown to consumers

The Working Group recommends that insurers be required to break down the premium cost, setting out the element of the cost related to the mandatory motor insurance (third party), in addition to the non-mandatory element (comprehensive).

It is noted by the Working Group that any changes to the Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007 Regulations would be subject

to the Central Bank of Ireland’s usual consultation process, which is the process followed when enhancements to the Regulatory framework are being proposed. This consultation process will need to engage with consumer stakeholders and with insurers to determine an appropriate lead time for any necessary changes to IT and or pricing systems to reflect the requirements for the additional breakdown in the premium make up. The Working Group is not seeking to prejudge the outcome of this consultation.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|-------------------------|-------------------------|
| 3 | Central Bank of Ireland to undertake consultation | Q4 2017 | Central Bank of Ireland | Central Bank of Ireland |
| 4 | Central Bank of Ireland to amend legislation | Q2 2018 | | |

Recommendation 3

Extend the current renewal notification period from 15 working days to 20 working days to make it easier for motorists to compare pricing when purchasing insurance

The Working Group believes that extending the current renewal notification from 15 working days to 20 working days could make it easier for motorists to compare pricing when purchasing insurance.

It is noted that the requirements for provision of information in non-life renewal notices are set out in the Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007. In order to amend these Regulations, the Central Bank of Ireland’s standard consultation process will have to be followed including engagement with consumer stakeholders and industry. The Working Group is not seeking to prejudge the outcome of this consultation.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|-------------------------|-------------------------|
| 5 | Central Bank of Ireland to undertake consultation | Q4 2017 | Central Bank of Ireland | Central Bank of Ireland |
| 6 | Central Bank of Ireland to amend legislation | Q2 2018 | | |

Recommendation 4

Transpose the Insurance Distribution Directive

The Working Group recommends that the Department of Finance transposes the Insurance Distribution Directive (Directive (EU) 2016/97) by the deadline for transposition, February 2018.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|-----------------------|-----------------------|
| 7 | Department of Finance to transpose the Insurance Distribution Directive | Q1 2018 | Department of Finance | Department of Finance |

Recommendations 5 – 7 Improving Access to Insurance

Recommendation 5

Support efforts and raise awareness of the need to improve cross-border insurance provision at EU level

The Working Group recommends that the Department of Finance, through the Permanent Representation of Ireland to the European Union, supports initiatives such as the Green Paper on retail financial services to remove cross-border barriers in the motor insurance sector, and to engage the support of our European Parliamentarians to push this agenda.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|-----------------------|-----------------------|
| 8 | Monitor EU developments | Ongoing | Department of Finance | Department of Finance |
| 9 | Make representations as necessary with EU Commission and EU Parliamentarians | Ongoing | | |

Recommendation 6

Put in place a standard protocol for insurance companies in order to ensure a greater consistency of treatment for returning emigrants

The Working Group is of the view that it is not possible through legislation to require insurers to provide quotations from insurers that take into account previous driver history in other jurisdictions because this is a commercial decision for the respective companies.

Notwithstanding this, the Working Group recommends that:

- Insurance Ireland put in place a standard information protocol for insurers to follow in this area in order to ensure that applicants have a greater understanding of the issue and what they need to do in order to obtain insurance. This should be done by the end of 2017;
- insurers implement policies that result in wider acceptance of driver history from other jurisdictions where the driver has previous driver experience in Ireland. In particular, the Group believes that there is no reason why insurers cannot recognise with immediate effect driving experience from emigrants returning from jurisdictions that drive on the same side of the road as Ireland. In addition, the Group believes that where a person has previous driving experience in Ireland and is returning from a country that drives on the other side of road, the insurer should take appropriate account of the experience in that country and previous Irish experience when pricing policy.

Insurers will communicate to the Working Group on their progress regarding the implementation of these recommendations by the end of Q2 2017 and again at the end of Q4 2017.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|---------------------|-------------------|---|
| 10 | Insurance Ireland to put in place a standard information protocol for consumers | Q4 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |
| 11 | Insurers to implement policies to accept driver experience from abroad when a person has previous driving experience in Ireland and is coming from a country that drives on the left side of the road (e.g. UK), and take full account of the experience in that country and previous Irish experience when pricing policy | Q2 2017 | | |
| 12 | Insurers to implement policies to accept driver experience from abroad when a person has previous driving experience in Ireland and is coming from a country that drives on the other side of road, and take appropriate account of the experience in that country and previous Irish experience when pricing policy | Q4 2017 | | |
| 13 | Insurance Ireland to submit report to Department of Finance on their implementation of actions 10, 11 and 12 | Q2 2017 and Q4 2017 | | |

Recommendation 7

The Declined Cases Agreement to be subject to ongoing review to ensure transparency

The Working Group notes that the Declined Cases Agreement process is considering a significant volume of cases (1162 in 2015). It also notes that Insurance Ireland has indicated that in practice they resolve most of the cases referred to them without convening the Committee on a regular basis. The Working Group however recommends that the Declined Cases Agreement process should be more transparent. In this regard, Insurance Ireland should provide a report by June 2017 and annually thereafter to the Minister for Finance on the operation of the Declined Cases Agreement, including on the cases submitted and resolved, and cases where a premium and/or terms are so excessive as to be tantamount to a refusal. The Working Group also believes that Insurance Ireland should provide further information on its website with regard to the recourse a consumer has in cases where there is not a satisfactory outcome through the Declined Cases Agreement.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|---|--------------------------|
| 14 | Insurance Ireland to provide information on their website | Q1 2017 | Insurance Ireland, Department of Finance | Department of Finance |
| 15 | Insurance Ireland to submit report to Department of Finance annually | Q2 2017 | | |

Recommendations 8 – 9 Improving Consumer Consultations

Recommendation 8

Develop a general protocol around the requirement for insurance companies to notify a policyholder of claims made against them before settlement

In order to ensure that insurers take greater account of this issue, it is recommended that Insurance Ireland develop a general protocol around the requirement for insurance companies to notify a policyholder of claims which they are of the view that the policyholder is unaware of before settlement. The Department of Finance should be consulted as part of this process.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|-------------------|---|
| 16 | Insurance Ireland to consult with the Department of Finance in relation to the development of a general protocol | Q3 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |
| 17 | Insurance Ireland to put in place a general protocol | Q4 2017 | | |

Recommendation 9

Insurance Ireland to establish a Forum for consumer and business issues

The forum should facilitate the appropriate engagement of Insurance Ireland and insurance companies with relevant business organisations, consumer associations, the Competition and Consumer Protection Commission, the Central Bank of Ireland, the Departments of Finance and Jobs, Enterprise and Innovation and other relevant stakeholders. Meetings should take place at least twice yearly. The first meeting should take place by June 2017.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|-------------------|---|
| 18 | Forum to be established by Insurance Ireland for consumer and business issues | Q1 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |
| 19 | Forum to meet twice yearly | Ongoing | | |

Recommendation 10

The Advisory Committee on Small Public Service Vehicles should enter regular discussions with Insurance Ireland to explore solutions for drivers in the sector

The Working Group recommends that the Advisory Committee on Small Public Service Vehicles (SPSV) should invite Insurance Ireland to regular meetings on steps that can be taken by the SPSV sector to improve the situation for drivers in the sector. This Committee includes representatives from various sectors and advises the National Transport Authority or the Minister for Transport, Tourism and Sport, as appropriate, in relation to issues relevant to small public service vehicles and their drivers. These meetings should take place as soon as possible and aim to submit a report to the Minister for Transport, Tourism and Sport by June 2017.

While neither the Minister for Finance nor the Central Bank of Ireland can direct insurance companies as to how they price their products, the Working Group believes that the implementation of the Report should introduce greater stability into the market and should also make Ireland more attractive to new entrants. These measures could result in more competitive rates being offered to taxi drivers over the next 12 months.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|-------------------------|--|-----------------|--|--|
| 20 | Advisory Committee on Small Public Service Vehicles to meet with Insurance Ireland | Q1 2017 | Advisory Committee on Small Public Service Vehicles, Department of Transport, Tourism and Sport, Insurance Ireland | Department of Transport, Tourism and Sport |
| 21 | Advisory Committee on Small Public Service Vehicles to report to the Minister for Transport, Tourism and Sport | Q2 2017 | | |

CHAPTER 6 – IMPROVING DATA AVAILABILITY

6.1 Improving data availability

As already discussed, the Working Group engaged with a wide number of stakeholders during this review. A common theme emerged from discussions with those stakeholders, namely that an improvement in transparency, facilitated by additional collection and publication of data, was essential. All of the insurance undertaking CEOs who met the Working Group stated that claims costs are a significant driver of insurance premiums increases. In order to better understand how claims costs impact premiums, the Working Group decided that an incremental data gathering approach should be adopted to increase transparency and improve data availability across the insurance sector. This would commence with the short-term publication, and on a quarterly basis, of a number of key aggregated claims-related metrics. This would be followed by the establishment of a National Claims Information Database which would facilitate a more in-depth annual claims' trends analysis.

A key objective, therefore, was to identify the data gaps in the market today and what the Working Group considers are the recommendations to address these gaps. During the discussions a number of perspectives on the precise data gaps which need to be addressed in order to improve transparency were identified. These include the following:

1. Emerging risks within the market (e.g., claims trends and costs),
2. Claim information similar to that collected at three yearly intervals to inform the Book of Quantum, and
3. Claim or policyholder-level information that could be used to combat fraud.

Important factors in considering any or all of these initiatives include:

- Consumer information and protection;
- Identifying data that are defined in a consistent manner, are practical and possible to collect;
- Timelines for delivery and effectiveness, i.e. deliverable in the short to medium term (within 3 years);
- Value for money, i.e. not to add unnecessary cost to the State, insurance undertakings and policyholders; and
- Precedent in other jurisdictions, i.e. proven effectiveness in other jurisdictions and to guide implementation.

Discussions have focussed on whether any one new data source can bridge these existing data gaps. The potential approaches to address the data gaps are discussed further in this chapter and include an assessment of each of the approaches. In each case, the factors above provided the rationale for examining the different approaches and the overall recommendation of the Working Group is aimed at meeting the objectives of transparency while delivering a workable, functional and cost-efficient solution.

In summary, the assessment of the Working Group on data availability is that it:

- Recommends, in the short-term, the collation and quarterly publication by the Department of Finance of key aggregated metrics on claims costs and trends within the market. This data would be collected from all relevant insurance undertakings operating in the State.
- Recommends, in the medium term, the establishment of a National Claims Information Database. The data to be collected would be in the form of a mandated industry analysis at a level of granularity to be determined. The information, however, would be collected and stored at a level of aggregation higher than individual claim level, i.e. not claim-by-claim information. This data would be collected from all relevant insurance undertakings, self-insured entities and other public bodies operating in the State for the purpose of an annual analysis of movements in claims costs / claims trends.

Overall, the Working Group concluded that an incremental approach resulting in the establishment of a National Claims Information Database represents the most immediate and practical solution to bridge the data gaps in such circumstances. This is based on an assessment by the Working Group, supported by the Society of Actuaries in Ireland. The Group believes that this approach will achieve the necessary and desired levels of transparency in the claims environment.

For the purposes of determining what key metrics should be collected and the establishment of a National Claims Information Database, the Department of Finance shall establish a sub-group in January 2017 to consider these matters. This sub-group shall comprise of representatives from the Central Bank, the Central Statistics Office, the State Claims Agency, the Competition and Consumer Protection Commission, the Society of Actuaries in Ireland, and any other relevant bodies as determined by the sub-group. There may also be a need to engage independent actuarial services to assist with the project. The sub-group will report by the end of Q1 2017.

The Working Group also noted the very significant challenge of establishing a claim-by-claim register which would take many years to deliver, require significant resourcing in terms of

cost, financing, staffing and expertise, and for which there is no known international precedent. However, the Working Group considered it appropriate to further explore the feasibility of such a register as a longer-term option and in this regard recommends that a separate sub-group chaired by the Department of Finance be set up to examine the matter.

6.2 Motor insurance data availability

There are a number of drivers of the cost of insurance premiums. In order to enable policy makers to take effective actions to understand and assess insurance premiums' costs, both now and in the future, it is essential to have reliable information on an ongoing basis on the key factors impacting such costs. As claims costs are a key driver in the cost of motor insurance with claims accounting for approximately 50 - 65% of premiums, this section focuses on the availability of data to explain trends in claims costs.

Currently in Ireland, claims data related to motor insurance is available from a variety of sources. However, it is not collected or produced for the purpose of improving transparency on emerging risks within the market. Pricing of insurance premiums reflects a current view on the likelihood and cost of claims into the future. Transparency of claims data could feed into insurers' current view of future risks and improve their ability to price more accurately and reduce the cyclical nature of their pricing. It should be noted that no organisation is currently responsible for the collection of data from insurers for this purpose, thus representing a clear information gap. The Working Group initially analysed the data and information currently available from a wide range of organisations in order to inform its assessment of data gaps in the market. A summary of the type of information collected by each organisation is set out in Appendix 8.

In the UK, the Institute and Faculty of Actuaries (IFoA) has undertaken a market-wide analysis since 2010. This annual analysis has highlighted factors which drive increases in insurance costs. This market-wide analysis of third party claims has provided support to policy making in the UK as it provides vital information on the effect of certain changes. This report is produced using a combination of aggregated company level information and more granular claim-by-claim data.

6.3 Data collection options

The Working Group identified a number of data collection models in order to meet the data gaps in the motor insurance sector identified earlier. The models were assessed in detail with consideration given to a range of issues including the users of the data, access, cost of implementation, etc.

In order to operationalise the models, information will be required from all insurance undertakings operating in the State in order to capture the full claims universe. Data will therefore need to be collected from Irish authorised insurance undertakings, insurance undertakings with their Head Office in other Member States operating on a Freedom of Service (FOS) or Freedom of Establishment (FOE) basis in Ireland, self-insured entities and other public bodies. The legislative implications of mandating FOS and FOE undertakings to provide this information would need to be addressed under all models (options include a model similar to the legislative requirement to join and fund the MIBI).

It should also be noted that, aside from the lead-in time in terms of establishing a database, given the timelines in terms of claims arising and ultimately being resolved, it would take some further years before meaningful trend information would be available.

6.3.1 Key aggregated metrics

Two key requirements for improved transparency are to (i) understand the relationship between the price paid by a customer for motor insurance and the cost to insurance undertakings and (ii) to identify any significant divergence over time between both, and the underlying reasons.

By understanding the trends or movements in the components of the average cost of claims over time, specific cost elements (medical, legal, or 'other' costs) can be identified as the underlying reason(s) for the change. This can assist in focusing future policy efforts in reducing the costs of insurance that a customer pays.

Data could be collected and reported on for each quarter to allow a more granular trend analysis.

From discussions with the Society of Actuaries in Ireland, key aggregated metrics which could be collected may include, but are not limited to, the following. Metrics would be developed by the sub-group to be established in early 2017:

- **Average gross earned premium:** This is the average premium received by the insurance company on an accounting basis, before reinsurance costs. This is a close mirror of the price that a customer pays for insurance.

- **Earned ultimate “burning cost” per policy:** This is the average ‘cost’ to the insurance undertaking for each policy. This metric could be further broken down into its constituent parts:
 - The **ultimate claim frequency** and the **ultimate numbers of claims** gives the percentage of policies that have a claim.
 - The **ultimate average cost** per claim gives the average payment by the insurance undertaking for each claim. This differs from the burning cost, which is the average cost per policy.
 - An important further breakdown relating to personal injury claims is to split the average claim into **‘indemnification’ costs** (e.g. medical and other associated costs) and **‘non-indemnification’ costs** (e.g. legal costs).
- **The investment return** received by each insurance undertaking for personal lines motor insurance on an average per-policy basis.
- **The expenses of each insurance undertaking**, split by commissions (e.g. brokerage costs) and non-commissions (e.g. employee costs, light & heat, rent, etc.) on an average per-policy basis.

Ultimately any metrics would need to be fully specified in advance of initial submission by insurance undertakings. The Working Group noted the technical issues concerning data definition and classification. These issues will need to be clarified and agreed with insurance undertakings to ensure that the data can be aggregated to a market level in a manner that allows valid trends to be identified over time.

The above key aggregated metrics could assist in the development of a national claims information database.

6.3.2 National Claims Information Database

In order to address the existing data shortfalls and to provide transparency in claims trends a National Claims Information Database should be established. Data would be collected from undertakings for the purpose of an annual statistical analysis of movements in claims costs / claims trends. The information stored would be in the form of a mandated industry analysis. The information would be stored at a level of aggregation higher than the individual claim, i.e. not claim-by-claim information. The raw data would not be publicly available and would only be available to the body carrying out the analysis and any third party delegates. That body, following the data analysis, would issue an annual report which would analyse motor claims from data collated across the motor insurance industry in any particular year.

In the UK, the IFoA has undertaken a similar market-wide analysis since 2010. This annual analysis, which focusses on third party claims, highlights factors which drive increases in insurance costs. This market-wide analysis has provided support to policy making in the UK as it provides vital information on the effect of certain changes.

The insurance sector in Ireland has also agreed that there is a requirement for a national claims information database to increase transparency and improve data availability within the market.

As the analysis of the data will require specific technical actuarial expertise, the body responsible for the data collection could procure the required actuarial resources.

Data Uses

The data would be used to develop an annual report on trends in motor claims across the industry. Information provided in an annual report would allow for information on the drivers of movements in claims costs year-on-year which would assist in informing movements in premium levels.

Users of the Data

This report would be used by the insurance industry and policy makers in order to inform policy decisions.

Data Access

Data would be provided to the body responsible for the production of the analysis. The raw data would not be publicly available or available for any other purpose other than the production of the report. However, there will be a requirement to ensure that Data Protection, Competition Law and any other issues associated with the sharing of data are complied with.

Population of Reporting Entities

The population of reporting entities would include Irish authorised insurance undertakings, insurance undertakings with their Head Office in other Member States operating on a FOS or FOE basis in Ireland, self-insured entities and other public bodies. This population size would ensure that the analysis would include information on all motor claims in the State.

The relevant public bodies will include, but are not limited to, the Personal Injuries Assessment Board, the State Claims Agency, the Courts Service and self-insured entities.

Considerations

In assessing whether to recommend the establishment of a National Claims Information Database, it was considered that this proposal offered the following benefits:

- A statistical analysis would improve transparency in the market by providing regular information on claims trends, thereby identifying areas to address. This model is used successfully in other jurisdictions.
- As data would be collected and used for a specific purpose the analysis should not cause competition issues in the market. Protection of confidentiality of underlying data should address anti-competitive issues, thus protecting commercially sensitive proprietary information. The analysis would provide useful information to potential new market entrants and would not act as a barrier to entry. As information would not be available at a granular level, Data Protection issues should be also avoided.
- Industry experts would be in a position to provide their expertise and advices concerning the development and ongoing production of the analysis. The Society of Actuaries in Ireland has indicated it would be willing to provide its advices in scoping the database and its development.
- A national claims information database could be scoped and established in a relatively short time period and represents the most practical approach to national claims data collection.

As part of this analysis, it was also acknowledged that there were some potential downsides to the proposal which would have to be examined carefully during its development and implementation phases. Issues which would need to be considered include:

- Insurance undertakings classify and define their data in different manners, therefore a detailed process would need to be undertaken in order to ensure that data is classified consistently for collation and input to the analysis. Clear guidance needs to be provided in terms of issues such as definitions used and infrastructure development in both the reporting institutions and the compiler.
- The annual analysis would need to be delivered in a way that mitigated the risk of insurance undertakings directly using the report to derive prices. This consideration could detract from the public benefit of such a report.

6.3.3 The feasibility and utility of a claim-by-claim register

The Working Group also considered a claims register as part of its broader considerations of improving the quality of data to all stakeholders.

Such a register from a theoretical perspective could capture granular claim-by-claim information from all relevant insurance undertakings, self-insured entities and other public bodies operating in the State. Data would be collected for the purposes of (i) an annual

statistical analysis of movements in claims costs / claims trends, (ii) claim level information to inform the Book of Quantum and (iii) claim- or policyholder-level information that could be used to combat fraud.

The information stored would be in the form of a mandated industry analysis at the most granular level of claims data. The information would not be publicly available and would only be available to the organisation carrying out the analysis. However, information in the Register would be available to other interested State bodies as appropriate to its purpose, i.e. updating the Book of Quantum, fraud detection and accident prevention. Information in the Register would be updated on a regular basis, e.g. quarterly.

The Register would initially provide information on all motor claims by Irish residents, individuals and companies, including information on frequency of claims, the speed of resolution, settlement channels, settlement amounts and delivery costs of such claims. The Register would then be expanded to include other claims, e.g. liability, property, etc.

The scope of such a Register has been a key discussion point for the Working Group. However, the general conclusion is that it is not a feasible or credible option in the short or medium terms for a number of reasons which include:

- It has not been possible to identify an international precedent for such an all-encompassing claims level register. Many of the initiatives in other countries appear to have a primary purpose of detecting and combatting fraud and do not gather information on the settlement values of claims.
- The establishment of a Register would carry a significant cost and lead-in time, both in terms of development and establishment. The allocation of responsibility for the Register to a public body would entail significant cost to the State. Significant costs would also be incurred by insurance undertakings in terms of systems changes, both nationally and at Group level. There is a risk that these costs could be passed on to policyholders in further premium increases.
- The Register could potentially be seen as a barrier to entry in the Irish market. The initial set-up costs could be higher but ongoing maintenance costs would be lower as the burden for aggregation would fall on the compiling institution.
- The type and detail of data required from insurance undertakings relating to claims costs would be proprietary, commercially sensitive information. In addition, the sensitivity of the granular level of information required for a claims register could result in Data Protection issues. These issues could severely limit the uses, users and type of information that could be produced from the Register.

- Requiring insurance undertakings to provide reserving data on incurred claims would, aside from being commercially sensitive, be complicated and would require monthly updates as claims move towards settlement in order to reflect movements in reserving.
- Insurance undertakings classify and define their data in different manners consistent with their Group data, risk management and governance requirements. Given the level of granularity required for a Register, a very detailed process would need to be undertaken in order to ensure that data received from insurance undertakings is classified consistently.
- Insurance undertakings reserve claims at numerous levels, e.g. accidental damage, fire and theft, windscreen, third party property damage, third party injury. These categorisations may not be consistent across the industry. At a minimum, the Register would require own damage, third party damage and liability splits. For each of these, latest claims paid and outstanding latest estimates would be required, together with claims maturity. To understand claims settlement behaviours in the market, there may be a requirement to further classify these by settlement channels. The potential complexity of the Register should not therefore be underestimated.
- An incorrect interpretation or misreading of any resulting report by an external party could cause unintended consequences, e.g. cause claims inflation through the disclosure of information relating to awards made by the various settlement channels: the PIAB, the Courts or direct settlement.

In conclusion, on this issue, the Working Group considered that a separate sub-group should be established in the longer term to consider the feasibility of a case-by-case register.

6.4 Other jurisdictions

The following section examines how other jurisdictions deal with the issue of providing transparency and/or improving data availability in the insurance sector. Further detail on initiatives in a number of countries is provided in Appendix 9.

The international initiatives identified have largely focused on databases aimed at improving insurance undertakings' visibility on customers' details and previous claims history. The objective of such initiatives is to assist in reducing fraud, and ensuring the information held on customers is accurate and independently verified. There is limited evidence of the operation of a case-by-case register in any of the jurisdictions examined with the exception of Australia where a National Claims and Policies Database (NCPD) for public and products liability and professional indemnity insurance is maintained.

The following summarises some of the initiatives in other countries; in particular, the UK has a number of different initiatives which provide transparency in the motor insurance industry. It is worth noting that initiatives in general are established in order to meet a specific purpose, such as related to statistics or fraud, and therefore they are classified using these broad themes below. From the initiatives investigated it appears they have not been developed in order to meet wide-ranging policy objectives, possibly due to the cost implications and complexities of establishing and maintaining such a database.

Statistical Information

In the UK, the IFoA, an independent actuarial professional body, collates and analyses data on UK third party motor claims provided by UK motor insurers. An annual report is produced providing commentary on trends in claims costs and the drivers of those trends. Their experience speaks to the significant technical difficulties in producing consistent statistical information over time. For example, there are changes over time in the insurers who contribute, their respective definitions of claims, restatement of prior year data. These issues do not invalidate the work of the IFoA, but speak to the ongoing technical difficulties in producing annual reports that are consistent year to year.

The Association of British Insurers (ABI), a trade association of insurers, collects extensive data from insurers and produces regular detailed statistics, including data in relation to premiums and claims, commission and expenses, changes in provisions, equalisation reserves, underwriting results, and operating ratios for a range of insurance categories. Data on motor insurance covers both quarterly and annual motor statistics and includes premiums, claims, distribution and fraud data.

Fraud

The UK use a database called Claims Underwriting Exchange (CUE) which consists of a central database of motor, home and personal injury incidents reported to insurance companies, which may or may not give rise to a claim. CUE is managed by not-for-profit company Insurance Database Services Limited (IDSL) on behalf of its member organisations which includes all major insurers.

In Germany, the German Insurers' Accident Database (UDB) is an accident database derived from the claim files of car insurers used for the purposes of accident research.

The information centre at the Croatian Insurance Bureau operates a claims database aimed at combating motor insurance fraud by giving its members access to claims data in order to enable the detection of multiple and fraudulent motor insurance claims.

In the Czech Republic insurers can obtain information about an applicant's claims history from the database operated by the Czech Insurance Bureau.

6.5 Designated authority

Currently no State body has a mandate with regard to transparency over movements in claims costs and how these relate to insurance premium levels. As part of its review of data currently held by State entities, the Working Group also considered the feasibility of each entity to fill the role of designated body to collect and analyse additional data for the purposes of a national claims information database.

The Central Bank of Ireland collects a range of information from insurance undertakings in the exercise of its supervisory functions. Data is collected from insurance undertakings by the Insurance Supervision, Consumer Protection and Statistics Directorates.

Based on the requirements of the National Claims Information Database, detailed above, it is recommended that the Central Bank of Ireland is the most appropriate State entity for the establishment and administration of the National Claims Information Database. The Central Bank noted the implications of this with regard to the extension of its mandate. The Working Group recognises this and that legislative change would be necessary to address it.

The Working Group also recognises that there will be resourcing implications and is of the view that these must be addressed as part of the implementation of the national claims information database, including an arrangement for financing that ensures that the Central Bank is fully reimbursed for the performance of this additional function.

6.6 Timelines for implementation

The Working Group recommends the engagement of independent actuarial services for the purposes of specifying the claims costs-related data to be provided in the short and medium term by insurance undertakings, self-insured entities and other relevant public bodies.

In regards to the establishment of a national claims information database, consideration of the issues pertaining to Data Protection and Competition Law and any consequent legislative provisions should be made with a view to any necessary legislation being in place by the end of 2017.

6.7 Recommendations

Recommendations 11 – 13 Improving Data Availability

Recommendation 11

Establish a national claims information database

The Working Group recommends the establishment of a national claims information database as its preferred model for data collection having analysed a number of existing and potential models. The Working Group recommends the Central Bank of Ireland as the most appropriate State entity for the establishment and administration of a national claims information database.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|--|-------------------------|
| 22 | Specify the key aggregated metrics for immediate publication and commence the development of a national claims information database | Q1 2017 | Department of Finance, Central Bank of Ireland, State Claims Agency, CCPC, Insurance Ireland, Society of Actuaries, PIAB | Department of Finance |
| 23 | Legislation in place for a national claims information database | Q4 2017 | | Department of Finance |
| 24 | National claims information database established | Q2 2018 | | Central Bank of Ireland |

Recommendation 12

Quarterly publication of key aggregated metrics, on claims costs and trends within the market

As an interim measure, the Working Group recommends the collation and quarterly publication by the Department of Finance of key aggregated metrics, on claims costs and trends within the market. The Department of Finance shall establish a sub-group in January 2017 to begin to immediately implement the above actions.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|--|-----------------------|
| 25 | Key aggregated metrics template to issue to insurance undertakings for completion and submission | Q1 2017 | Department of Finance, Central Bank of Ireland, State Claims Agency, CCPC, Insurance Ireland, Society of Actuaries, PIAB | Department of Finance |
| 26 | Collation and analysis of submissions received from insurance undertakings | Q2 2017 | | |
| 27 | Quarterly publication of key aggregated metrics commenced | Q2 2017 | | |

Recommendation 13

Consider the feasibility of a longer term claim-by-claim register

The Working Group recommends that the Department of Finance, in the longer term, establish a separate sub-group to consider the feasibility of a longer term claim-by-claim register.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|--|-----------------------|
| 28 | Establish sub-group to consider feasibility of a claim-by-claim register | Q1 2018 | Department of Finance, Central Bank of Ireland, State Claims Agency, CCPC, Insurance Ireland, Society of Actuaries, PIAB | Department of Finance |
| 29 | Report on longer term claim-by-claim register delivered | Q3 2018 | | |

CHAPTER 7 - IMPROVING THE PERSONAL INJURIES CLAIMS ENVIRONMENT

7.1 Introduction

This chapter seeks to provide an understanding of the personal injury (PI) claims environment. It details the settlement channels available to claimants and some of the high-level costs associated with them. Some industry commentators have suggested that the volume and value of PI claims has increased in recent years playing a key role in the dramatic rise in the cost of insurance premiums. Available data is assessed from all settlement channels in an effort to investigate these assertions and recommend appropriate policy responses. A high-level appraisal of models used in other jurisdictions for settling PI claims is also provided to see if there are any lessons Ireland can take from international practice.

PI claims represent a small but costly element of the overall insurance claims environment. It is accepted that any major shift in the value or volume of PI claims can have a corresponding impact on the price of an insurance premium. Approximately 10% of motor insurance policies will have a claim made against the policy annually whereas the corresponding figure for PI claims is believed to be around 1%. However, the cost of the PI element of claims is estimated to make up about three-quarters of the overall cost of claims. The balance is made up from accidental damage, theft, third party property damage, windscreen claims, etc. There is no evidence and little suggestion that non-PI claims are increasing or decreasing in volume or value.

7.2 Personal Injury Claim Resolution Channels

Personal injury claims are now resolved in one of three ways – through PIAB, through direct settlements or through the Courts. This chapter seeks to understand trends in relation to these channels with a view to determining their impact or otherwise on insurance premium increases in recent years.

Unlike certain other jurisdictions, Ireland operates a fault-based (tort) system in relation to PI claims. Section 7.4 of this chapter provides an overview of other international models for handling PI claims. The underpinning legislation/constitutional framework is that the victim of an accident caused by the negligence of others is entitled to be compensated by the party deemed to be liable for the accident. Compensation takes the form of general damages which is pecuniary compensation for pain and suffering and special damages which is pecuniary compensation for loss of earnings, treatment costs, etc. Levels of general damages are not defined in legislation but are determined ultimately by the judiciary. Although few claims

overall are actually determined by the judiciary, they influence the levels of compensation throughout the system.

The right of damages in compensation for personal injury is seen as part of the right to litigate and is also associated with constitutional property rights and the right of access to the Courts. Under Article 34 of the Constitution, justice is usually administered in public, in Courts established by law by judges appointed in accordance with the Constitution. The District and Circuit Courts deal with PI cases up to a defined financial jurisdiction and have their jurisdiction defined by Statute. The High Court is a court of first instance with full original jurisdiction. Full original jurisdiction and power to determine imply clearly that, whatever limitations may be imposed by law as regards the jurisdiction of the Circuit or District Courts, the determination of compensation levels by the High Court cannot be regulated by legislation and determinations of the Court may only be changed, as appropriate, by a Court to which an appeal lies from the High Court (i.e. the Court of Appeal or, in certain instances as provided for in the Constitution, where an appeal from the High Court is heard directly by the Supreme Court).

The Book of Quantum is a guide to prevailing levels of compensation in Ireland. These levels differ from other jurisdictions as outlined in Section 7.4. The Book, which was revised in 2016, is a set of guidelines reflecting what prevailing levels of damages are for various types of injury based on what has actually been paid out in the Courts, by the State Claims Agency, in direct settlements by the insurance sector, or awarded by PIAB. The Book is used by PIAB in assessing PI claims so that awards reflect what is likely to be achieved through litigation but at a much lower cost of delivery. This model was developed to reduce the cost of settling a claim for all parties with the savings ultimately benefitting the consumer.

7.3 Personal Injuries Assessment Board (PIAB)

Prior to the establishment of the PIAB in 2004, the usual method for resolving all PI claims was by way of initiating legal proceedings in the Courts. A smaller but indeterminate number of cases were settled directly between motor insurer and claimant or between employer and claimant. Approximately 30,000 – 35,000 cases involved the issuing of proceedings yet less than 10% resulted in a hearing with many settling “on the steps” of the court.

Because of the prevalence of solicitors and barristers in a high percentage of cases along with the use of many, often competing, medical or other third party specialist reports, there was a very high delivery or processing cost on top of compensation payments. Delivery costs were estimated by the Motor Insurance Advisory Board to be 46% of the compensation paid and were considered to be a significant driver of overall claims costs, in turn contributing significantly to insurance premium costs. Data examined in more detail in Chapter 8 suggests

that delivery costs for cases settled outside the PIAB continue to be over 40% of compensation costs.

The PIAB was established in 2004 with the aim of removing many cases from unnecessary litigation. Best estimates or forecasts at the time were that up to two-thirds of cases would be removed from unnecessary litigation. However, litigation might be the appropriate forum where liability was in dispute.

The PIAB operates an administrative paper-based process and assesses damages on the same basis as the Courts do, i.e. in accordance with the laws of tort. Effectively, this means that the PIAB assesses amounts for General Damages (amounts for pain & suffering), and Special Damages (amount for financial loss such as wage loss, medical treatment costs or out of pocket expenses).

An intending applicant must make their claim through the PIAB unless they settle their case directly with the other party. An application consists of the application form itself, a report from the accident victim's treating doctor and a small fee. When the PIAB receives the papers, it passes them to the person against whom the claim is being made, called the respondent, or usually their insurer. If the respondent consents to the PIAB assessing the case, they pay a fee (currently €600) to the PIAB, who then assess the case. If they don't consent, the PIAB issues an authorisation (section 14 of the *Personal Injuries Assessment Board Act 2003*) which permits the claimant to proceed down the litigation route.

In assessing cases, the PIAB usually requires the claimant to attend an independent medical practitioner for an up-to-date medical and final prognosis. Within a legislatively defined time period (usually 9 months), the PIAB's assessors make an award and issue it to both parties. If the award is accepted by both parties, an Order to Pay is issued against the respondent who then pays the compensation to the claimant. If either party reject the award, then the PIAB issues an authorisation to the claimant (section 32 of the *Personal Injuries Assessment Board Act 2003*). Under the legislation either party can reject a PIAB award. Award acceptance is not compulsory as this would deny a person's constitutional right of access to justice which is delivered by the Courts.

The introduction of the PIAB facilitated a move away from an adversarial way of resolving PI cases to a non-adversarial approach. This has resulted in a scenario whereby a significant number of settlements are made directly between parties (some commentators suggest as high as 60% - 70% of all cases) but there is no publicly available data as to the outcome of these cases. In the absence of full transparency of data for PI claims, it is difficult to have a comprehensive understanding of the entire claims environment. The national claims information database recommended in the previous chapter speaks to these concerns.

PI claimants cannot issue legal proceedings without receiving an authorisation from the PIAB. These generally fall into three categories – cases where respondents/insurers have not given

their consent to the PIAB to assess the case (approximately 7,000 p/a or 20%), cases where either party reject an assessment made by the PIAB (approximately 5,000 p/a or 15%), or cases that are released under section 17 of the *Personal Injuries Assessment Board Act 2003* (approximately 9,000 cases p/a or 27%) as they are cases which are not appropriate for assessment by the PIAB, e.g. wholly psychological cases, cases involving abuse, complex cases with pre-existing injuries, etc. While the PIAB can report on the number of authorisations it issues annually, it is not known what happens to these cases – whether they go to litigation, whether they are settled or whether the cases do not proceed further.

The PIAB makes awards in about 12,000 cases annually with about 60% (approximately 7,200) of claimants accepting them. The acceptance rate has remained broadly consistent in recent years. These cases are dealt with speedily and at low cost – current delivery cost is approximately 6.5% of the value of the compensation and this is mainly comprised of the fees paid by the claimant and respondent and the costs of the medical reports required to assess the case. We understand that over 90% of claimants still choose to engage legal representation. We do not know the amount of the PIAB settlement which the claimants use to pay for that legal representation.

In making its awards, the PIAB uses the Book of Quantum which is a guide to general damages levels for various types of injury based on impact and severity. Under the *Civil Liability and Courts Act 2004*, the judiciary are required to have regard to the Book in assessing damages.

7.4 Overall claims costs in relation to motor personal injury

Some stakeholders have suggested that the cost of PI claims is a contributing factor to increasing premiums. These costs predominantly have three aspects – frequency, average compensation amount, and delivery costs – which apply across the three settlement channels: Court awards, PIAB awards, Direct Settlements.

Frequency relates to the number of PI claims made per policy which ultimately result in a compensation payment. Average compensation amount is the total compensation paid out divided by the number of relevant claims and includes general damages and special damages. Delivery costs relate to the third party costs involved in bringing a claim to resolution and may include legal or other litigation costs (medical, actuarial, engineers' reports), or the PIAB fee where relevant. Delivery costs are explored in more detail in Chapter 8.

Claim details in relation to direct settlements between insurers and claimants are not publicly available. Some commentators estimate that direct settlements comprise 60%-70% of all cases thus this represents a significant data gap. Following a letter from Minister of State Murphy in November 2016 outlining the challenges this data gap presented in facilitating policy analysis, Insurance Ireland provided the Working Group with aggregate data that allows for high-level analysis of the motor PI claims environment. The data, which does not include

claims incurred, is limited to the years 2013 to 2015 as this is the period associated with significant increases in the cost of insurance premiums.

Chart 1 – Motor personal injury claims recorded 2013-2015

| Year | PIAB | Insurance Ireland members ⁴² |
|------|--------|---|
| 2013 | 18,877 | 20,006 |
| 2014 | 18,994 | 21,001 |
| 2015 | 19,812 | 19,677 |

Chart 2 – Motor personal injury claims settled 2013-2015

| Year | PIAB | Non-PIAB Sample ⁴³ |
|------|-------|-------------------------------|
| 2013 | 4,841 | 11,379 |
| 2014 | 5,556 | 12,829 |
| 2015 | 5,011 | 12,503 |

Chart 3 – Average value of Motor Compensation & Claims 2013 - 2015

| Year | PIAB award | Non-PIAB Sample | Non-PIAB Sample (Claim) ⁴⁴ |
|------|------------|-----------------|---------------------------------------|
| 2013 | €20,979 | €22,383 | €33,290 |
| 2014 | €20,897 | €21,355 | €30,522 |
| 2015 | €21,487 | €23,412 | €33,764 |

⁴² Based on returns from companies representing 99% of the motor insurance market as comprised of Insurance Ireland members only and based on 2015 gross written premiums term.

⁴³ Based on returns from companies representing 78% of the motor insurance market as comprised of Insurance Ireland members only and based on 2015 gross written premiums term.

⁴⁴ Derived from data received from Insurance Ireland, includes claimants' legal costs, insurers' legal costs and other costs (e.g. medical fees, engineer reports, etc.).

Chart 4 – Total Cost of Motor Personal Injury Claims Settled⁴⁵

| Year | Compensation | Other | Total |
|------|--------------|---------|---------|
| 2013 | €254.7m | €124.1m | €378.8m |
| 2014 | €274.0m | €117.6m | €391.6m |
| 2015 | €292.7m | €129.4m | €422.2m |

In relation to the frequency of claims, Chart 1 suggests that the volume of overall motor PI claims reported is relatively stable since 2013. An increase in the number of recorded motor PI claims may have been expected in the context of more vehicles on the road and more kilometres being travelled in line with economic growth.

Settled motor PI claims are outlined in Chart 2. Settled claims in a given year may be related to accidents that occurred several years ago which explains why the figures in Chart 2 differ from Chart 1. Claims settlements through the PIAB increased by 3.5% over this time period. Claims settlements for a representative sample of companies increased by 9.9% over the same period – however these data may be skewed by shifting volumes of business between companies.

Chart 3 represents the average value of compensation received by a claimant on the completion of their settlement. The average value of compensation received by a motor injury claimant who settled outside the PIAB process was €23,412 in 2015 which is an increase of 4.6% relative to 2013. When ancillary costs such as claimant legal fees, insurer legal fees and other costs (e.g. medical fees, engineer reports, etc.) are taken into account, the average cost of a claim in 2015 settled outside the PIAB process was €33,764, representing an increase of 1.4% relative to 2013. The average value of compensation received by a motor injury claimant who settled within the PIAB process was €21,487 in 2015 which is an increase of 2.4% relative to 2013.

Chart 4 illustrates that total compensation received by claimants for motor injury claims settled between 2013 and 2015 increased by 15% over this period. The total payment by the insurers included in this sample (representing 78% of Insurance Ireland members' premiums in 2015) increased by 11% over the same time period. Delivery costs (legal fees, etc.) increased by 4% over this period. These movements could be adversely influenced by these companies growing or shrinking market share over this time period.

⁴⁵ Based on returns from companies representing 78% of the motor insurance market as comprised of Insurance Ireland members only and based on 2015 gross written premiums term.

The analysis above is based on settled or paid claims. As noted elsewhere in this Report, an insurer may take a premium at X date, and a claim may arise in the period X+1 year. However, the settlement of that claim may not occur for some years after. Therefore, analysing settled or paid claims only does not provide a correct picture of the evolution of claims costs. Claims costs includes both claims paid as well as an insurance company's best estimates of the final costs of claims incurred but not yet settled. Insurance companies are also required to make estimates of incurred but not yet reported claims; essentially, claims which have occurred in a particular time period but which have not yet been notified to the insurer. The picture that emerges from claims incurred can be significantly different. For instance, latest data from the Central Bank of Ireland Insurance Statistics shows claims paid gross in 2015 (per Table 22) are up 2.8% from 2014, whereas claims incurred have increased by 19% to €1,293m⁴⁶. Further, such aggregate annual data on claims are limited in understanding the evolution of claims costs. A fuller understanding would require claims paid and incurred data to be augmented with data on settlement rates, policy counts, and disaggregated by an accident year basis to be more fully informative.

7.4.1 Court data

There are limited details available from the Courts Service relating to overall PI claims received annually (including motor, EL, PL and medical negligence), and total amounts paid in each of the courts. There is no public information about delivery costs.

Assessing trends in the total value of awards determined in the Courts may be of limited use in understanding developments in the claims environment. Data provided by the Courts Service suggests that the total value of Court PI awards, excluding medical negligence cases, in 2015 was €129m. Therefore, Courts data represents a relatively small portion of the overall PI claims market and is likely to involve less routine cases than those that can be settled at an earlier stage. As outlined in Section 7.2, although few cases are actually determined by the judiciary, they influence the levels of compensation throughout the system.

It has been suggested by various stakeholders that some recent legislative changes are having an inflationary impact on claims. These assertions are examined in detail in Chapter 8.

⁴⁶ Central Bank of Ireland, *Insurance Statistics 2015*, <http://www.centralbank.ie/publications/Documents/Insurance%20Statistics%202015.pdf>.

7.4.2 Conclusions

All stakeholders recognise that there is limited data available to facilitate a comprehensive examination of the motor PI claims environment. Improving access to this type of data is a key recommendation of the Working Group, as has been discussed in Chapter 6. However, from data provided by Insurance Ireland representing 78% of its members' market premiums in 2015 and by the PIAB, there are a number of tentative conclusions that can be made.

The data set out above suggests that frequency of reported claims was relatively stable between 2013 and 2015. The data also suggests the number of motor PI claims settled increased by 10% over the same period while average compensation awarded to a claimant increased by 5%.

In the context of an increase of 3.5% in vehicles on the road during the period 2013 to 2015, the data suggests that the change in settled claims experience between 2013 and 2015 has had a moderate impact on recent premium increases.

The costs data referred to above focuses on claims settled in a three-year period. It does not reflect the claims cycle, claims incurred or expected (IBNR) and associated reserving against these claims. As explained in Section 2.6, insurance premiums are driven by the costs insurance companies incur in setting aside reserves to ensure that they are in a position to fund claims they expect to pay but which have not yet been settled.

The impact that other factors may have made in influencing premium prices in recent years are examined in other parts of the report, particularly Chapters 2, 3 and 8.

7.5 Other jurisdictions– alternative models, compensation levels, research on injuries

In the current debate on rising insurance costs, many commentators have referred to the experience in other jurisdictions. It has been queried whether whiplash claims are as prevalent in other jurisdictions; whether compensation levels are higher in Ireland than elsewhere; and whether it is possible to introduce alternative compensation systems (e.g. care not cash) for accident victims in Ireland. There is already information, albeit historical, available from the Second Report of the Special Working Group on Compensation (Department of Enterprise, Trade & Employment, 2000), and the two Motor Insurance Advisory Board reports, which look at comparative models. The Working Group (sub group on claims costs) conducted additional research based on web-based research, teleconference calls with UK Ministry of Justice officials and European reinsurers who have researched the area in the past, and providers of systems to state bodies in other jurisdictions, including New Zealand, Australia and the USA.

In terms of models of addressing accidents, there are a variety of systems in place internationally, such as:

- Ireland and the UK which are based on fault/tort principles,
- New Zealand which is based on a no fault system where the state pays compensation and/or the cost of rehabilitation and the public pay for this system through taxes etc., and
- Various hybrid models involving some levels of compensation & social security intervention.

Some of these models are quite complex and they need to be considered in a wider context than just focusing on compensation for accident victims. As well as impacting on insurance premiums, they may impact on personal taxation, social security contributions, etc. These models also need to be considered in terms of existing constitutions, national legislation and European legislation, e.g. the requirements of EU Motor Insurance Directives in terms of an individual's right to monetary compensation.

Internationally, there have also been attempts to provide a care rather than cash basis in some jurisdictions, e.g. in certain USA states. Initial research again shows a complexity to these systems with many benefits and drawbacks. For example, the UK was considering a mandatory care not cash arrangement for certain accident victims but such an arrangement is now being considered in terms of the legislative hindrances to its establishment, the appropriateness of the system for certain type of injuries, and trends from other jurisdictions which indicates that there may not be the potential cost savings that may have been anticipated.

Research by the group shows that in certain jurisdictions, such as the UK, there is considerably more data available in relation to the PI claims environment. Any meaningful comparison of jurisdictions would necessitate greater availability of data and transparency regarding the Irish PI claims environment.

European studies have been conducted in the past which focus on the various types of systems in Europe, the nature of claims in certain countries (e.g. data indicates a lower prevalence of whiplash claims in France as against many other European countries), the incidence of PI claims as against non-PI motor claims (the UK would appear to have a higher incidence of PI claims as against certain other European countries). Some studies have also been carried out in relation to comparing damages levels in various European countries. Many commentators have consistently said that the levels of damages in Ireland for certain types of injury (e.g. whiplash cases) greatly exceed that of the UK, Spain, etc. While this is likely to be true, it also likely to have always been the case and therefore cannot have been a major contributor to the recent increase in premiums. However, reviewing the level of awards may be one way of reducing the cost of claims/insurance.

Some level of comparison can be made between levels of damage in Ireland and England/Wales based on the respective versions of the Book of Quantum. At a cursory level, this indicates that less severe injuries in Ireland tend to attract higher levels of damages but that does not tend to be the case as the severity of injury increases. Some industry commentators have suggested that whiplash injuries account for approximately 80% of all PI claims in Ireland. It has also been suggested that compensation levels related to whiplash are significantly higher in Ireland than in other jurisdictions.

Finally, in any international comparison of damages, account must be taken of other factors such as the prevailing level of social security intervention by the state as well as the nature of the health service in terms of rehabilitation options, etc.

The Working Group has also conducted some research in relation to how injuries are “graded” or assessed internationally. For example, in Canada the Quebec Task Force report provided an objective basis for diagnosing whiplash. Severity scales are used in other jurisdictions such as Germany and many countries use predictable damage tables such as Sweden, Norway and Spain. In France medical practitioners who are diagnosing whiplash must have specific qualifications and be trained in bodily injury diagnosis.

Undoubtedly, there is much to be gained by looking at other European and international systems in considering what is appropriate in an Irish context which would respect the rights of all parties. In the context of the work of the sub group on claims, the main conclusion to be drawn is that a more detailed and complex analysis needs to be carried out to lead to a greater understanding of whether changes to the existing system are required. The timeframe allowed for the Working Group does not facilitate this complete analysis. It is therefore recommended that a Personal Injury Commission is established to look at these issues in greater detail with a view to proposing further measures that can help reduce the cost of claims.

7.6 Recommendations

Recommendation 14

Establish a Personal Injuries Commission

This chapter has highlighted the complexity in assessing the personal injury resolution framework in Ireland. Section 7.2 details how the level of awards for personal injuries is ultimately determined by the Courts. Precedents set by the Courts are followed by the PIAB and the insurance sector.

It is acknowledged that soft tissue injuries (e.g. whiplash) account for a large proportion of claims. The severity of these types of injuries is very difficult to diagnose. Other jurisdictions have established specific qualifications for medical professionals in this area of expertise to facilitate more detailed grading of injuries. Approaches that clearly link the diagnosis, treatment, prognosis and the award of damages should be examined. Such systems require a consistent approach in the classification and reporting of such injuries. It is noted that some jurisdictions use a national panel of trained and accredited medical advisors.

Systems that utilise a scale or rating for soft tissue injuries should be examined. A number of countries use scales/tables to determine quantum in personal injury cases, Spain and Sweden being two examples. Spain has a system of tables. Sweden has adapted the use of the classification system introduced in 1995 by the Quebec Task Force. The Whiplash Associated Disorder (WAD) is classified as 0-4. In Sweden they adapted the 0 to 4 grades system in the context of Soft Tissue injuries and focused on the 1-3 grades.

While the Working Group has engaged in a preliminary analysis of other possible options used in other jurisdictions that could augment the current system, it is recommended that a Personal Injuries Commission be established to investigate some of these issues further. The Commission should investigate other models internationally but focus on those applying to common law jurisdictions.

To ensure appropriate expertise is available to the Commission, it is recommended that it have representatives from the medical profession, the legal profession, the insurance sector and Government. It is recommended that an independent chair is appointed to facilitate the deliberations. The Commission should be supported by a secretariat within the Department of Jobs, Enterprise and Innovation. The Commission should meet at regular intervals and should have the ability to engage external expertise and invite relevant parties to meetings. A draft phased work programme is outlined below. The Commission may also look at other relevant areas.

Phase One (report due by Q4 2017)

In respect of other relevant jurisdictions, particularly in Europe:

- Complete a comprehensive data gathering exercise to assess systems for handling personal injury claims, particularly soft tissue (whiplash) claims focusing on causes, frequency/incidence, diagnosis, treatment and appropriate compensation level;
- Report on systems where detailed grading of minor personal injuries is in operation;
- Assess the potential for medical professionals to prepare injury claim reports on a percentage disability basis with 100% being the maximum severity case;
- Assess the potential for a national medical panel of trained and accredited medical specialists for completion of reports with a timely medical assessment of the extent and impact of the injury and include a standardisation of reporting methods by assessing specialists;
- Investigate the potential for the establishment of a panel of medical experts for use in Court.

A summary report should be made to the Minister of State which will:

- Make recommendations as to the possible development of such practices in Ireland;
- Indicate the timeframe for, benefits of, and risk associated with the implementation of the above recommendations.

Phase Two (report due end Q1 2018)

- Establish a high-level benchmarking of international awards for personal injury claims with domestic ones as referred to in the Book of Quantum;
- Analyse and report on international compensation levels and compensation mechanisms;
- Analyse and report on alternative compensation and resolution models internationally, focusing on common law systems while taking account of social welfare, healthcare and related factors associated with each jurisdiction;
- Report on “care not cash” models and variations in place internationally.

A summary report should be made to the Minister of State which will:

- Assess the various systems in place and indicate the feasibility or otherwise for the possible development of such systems in Ireland;
- Indicate the timeframe for, benefits of, and risk associated with the implementation of the above recommendations.

Phase Three (report due end Q2 2018)

The Third report from the Commission with a list of recommendations and timelines should be delivered in Q2 2018.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|-------------------------|---|-----------------|---|---|
| 30 | Establish a Personal Injuries Commission (PIC) | Q1 2017 | Department of Jobs, Enterprise and Innovation, PIAB, Department of Justice and Equality | Department of Jobs, Enterprise and Innovation |
| 31 | PIC to investigate and make recommendations on processes in other jurisdictions which could enhance the claims process in Ireland | Q4 2017 | | |
| 32 | PIC to benchmark international PI awards with those in Ireland and report on alternative compensation and resolution models | Q1 2018 | | |
| 33 | PIC to deliver their third report | Q2 2018 | | |

CHAPTER 8 - REDUCING THE COSTS IN THE CLAIMS PROCESSES

8.1 Introduction

This chapter seeks to provide an understanding of the costs in the PI claims process. The costs of the claims process have been highlighted by many commentators as being a key reason for the increase in the cost of insurance premiums.

The chapter examines the data available to the Working Group in relation to the costs associated with PI compensation such as legal costs and non-legal costs (which are sometimes categorised in legal costs, e.g. engineers' reports and medical reports), and will also identify recent changes in the PI legal environment that may impact on claim costs such as the changes in the court jurisdictional limits, the setting of the discount rate in PI lump sum awards and the introduction of periodic payment orders. These areas have been referred to as requiring additional reserves as they are impacting on, or will impact on, the future cost of claims. The chapter will also set out recent legislative developments which should provide greater transparency in determining legal costs.

8.2 Legal Costs

According to the Central Bank of Ireland Insurance Statistics 2015, the overall cost of motor insurance claims in Ireland for 2015 was €1.1bn and income from premiums was €1.3bn.

It has been stated by some stakeholders that legal costs are a significant factor in the rising cost of motor insurance claims. However, there is no statistical basis for the measurement of legal costs either in the economy in general or in relation to the legal costs associated with motor insurance. The Courts do not record legal costs.

As outlined in Chapter 7, before the PIAB was established, a claimant who had suffered a PI had no alternative but to pursue their claim through the litigation system which involves legal costs thus adding to the cost of a claim. Today, the PIAB's non-adversarial model delivers settlements to claimants without the need for litigation in a significant proportion of cases. As outlined in Section 7.3, claimants can deal directly with the PIAB or they may ask a third party, including solicitors, to submit the claim on their behalf at their own cost. However, in limited circumstances the PIAB allows for legal costs reasonably and necessarily incurred under section 44 of the *Personal Injuries Assessment Board Act 2003*, for example in cases involving minors, fatalities and identity of respondent issues, i.e. in cases where due to the circumstances of the accident it may not be obvious or apparent as to who might be at fault.

The total amount of legal fees allowed by the PIAB in assessments is approximately €1.5m per annum.

Chart 1 – Delivery Costs

| Year | Non-PIAB ⁴⁷ | PIAB ⁴⁸ |
|------|------------------------|--------------------|
| 2013 | 48.7% | 7.6% |
| 2014 | 43.0% | 6.7% |
| 2015 | 44.2% | 6.5% |

Chart 1 illustrates the cost differences (excluding awards) between claims settled through the PIAB and claims settled outside of the PIAB model from data provided by a representative sample of Insurance Ireland members. Costs related to claimant legal fees, insurers’ own legal fees and other costs (e.g. engineer reports, medical fees, actuarial reports, etc. - referred to in the aggregate as ‘delivery costs’) result in a differential of 40% when compared to the cost of settling claims within the PIAB where delivery costs are stable at around 6.5%. Some difference would be expected given that the PIAB does not settle claims where liability is contested nor does it handle certain categories of complex cases. However, the differential in delivery costs between the settlement channels demonstrates the efficiency to all parties of using the PIAB model where possible when an early settlement has not been reached. Recommendations are made at the end of this chapter to encourage higher rates of settlement through the PIAB process, thus taking costs out of the system.

Outside of the PIAB process, legal costs will typically arise in a number of instances:

- The legal costs (including litigation where the matter goes to court) of the insurance companies themselves in respect of their handling of claims.
- The legal costs (including litigation where the matter goes to court) of the plaintiff injured party.
- Where a plaintiff is successful in his/her case, under the ‘costs follow the event’ rule, the insurance company will pay their own and the plaintiff’s legal costs. Where the insurance company settle a case (i.e. other than in circumstances where an award is recommended by the PIAB and accepted), there will inevitably be a sum paid over to cover the plaintiff’s legal costs as part of the settlement.

⁴⁷ Derived from data received from Insurance Ireland representing 78% of the motor insurance market as comprised of Insurance Ireland members only and based on 2015 gross written premiums term, includes claimants’ legal costs, insurers’ legal costs and other costs (e.g. medical fees, engineer reports, etc.).

⁴⁸ PIAB, *Annual Reports*, <http://www.injuriesboard.ie/eng/News-Information/Annual-Reports-Archive/>.

As outlined in Chapter 7, Insurance Ireland supplied the Working Group with certain data on motor PI claims including data on legal costs and other costs (medical reports, actuarial reports, engineers' reports, etc.). Charts 2 and 3 below set out data on these costs for 2013, 2014 and 2015. As noted previously, the data is based on returns from companies representing 78% of the motor insurance market as comprised of Insurance Ireland members only and based on 2015 gross written premium terms.

Chart 2 – Total Compensation paid and total costs for 2013-2015

| Year | Legal Costs Claimant | Legal Costs Own | Other costs | Total Cost of Compensation | Total Claim Cost |
|-------------|-----------------------------|------------------------|--------------------|-----------------------------------|-------------------------|
| 2013 | €66.0m | €37.6m | €20.5m | €254.7m | €378.8m |
| 2014 | €69.5m | €25.6m | €22.5m | €274.0m | €391.6m |
| 2015 | €74.2m | €27.8m | €27.5m | €292.7m | €422.2m |

Chart 3 – Breakdown of legal and other costs in the various settlement channels as a % of the total compensation paid 2013-2015

| Year | Claims settled Pre PIAB process | Claims settled during PIAB process | Claims settled Post PIAB and including Court Award |
|----------------------|--|---|---|
| 2013 | | | |
| Legal Costs Claimant | 0.83% | 0.58% | 24.5% |
| Legal Costs Insurers | 0.24% | 0.03% | 14.48% |
| Other Costs | 0.92% | 0.19% | 6.91% |
| Total | 1.99% | 0.80% | 45.89% |
| 2014 | | | |
| Legal Costs Claimant | 0.93% | 0.67% | 23.7% |
| Legal Costs Insurers | 0.26% | 0.04% | 9.03% |
| Other Costs | 1.06% | 0.23% | 6.91% |
| Total | 2.25% | 0.94% | 39.64% |
| 2015 | | | |
| Legal Costs Claimant | 1.0% | 0.57% | 23.75% |
| Legal Costs Insurers | 0.31% | 0.03% | 9.14% |
| Other Costs | 1.42% | 0.27% | 7.69% |
| Total | 2.73% | 0.87% | 40.58% |

Chart 2 illustrates that aggregate claimant legal costs and other costs (medical reports, actuarial reports, engineers’ reports, etc.) increased by 12% and 34% respectively between 2013 and 2015. Offsetting this to a large degree was a 26% reduction in the legal costs of insurers. Taken as a whole, delivery costs for claims settled directly by the sample of Insurance Ireland members provided increased by 4.3% between 2013 and 2015. Given the significant variation in the trends observed with these costs, the Working Group recommends a further examination of the effect legal costs have on PI settlements.

Chart 3 illustrates the allocation of costs in the various settlement channels. The data clearly shows that the vast majority of costs (i.e. over 90%) are incurred in cases that are settled after

the PIAB process and including court awards. The data suggests that if more cases can be encouraged to settle at an earlier stage in the process, then ancillary costs can be reduced. A number of the Working Group's recommendations attempt to encourage earlier settlements.

8.3 Recent Legislative Developments

Legal costs in Ireland have been consistently highlighted as an area in need of reform, particularly in relation to their transparency. Key reforms are outlined in this section which may have a positive impact on legal costs in the PI claims environment.

The *Legal Services Regulation Act 2015* (the 2015 Act) makes extensive provision in Part 10 for a new and enhanced legal costs regime. It will bring greater transparency as to how legal costs are charged along with a better balance between the interests of legal practitioners and those of their clients.

The approach of that Act is to impose higher transparency obligations on legal practitioners that better meet the interests of all consumers of their services. It also brings transparency to the various parameters of legal costs that have been hidden historically in Rules of Court; Practice Directions; jurisprudence, etc. The new legal costs transparency obligations will apply to both solicitors and barristers in their charging of costs for their services to clients. All legal practitioners will be obliged, under the provisions of the 2015 Act, to provide more detailed information about legal costs from the outset of their dealings with clients. This will be in the form of a Notice, written in clear language, which must be provided when a legal practitioner takes instructions. The Notice must, *inter alia*, disclose the costs that are involved or, where this is not known, the basis upon which such costs are to be calculated. A cooling-off period is provided for the consideration of costs by the client.

When there are any significant developments in a case which give rise to further costs, the client must be duly updated and given the option of whether or not to proceed with proceedings. In addition, the Act sets out that it will not be permissible for legal practitioners to set fees as a specified percentage or proportion of damages payable to a client from contentious business and that it will no longer be permissible for barristers to charge junior counsel fees as a specified percentage or proportion of Senior Counsel fees. An aggrieved client will also have the option of applying for the adjudication of disputed legal costs by the reformed and modernised Office of the Legal Costs Adjudicators, which is currently known as the Taxing Masters' Office.

The Legal Services Regulation Act completely overhauls and replaces the existing Office of the Taxing Master with a new Office of the Legal Costs Adjudicators and sets out, for the first time in legislation, a series of Legal Costs Principles. There will also be a publicly accessible Register of Determinations which will disclose the outcomes and reasons for decisions made by the

Legal Costs Adjudicators. The Act will also introduce a system for processing complaints about excessive costs weighted towards the less costly option of informal resolution. This is important because opting for formal adjudication of disputed legal costs can be prohibitive from a cost point of view – this circumvents that disincentive.

Part 15 of the 2015 Act provides for the roll-out of Pre-Action Protocols in medical negligence cases which it is then intended to apply to other areas of litigation.

The Act also sets out a clear path to early start-up of new Legal Partnerships business models involving barrister/barrister partnerships and barrister/solicitor partnerships, which will allow for such partnerships to open for business in competition with the more traditional lawyer structures. It also contains measures and a process to provide for new Multi-Disciplinary Partnership business models in which legal practitioners and other service providers will be able to combine into single service delivery organisations.

8.4 Other issues impacting on Costs

It has been widely reported that a number of changes taking place within the claims environment are resulting in heightened levels of uncertainty in that environment. This uncertainty is reflected in reserving practices which in turn are increasing the cost of insurance. These include:

- The ongoing legal proceedings (at time of writing) in relation to the failure of Setanta Insurance is a concern to insurers because of the uncertainty over the compensation arrangements for claimants.
- Changes to the jurisdictional limits of the Circuit and District Courts in personal injury cases since 2014. Some stakeholders have stated that this will inflate claims costs.
- The discount rate: a recent court case has reduced the discount rate and this has implications for reserve setting to meet future costs of catastrophic claims.
- Proposals to introduce Periodic Payment Orders (PPOs): industry claims that it is uncertain of the implications for the appropriate reserve-setting and future pricing.

8.4.1 Failure of Setanta Insurance⁴⁹

The placing into liquidation and subsequent failure of Setanta Insurance in 2014 highlighted weaknesses with the current insurance compensation framework in Ireland. An issue arose as to which fund or scheme is liable to cover the Setanta claims (the Insurance Compensation

⁴⁹ Setanta Insurance Company Limited was authorised by the Malta Financial Services Authority and operated in Ireland on a Freedom of Services basis.

Fund (ICF) or the Motor Insurers' Bureau of Ireland (MIBI))⁵⁰. Legal proceedings commenced in April 2015 between the Law Society of Ireland and the MIBI. In September 2015, the High Court ruled that the MIBI was liable for the claims in respect of Setanta Insurance. The MIBI subsequently appealed this decision and in January 2016, the Court of Appeal upheld the High Court judgement. The MIBI appealed that decision to the Supreme Court in October 2016 and judgment has been reserved.

In December 2015, the motor insurance industry made representations on the matter to both the Minister for Finance and the Minister for Transport, Tourism and Sport. In January 2016, a Joint Working Group was established to review the motor insurance compensation framework in Ireland. In June 2016, they issued their report, which sets out the Joint Working Group's assessment of the issues and makes recommendations to provide certainty regarding the compensation framework in Ireland. In order to implement the recommendations, primary legislation will be required. The process for doing this has been commenced with a view to having heads of a Bill approved by Government in Quarter 2 of 2017. It should also be noted that concerns of the insurance industry in relation to the uncertainty of their exposure as a result of the outcome of the Joint Working Group's report, and their proposal of the establishment of an ex-ante fund to address this uncertainty is being considered.

8.4.2 Impact of Jurisdictional Changes

The *Courts and Civil Law (Miscellaneous Provisions) Act 2013* introduced changes to the monetary jurisdiction of the Circuit and District Courts, which had remained unchanged since 1991. These changes are outlined in Chart 4. The intention was that the changes would result in a substantial amount of court litigation previously dealt with at Circuit Court level initiated on or after the 3 February 2014 being dealt with in the District Court and such litigation which up to then had to come before the High Court being dealt with in the Circuit Court. It was also considered that the changes would ultimately lead to reduced legal costs for individuals and companies involved in litigation, the intention being that parties involved in legal conflict do not incur more legal costs than are necessary in circumstances in which they have to resort to litigation.

Chart 4 - Current jurisdictional limits which came into effect in 2014

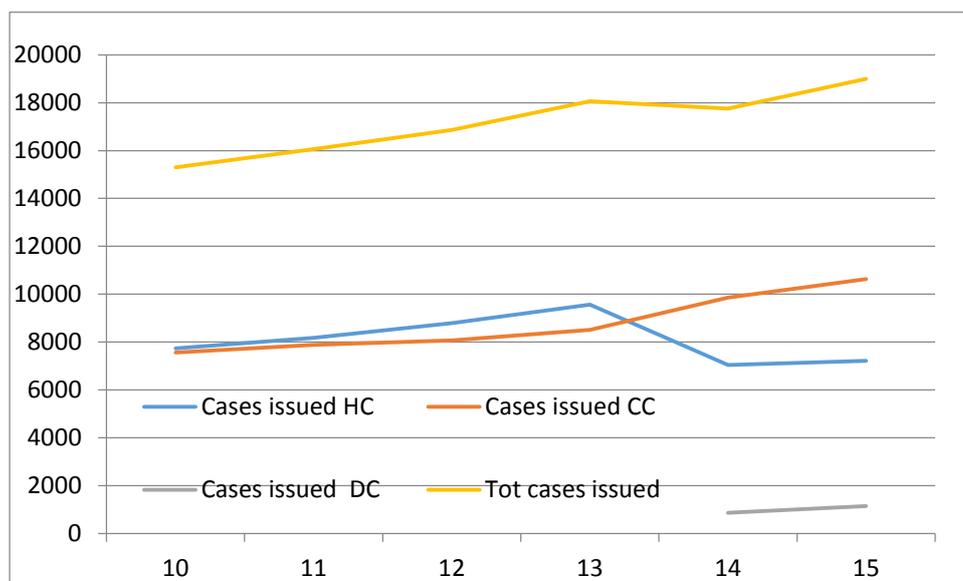
| Court | 1991 Limits | 2014 Limits |
|--------------------------------|--------------------|--------------------|
| District | €6,384 | €15,000 |
| Circuit | €38,092 | €75,000 |
| Circuit (personal injury only) | | €60,000 |

⁵⁰ Details on the relevant authorities for Motor Insurance Compensation in Ireland are set out in Appendix 6.

As part of the consultation process underpinning this report, the Courts Service informed the Working Group that they are of the view that very few, if any, cases at Circuit Court level had progressed to court award stage yet under the new limits regime. Therefore, it would be too early to review the impact of the new limits on PI award levels. While insurance companies may have taken a decision that they are obliged to reserve for likely higher award levels on the basis of the new jurisdictional limits, there is no empirical evidence available yet to underpin this perception.

Chart 5 below illustrates the numbers of new PI cases issued in the Courts from 2010 to 2015 as extracted from the Courts Service Annual Reports 2010-2015. It should be noted that these data include Employer Liability, Public Liability, Motor Liability and Medical Negligence cases.

Chart 5 – New Personal Injury cases per year issued in the High Court, Circuit Court and District Court



It highlights an underlying growth in the overall number of cases issued across the three court jurisdictions. The trend is interrupted only by one small decrease in numbers (caused by a 26% drop in High Court cases issued between 2013 and 2014).

The graph also clearly illustrates the changes which took place between 2013 and 2014 (the new jurisdictional limits came into force in February 2014). At that point there was a significant drop in cases issued at High Court level and a corresponding increase in cases issued at Circuit Court level, together with the entrance of the District Court with 864 cases.

While little or none of the High Court and/or Circuit Court cases issued in 2014 would have progressed to court award stage by now, it is clear that there were significant changes in case

issuing behaviour by plaintiffs and their legal advisors in 2014, the year when the jurisdictional changes were made. It is also clear that, while the overall number of cases issued continues to rise, the effects, in terms of reducing High Court cases and increasing those in the Circuit Court and District Court, which was one of the key stated intended effects of the jurisdictional changes, have been positive. In this regard, 56% of all personal injury cases in 2015 were issued in the Circuit Court and 38% in the High Court, as compared with 47% and 53% respectively in 2013.

Circuit Court cases will attract only Circuit Court legal costs, which are lower than High Court costs and this shift from a majority of cases issued at High Court level to a majority issued at Circuit Court level, if it continues, should lead to a reduction overall in legal costs for litigation of personal injury cases before the Courts.

However, jurisdictional limits have been referred to by a number of stakeholders as influencing the increase in insurance premiums. Reflecting this concern, the Working Group recommends reviewing the impact of the new limits on PI claims when an appropriate number of cases have progressed through the system under the new regime.

8.4.3 Discount Rate in Personal Injuries Cases

Under the *Civil Liability and Courts Act 2004*, the Minister for Justice and Equality has the power to prescribe by regulation “the discount rate that shall apply for the purposes of the assessment of damages in respect of future financial loss”. To date, the power has not been exercised. Instead the rate has been set at the discretion of the Courts. The discount rate is used in a small number of very severe PI cases where substantial compensation is awarded.

The discount rate represents the average ‘real rate of return’ that a ‘prudential investor’ could achieve on an award. The size of the award is ‘discounted’ by the percentage return that the plaintiff can expect to make by investing the award. Therefore, the lower the discount rate, the higher the award will be (since the assumption is that the lump sum will yield a low amount of income if invested) whereas if the discount rate is higher this will reduce the amount of a lump sum award as there is an assumption that a substantial investment income will be available on the lump sum. Logically, the level of the discount rate becomes less critical in respect of awards which are to be paid by periodic payment order mechanism since there is no issue to consider as to what investment return a plaintiff may obtain into the future as she/he will be paid the award in annual instalments over his/her lifetime. However, it should be noted that a low discount rate may make a lump sum a more attractive option for the plaintiff than a PPO.

The discount rate was set at 3% in 2003 in *Boyne v Bus Átha Cliath* [2006] IEHC 209 (2006). However, there have been strong arguments in recent cases to reduce the rate significantly because of the lower returns being achieved on cash and bond investments. The issue of the

discount rate came before the High Court in the *Gill Russell v HSE* case in October 2012, a case involving a minor who suffered catastrophic injuries at birth.

The judgement of December 2014 determined that the discount rate then being applied was too high as the funds would have to be invested in risk-free options which were likely to generate returns lower than 3% per year. The Court ruled that the discount rate should be set at 1% for future care costs (to take account of the likelihood that care costs would be higher than inflation) and at 1.5% for other future pecuniary losses (to include future loss of earnings). In November 2015, the Court of Appeal, case reference [2015] IECA 236 (November 5, 2015), upheld the decision of the High Court. The Court accepted the plaintiff's argument that his lump sum should be calculated by reference to Index Linked Government Securities as the nearest to risk free investments as possible. The Court held that this "almost risk free" investment strategy would give the plaintiff a 'real rate of return' of 1.5% on future pecuniary losses with the exception of future care where the real rate of return was set at 1% to take into account the extent to which wage inflation is likely to exceed the Consumer Price Index over the lifetime of the plaintiff.

Leave has been sought to appeal the decision to the Supreme Court.

8.4.4 Periodic Payment Orders (PPOs)

In 2010, the President of the High Court established a Working Group on Medical Negligence and Periodic Payments which included representatives of the legal profession, the insurance industry and the State Claims Agency to examine the case for legislation to provide for periodic payments in PI cases.

A report of that Working Group in October 2010 recommended that legislation should be enacted to empower the courts, as an alternative to lump sum awards of damages, to make consensual and non-consensual PPOs to compensate injured victims in cases of catastrophic injury where long term permanent care would be required for the costs of (a) future treatment, (b) future care, and (c) the future provision of medical and assistive aids and appliances. The Government agreed to examine this issue in response to the Working Group's recommendations and the ongoing concern of the judiciary at the inadequacy of the lump sum system to cater properly for catastrophically injured plaintiffs requiring ongoing care and medical treatment.

The Government decided in January 2013 that legislation should be enacted to provide for periodic payments in cases of catastrophic injury involving State defendants. It also agreed that the question of extending PPOs to cases involving private defendants should be examined by the Department of Justice and Equality in cooperation with the Department of Finance.

The Department of Finance subsequently requested the State Claims Agency to commission research into the technical aspects of this issue, particularly the need to develop mechanisms that would provide for the financial security of payments on a long-term basis. Detailed analysis of financial security mechanisms, indexation, variation and stepped payments was carried out. International models and consultation with the insurance industry in Ireland was also carried out.

A subsequent working group established by the Department of Justice and Equality recognised that the introduction of PPOs would be of significant benefit to catastrophically injured claimants as it would enable them to have continuity of payments to cover their care and medical costs for the duration of their lives. The Working Group also recognised that the introduction of PPOs would add to the liabilities of insurance companies and increase the cost of insurance, with knock-on effects for both businesses and consumers.

It is proposed to publish the Civil Liability (Amendment) Bill 2017 in January 2017 to allow for the introduction of PPOs, with a view to enactment during the first half of 2017.

8.5 Recommendations

The establishment of the PIAB in 2004 has successfully resulted in thousands of PI cases being settled at a lower delivery cost than otherwise would have been possible. This initiative has resulted in significant savings which have ultimately benefitted the consumer. As illustrated in Chart 1, PIAB delivery costs are approximately 6.5% whereas settlements arrived at outside PIAB incur delivery costs of over 40%. Encouraging more claimants and respondents to settle cases through the PIAB where possible or at an earlier stage in the process can result in further significant cost savings in the PI claims environment.

Measures that reduce the number of PIAB awards which are rejected and end up in litigation will put downward pressure on claims costs. Additionally, reducing the cost of those PIAB rejected cases that end up in litigation will similarly put downward pressure on costs. The Working Group are putting forward a suite of recommendations that may help achieve these objectives. Based on the evidence assessed by the Working Group, the following recommendations are being put forward:

Recommendations 15 – 17 Maximise PIAB process

Recommendation 15

Assess, within the current review of the PIAB legislation, cases of non-cooperation such as non-attendance at medicals and refusal to provide details of special damages

It is possible to reject a PIAB award and to introduce new case information when litigation commences. The PIAB assesses cases based on the information provided – if information is withheld, it must assess the case on what is available even if the withheld information is introduced in subsequent litigation. This recommendation seeks to address this issue. As illustrated by the delivery costs provided by Insurance Ireland in settling claims, litigation is a costly way of resolving cases, with an indeterminate legal costs overhead. A rejected PIAB award that enters litigation will lead to more costs and there is uncertainty as to what one will be awarded in court. This matter is under active consideration by the Department of Jobs, Enterprise and Innovation.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|---|---|
| 34 | Review cases of non-attendance at medicals and refusal to provide details of special damages | Q2 2017 | Department of Jobs, Enterprise and Innovation | Department of Jobs, Enterprise and Innovation |
| 35 | Publish Heads of Bill to enhance the powers of PIAB | Q2 2017 | | |

Recommendation 16

Ascertain and set out the measures necessary to implement Pre-Action Protocols for personal injury cases

A Pre-Action Protocol (PAP) is, in essence, a document that sets out a series of procedural requirements that are a prerequisite to the commencement of litigation. These procedural steps, which apply to all interested parties, are generally aimed at encouraging settlement. The PAP will assist in narrowing down the issues in dispute, which will in turn encourage alternative dispute resolution or, even where court action still occurs, a more efficient and cost-effective process.

Part 15 of the *Legal Services Regulation Act 2015* (the 2015 Act) now provides for the implementation of PAPs in medical negligence cases. That Part of the 2015 Act is, therefore, ready for immediate commencement. Part 15 provides for the introduction of these protocols under regulations of the Minister for Justice and Equality which “shall include requirements that must be complied with by the parties to clinical negligence actions before such actions are brought”.

These PAPs will initially apply only to medical negligence cases. It is anticipated that they can then be extended to other areas of litigation once road tested in the medical negligence field. There will, of course, also be a requirement for supporting Rules of Court.

Before making the relevant regulations, the Minister for Justice and Equality is obliged, under Part 15, to consult with the Minister for Health, the State Claims Agency and other appropriate bodies.

In making the regulations the Minister for Justice and Equality will have regard to the desirability of:

- (a) Encouraging early resolution of allegations of possible clinical negligence,
- (b) Promoting timely communication between parties,
- (c) Reducing the number of clinical negligence actions brought,
- (d) Facilitating early identification of issues in dispute, and
- (e) Encouraging early settlement of clinical negligence actions.

PAPs are, therefore, another step that is being taken with a view to further reducing litigation costs. This will complement the more extensive legal costs transparency measures contained in the 2015 Act. The introduction of the protocols should also reduce the amount of clinical negligence cases that end up having to be determined before the courts. A number of recent judicial decisions under which clinical negligence awards have been virtually halved and these decisions have also clarified the basis on which the original awards ought to have been made.

The intention has always been that the introduction of PAPs for medical negligence cases would act as a pilot for their extension into other classes of action. It would seem therefore that there should be no bar to extending them into PI cases generally and this should be pursued. Since the PI sphere covers a multitude of areas, some definitional work would need to be undertaken as regards putting order on types of actions likely to fall under a PI heading. While it may be that a simple legislative amendment to the existing statutory provisions would be sufficient to extend the PAP concept to PI actions, this would have to be looked at very carefully in order to ensure effective dovetailing with the existence and powers/functions of the PIAB. It is noted that PAPs for personal injuries actions are already in place in the UK.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|---|---|
| 36 | Ascertain and set out the necessary measures to implement Pre-Action Protocols in personal injury cases | Q3 2017 | Department of Jobs, Enterprise and Innovation, Department of Justice and Equality | Department of Jobs, Enterprise and Innovation/ Department of Justice and Equality |
| 37 | Publish Heads of Bill to extend Pre-Action Protocols to personal injury cases | Q4 2017 | | |

Recommendation 17

Fully assess viable options for referring rejected PIAB assessments into a judicial process on an appeal basis so that the facts established relating to a personal injury in the PIAB process do not require to be re-established

Section 16 of the *Personal Injuries Assessment Board Act 2003* refers to the scenario where a case that went through the PIAB ends up in court and how certain documentation produced in the former process cannot be produced in the latter process. It is arguable that this section was included as the PIAB process was considered administrative in nature. It was not envisaged, however, that claimants who rejected PIAB awards would be able to introduce new evidence into court that could have been provided at the time of the PIAB assessment and effectively have a “different” case adjudicated on by the Court.

This matter will be considered by the Department of Jobs, Enterprise and Innovation in consultation with the Department of Justice and Equality in terms of any potential legislative or constitutional constraints. It is important that the rights of the individual claimant are protected but it is also important that information that could have been produced during the PIAB process is not deliberately withheld and a “new” case built in litigation.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|--|---|
| 38 | Review potential legal and constitutional constraints to the appeal style system | Q4 2017 | Department of Jobs, Enterprise and Innovation and Department of Justice and Equality | Department of Jobs, Enterprise and Innovation/ Department of Justice and Equality |

Recommendations 18 – 20 Improving the Book of Quantum

While an updated Book of Quantum issued in October 2016, greater consistency and reduced uncertainty in damages levels can be achieved by introducing the measures outlined in Recommendations 18 – 20.

It has been claimed that the Book of Quantum is not always being applied in certain instances and the impact of this, it is argued, is that it is providing an incentive for more PIAB cases to be rejected and pursued in litigation. While there has been little change in the acceptance rate of PIAB awards in recent years, any measures which could increase the number of cases finalised through PIAB would intuitively result in lower overall claims costs. Achieving greater consistency and predictability in awards/settlements is also believed to be an aid in terms of how insurers reserve for future claims, which in itself is a driver of premium rates.

Recommendation 18

Explore with the judiciary how future reviews of the Book of Quantum/guidelines might involve appropriate judicial involvement in its compilation or adoption

This should ensure greater consistency in application by all parties.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---------------------------------|----------|---|---|
| 39 | Consultation with the Judiciary | Ongoing | Department of Jobs, Enterprise and Innovation, Department of Justice and Equality, PIAB | Department of Jobs, Enterprise and Innovation/ Department of Justice and Equality/ PIAB |

Recommendation 19

Examine the frequency of future Book of Quantum updates in terms of any future changes to its production

The Working Group recommends that the Book of Quantum should be updated every 3 years at a minimum.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|---|------------|
| 40 | Implement the outcome of the PIAB legislative review | Q2 2017 | Department of Jobs, Enterprise and Innovation, PIAB | PIAB |

Recommendation 20

Introduce more granularity in to the Book of Quantum

This has been achieved in the recent publication but further editions should seek to improve the detail by introducing more detailed grading for minor personal injuries – perhaps arising from the work of the soon to be established Personal Injuries Commission who will be tasked with examining the possibility of the gradation of certain types of injuries through medical reports.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|---|------------|
| 41 | Consult with the Personal Injuries Commission and implement any recommendations arising from their Report | Ongoing | Department of Jobs, Enterprise and Innovation, PIAB | PIAB |
| 42 | Enhance the Book of Quantum upon each publication | Ongoing | | |

Recommendations 21 – 24 Measures to address other factors

Recommendation 21

Implement the Review of the Framework for Motor Insurance Compensation in Ireland

The relevant organisations are currently working to implement the recommendations of the Joint Working Group. The Working Group supports the recommendations outlined in the Joint Report of the Minister for Finance and Minister for Transport, Tourism and Sport and believes that they would contribute to the increased certainty in insurance sector.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|--|---|
| 43 | Continue to implement the Review | Ongoing | Department of Finance, Department of Transport, Tourism and Sport, Central Bank of Ireland | Department of Finance/ Department of Transport, Tourism and Sport |
| 44 | Government approval of Heads of Bill to amend the <i>Insurance Act 1964</i> | Q2 2017 | | |

Recommendation 22

Examine the impact of legal fees and other fees on personal injury awards

Data provided by Insurance Ireland shows that claimants' legal costs appear to have increased between 2013 and 2015 whereas the legal costs incurred by insurers have fallen. Overall, it does not appear that legal costs have been a major contributory factor in the recent increase in insurance premiums from the data available to the Working Group. However, given the strong assertions made by stakeholders in this regard and the introduction of the *Legal Services Regulation Act 2015*, it may be appropriate to examine the impact of legal fees on personal injury awards when the provisions of the Act have been embedded.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|------------------------------------|------------------------------------|
| 45 | Establishment of reliable set of data and commence review | Q1 2017 | Department of Justice and Equality | Department of Justice and Equality |
| 46 | Report to be submitted to the Cost of Insurance Working Group | Q2 2018 | | |

Recommendation 23

Review the impact of the changes to the Court jurisdictional limits as they evolve.

Some stakeholders advise that they have had to increase reserves to take account of the future cost of claims arising from a number of changes in the legislative environment. This includes the change in jurisdictional limits. As outlined in this Chapter, available evidence does not support this assertion in relation to the new limits. However, as the Courts Service have confirmed that very few, if any, cases have progressed to the court award stage under the new regime, it will be appropriate to review the impact of the new limits at an appropriate stage.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|------------------------------------|------------------------------------|
| 47 | Review to be commenced | Q1 2017 | Department of Justice and Equality | Department of Justice and Equality |
| 48 | Report to be submitted to the Cost of Insurance Working Group | Q2 2018 | | |

Recommendation 24

Examine the setting of the discount rate (in personal injury lump sum awards), without prejudice to the outcome of relevant proceedings, and to be reviewed at regular intervals.

The analysis in this chapter has detailed the evolution of the discount rate to date. As has been outlined, in December 2014 the High Court determined that the discount rate should be set at 1% for future care costs and at 1.5% for other future pecuniary losses. In November 2015, the Court of Appeal upheld the decision of the High Court. Leave has been sought to appeal the decision to the Supreme Court. The Department of Justice and Equality will commence the review by the end of Q1 in 2017 with a view to reporting to the Working Group by the end of Q3 2018.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|------------------------------------|------------------------------------|
| 49 | Review to be commenced | Q1 2017 | Department of Justice and Equality | Department of Justice and Equality |
| 50 | Report to be submitted to the Cost of Insurance Working Group | Ongoing | | |

CHAPTER 9 - REDUCING INSURANCE FRAUD AND UNINSURED DRIVING

9.1 Introduction

Fraud

The vast majority of claims are genuine with only a small minority of people making fraudulent and exaggerated claims. However, there is a perception issue with insurance fraud insofar that it is often viewed as a victimless crime in that no one gets hurt. In the overall scheme of things, the making of a false claim or the exaggeration of a genuine claim can be viewed as insignificant. However, the impact of the accumulation of those false or exaggerated claims affects all policyholders.

It is clear that fraud affects every type of insurance, whether it is non-life insurance, life and protection cover or health insurance. It can be committed by the policyholder or by a third party claiming against an insurance policy. Insurance fraud can range from opportunistic claims, through claims for phantom passengers and fictitious or exaggerated injuries in road accidents, to highly organised crime rings.

Fraud is tackled in a number of ways. The Working Group understands that insurers generally have internal fraud teams or Special Investigation Units aimed at detecting and fighting opportunistic fraud. The insurance industry estimates that it has spent between €14 and €17 million in each of the years since 2011 in tackling insurance fraud. Insurance fraud is estimated by the insurance industry to cost €200 million a year which they claim adds an approximate €50 to each policy.⁵¹ Consultations with various stakeholders during the course of our work has highlighted that the insurance industry believes insurance fraud is an increasing problem in Ireland. However, concrete evidence of the prevalence of fraud is difficult to obtain, given the nature of the issue.

This issue crosses over to the health service, adding to the strain upon the medical profession with ambulances having to attend fake accidents when others are in genuine need. The prevalence of insurance fraud and corresponding increasing premiums puts at risk the vital contribution the insurance sector makes to the Irish economy.

While fraud is undoubtedly a cost factor for insurance companies, it is not the main reason why insurance prices have increased so much over the last 12 months. This is attributable also to a range of other factors discussed elsewhere in the report.

⁵¹ Insurance Ireland arrived at the figure of €200 million using international industry standards. They have stated that it was calculated based on the estimation by Insurance Europe that fraud represents up to 10% of all claims expenditure in Europe. Total gross incurred claims in Ireland are in excess of €2 billion each year with motor gross incurred claims costing an average €1 billion each year over the past five years and almost €1.2 billion in motor claims paid. If fraud represents 10% of all claims expenditure, it can be estimated that insurance fraud costs €200 million in Ireland each year with motor insurance fraud costing €100 million.

Uninsured Driving

The Working Group also considered the problem of uninsured driving. Drivers who are in a collision with an uninsured or unidentified driver are compensated by the Motor Insurers' Bureau of Ireland (MIBI). This is regulated by an Agreement between the Minister for Transport, Tourism and Sport and the MIBI, and sets out the rights of persons who sustain loss and/or injuries in a road traffic accident caused by an uninsured or untraced motorist. All insurance companies underwriting motor insurance in Ireland must be members of the MIBI and contribute to the funding for claims in proportion with their market share.

The amount paid out by the MIBI annually for collisions involving uninsured or untraced drivers is €50 to €60 million approximately. This cost is passed directly on to motorists by way of a levy on motor insurance premiums. The insurance industry estimates that this equates to €30 approximately per premium sold. A decrease in the number of uninsured drivers should assist in a decrease in the cost of MIBI claims to insurance companies, which in turn should lead to reduced premiums for motorists.

Figures provided to the Working Group by the MIBI show the level of uninsured driving remained below 5% throughout the period 2011 to 2013. However, the MIBI figures indicate a rise in the level of uninsured driving to 7.1% in 2015, with partial figures for 2016 estimating an increase to 7.4%.⁵² It is likely that the significant hike in motor insurance premiums in recent times is a factor in the increasing number of uninsured drivers. Therefore, if the cost of insurance can be addressed, it should also assist in reducing this upward trend in uninsured driving.

Following a consultation process and research of the issues, the Working Group is making a number of recommendations aimed at tackling fraud and uninsured driving.

9.2 Tackling Fraud

The Working Group has considered measures which could be taken to tackle insurance fraud in Ireland. This consideration has involved the establishment of an insurance fraud database and further cooperation between the insurance industry and An Garda Síochána in addition to consideration of relevant legislation.

9.3 An insurance fraud database

The aim of the database would be to provide a mechanism for the insurance industry to identify patterns of fraud at any stage in the policy lifecycle. Insurers would be able to share data amongst themselves for this purpose through a secure protocol, to ensure the integrity of the data. Such a database would play an important role in the fight against insurance fraud to protect honest customers. The database would be available to all insurers participating in the Irish market for fraud detection purposes.

⁵² Data received from Motor Insurers' Bureau of Ireland.

The long term aim is to tackle the issue of insurance fraud proactively, by making it more difficult to commit the crime in the first place. The figures provided to the Working Group indicate that approximately 50% of the new cases reported to the Insurance Confidential anti-fraud hotline run by Insurance Ireland relate to motor injury. It is hoped that by recording details of incidents on a fraud database, it will be more difficult to successfully defraud an insurance company or misrepresent a claims history. The existence of such a database may also contribute to removing the incentive to commit fraud, thus making Ireland a less attractive location in which to commit such a crime. The overall aim of this proposal, therefore, is to reduce the potential for fraud in order to keep the cost of insurance down for the majority of honest policyholders.

What is the current situation?

Insurance Ireland have operated Insurance Link since 1987. It is a claims-matching database to assist their members in the detection and defence of potentially fraudulent claims. It can be used as a tool to identify potentially fraudulent claims and to check against non-disclosure at the proposal stage. Insurance companies input basic details of claims into Insurance Link. It contains details of claims made by individuals against insurers or directly against self-insured members of the service. The type of information held on the database includes the claimant's name, address, date of birth and the type of injury or loss suffered. The database is not limited to information relating to motor injury, it also covers claims relating to vehicle damage, household and commercial property, public and employers' liability.

An insurance company can use the database to identify if there are any matches between claims, for example, whether the claimant has made multiple claims or there are similarities between the claims. It is important to note that the database does not indicate whether the claim is fraudulent or exaggerated. It simply alerts insurance companies to similarities or multiple claims which they can then choose to look at more closely.

Insurance Link operates using an established protocol between the provider and the insurance industry. Following an audit of data procedures and engagement with the Data Protection Commissioner, a Code of Practice on Data Protection for the Insurance Sector was approved in June 2013⁵³. This Code of Practice puts in place an agreed protocol for the management of the data Insurance Link contains.

However, through the consultations that the Working Group has had with various stakeholders, it has become apparent that the data held by the database could be significantly improved upon.

The operation of Insurance Link is constrained due to the restrictions in place on the disclosure of information. These limitations to the usefulness of the database result in disingenuous claims being paid out, which can add to the overall cost to the insurer and consequentially, the insured. It is therefore of limited use to insurance companies in the

⁵³ Insurance Ireland, *Code of Practice*, http://www.insuranceireland.eu/media/documents/20130626_Code_of_Practice_Final.pdf.

identification of fraud. In addition, Insurance Link does not have a link with An Garda Síochána.

The approach to fraud in the UK

The UK uses data sharing as a measure to tackle insurance fraud. The UK's Insurance Fraud Bureau (IFB) is a not-for-profit company established in 2006 to lead the insurance industry's collective fight against insurance fraud. The IFB manages, on a day-to-day basis, the Insurance Fraud Register (IFR). The IFR operates as a single industry-wide central database in the UK and is sponsored by the Association of British Insurers (ABI).

The IFR holds details of the committing and facilitating of fraud across all product lines. Members of the IFR have the ability to search across all types of insurance and at all stages of the product lifecycle to detect and prevent fraud in the underwriting of insurance products, and when processing claims. They also have the ability to share details which can be used to help insurers identify fraud at any stage in the policy lifecycle. This information is then available to all of the IFR's members across the insurance industry through a secure protocol. The IFR continues to evolve and is playing an increasingly important role in the fight against insurance fraud to protect honest customers.

The UK has specific legislation to cater for the IFR and the IFB. The sharing of data is provided for by way of designated individuals within insurance companies who are authorised to contact other insurance companies to discuss fraud concerns. Section 29 (Crime & Taxation) of the UK's *Data Protection Act 1988* allows insurers to exchange data when they have reasonable grounds to do so in investigating or preventing the crime of insurance fraud. The provision operates by way of an exemption, in that restrictions relating to the processing of personal data do not apply when that personal data is processed for the prevention or detection of crime. Section 29 is not explicit in who may utilise the exemption. In practice, the section is used by the IFB.

The UK's *Serious Crime Act 2007* provides for a 'gateway' to authorise a public authority to disclose information as a member of a specified anti-fraud organisation for the purposes of preventing fraud or a particular kind of fraud. The IFB is then specified as an anti-fraud organisation pursuant to the *Serious Crime Act 2007* (Specified Anti-Fraud Organisations Order 2008). The net effect of these provisions allows data to be shared for the purposes of preventing fraud in line with data protection.

The Claims and Underwriting Exchange (CUE) is also utilised in the UK. Established in 1994, the CUE is a central database of motor, home and personal injury incidents reported to insurance companies, which may or may not give rise to a claim. The CUE is managed by Insurance Database Services Limited (IDSL), a not-for-profit company, on behalf of its member organisations which includes all major insurers. The purpose of the CUE is to record all claims on a single centralised database and to keep down premiums for policyholders by preventing multiple claims fraud and the misrepresentation of claims histories. There are currently over 32 million claims records available to subscribers.

The type of information contained in the CUE comprises that supplied by the policyholder or claimant on their application or claim form, together with other information in relation to the incident or claim. It does not hold sensitive information or details relating to the levels of premiums or claims paid.

What is proposed?

The Working Group is of the view that an insurance fraud database is required which would be managed by an independent not-for-profit body but funded by industry. The proposed database would be along the lines of the CUE in the UK and would hold details of incident data which can be used to detect patterns of potentially fraudulent behaviour. It is hoped that the compilation of this type of data on a wide scale in a central database would allow insurance companies to proactively reduce the potential for fraud and to efficiently target their internal anti-fraud measures where they are needed. Insurance companies have the option of approaching An Garda Síochána in circumstances where they believe unlawful behaviour has taken place.

The type of data to be included on the database includes the incident or claim information but would not include a granular level of detail such as the amount of the premium paid or the level of claims paid. It is recommended that engagement with the Data Protection Commissioner commence as soon as possible in order to further develop this recommendation.

What legislation may be required?

Criminal justice legislation may be required to put in place a statutory framework for an independent body to manage the database and to allow, subject to appropriate safeguards for the rights and freedoms of individuals, for the sharing of data between relevant public authorities and between them and authorised insurance service providers. Such legislation would be required to be in line with both EU law and domestic data protection legislation to uphold the integrity of the personal data. The legislation would provide a 'gateway' for the sharing of data without infringing on data protection legislation.

Issues with the proposal

There are a number of issues to be considered in relation to this recommendation.

One concern relates to the potential cost of establishing such an industry funded database, which could potentially be absorbed into the cost of premiums for policy holders. The cost of setting up a system such as this should not be underestimated. Significant resources would be required to ensure that the database would be fit for purpose. Another point relates to proportionality. Given the cost and the considerable time it will take to implement, it must be considered whether it is proportionate to invest such resources into establishing a sophisticated framework for insurance fraud such as that in the UK, given the relative size of the insurance market in Ireland.

In terms of the timeframe for implementation, the development of the necessary IT infrastructure and the accumulation of the data and population into the database will take

time. The database will therefore take some time before being a truly useful tool for tackling insurance fraud. The aim, however, is to have the database effective by the end of 2018.

9.4 Measures to enhance cooperation between the insurance industry and An Garda Síochána

The Working Group looked at the cooperation between the insurance sector and An Garda Síochána in relation to insurance fraud investigation. It is proposed that further exploration be undertaken as to the avenues open to increasing cooperation. Creating a more hostile environment for people who commit insurance fraud, be it for a small or large amount, not only contributes to reducing the cost of insurance but will change the public perception that committing even small time 'opportunistic' fraud does not really matter. An increased focus on tackling fraud may also reduce the temptation to commit fraud.

Further cooperation between industry and An Garda Síochána may lead to the uncovering and dismantling of organised crime gangs that are responsible for an increasing amount of today's insurance fraud. In this vein, increasing and improving the cooperation may lead to a consequential decrease in the cost of premiums, following a reduction in fraud.

One measure which the Working Group considered is the establishment of a dedicated team within An Garda Síochána or a partnership to tackle insurance fraud, as well as focusing on emerging threats such as illegal insurance advisors. This cooperation could be modelled along the lines of the UK, where a dedicated insurance fraud unit has been set up and which is funded by the insurance industry. This proposal is subject to the approval of the Garda Commissioner and the Minister for Justice and Equality.

The approach in the UK

The Insurance Fraud Enforcement Department (IFED) is a specialist police unit dedicated to tackling insurance fraud and is committed to addressing high volume and organised criminality in collaboration with its criminal justice partners. The IFED is funded by the Association of British Insurers and Lloyds of London members. It is hosted by the City of London Police within the Economic Crime Directorate. The IFED is comprised of detectives, police staff and financial investigators who operate independently while working closely with the insurance industry.

Consideration of the measure for further cooperation

If such a specialised insurance unit were to be established, the team could consist of members of the Garda National Economic Crime Bureau (GNECB) working in conjunction with members of the insurance industry. The Working Group met with the GNECB as part of the consideration of this proposal. It is understood that the GNECB have engaged with the insurance industry on this proposal and the initial reaction has been positive. It should be noted that the establishment of a new Unit or deployment of Garda resources in any particular context is an operational matter for the Garda Commissioner. In addition, any

proposal in this regard will require the approval of the Garda Commissioner before being considered by the Minister of Justice and Equality.

There are issues in relation to the possibility of having a specialised unit of An Garda Síochána privately funded, particularly with regard to competing demands for Garda resources to combat other forms of crime. The funding provided by the insurance industry would be ring-fenced for the use of the unit only and not re-directed elsewhere. However, the provision of funding will not provide the insurance industry with any role in relation to the investigation and prosecution of insurance fraud. Decisions in regard to investigations and prosecutions would have to be taken by An Garda Síochána without any interference by the insurance industry. It would be essential for a unit such as this to act independently.

If a decision is made to proceed with this proposal, then it will need to be carefully examined to ensure that data protection legislation is fully complied with. However, such barriers have been overcome in the UK and it is hoped that they could be overcome in Ireland also.

It would be difficult to quantify the level of savings by the insurance industry as a direct impact of having such a dedicated unit. However, there is a potential positive societal impact of an increase in the prevention and detection of insurance fraud. The relevant unit in the UK was initially set up for a three-year period. That engagement has been renewed by the insurance industry which would seem to suggest that there has been a positive impact on the costs to the insurance company as a result of the valuable work of the unit. If the project is approved, the funding provided by the insurance industry is likely to be offset by savings made due to a reduction in the level of fraud. It is hoped that these savings would be passed on to the consumer.

9.5 Review of Sections 25 and 26 of the *Civil Liability and Courts Act 2004*

The litigation of personal injury actions is provided for in the *Civil Liability and Courts Act 2004*. The emerging recommendations set out that the use of sections 25 and 26 of the *Civil Liability and Courts Act 2004* (the 2004 Act) be subject to review. The Working Group undertook to review the sections as part of its report to provide information on the use of these sections to date.

Section 25 (False evidence) of the 2004 Act creates an offence for anyone to knowingly give or adduce (or cause to be given or adduced) false or misleading material evidence in a personal injuries action, or to a solicitor, or person acting on behalf of a solicitor, or an expert, if done with the intention of misleading the court. The penalty for an offence under section 25 is a substantial fine or imprisonment or both.⁵⁴

Information made available by the Courts Service, the Office of the DPP and An Garda Síochána indicates that very few allegations of offences under section 25 are being made to An Garda Síochána, with the result that the number of recorded prosecutions and convictions

⁵⁴ Section 29 of the 2004 Act provides for a fine of up to €100,000 or imprisonment for a term up to 10 years where a person is convicted on indictment.

for this offence is very low. While this suggests a need for further co-operation between the insurance industry and An Garda Síochána in relation to the reporting of offences under section 25, the Working Group does not believe that a further review of section 25 is required at this time.

Section 26 (Fraudulent actions) of the 2004 Act requires the Court to dismiss a personal injuries claim where the plaintiff knowingly gives or adduces (or causes to be given or adduced) evidence that is false or misleading in any material respect, unless dismissal of the action would result in an injustice. The section is mandatory in nature. Once the court is satisfied that, on the balance of probabilities, the claimant is fundamentally dishonest in relation to the claim, any legitimate parts of the claim cannot survive and the claim (case) must be dismissed in its entirety unless dismissal would result in an injustice. The court is not entitled to separate out the good from the bad. This section was commenced on 20 September 2004 (S.I. No. 544 of 2004).

Section 26 has been described by the courts as being “certainly of a draconian nature, but it is deliberately so in the public interest”⁵⁵. There is a risk to both the defendant and the plaintiff when section 26 is invoked. The risk to the defendant if the allegation under section 26 is unsuccessful is potential liability for aggravated and exemplary damages. The risk to the plaintiff is that the claim will be dismissed, with an adverse costs order, and also the possibility of being prosecuted for an offence under section 25. O’Neill J. pointed out in *Dunleavy v Swan Park Ltd*⁵⁶, that section 26 was enacted:

“to deter and disallow fraudulent claims. It is not and should not be seen as an opportunity to seize upon anomalies, inconsistencies and unexplained circumstances to avoid a just liability. Great care should be taken to ensure, in a discriminating way, that clear evidence of fraudulent conduct in a case exists before a form of defence is launched which could unjustly do grave damage to the good name and reputation of a worthy plaintiff”.

The Working Group anecdotally understands that after commencement of the relevant sections, jurisdiction to dismiss was rarely invoked by the courts, with the majority of the initial applications under section 26 being refused. Emphasis was placed on the honesty or perceived honesty of the plaintiff. For example, Finnegan P. found in *Corbett v. Quinn Hotels Limited*⁵⁷ that even though the plaintiff’s evidence was misleading, the plaintiff had given evidence honestly believing the same to be true and that the plaintiff had not intended to mislead the court.

Some refusals to dismiss under section 26 arose because the plaintiff, having given misleading information to a solicitor or doctor before the court hearing, did not give misleading evidence

⁵⁵ *Carmello v Casey* [2007] IEHC 362.

⁵⁶ [2011] IEHC 232.

⁵⁷ (Unreported, High Court, Finnegan P., 25th July, 2006).

in court, or the part of the claim which involved the false information was withdrawn before the hearing. Courts have also been concerned about attempts by defendants to:

"prey on the frailty of human recollection or the accidental mishaps that so often occur in the process of litigation, to enable a concoction of error to be assembled so as to mount an attack on a worthy plaintiff in order to deprive that plaintiff of the award of compensation to which they are rightly entitled"⁵⁸.

In some cases judges found that misleading statements of subjective beliefs were provided to the court by plaintiffs but that they had not intended to mislead the court.⁵⁹ However, it would appear from more recent reported judgments that more claims are now being dismissed following a successful action under section 26. The key considerations in relation to fraudulent or exaggerated claims are set out below.

1. The onus of proof is on the defendant who must satisfy the requirements of section 26 on the balance of probabilities.⁶⁰
2. The trial judge should be satisfied that the plaintiff against whom section 26 is sought to be invoked is afforded the opportunity of countering the evidence or charges that are sought to be relied upon by a defendant in support of the application.⁶¹
3. Where a defendant invokes section 26 inappropriately, the defendant may be liable for both aggravated and exemplary damages.⁶²
4. Where the Court is satisfied that the requirements of section 26 have been met, then the provisions of the section are mandatory. The Court is required to dismiss the Plaintiff's claim in its entirety unless dismissal of the section would result in an injustice being done.
5. The defendant must establish firstly an intention on the part of the plaintiff to mislead the court and secondly that he/she adduced or caused to be adduced evidence that was misleading in a material respect.
6. False or misleading evidence, even if intentionally advanced, if not material to the claim made cannot justify invocation of section 26.
7. Any such false or misleading evidence must be sufficiently substantial or significant in the context of the claim that it can be said to render the claim itself fraudulent.

The Working Group is satisfied that sections 25 and 26 do not need further review in light of the above.

⁵⁸ *Smith v HSE* [2013] IEHC 360.

⁵⁹ *Aherne v Bus Éireann* [2011] IESC 44.

⁶⁰ *Waliszewski v McArthur and Company Limited* [2015] IEHC 264.

⁶¹ *Nolan v O'Neill* [2016] IECA 298.

⁶² *Aherne v Bus Éireann* [2011] IESC 44 and *Meehan v BKNS Curtain Walling Systems Ltd & Anor* [2012] IEHC 441.

9.6 Review of Section 30 of the *Civil Liability and Courts Act 2004*

The Working Group heard during the course of its deliberations that there was a need to review and amend section 30 of the *Civil Liability and Courts Act 2004* (the 2004 Act) to include more information. There were also calls to expedite the commencement and implementation of the section.

Review of the Section

Section 30 of the 2004 Act provides that the Courts Service shall set up and maintain a register of personal injuries actions. The aim of the register appeared to be to facilitate defendants in personal injury actions in finding information on previous actions by the same plaintiff and also to facilitate plaintiffs in finding information regarding defendants. In particular, the information on the register would alert defendants to the possibility that a plaintiff has in the past made one or more personal injury claims and may prompt them to seek particulars of such actions from the plaintiff. It was originally intended that the register would be published on the internet to enable easy public accessibility. However, the provision requiring publication on the internet was removed by amendment in the Dáil, due to concerns about implications for the privacy of plaintiffs.

It is worth recalling that section 30 provides for the following information to be kept:

- Name and address of the solicitor for each party to the action
- Name, occupation and address of each party to the action

The limited amount of information to be entered in the register limits its usefulness. For example, there is no requirement to collect the PPSN which would potentially provide a unique identifier for persons involved in personal injuries actions.

Commencement of Section 30

Section 30 has not yet been commenced. The Working Group understands that the main reason for it not coming into force is the lack of resources by the Courts Service in relation to IT infrastructure and personnel required to maintain such a register. It also understands that when commencement of the 2004 Act was being considered, the Courts Service indicated that a significant body of work was required in enhancing and extending civil case tracking systems in the various court offices, and developing a central database to facilitate automated capture of the particulars required by section 30(2). The view was that commencement of section 30 would not be technically feasible until all court offices were linked to the necessary central database.

The Working Group believes that further information will be required from the Courts Service as to whether their civil case tracking systems and central databases have been sufficiently developed in the 12 years since enactment of the 2004 Act to enable commencement of section 30.

Amendment of Section 30

The question of amending section 30 to add a requirement to record details of the awards in personal injury cases will depend, to a large extent, on the capacity of the Courts Service case tracking systems to meet such a requirement. The amount of information required to be entered in the section 30 register is limited. For example, there is no requirement to collect the PPSN, which would potentially provide a unique identifier for persons involved in personal injuries actions. However, given the statutory restrictions on the collection and use of the PPSN and the data protection implications, any proposal in this regard would have to be carefully examined in consultation with the Minister for Social Protection and the Data Protection Commissioner.

The Working Group recommends a further review of section 30 be undertaken in 2017 by the Department of Justice and Equality in conjunction with the Courts Service, in light of developments in relation to the establishment of the National Claims Information Database. This review should determine whether section 30 requires to be amended and commenced. The results of that review are to be submitted to the Cost of Insurance Working Group for consideration.

9.7 Recommendations

Recommendations 25 – 27 Reducing Fraud

Recommendation 25

Establish a fully functioning integrated insurance fraud database for industry to detect patterns of fraud

The Working Group recommends the establishment of an insurance fraud database which would be managed by an independent not-for-profit body but which would be funded by industry. The proposed database would be similar to the CUE in the UK and access would be provided to insurance companies for the purposes of identifying patterns of fraud. The aim is to reduce levels of fraud, which should effect a decrease in the cost of premiums of motor insurance.

However, the establishment of such a fraud database, in the absence of action to address data protection and legislative regime issues, would be limited. It is essential therefore that the question of whether there is a requirement for a statutory framework is determined and, if so, that it is put in place before a fully functional insurance fraud database is established to ensure that the sharing of personal data takes place in a controlled manner, under protocols approved by the Data Protection Commissioner.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|---------------------|--|------------------------------------|
| 51 | Determine the parameters of the database to be established; who is to be responsible, how it will be funded and who will have access. | Q2 2017 | Insurance Ireland, Department of Justice and Equality, Department of Finance | Department of Justice and Equality |
| 52 | Liaise with industry and An Garda Síochána to determine what type of data will be inputted to the database | Q2 2017 | | |
| 53 | Liaise with the Data Protection Commissioner in relation to data sharing provisions | Q2 2017 | | |
| 54 | Prepare criminal justice legislation if required and implement the database | Q2 2018 and Q4 2018 | | |

Recommendation 26

Explore the potential for further cooperation between the insurance sector and An Garda Síochána in relation to insurance fraud investigation

Further exploration is required as to the measures for further cooperation between the insurance industry and An Garda Síochána in relation to insurance fraud investigation. At this stage the recommendation put forward is to explore the various avenues with consideration being given to the feasibility of a specialised and dedicated insurance fraud unit within An Garda Síochána, funded by industry.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|--|-------------------|
| 55 | Determine mechanism for further cooperation | Q2 2017 | Insurance Ireland, An Garda Síochána, Department of Justice and Equality | An Garda Síochána |
| 56 | Approval of the Garda Commissioner for the mechanism chosen | Q3 2017 | | |
| 57 | Approval of the Minister for Justice and Equality for the mechanism chosen | Q3 2017 | | |
| 58 | Liaise with industry | Ongoing | | |

Recommendation 27

Review of Section 30 of the Civil Liability and Courts Act 2004

The Department of Justice and Equality should begin a review, in conjunction with the Courts Service, on section 30 of the *Civil Liability and Courts Act 2004*. This should consider the usefulness of section 30 as currently drafted, particularly in light of the proposed developments in data collection set out in Chapter 6, the possible amendment of the section and its possible commencement.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|------------------------------------|------------------------------------|
| 59 | Review to be commenced to determine necessary amendments, if any | Q4 2017 | Department of Justice and Equality | Department of Justice and Equality |
| 60 | Report to be submitted to the Cost of Insurance Working Group | Q1 2018 | | |

9.8 Tackling Uninsured Driving

The Working Group considered measures which could be taken to tackle uninsured driving in Ireland.

9.9 Consideration of a database to identify uninsured drivers

The proposed recommendation involves the establishment of a fully functioning database of insured and uninsured drivers which will enable An Garda Síochána to check motor insurance compliance as part of its road traffic enforcement function. The database will be comprised of two separate parts – one for insured drivers and a second for uninsured drivers. Together, they will collectively be referred to as the database to identify uninsured drivers.

Section 56 of the *Road Traffic Act 1961* as amended, creates a legislative requirement for compulsory insurance of motor vehicles while in use by the driver or owner in a public place. It is an offence for the driver or owner to use a vehicle in a public place without having a valid Certificate of Insurance in place at the time.

The non-display of a valid insurance disc is an offence contrary to section 11 of the *Road Traffic Act 1961* (as amended by section 6 of the *Road Traffic Act 1968*) and is separate to the offence of not having a valid Certificate of Insurance. The offence occurs where a driver or owner fails to display a valid insurance disc 10 days after the production of a valid Certificate of Insurance at a specified Garda Station. The offence is not a penalty point offence, however a fine of €60 is payable within 28 days, rising to €90 within 56 days, after which a summons to court will issue.

Rationale for the proposal

An Garda Síochána requires comprehensive, accurate data concerning insured and uninsured drivers for road traffic enforcement purposes. An Garda Síochána and the Department of Transport, Tourism and Sport have been endeavouring to engage with the insurance sector over the past two years in this regard. An Garda Síochána had to disable ANPR due to the unreliability of insurance data on 30 May 2014. One hundred Garda vehicles are currently equipped with ANPR. For this reason, it is critically important that data provided by the insurance industry is robust, accurate and capable of being used by An Garda Síochána in conjunction with its technology, including ANPR. The provision of comprehensive, accurate data by the insurance sector will enable An Garda Síochána to check and enforce motor insurance compliance on our roads. This data will also make it possible for them to switch ANPR back on and use ANPR for the purposes of identifying uninsured driving.

The necessity for the insurance industry to provide comprehensive data on insured drivers for road traffic enforcement purposes is underpinned by a legislative requirement in section 30 of the *Road Traffic Act 2016*. This requires the insurance industry to provide detailed information to An Garda Síochána, the Road Safety Authority and the Department of Transport, Tourism and Sport's National Vehicle and Driver File for the purposes of road traffic enforcement, road safety and other matters. On foot of the Act, the following information will now be required from the insurance sector in relation to insured drivers:

- Policy number;
- Name of policyholder;
- Address of policyholder (postal & risk address);
- Eircode;
- Driving option on the specific vehicle registration number;
- Named drivers on the policy who can drive the vehicle registration number;
- Date of Birth of each named driver;
- Cancellation of vehicle cover indicator;
- Start and expiry dates of insurance cover;
- Driving licence number.

The driving licence number is a key requirement as it allows insurance companies who currently collect this information to log into the self-service portal in the Department of Transport, Tourism and Sport's National Vehicle and Driver File to check and verify whether the driver is licensed, whether the driver has any disqualifications and the number of penalty points on the driving licence. Once insurance companies are required to collect this information, it should become an important tool in their underwriting decision process, should help reduce fraud, and ensure that unlicensed or disqualified drivers cannot obtain insurance.

In this regard, all insurance companies bar one who were asked by the Working Group about whether collection of this data should pose any difficulties for them indicated that they did not foresee this being a problem. It was pointed out, however, that it will take a certain amount of time for fields in individual companies' databases to be amended, and for driving

licence numbers to be collected from all drivers. This will in turn by definition have a knock-on effect in updating fully the insured drivers' database.

How it can be achieved

Insurance Ireland and the MIBI propose the creation of a central database, which will contain the information required under the *Road Traffic Act 2016*. This database will be owned and managed by Insurance Ireland on behalf of the insurance industry, who will be responsible for populating it. The database will be a web-based look-up system with a 'read only' basis.

In order to progress the development and rollout of the new database, Insurance Ireland and the MIBI established a project group. As part of this process, they agreed in September 2016 to submit a detailed project and implementation plan to the Department of Transport, Tourism and Sport, the Department of Justice and Equality and An Garda Síochána, containing a set of key deliverables which would be acceptable to all stakeholders. The design of the database is currently underway.

Once established, the new database will be made available to An Garda Síochána, Road Safety Authority and the Department of Transport, Tourism and Sport's National Vehicle and Driver File and updated daily by the insurance industry. The ultimate aim is to provide to An Garda Síochána on an 'authorised user' basis a mobile app for roadside access to the central database.

Timeline for implementation

Once section 30 of the *Road Traffic Act 2016* is commenced, the insurance industry will be required in law to provide the relevant data on insured drivers to An Garda Síochána, the Road Safety Authority and the Department of Transport, Tourism and Sport's National Vehicle and Driver File.

In order to maintain momentum on the central database project, the Ministers for Justice and Equality and Transport, Tourism and Sport met Insurance Ireland and the MIBI on 16 November 2016, when the industry bodies provided an outline of progress to date. The industry indicated that it will be in a position to roll out the new database in respect of all privately-owned vehicles (which amount to 90% of all vehicles) in accordance with the following timelines: Quarter 1 2017 – Coding; Quarter 2 2017 – Testing; Quarter 3 2017 – 'Go Live'.

It is important to acknowledge a number of constraints with regard to the delivery of a fully functioning insurance database. As mentioned already, while in general companies do not foresee any major difficulty in collecting driver licence information, they have indicated that it is likely to result in additional costs and delays in delivering a complete central database and, by extension, the relevant information to An Garda Síochána, the Road Safety Authority and the Department of Transport, Tourism and Sport's National Vehicle and Driver File. However, it is understood that this will not prevent An Garda Síochána using the system from

the 'go live' date in order to check motor insurance compliance as part of its road traffic enforcement function based on existing data requirements as a first phase implementation.

The insurance industry has committed to exploring feasible timelines for providing driving licence numbers in accordance with the new road traffic legislation for the purposes of the central database and to report back to the Ministers. These details, when available, will be implemented by way of a second phase, provided that it does not happen too much later than the first phase referred to above.

Fleet vehicles

In relation to fleet vehicles, there are also challenges in the collection and provision of up to date, comprehensive data. As the situation currently stands, a company insures a fleet of vehicles under a single insurance policy. When a vehicle is replaced, the insurance companies are reliant on the fleet manager to update the record on the insurance industry's National Fleet Database. It would appear that the compliance rate currently is at 40-50%, meaning that there are a number of vehicles which may be covered under a fleet insurance policy about which the insurance company has no information. The insurance industry is of the view that this is largely due to a lack of penalties for non-compliance.

The concern is that the current situation leaves insurance companies open to fraudulent claims. With fleet vehicles accounting for approximately 10% of all vehicles insured by the Irish motor insurance industry, this also results in a critical gap in the data available for inclusion in the central database. In a submission to the Department of Transport, Tourism and Sport, Insurance Ireland and the MIBI proposed that failure to provide data to the National Fleet Database should become an offence under road traffic legislation.

The Working Group recommends that insurance companies advise their fleet customers that any vehicle which has not been entered on the National Fleet Database is not covered by the fleet policy, thereby ensuring compliance by all fleet managers. This would involve an additional clause in the insurance policy. It is acknowledged that this proposal will take a full year to implement given that existing motor insurance policies will need to run their course.

9.10 Review of use of Section 41 of the Road Traffic Act 1994

The Working Group have considered whether there is a need for changes to the legislative framework in relation to uninsured driving.

Section 41 of the *Road Traffic Act 1994* (the 1994 Act) provides that a member of An Garda Síochána may detain, remove, store and subsequently release or dispose of a vehicle in a public place for a number of reasons, including where the member reasonably believes that there is not in place an approved policy of insurance for the vehicle. Other circumstances include where the Garda believes the driver is disqualified, VRT has not been paid and the vehicle has been in use in the State for at least two months, or that the car is not roadworthy.

The current penalties for driving without insurance, on conviction, are 5 penalty points on the driver's licence, up to a €5,000 fine and/or up to 6 months imprisonment.

An Garda Síochána is tasked with the enforcement of the road traffic laws. The Working Group has been informed that where a vehicle is stopped and the Garda has reasonable grounds for believing that it is not insured, the driver is not allowed to continue and the car is detained under section 41 of the 1994 Act.

The Working Group is satisfied that An Garda Síochána has enough powers under current legislation to detain vehicles if they believe there to be no approved policy of insurance in place.

9.11 Proposal to phase out the paper based insurance disc

In regard to uninsured driving and to fraud, the Working Group considered a proposal put forward by the AA to phase out the paper-based insurance disc. The insurance disc provides an indication to An Garda Síochána that the driver of the car has the insurance required under law. However, motorists can easily photocopy an insurance disc and display it in place of a genuine disc. In addition, there is a possibility that a person will cancel the policy but retain possession of the genuine insurance disc to display. In this regard, there is nothing on the disc to indicate that the policy has been cancelled. Therefore, the AA were of the view that it is preferable to use technology rather than the paper based disc to indicate whether a motorist has insurance or not.

The Working Group sees the benefits of phasing out the paper based insurance disc. However, there are arguments as to why the paper based insurance disc should be retained. An Garda Síochána are reluctant to support such a proposal until such time as the technology needed to replace it is fully functional. Furthermore, a number of Government Departments have argued in favour of preserving the legal requirement to display the paper insurance disc for a number of reasons.

Before the paper insurance disc could be removed, it is imperative that the necessary technological resources are established. Technology, in particular ANPR technology, can play a significant part in enforcement in the area of motor insurance. However, the Working Group understands that Ireland is not yet in a situation where there are sufficient ANPR cameras across the road network to underpin an enforcement regime where technology would be the primary method of enforcement.

The availability of paper discs for the purposes of visual scrutiny may continue to be useful following the introduction of the insurance database. The absence of a disc, or an out of date disc, is often the trigger for a Garda to stop a vehicle. This leads to the detection of uninsured drivers and the detection of other road traffic offences. This can also lead to the detection of more serious criminal offences. The removal of the requirement to display could therefore have an adverse impact, not only on the enforcement of the requirement for compulsory insurance, but also on other road traffic offences and, as a consequence, road safety.

Furthermore, the loss of the opportunity to detect other more serious criminal offences would also have an adverse impact on crime prevention and detection and therefore from a crime perspective, community safety.

The experience of the UK in removing the paper tax disc

The experience of the UK in removing the paper tax disc has not been entirely positive. The removal of the requirement to display a paper tax disc has coincided with the Driver and Vehicle Licensing Agency (the DVLA) seeing a sharp drop in revenues. Revenue from vehicle excise duty fell £93 million in the year to the end of March 2016, from £5.93 billion. The sharp drop in revenue has been attributed by the DVLA, at least in part, to the transitional period with customers becoming accustomed to the new tax changes. The withdrawal of the requirement to display a valid paper tax disc may have contributed to the increase in non-compliance seen in a UK roadside survey given the correlation of these changes with a worsening of non-compliance rates. However, this remains to be seen and it is too early to be definitive.

Instances of non-compliance highlighted in the UK roadside survey include instances of deliberate evasion, but also unintentional non-compliance which may have increased as motorists adjust to the new rules. Motoring organisation the RAC has indicated it believes losses could continue to rise in the coming years due to the threat of increased evasion owing to the fact the expiry date is no longer visible on the windscreen.

If the legal requirement to display a valid insurance disc is removed in Ireland then there is a possibility, based on the UK experience with tax discs, that there will be increased insurance evasion. This could result in an initial loss of income to insurance companies in terms of insurance premiums received, which may ultimately lead to an increase in premiums for compliant motorists.

Decision of the Working Group

The Working Group are not recommending the phasing out of the paper-based insurance disc at this time. However, this should be reviewed in the future as the development of technology progresses.

9.12 Driver licence number

At present, there is no requirement on insurance companies to collect the driver licence number. This flaw creates a serious gap in information as the driver licence number is the key to linking driver information together. This issue is being addressed through the Road Traffic Act 2016. Once enacted, insurance companies will be required to collect certain information from their policies, including the driver licence number.

However, it does not follow that insurance companies will use the driver licence number to check the information associated with it. The Working Group has been informed that a

number of companies do utilise the number under their own procedures. However, others do not. There are major benefits to undertaking this check. Insurance companies can log into the self-service portal in the Department of Transport, Tourism and Sport's National Vehicle and Driver File (NVDF) to efficiently check and verify whether the driver is licensed, whether the driver has any disqualifications and the number of penalty points on the driving licence.

What is proposed?

The Working Group is of the view that the insurance industry should maximise the potential use of the driver licence number. Checking the NVDF for the information associated with the driver licence number would provide insurance companies with important information on the driver. It would allow insurance companies to verify details provided to them by drivers on application forms and ensure that unlicensed or disqualified drivers could not obtain insurance. This information has the potential to become an important tool in their underwriting decision process, should help reduce fraud, and ensure that unlicensed or disqualified drivers cannot obtain insurance.

Consequently, it is recommended therefore that a general protocol be put in place with the insurance industry to provide for insurers to check the NVDF as a common standard before insuring a driver, in order to establish whether the driver has any disqualifications or penalty points.

9.13 The Master Licence Record

In technical terms, vehicles and drivers are accommodated on separate datasets on the NVDF system reflecting the historical way in which vehicle and driver services were delivered: one of vehicles and the other of persons who hold driving licences, with no link between the two. This makes it difficult to establish the complete record of driver and vehicle.

What is being done currently?

The Master Licence Record (MLR) is being established. The MLR will, for the first time, link vehicle owners to their driving licences which will provide a basis for a presumption for attributing guilt to a driver for a road traffic offence involving a vehicle linked to them. In a situation where a driver denies driving the vehicle at the time the road traffic offence was committed, the driver will have to accept penalty points on their licence for the road traffic offence, or name the actual driver. It will provide complete linked data between the driver and the vehicle, giving the stakeholders complete information on both, thereby reducing instances of fraud, uninsured driving and vehicle theft, as well as facilitating optimum penalty point endorsement on driving licences.

The Master Licence Record will also arrange vehicles into fleets, thereby facilitating optimum allocation of penalty points including the linking of company vehicles to drivers. The MLR will facilitate vehicle ownership 'tracking' and thereby enable arrangements to be put in place

whereby outstanding motor tax must be paid before another vehicle can be registered in the name of an individual.

Through online services and personal verification arrangements, the authentication of buyers and sellers of motor vehicles and the accuracy of ownership details recorded on the NVDF system will be optimised. A Courts/NVDF (MLR) Interface will facilitate optimum electronic update of Court imposed disqualifications on the NVDF system. The MLR will also be able to contribute to the introduction of state-of-the-art traffic policing technologies by An Garda Síochána in real time. The MLR will also be versatile enough to accept data from a range of sources, including An Garda Síochána and the Courts Service, to assist the achievement of the objective of maintaining current and accurate data.

A project team has been appointed, and the project is underway. It is expected to be ready by the end of 2018, and will cost in the region of €4 million to implement.

9.14 Recommendations

Recommendations 28 – 30 Tackling Uninsured Driving

Recommendation 28

Establish a fully functioning database to identify uninsured drivers compelling insurance companies to provide the driver licence number

It is recommended that a fully functioning database to identify uninsured drivers be established, which will enable An Garda Síochána to check motor insurance compliance as part of its road traffic enforcement function. It is recommended that the work already underway be expedited to ensure the database is available as soon as possible. It is further recommended that legislation be put in place to require insurance companies to provide the driver licence number to the database. It is further recommended that a protocol be established with the insurance industry to provide that customers be advised that their vehicle will not be covered by the fleet policy if the vehicle is not entered on the National Fleet Database.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|---------------------|--|---|
| 61 | Complete Phase 1 - Go Live (in relation to privately owned vehicles) | Q3 2017 | Insurance Ireland, MIBI, Department of Transport, Tourism and Sport, | Insurance Ireland/ MIBI/ Department of Transport, |
| 62 | Complete Phase 2 - to include the driver licence number and commence the provision of the Road Traffic Act 2016 which will | Q3 2018 and Q4 2018 | | |

| | | | | |
|----|---|---------|------------------------------------|-------------------|
| | require insurance companies to provide the driver licence number | | Department of Justice and Equality | Tourism and Sport |
| 63 | Establish a protocol with the insurance industry to advise fleet customers that their vehicle will not be covered by the fleet policy if not entered on the National Fleet Database | Q4 2018 | | |

Recommendation 29

Develop a protocol to provide that industry use the driver licence number to check driver details on the NVDF

While it is a positive development that insurers will be required to provide certain information under the *Road Traffic Act 2016*, the Working Group does not believe this measure goes far enough. Consequently, it is recommended that a protocol be put in place with the insurance industry to provide for insurers to use the driver licence number to check the NVDF as a common standard before insuring a driver, in order to establish whether the driver has any disqualifications or penalty points.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|--|--|
| 64 | Establish a protocol with the insurance industry to provide that industry use the driver licence number to check and verify driver details on the National Vehicle and Driver File | Q4 2018 | Insurance industry, NVDF, Department of Transport, Tourism and Sport | NVDF, Department of Transport, Tourism and Sport |

Recommendation 30

Expedite the development of the Master Licence Record

It is recommended that the development of the Master Licence Record be expedited and be completed by the end of 2018 at the latest. Once complete it will provide complete linked data between the driver and the car, giving the stakeholders complete information on the car and the driver, thereby reducing instances of fraud, uninsured driving and vehicle theft, as well as facilitating the awarding of penalty points.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|-------------------------|--|-----------------|---|---|
| 65 | NVDF to submit detailed project plan to the Minister for Transport, Tourism and Sport who will provide a report to the Cost of Insurance Working Group | Q2 2017 | NVDF, Department of Transport, Tourism and Sport | NVDF, Department of Transport, Tourism and Sport |
| 66 | Department of Transport, Tourism and Sport to expedite the implementation of the Master Licence Record | Q4 2018 | | |

CHAPTER 10 - PROMOTING ROAD SAFETY AND REDUCING COLLISIONS

10.1 Introduction

The Working Group recognises that a rise in the number of collisions leads to an increase in the number of claims received by motor insurance companies. Consequently, the more that can be done to make our roads safer the more everyone benefits – the insurance company in reduced claims and the motorist in reduced premiums.

The motor insurance industry has put the cost of motor personal injury claims at €379m in 2013, €392m in 2014, and €422m in 2015, and has indicated that these costs are rising year-on-year.

The Road Safety Authority, which has responsibility for improving safety on our roads, participated in the sub-group review of this area during which time the sub-group met with a number of key stakeholders in the insurance area, including Insurance Ireland, a number of individual insurance companies, the Motor Insurers' Bureau of Ireland (MIBI), the NVDF, and Auto Records Ltd., to see if there were measures that could be taken by the motor insurance industry to help improve road safety.

Arising from these meetings and research carried out by the sub-group, a number of recommendations have emerged, which are discussed in this chapter. In addition, further proposals were considered by the Working Group but are not being included as recommendations. Such proposals are considered in this chapter also.

10.2 Maximising the use of the NCT/CRW

At present, there is a lack of a facility available to insurance companies to verify whether a driver holds a valid NCT/CRW.

What is proposed?

The establishment of the database of insured and uninsured drivers and the Master Licence Record will provide insurance companies with the facility to check for proof of the NCT/CRW before offering insurance, or at the renewal stage. The benefits of this proposal are significant in the view of the Working Group as it should remove a number of unsafe vehicles from our roads. Once the Master Licence Record is up and running (see Recommendation 30 above for more detail), an insurance company will be able to use the driver licence number to readily access information such as the valid NCT cert when selling insurance.

The Working Group recommends a general protocol be developed between the insurance industry and the NVDF to provide for insurers checking for proof of NCT/CRW. The Working Group considers it is in the best interests of the insurers and the insured that these checks are done. The introduction of this recommendation should lead to a follow-on reduction in the number of claims.

Issue with the proposal

The downside of this proposal is that there is a danger that a driver whose car has failed the NCT may choose to drive it uninsured since he cannot obtain insurance, and this may lead to a rise in the number of uninsured drivers on our roads. This would have the knock-on effect of a larger number of claims for collisions involving uninsured drivers being paid out by the MIBI, the costs of which are passed directly to the policyholders. However, a properly functioning insured driver database should minimise this possibility.

10.3 Compliance with Road Safety Legislation

Insurance companies could assist in raising awareness of the rules of the road and responsibilities of drivers, particularly learner drivers, by providing this information to drivers when they are taking out a policy. The Working Group is of the view that insurance companies could include such information in the form of clauses in the standard policy documents or in the letter accompanying the insurance certificate and disc. Many types of drivers who are over-represented in road collision statistics tend to fall into more than one category. For example, young drivers tend to be learner permit holders and to drive older cars. These categories of drivers could benefit from this information being provided to them, as a reminder of the rules and their responsibilities as drivers.

There is no legislation to compel the insurance companies to do this, but a relevant recommendation is contained in the Road Safety Strategy 2013 – 2020 (Action 41) which states:

“Work with the Irish Insurance Federation (IIF) to promote compliance with learner permit regulations and rules relating to vehicle modifications. Run campaigns and utilise customer databases to ensure that every learner permit holder covered by an insurance policy receives specific advice on learner permit regulations”.

Agreement with the insurance industry is required for this recommendation to be achieved. If such agreement is in place, the insurance industry would be participating in helping to promote road safety.

The proposal will require the wording on the rules of the road and the responsibilities of drivers to be provided by the Department of Transport, Tourism and Sport, in accordance with road traffic legislation, to insurance companies. After an agreed date, insurance companies would then begin to include that information with the documentation provided to policyholders.

If agreement with industry is forthcoming, the Working Group believe this recommendation could be implemented quickly.

10.4 Encourage the use of technology to benefit consumers

Telematics is the use of technology to give real-time information on driver performance using wireless devices. Telematics has been used only to a limited extent in Ireland in recent years, largely due to the cost of the technology.

As part of their calculation of a premium, insurance companies use underwriting methods to calculate risk. These methods involve factors such as, for example, age and vehicle type. However, with telematics, the traditional assessment is approached in a different manner. Instead of relying on the abovementioned factors, telematics allows insurance companies to calculate their risk based on how a person is driving. Telematics can provide insurance companies with data detailing whether a person is engaged in driving behaviour which is considered risky. For example, the data can inform the insurance company if a specific driver is consistently speeding or braking harshly. This data is used to calculate the risk of each individual based on their driving patterns.

Several insurance companies have begun to use telematics in insured vehicles, particularly in relation to drivers who would be considered high-risk. Although this technology is still in its infancy in Ireland, at least one company indicated to the Working Group that it is using data from telematics as a basis for rewarding better drivers and that it would eventually overtake the traditional loading bases (e.g. age of driver, engine power, etc.) as a means of underwriting insurance.

The use of telematics to price policies, and the follow-on effect that this will have for rewarding safer drivers and penalising those who engage in risky driving practices, is entirely a matter for insurance companies. The EU framework for insurance expressly prohibits Member States from adopting rules which require insurance companies to obtain prior approval of the pricing or terms and conditions of insurance products. There is no power available to the State to direct insurance companies on the pricing of insurance products.

There are constraints on the use of the telematics. There has been a level of media attention in the UK in relation to the validity of the information provided through telematics. On this basis, the Working Group only recommends the use of telematics where it is proven to be reliable and effective and believes it would be useful for Insurance Ireland to review the current use of telematics and provide a report to the Cost of Insurance Working Group.

10.5 Proposal to promote best practice in rewarding driver competency

A proposal considered by the Working Group was to explore how driver competency would be incentivised in some way by the insurance industry.

From discussions held with the insurance industry, the Working Group has heard of several companies which offer discounts to better drivers. For example, some companies offer discounts to drivers who have completed advanced driver courses. Other insurance companies are of the view that they already do this in the form of the No Claims Bonus (which varies between companies but may be as high as a 70% discount). As stated previously, the EU framework for insurance expressly prohibits Member States from adopting rules which

require insurance companies to obtain prior approval of the pricing or terms and conditions of insurance products. Thus, the Working Group consider that there is no power to direct insurance companies on the pricing of insurance products to take account of driver competency.

Work related to driver competency is being undertaken by the Road Safety Authority. In their current Strategy Statement, there are a number of action related to encouraging and educating drivers to drive safely, including; implementing public awareness campaigns around the main casual factors for injuries and deaths, developing and implementing education and awareness interventions aimed at those aged 17-24, developing and implementing specialist training for drivers of category “BE” vehicles and reviewing, updating and expanding the Graduate Driver Licensing programme to include new requirements to enhance skill progression for learner and novice drivers.

Decision of the Working Group

The Working Group consider that driver competency is currently incentivised through the advanced courses and providing a No Claims Bonus to policyholders. Furthermore, the Working Group are of the view that practices such as this are entirely a matter for insurance companies. On this basis, no recommendation is being put forward in this area.

10.6 Recommendations

Recommendations 31 – 33 Promoting Road Safety and Reducing Collisions

Recommendation 31

Develop a General Protocol in regard to Insurance Companies requiring proof of NCT/CRW

The Master Licence Record will provide insurance companies with the facility to easily check for proof of the NCT/CRW. The Working Group recommend the development of a general protocol between the insurance industry and the NVDF to provide for a common standard.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|-------------------------|--|-----------------|---|--|
| 67 | Expedite the Master Licence Record - this will provide insurers with the facility to check the NVDF for proof of NCT/CRW | Q4 2018 | Department of Transport, Tourism and Sport, | Department of Transport, Tourism and Sport |
| 68 | Insurance Ireland to put in place a general protocol in regard to insurance companies requiring proof of NCT/CRW | Q4 2018 | Sport, insurance industry | |

Recommendation 32

Require the insurance industry to promote compliance with road safety legislation

It is recommended that insurance companies promote compliance with road safety legislation. Specifically, the Working Group recommends additional information be provided to consumers to reinforce their knowledge of their responsibilities.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|--|----------|---|--|
| 69 | Develop a protocol for the insurance industry to promote compliance with road safety legislation | Q1 2017 | Department of Transport, Tourism and Sport, Road Safety Authority, Insurance industry | Department of Transport, Tourism and Sport |
| 70 | Wording to be provided by Department of Transport, Tourism and Sport for inclusion in policy documents | Q2 2017 | | |

Recommendation 33

Support the use of technology to benefit consumers

The Working Group recommend that insurance companies be encouraged to explore further the potential of telematics, particularly in order to make the motor insurance market more affordable to younger people.

| Action Point No. | Action Point | Deadline | Relevant Bodies | Lead/Owner |
|------------------|---|----------|-------------------|---|
| 71 | Insurance Ireland to review the current use of telematics by industry and report to Cost of Insurance Working Group | Q4 2017 | Insurance Ireland | Insurance Ireland/ Department of Finance |

PART 3 – APPENDICES

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Part 1 Appendices

APPENDIX 1 - Members of the Cost of Insurance Working Group

| | |
|---|---|
| Eoghan Murphy TD | Minister of State at Department of Finance |
| Aidan Carrigan | Department of Finance |
| Cathal Sheridan | Department of Finance |
| Brid Kemple (replaced by Annemarie McNulty) | Department of Finance |
| Michael Taggart | Department of Finance |
| Annemarie McNulty | Department of Finance |
| Denise Tully (replaced by Rose O'Connor) | Department of Finance |
| Rose O'Connor | Department of Finance |
| Colm Forde | Department of Jobs, Enterprise and Innovation |
| Derval Monahan | Department of Jobs, Enterprise and Innovation |
| Kieran Grace | Department of Jobs, Enterprise and Innovation |
| Conan McKenna | Department of Justice and Equality |
| Doncha O'Sullivan (replaced by Ben Ryan) | Department of Justice and Equality |
| Ben Ryan | Department of Justice and Equality |
| Sinead Hession | Department of Justice and Equality |
| Paul Hannon | Department of Transport, Tourism and Sport |
| Fiona O'Sullivan | Department of Transport, Tourism and Sport |
| Gerry Cross | Central Bank of Ireland |
| Deirdre Mullally | Central Bank of Ireland |
| Conor O'Brien | Personal Injuries Assessment Board |
| Stephen Watkins | Personal Injuries Assessment Board |
| Ciarán Breen | State Claims Agency |

APPENDIX 2 - Members of the Sub-groups of the Cost of Insurance Working Group

Sub-group 1 – Understanding the motor insurance sector

| | |
|---|-------------------------|
| Cathal Sheridan | Department of Finance |
| Brid Kemple (Replaced by Michael Taggart) | Department of Finance |
| Michael Taggart | Department of Finance |
| Denise Tully (Replaced by Rose O'Connor) | Department of Finance |
| Rose O'Connor | Department of Finance |
| Ben Mannering | State Claims Agency |
| Deirdre Mullally | Central Bank of Ireland |

Sub-group 2 – Improved data availability

| | |
|-------------------|------------------------------------|
| Ciarán Breen | State Claims Agency |
| Jim Deery | State Claims Agency |
| Pat Kirwan | State Claims Agency |
| Gerry Cross | Central Bank of Ireland |
| Attracta Jennings | Central Bank of Ireland |
| Allan Kearns | Central Bank of Ireland |
| Stephen Watkins | Personal Injuries Assessment Board |
| Conor O'Brien | Personal Injuries Assessment Board |
| Barra Casey | Central Statistics Office |

Sub-group 3 – Cost of claims

| | |
|-----------------|---|
| Colm Forde | Department of Jobs, Enterprise and Innovation |
| Derval Monahan | Department of Jobs, Enterprise and Innovation |
| Conan McKenna | Department of Justice and Equality |
| Conor O'Brien | Personal Injuries Assessment Board |
| Stephen Watkins | Personal Injuries Assessment Board |

Sub-group 4 – Other public policy issues

| | |
|---|--|
| Cathal Sheridan | Department of Finance |
| Brid Kemple (Replaced by Annemarie McNulty) | Department of Finance |
| Michael Taggart | Department of Finance |
| Annemarie McNulty | Department of Finance |
| Rose O'Connor | Department of Finance |
| Doncha O'Sullivan (replaced by Ben Ryan) | Department of Justice and Equality |
| Ben Ryan | Department of Justice and Equality |
| Sinead Hession | Department of Justice and Equality |
| Paul Hannon | Department of Transport, Tourism and Sport |
| Fiona O'Sullivan | Department of Transport, Tourism and Sport |
| Chief Supt Aidan Reid | An Garda Síochána |
| Supt Con O'Donohue | An Garda Síochána |
| Maggie Martin | Road Safety Authority |

APPENDIX 3 - The Work of the Sub-groups

Work of Sub-group 1 – Understanding the motor insurance sector

Sub-group 1 was tasked with developing the background and context of the main report and to outline issues which may be influencing the cost of motor insurance. Its contribution to the Report was to provide an understanding of the motor insurance sector, through a general analysis of the sector, a description of the regulatory environment, an overview of the pricing of insurance and an examination of some other sectorial issues.

The sub-group was comprised of representatives from the Department of Finance, the Central Bank of Ireland and the State Claims Agency.

Work of Sub-group 2 – Improved Data Availability

Sub-group 2 was tasked with identifying the data requirements to develop an understanding of the reasons for the increase in insurance premiums, particularly motor insurance, documenting these requirements and conducting a gap analysis. The terms of reference of the Sub-group were to identify:

- What are the specific data requirements;
- What data is available at present / what are the data sources;
- What data is not available (“the gap”);
- Where can this data be sourced; and
- What data is available in other jurisdictions.

The Sub-group was chaired by the State Claims Agency (SCA) and consisted of representatives from the SCA, Central Bank of Ireland (vice chair) and the Central Statistics Office (CSO).

Given the nature and interdependency of the work between Sub-group 2 and Sub-group 3 (Cost of Claims) communication was ongoing between each group with sharing of research data and attendance at relevant sub group and stakeholder meetings.

Work of Sub-group 3 – Cost of claims

Sub-group 3 was tasked with analysing the personal injury claims environment and the various claim resolution channels such as court awards, through PIAB and through settlements made by insurers, including how it has evolved. Factors which were considered included:

- The effects of legal costs and litigation processes on insurance costs;
- Identifying and reviewing other jurisdictions which offer possible solutions to reduce premiums in the Irish market; and
- Recommendations regarding the cost of claims.

The sub-group was chaired by the Department of Jobs, Enterprise and Innovation (DJEI). The vice chair

was the Department of Justice and Equality, Civil Law Reform and Courts Policy Division. Group membership also comprised of officials from DJEI and the Personal Injuries Assessment Board (PIAB). The sub-group has been assisted in its considerations by representatives from the State Claims Agency and the Central Bank of Ireland.

Work of Sub-group 4 – Other policy issues

Sub-group 4 was tasked with dealing with certain public policy issues which have had an impact on the cost of motor insurance. The Sub-group was chaired by the Department of Finance. The joint vice chairs were the Department of Transport, Tourism and Sport and the Department of Justice and Equality, Crime Division.

The issues that the Sub-group examined included:

- Fraudulent and exaggerated claims;
- Uninsured drivers;
- Breaches of road traffic legislation; and
- Driver education.

The objective of the work of sub-group 4 was to identify measures which could effectively address these issues and ultimately contribute to reducing the cost of motor insurance.

APPENDIX 4 – Consultations

Chair and Working Group:

IBEC
Insurance Ireland
Personal Injuries Assessment Board
National Transport Authority
Irish Brokers Association
Central Bank of Ireland
AA Ireland
Irish Brokers Association
Consumers Association of Ireland
The Law Society
Irish Road Haulage Association
Car Rental Council of Ireland
UK Forum of Insurance Lawyers
Vintners Federation of Ireland
The Council of the Bar of Ireland
Dorothea Dowling, Former Chair of the Motor Insurance Advisory Board
John Healy SC, Medical Law Specialisation
Aviva
AIG
AXA
FBD Insurance
Liberty Insurance
RSA

Sub-group 1:

Insurance Ireland
Tiománaí Tacsáí na hÉireann
Freight Transport Association of Ireland
Head of Taxi Regulation at the National Transport Authority
Block Capitals Ltd

Sub-Group 2:

Insurance Ireland
Society of Actuaries in Ireland
Attended relevant Sub Group 3 stakeholder meetings

Sub-Group 3:

Department of Social Protection
Enterprise rent-a-car
Gen-Re re-insurance
UK Ministry for Justice
The Courts Service of Ireland
Legal Cost Accountants of Ireland
Car Rental Council of Ireland
Fineos (provider of core software solutions for Life, Accident and Health insurers)
Attended relevant sub-group 2 meetings

Sub-Group 4:

Insurance Ireland
Motor Insurers' Bureau of Ireland
Road Safety Authority
DTTAS – Driver and Vehicle Computer Services Division, Shannon
Auto Records Ltd.
Garda National Economic Crime Bureau

Part 2 Appendices

APPENDIX 5 – The Irish and EU Legislative Framework

European Legislation

- *Solvency II Directive (2009/138/EC)*
- *Omnibus II Directive (2014/51/EU)*
- *Commission Delegated Regulation (EU) (2015/35)*
- *Solvency II specific implementing regulations*
- *Financial Conglomerates Directive (2002/87/EC)*
- *Insurance Mediation Directive (2002/92/EC)*
- *Distance Marketing Directive (2002/65/EC)*

Irish Legislation

The principal domestic legislation includes:

- *Assurance Companies Act, 1909*
- *Insurance Act, 1936*
- *Insurance (No. 2) Act, 1983*
- *Insurance Act, 1964*
- *Insurance Act, 1989*
- *European Communities (Non-Life Insurance) Framework Regulations 1994⁶³*
- *Part IV of the Finance (Miscellaneous Provisions) Act 2015*
- *European Communities (Financial Conglomerates) Regulations 2004*
- *European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004*
- *European Communities (Insurance Mediation) Regulations 2005*
- *Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007*
- *European Union (Insurance and Reinsurance) Regulations 2015*
- *European Union (Insurance Undertakings: Financial Statements) Regulations 2015*
- *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Undertakings National Specific Templates Reporting Arrangements) Regulations 2016*

In addition to the specific pieces of legislation set out above, Irish authorised non-life insurance undertakings are required to adhere to requirements, guidelines (and policy) issued by EIOPA and the Central Bank of Ireland.

⁶³ Subject to s. 20 the *Finance (Miscellaneous Provisions) Act 2015* and notwithstanding art. 310 of the Solvency II Directive, this Regulation shall, in so far only as they apply to a relevant undertaking, continue in force as if this Regulations had not been repealed.

APPENDIX 6 – Relevant Authorities for Motor Insurance Compensation in Ireland

The Motor Insurer's Bureau of Ireland (MIBI)

The MIBI was established by agreement between the Government and those companies underwriting motor insurance in Ireland, in accordance with EU Motor Insurance Directives. All insurance companies underwriting motor insurance in the State whether they are Irish authorised or operating under the EU passporting framework, must, by law, be members of the MIBI and contribute to funding claims in proportion to their market share. The principal role of the MIBI is to compensate victims of accidents caused by uninsured and unidentified vehicles. This is regulated under the terms of a 2009 Agreement between the MIBI and the Minister for Transport, Tourism and Sport.

The MIBI does not operate a fund. Claims are received and issued to one of four major insurers which handle the claims on behalf of the MIBI. When claims are settled, the MIBI member motor insurance companies are levied to make up the amount due.

The MIBI claims account for approximately 7% of all motor claims paid by value.

The Insurance Compensation Fund

The Insurance Compensation Fund (the “Fund”) was established under the *Insurance Act 1964*⁶⁴, as amended by the *Insurance (Amendment) Act 2011*. The Fund covers non-life insurance only, with certain exclusions. The Fund facilitates payments to policyholders in relation to risks in the State where an Irish authorised or an EU authorised non-life insurer goes into liquidation. Compensation to a person under a policy shall not exceed (whether as one payment or as the total of a series of payments) 65% of the sum due to the policyholder or €825,000 whichever is the less.

The Fund is financed ex-post through contributions from non-life insurers on business written in respect of risks in the State, up to a maximum of 2% of Gross Written Premium (GWP). In practice, the levy is passed on to the policyholder. The Revenue Commissioners are the collector for the Fund. The Fund is maintained and administered under the control of the President of the High Court acting through the Accountant of the High Court. The High Court must approve and make such payments. The Central Bank of Ireland carries out an annual assessment of the financial position of the Fund and determines appropriate contributions to be paid to the Fund.

⁶⁴ The *Insurance Act 1964* was introduced following the collapse of Equitable Insurance Company Limited.

APPENDIX 7 - International Comparisons

Overview

The following Appendix provides a summary of the essential characteristics of the insurance sectors in a number of different jurisdictions including Canada, Australia, France, and the UK. The primary aim of each summary is to identify the potential positives and negatives of possibly adopting specific arrangements. To do this, each summary examines

- how the industry is regulated,
- key players including state owned insurance companies where applicable,
- whether motor insurance is mandatory,
- the breakdown of insurance into its component parts, i.e. Third Party etc,
- how the motor insurance system is funded,
- structures similar to the Declined Cases Agreement in Ireland,
- how payments to claimants are settled / structured and what they include. E.g. care not cash models, and
- sector specific arrangements.

1. Regulatory environment:

The national laws of each country which govern liability and specifically the judicial procedure used to establish liability and assess quantum have a significant factor in the calculation of the risk. These rules will also impact on causation and the size of awards.

2. Liability System in place:

Some member states will have different rules to determine liability. “Fault” and “no fault” systems, different burdens of proof (balance of probability versus civil codes) and varying rules on contributory negligence will again impact on the risk criteria of a country.

3. Compensation Culture:

Compensation culture will vary nationally, indeed regionally. Certain compensation schemes will provide for loss of incomes, arising out of road traffic accidents, due to an inability to work. The absence of these supports in other jurisdictions can lead to compensation claims where injured parties are left uncompensated through no fault

of their own. Equally, the degree of education and awareness of a victim's rights will impact on the claim frequency and claim compensation amount sought.

There are huge variations in personal injury compensation between countries and how these are comprised. Following the Fourth Motor Insurance Directive⁶⁵, member states were obliged to ensure that a person injured in a motor accident, occurring in a member state other than that in which he resides, should have a direct right of action against the insurer of the person responsible for the accident. The European Court of Justice held in *FBTO Schadeverzekeringem NV v Odenbrit*⁶⁶ that the person injured in a motor accident, who has a right to bring proceedings directly against the insurer of the driver responsible for his injury, is entitled to bring those proceedings before the courts of the member state in which he is domiciled, provided that insurer is domiciled in the member state. As such, member state's judiciaries are now applying the law of different member states to establish liability and indeed quantum in personal injury matters where heretofore they would have applied local rules and quantum.

Such matters have been heard in the Irish jurisdiction. These cases involve considerable legal costs and expert evidence from different member states to advise the Irish judiciary on the assessment of liability and damages under the local Member State law.

4. Road Related Issues:

The proportion of high risk drivers who can purchase vehicles and insurance will be greater in economically wealthier countries. Public attitudes to, amongst others, alcohol and driving, drugs and driving, poor road conditions, vehicle maintenance, seatbelts and traffic conditions will vary substantially between not only urban and rural drivers but also regional and intra-nationally between member states population.

Road fatality rates are a huge factor in the risk and profile of a country.

5. Medical costs:

These will also impact on claims expenditure. To what degree the medical costs arising out of road traffic accidents are recoverable against motor insurers, and the difference in the price level of said costs, between countries will also affect risk factors. The medical procedures in each country, and indeed region, will lead to different hospitalisation rates and durations of stay in hospitals which will equally impact on claims expenditure.

⁶⁵ Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC.

⁶⁶ Judgment of 13 December 2007, *FBTO Schadeverzekeringem NV v Odenbrit* C-463/06, ECLI:EU:C:2007:792.

6. Fraud/Theft/Uninsured driving:

There are vast differences between the purchasing cost of motor vehicles and consequentially repairing cost of stolen or damaged motor vehicles between different countries. Equally, the cost of replacement of stolen vehicles and the incidence of theft will vary dramatically. Again, instances of fraud, or alleged fraud, will vary substantially between countries. The incidence of uninsured driving and its prevalence in different countries will also influence the different risk pricing mechanisms of insurers.

7. Taxation:

Taxation or the taxation regime, can also influence the pricing of the risk. Whilst Ireland does not impose any tax on motor insurance premiums, this can reach up to 43% in Denmark and 32% in Sweden.

Australia

Overview

The Australian general insurance industry is regulated by the Australian Prudential Regulation Authority (APRA) under the *Commonwealth Insurance Act 1973*.

Breakdown of insurance offered

There are four types of motor insurance in Australia:

- **Compulsory Third Party (CTP)** insurance is mandatory in all states and territories and provides compensation for bodily injuries caused by vehicles. It does not provide cover for any damage to the vehicle and therefore other forms of motor vehicle insurance should also be purchased.
- **Comprehensive Insurance** can cover damage to vehicles, theft of vehicles, collision, malicious damage and weather damage. Depending on the policy, it can cover damage caused to other vehicles.
- **Fire and Theft Only** is a limited form of insurance that only covers for fire damage to, and theft of, vehicles. It does not cover collision damage to vehicles.
- **Third Party Property Only** provides cover for vehicles damaged by the policyholder's vehicle. It does not provide cover for the policyholder's own vehicle. This product is generally only taken out by consumers with a low value vehicle, protecting themselves against damage to other motorists.

The administration of compulsory insurance varies between the different states and territories. For example, in Western Australia, Motor Injury Insurance (MII) is compulsory and is applied to vehicles at the point of licensing and the rate is decided by the category of car.⁶⁷ Whereas in South Australia, four private companies provide CTP insurance at the same set price.

Claims

Australian states and territories have been moving towards no-fault regimes in respect of serious personal injuries. In Victoria, for example, a no-fault compensation scheme has operated since the 1970s. The Transport Accidents Commission provides no-fault insurance that drivers pay for when registering their vehicles. Since 1 July 2016, in Queensland, people who sustain serious personal injuries in a motor vehicle accident are covered by the National Injury Insurance Scheme regardless of fault.

⁶⁷Insurance Commission of Western Australia, *Motor Injury Insurance Premiums*, <https://www.icwa.wa.gov.au/motor-injury-insurance/why-do-i-pay-for-ctp-insurance/ctp-insurance-premiums>.

Cover in the event of insurer insolvency

For general insurers, the Financial Claims Scheme (FCS) provides compensation to eligible policyholders with valid claims against a failed general insurer. Under the FCS, most policyholders with the affected general insurer are covered for valid claims up to \$5,000. For any valid claims of \$5,000 and over, the policyholder or claimant must be eligible under certain criteria. If they are eligible, APRA will determine through a claims assessment process the validity of each claim and the amount payable to eligible policyholders and claimants. The amount paid will be the full amount that the policyholder or claimant would have been entitled to under the insurance policy, assuming the claim is valid and the amount claimed is justified.

If a policyholder or claimant is not eligible under the FCS, they can apply to the liquidator along with other unsecured creditors in the liquidation of the general insurer.

The FCS does not apply to any unexpired insurance premiums paid to the general insurer before its failure. Policyholders may be entitled to claim some or all of their unexpired premiums in the winding up of the insurer.

Fraud

The Insurance Fraud Bureau of Australia (IFBA) is managed by the Insurance Council of Australia, the industry representative body. Its role includes the coordination of fraud prevention strategies across the general insurance industry. As such, the IFBA receives information and allegations of insurance fraud from a variety of sources (anonymous and otherwise) and relays this information to the relevant insurer, which then takes whatever action the insurer deems appropriate. The IFBA does not undertake investigations.

Canada

Overview

The Office of the Superintendent of Financial Institutions (OSFI) is the prudential regulator of insurance companies in Canada. The OSFI conducts prudential reviews of the federally regulated insurers to determine their financial soundness, while the provinces regulate the licensing of insurers operating within their jurisdictions as well as the marketing of insurance products.

Motor insurance is a category of Property and Casualty (P&C) insurance. There are 160 federally regulated Property and Casualty insurance companies in Canada, 86 Canadian and 74 foreign insurance companies. There are about 109 private P&C insurance companies competing for auto insurance business in Canada. In addition to these private insurers, government-owned insurers in British Columbia, Saskatchewan, Manitoba and Quebec provide the mandatory component of auto insurance in those provinces.⁶⁸

Regulatory Funding

The OSFI is funded through assessments on the financial services industry and private pension plans that OSFI regulates and supervises, and through a user-pay program for selected services. A small portion of revenue is received through an appropriation from the Government of Canada for actuarial services relating to various public sector pension and benefit plans.

Breakdown of insurance offered

Insurance is broken down into four elements; two mandatory elements and two optional elements. All Canadian provinces and territories require drivers to have at least:

- **liability insurance** to cover injury or death of third parties or damage to their property, and
- **accident benefits/bodily injury insurance** to cover the cost of the insured's own medical expenses and loss of income following an accident.

The optional elements are comprehensive and collision insurance:

- **Comprehensive insurance** covers vandalism, fire or theft. Comprehensive insurance does not cover loss or damage to the insured's vehicle if you hit another vehicle or object in a collision.

⁶⁸ Insurance Bureau of Canada, *Facts of the Property and Casualty Insurance Industry in Canada 2016*, http://assets.ibc.ca/Documents/Facts%20Book/Facts_Book/2016/Facts-Book-2016.pdf, p.26.

- **Collision insurance** covers the cost of repairing or replacing the insured's vehicle as a result of a collision.⁶⁹

Claims

In most provinces and territories, the person who did not cause the collision also has the right to sue the at-fault driver for damages but, in some provinces, only if his or her injuries meet a prescribed threshold. Every province offers some degree of no-fault insurance. Two provinces – Manitoba and Quebec – have pure no-fault systems, with no right to sue respecting bodily injury or death. Other provinces use a mix of no-fault and tort-based systems. Some of them specify accident benefits limits and the right to sue for additional compensation under certain specified situations, such as when injuries are determined to be permanent and serious.⁷⁰

Cover in the event of insurer insolvency

The Property and Casualty Insurance Compensation Corporation (PACICC) protects policyholders from financial loss in the event that their insurer is shut down by a Canadian insurance regulator. PACICC protection is generally included when purchasing motor insurance subject to some exceptions. The PAICC provide cover up to \$250,000 on motor insurance claims and refund 70% of the unearned (unexpired) portion of premiums up to \$700.

Structures similar to the Declined Cases Agreement

The Facility Association is an entity established by the motor insurance industry to ensure that motor insurance is available to all owners and licensed drivers of motor vehicles where such owners or drivers are unable to obtain motor insurance through the voluntary insurance market.

⁶⁹ Financial Consumer Agency of Canada, *Types of Insurance*, <http://www.fcac-acfc.gc.ca/Eng/resources/educationalPrograms/ft-of/Pages/insurance-2-9.aspx>.

⁷⁰ Insurance Bureau of Canada, *Facts of the Property and Casualty Insurance Industry in Canada 2016*, http://assets.ibc.ca/Documents/Facts%20Book/Facts_Book/2016/Facts-Book-2016.pdf, p.27.

New Zealand

Overview

The insurance industry in New Zealand is regulated by the Reserve Bank of New Zealand. All licensed insurers in New Zealand must adhere to standards as part of the prudential requirements of the Reserve Bank, including around fitness and probity and solvency standards.

Motor insurance is not mandatory in New Zealand. One of the primary reasons for there not being mandatory third party vehicle insurance is because no-fault personal injury insurance is provided to all citizens and visitors of New Zealand through a state organisation called the Accident Compensation Commission (ACC). Nevertheless, a 2009 report by the New Zealand Ministry of Transport found that over 92% of drivers had some form of motor insurance.⁷¹ The conclusion of the report was that insurance coverage was comparable to other jurisdictions that had compulsory insurance and was therefore not needed.

The ACC

The ACC provides cover for personal injuries arising from motor accidents as well as work place accidents. According to the ACC, it will assess all claims for eligibility, oversee and coordinate the help clients get, to make sure they get the help they need, pay weekly compensation (a regular form of income, calculated at a percentage of the client's usual earnings), help pay for a wide range of treatment and medical costs, from GP visits and specialist fees, to x-rays, prescription costs and hospital emergency services, collect levies to help pay for the services they provide, and work with businesses and in the community, to help them become safer, injury-free places.

Because of the assistance available from ACC after an injury, injured parties can't sue for personal injury, except for exemplary damages. This applies to overseas tourists too. The ACC does not cover the cost of vehicle repair for either party or any other costs associated with a car accident, therefore many people in New Zealand opt to have motor insurance in any case.

A vehicle registration fee is levied on all cars and a large portion of this fee goes towards the ACC. Funding is also raised through fuel levies.

Breakdown of insurance offered

The Ministry found in its research that comprehensive insurance was the most common form of motor insurance (79% of vehicles). Third party, Fire and Theft insurance was held by 13.3%

⁷¹ Minister for Transport, New Zealand, *Vehicle insurance in New Zealand*, 2009, <http://www.transport.govt.nz/assets/Import/Documents/Vehicle-insurance-in-New-Zealand.pdf>, p. 1.

of participants in the research.⁷² It should be noted that third party insurance generally only covers the damage to another person's property and also a contribution of an amount in the case you suffer damage to property from an uninsured driver.

⁷² Minister for Transport, New Zealand, *Vehicle insurance in New Zealand*, 2009, <http://www.transport.govt.nz/assets/Import/Documents/Vehicle-insurance-in-New-Zealand.pdf>, p. 2.

European Union Countries

France

Overview of Market

The French Prudential Supervision and Resolution Authority (Autorité de contrôle prudentiel et de résolution - ACPR) is the prudential supervisor for banks and insurance companies in France. It operates under the auspices of the French central bank, Banque de France. The French market, in 2013, had 92 insurance companies, of which the 10 largest groups represented 88% of the market. AXA, AGF, Credit Mutuel and CIC Insurance are large players in the market.

Breakdown of insurance offered

Motor insurance is mandatory in France. The following three categories of car insurance are available with other tailored options also available:

- **Third Party** (*responsabilité civile, minimale, tiers illimitée* and *au tiers*) – the minimum required by law in France and generally includes unlimited medical costs and damage to third-party property;
- **Third Party, Fire & Theft** (TPF&T; *tiers personnes/restreinte/intermédiaire/vol et incendie*) includes cover against fire, natural hazards, theft and legal expenses (*défense-recours*). TPF&T includes damage to (or theft of) contents and radio;
- **Comprehensive** (*multirisque tous accidents/tous risques*) – covers all the risks listed under TPF&T and includes damage to your vehicle however caused and whether a third party can be identified or not.

All French insurance companies provide an automatic green card (*carte internationale d'assurance automobile/carte verte*) extending normal insurance cover to most other European countries. It is possible to insure cars for single journeys up to 1,000km, periods of three months, and periods of 1 year.

The penalties for not holding the minimum compulsory motor insurance may include:

- a fine of € 3,750;
- license suspended license (up to 3 years);
- the cancellation of your driving license and prohibiting the board for 3 years (more);
- the prohibition to drive certain vehicles, even if they do not require a driving license;
- the confiscation of the vehicle.

Cancellation / Refusal

French insurance companies are forbidden by law to cancel third-party cover after a claim, except in the case of drunk driving or when a driver is subsequently disqualified from driving for longer than a month. A company can, however, refuse to renew a policy at the end of the contract period, but two months' notice must be provided.

Structures similar to the Declined Cases Agreement in Ireland

Where drivers find it difficult to obtain cover, the Bureau Central de Tarification can demand that a company of the choice of the driver provide the driver with cover, the premium being fixed by the Bureau. This is limited to Compulsory Third Party motor insurance.

Making a Claim

With regard to making a claim, French insurance companies issue drivers with an internationally standard form (*le constat amiable*) to fill in the event of an accident. The form provides space to fill out insurance details, a written and a graphic description of the accident. It must be completed and signed by both parties involved in the accident. Both parties send their copy back to their respective insurance company to establish responsibility.

Latest Developments in French Insurance Sector

According to a November 2015 Report by Insurance Europe, recent developments in France relating to motor insurance include:

- Increased Road Safety measures including lower alcohol limits for young drivers, more powers to local authorities to lower speed limits and a lower age for learning to drive;
- Further work by the Ministry of Interior to combat uninsured driving although progress appears to be slow;
- Changes to the regulatory environment to make it easier for drivers to cancel insurance policies to allow them to switch policy to another insurance provider, with the new insurance provider able to cancel existing policy to ensure continuity of cover. This has been seen as a way of improving competition in the market.⁷³

⁷³ Insurance Europe, European Motor Insurance Markets, November 2015, <http://www.insuranceeurope.eu/sites/default/files/attachments/European%20motor%20insurance%20markets.pdf>, p. 76 - 78.

United Kingdom

Overview

The Bank of England's Prudential Regulation Authority (PRA) is responsible for regulating insurance companies in the UK. In 2014 the ten largest private motor insurer represented 73.3% and the ten largest commercial motor insurers represented 89.9% of the market. The largest players in the respective sectors at that time were Direct Line Group, AVIVA plc and Ageas Insurance Limited and RSA Insurance Group plc, AVIVA plc and Allianz Insurance plc.⁷⁴

Regulatory Funding

The PRA is allowed to raise fees, in order to allow it to fulfil its statutory objectives. The PRA prudentially regulates six categories of firms, or "fee blocks" including general insurers. The amount payable by each fee block depends on the budgeted cost of prudentially regulating that category of firms. Within each category, the fee payable by an individual firm depends on the size of that firm's business. The size of a general insurer's business is calculated as its Gross premium income / gross technical liabilities.

Breakdown of insurance offered

Third Party insurance is mandatory in the UK. It must cover injury and property damage. There is a fixed penalty of £300 and 6 penalty points for uninsured driving. If the case goes to court this can increase to an unlimited fine, disqualification and the destruction of the vehicle. Third Party, Fire and Theft and Comprehensive insurance are also optional.

Claims

In 2015, the average cost of a bodily injury claim was £10,680, although the overall average for all types of claims was £2,649. Bodily Injury claims make up 9% of the total number of claims, yet are 51% of the total value of claims.⁷⁵

Structures similar to the Declined Cases Agreement

The UK does not appear to have a structure similar to the Declined Cases Agreement. The National Association of Citizens Advice Bureaux advise individuals who have been refused car insurance to find a broker to put them in touch with specialist insurers or to contact a charity or organisation that helps people with their particular needs as they may have a list of insurers that will provide cover.

⁷⁴ Association of British Insurers, *General Insurance Company Rankings 2014* .

⁷⁵ Association of British Insurers, *UK Insurance & Long Term Savings Key Facts 2015*, <https://www.abi.org.uk/~media/Files/Documents/Publications/Public/2015/Statistics/Key%20Facts%202015.pdf>, p.6.

Cover in the event of insurer insolvency

When an authorised insurer is in default the Financial Services Compensation Scheme (FSCS) provide compensation of 90% of the claim with no upper limit in relation to general insurance. Compulsory insurance is provided at 100% of the claim.

Latest developments in the UK Insurance sector

According to a November 2015 Report by Insurance Europe, recent developments in the UK relating to motor insurance include:

- The introduction of a premium tracker launched by the Association of British Insurers (ABI) in 2014.
- Recommendations following a consultation process held by the Minister for Justice and Equality in 2013 to
- Fix the fees charged for medical reports,
- Develop a robust accreditation system for those medical professionals preparing medical reports in support of whiplash claims, and
- Develop a web-based system to randomly allocate a medical reporting organisation or professional to a claimant lawyer in soft tissue injury cases.
- The establishment of the Insurance Fraud Bureau (IFB) in 2006 as a not-for-profit industry funded organisation. It analyses industry supplied data to find trends that individual insurers alone could not identify. It then investigates and prosecutes those criminals.
- The establishment of the Insurance Fraud Enforcement Department of the City of London Police became operational in 2012. At the time of the report it had secured 105 convictions. It is currently increasing capacity.
- The establishment of the Insurance Fraud Register as an industry-owned, cross-sector register of known insurance fraudsters. Its operation includes a robust complaints mechanism. The register is used by nearly 30% of the general insurance market.
- The launch of 'MyLicence', an initiative to allow industry to access driver data including convictions and entitlements to deter application fraud.⁷⁶

⁷⁶ Insurance Europe, *European Motor Insurance Markets*, November 2015, <http://www.insuranceeurope.eu/sites/default/files/attachments/European%20motor%20insurance%20markets.pdf>, p. 107 - 110.

APPENDIX 8 – Summary of Data Currently Available

The following summarises data currently collected by relevant organisations on the insurance market in Ireland. Depending on the mandate of the individual organisations, reports may be published however in a number of cases the data cannot be shared and can only be used for the purpose for which it is collected.

The Central Bank of Ireland

The Central Bank of Ireland collects a range of information from insurance undertakings in the exercise of its supervisory functions. Under Solvency II⁷⁷, the reporting requirements for undertakings are much more extensive than previously. A harmonised approach is applied to data collection across the EU and each national supervisory authority collects aggregate data on risk exposures which includes information on premiums and incurred claims, technical provisions and claims development triangles by line of business. The Central Bank of Ireland also publishes information on the insurance market, the Insurance Statistical Review contains a summary of the Life and Non-Life returns submitted to the Central Bank of Ireland under Solvency I (this will be replaced by Solvency II reporting requirements from 2017 onwards). The publication contains company level data on motor vehicle insurance business including net underwriting revenue, claims paid and incurred, and underwriting profit/loss. The Macro Financial Review is a financial stability publication which includes data and commentary on the insurance sector including reference to the motor insurance market. The Central Bank of Ireland also provides to and receives aggregated insurance data from the CSO strictly for the compilation of statistical obligations such as national accounts and balance of payment statistics. The Central Bank of Ireland also publishes the Private Motor Insurance Statistics data. The Private Motor Insurance Statistics are compiled from policy level data submitted by Insurance Ireland to the Central Bank of Ireland.

Central Statistics Office

The Central Statistics Office (CSO) collects very detailed information from insurance undertakings for the purposes of meeting EU Statistical Regulations in the area of National Accounts and Balance of Payments (BOP). The data collected in the BOP42 survey mainly relates to Profit & Loss and Balance Sheet items broken into detailed instruments and country

⁷⁷ The Solvency II Directive came into force on 1 January 2016 and annual reporting data will not be received until May 2017.

(including Ireland)⁷⁸. The two items that relate to the claims of insurance companies are (i) gross claims paid/payable by country and (ii) net claims paid/payable by country (the difference being reinsurance). The CSO are also responsible for monitoring insurance prices as a component of the consumer price index. This data is sourced from direct surveys to industry.

State Claims Agency

The NTMA is a State body which operates with a commercial remit to provide asset and liability management services to Government and is designated the State Claims Agency (SCA) when performing the claims and risk management functions delegated to it under the *National Treasury Management Agency (Amendment) Act 2000*. The SCA's principal objectives are:

- While acting in the best interest of taxpayers, to act fairly and ethically in its dealings with people who have suffered injuries and who take legal actions against the State or State bodies, and the families of these people; and
- To implement targeted personal injury and property damage risk work programmes to mitigate litigation risk, in State authorities and healthcare enterprises, in order to reduce the costs of future litigation against the State.

The SCA's remit, to defend the State's liability position, covers personal injury and third-party property damage, including motor, risks and claims relating to 132 State authorities including the State itself, Government Ministers, the Attorney General, the Health Service Executive, the voluntary healthcare sector, An Garda Síochána, the Irish Prison Service, the Defence Forces and community and comprehensive schools. It also manages third-party costs arising from certain Tribunals of Inquiry and claims for legal costs by parties who have successfully sued the State in respect of personal injury and other non-personal injury related actions.

The State Claims Agency manages the National Incident Management System (NIMS) which is a highly secure web based end to end risk and claims management system. NIMS allows State enterprises to manage incidents throughout the incident life cycle and includes the following features:

- Reporting of incidents
- Management of investigations
- Recording of investigations conclusions

⁷⁸ CSO, *Survey of non-life insurance and reinsurance companies*, (BOP42), <http://www.cso.ie/en/surveysandmethodology/balanceofpayments/surveyofnon-lifeinsuranceandreinsurancecompaniesbop42/>.

- Recording and tracking of recommendations to closure
- Analysis of incident, investigation and recommendations data and other functionality.
- Analysis of claims data and recording of claims-related financial data.

The NIMS database, retains a large amount of data related to personal injury and property damage claims against the State. The SCA is able to provide claims-related data to include settlement amount, legal costs including defence and plaintiffs' legal costs and third party costs, incurred by the State in relation to the State authorities under its remit. It should be noted that the SCA can only provide plaintiffs' legal costs where an award is made against the SCA. If the SCA wins, the claim is withdrawn or fails for any reason the SCA does not have access to plaintiffs' legal costs.

Personal Injuries Assessment Board

In fulfilling its remit to deliver compensation awards, PIAB gathers substantial data on injuries and the circumstances of accidents in a wide variety of settings. Access to this anonymised data provides an important insight into the types of injuries people sustain and the nature of the accidents in which they are involved. This statistical information can be particularly useful to those responsible for risk management and accident prevention, including other State Agencies. PIAB also gathers data in relation to claims frequency, average awards, and delivery costs in relation to all claims resolved through PIAB.

Courts Service

The Courts Service is responsible for the administration and management of the courts in Ireland. Its primary functions are to manage the courts, support the judges, provide information on the courts system to the public, and provide court buildings and facilities for court users. There is limited details available from the Courts Service relating to overall personal injury suits received annually (including motor, EL, PL and medical negligence), and total amounts paid in each of the courts. There is no public information about delivery costs.

Insurance Ireland

Insurance Ireland represents and supports the development of the insurance industry in Ireland with approximately 95% of insurance companies operating within Ireland being members. Insurance Ireland have initiated a project with their members to collate and publish data on the motor insurance industry.

Society of Actuaries in Ireland

The Society of Actuaries in Ireland is the professional body representing the actuarial profession in Ireland. Although the Society does not collect or administer any data in relation to the cost of insurance or claims it has produced reports following data collection and analysis by a third party.

APPENDIX 9 – Data Availability in Other Jurisdictions

Statistical Databases

United Kingdom

Institute and Faculty of Actuaries (IFoA): The IFoA collate and analyse data for UK third party motor claims (injury and property damage) provided by UK motor insurers. An annual report is produced providing commentary on key trends in third party motor claims.

The key features of the IFoA approach are:

- It has established a Third Party Working Party (TPWP⁷⁹) which investigates emerging claim trends in third party motor insurance;
- The TPWP works in conjunction with other related IFoA working parties to ensure that key messages of interest to the industry, consumers, the press or government bodies are appropriately aired;
- It collects additional data from within the market or from other sources as the working party sees fit;
- It maintains appropriate standards with respect to competition law – in particular no individual company actuary will see any data other than aggregate market data and there are no discussions around pricing related matters;
- All data processing is hosted by an independent actuarial consultancy.

Association of British Insurers (ABI): Collecting facts and figures is a key part of the ABI's work. The ABI, a trade association of insurers collects extensive data from insurers and long term savings providers, covering everything from motor and property insurance to life assurance and pensions.⁸⁰ Their extensive data offers the most comprehensive coverage of the UK insurance market. ABI produce regular detailed statistics including statistical data in relation to premiums and claims, commission and expenses, change in provisions, equalisation reserves, underwriting result, and operating ratios for a range of insurance categories. The section on general (non-life) insurance is split into seven categories, six of which cover all of the individual product line data that the ABI collects and one on total market and product distribution data, which encompasses the entire non-life market. Data on Motor covers both

⁷⁹ IFoA Member-led research working parties are volunteer-led groups which conduct research on timely topics of interest to the practice area and the wider profession. There are currently 20 active general insurance research working parties examining a range of areas.

⁸⁰ Association of British Insurers, *Statistics*, <https://www.abi.org.uk/Insurance-and-savings/Industry-data>.

quarterly and annual motor statistics and includes premiums, claims, distribution and fraud data.

Finland

The Federation of Finnish Insurance Companies (FFIC), the trade association for insurance companies in Finland, publishes information on the gross premiums written, financial ratios, profit and loss accounts and balance sheets of non-life insurance companies operating in Finland.

The Finnish Crash Data Institute (OTI) coordinates the independent investigation of fatal road accidents and administers the data compiled of them and other traffic accident statistics.⁸¹

Denmark

The Danish Insurance Association (DIA), a trade association of Danish insurance undertakings publishes an annual statistical analysis of the life, non-life and pensions business. In relation to non-life business, the DIA publication includes some aggregated information on premium income and claims by class and sub-class of insurance.

Fraud/ Uninsured Driving Databases

UK

Claims Underwriting Exchange (CUE): CUE is a central database of motor, home and personal injury incidents reported to insurance companies, which may or may not give rise to a claim.⁸² CUE is managed by not-for-profit company Insurance Database Services Limited (IDSL) on behalf of its member organisations which includes all major insurers. The purpose of CUE is to record all claims on a single centralised database and to keep down premiums for policyholders by preventing multiple claims fraud and the misrepresentation of claims histories. There are currently over 32 million claims records available to subscribers.

The information contained in the database comprises that supplied by the policyholder or claimant on their application or claim form, together with other information relating to the incident or claim. It does not hold sensitive information or details relating to the amount of premium or claims paid.

⁸¹ The Finnish Motor Insurers' Centre (LVK), *Statistics*, <http://www.lvk.fi/en/statistics/>.

⁸² LexisNexis, *Claims and underwriting Exchange (CUE)*, [http://uk-insurance.custhelp.com/app/answers/detail/a_id/27/~claims-and-underwriting-exchange-\(cue\)](http://uk-insurance.custhelp.com/app/answers/detail/a_id/27/~claims-and-underwriting-exchange-(cue)).

Motor Insurers Anti-Fraud and Theft Register (MIAFTR)⁸³: This a database containing records of written off and a stolen vehicles, as defined by the Code of Practice for the Disposal of Motor Vehicle Salvage.⁸⁴ MIAFTR was designed and developed to help monitor vehicles written off for insurance purposes, to help trace and recover stolen vehicles and to help detect fraud. Access to MIAFTR is limited to subscribers, of which there are approximately 300. These include insurers, self-insured compensators (e.g. fleet companies), police forces and delegated authorities working on behalf of an existing subscriber (e.g. an insurer), MIB is the data controller for this database.

Motor Insurance Database (MID): The Motor Insurers' Bureau (MIB) is responsible for tackling and reducing the incidence of uninsured driving in the UK and administers a national database which shows the insurance status of each registered vehicle in the UK. Experian operates the Motor Insurance Database, a UK motor insurance industry initiative to combat uninsured driving, on behalf of the MIB.⁸⁵ The database shows if the vehicle is insured and the identity of the insurance company. The MIB works with the DVLA and Police to combat uninsured driving. All motor insurers must abide by Department for Transport (DFT) rules for the timely supply of data to the MID and there are consequences for insurers if the obligations are not met. The Motor Insurance Database holds details on all UK insured drivers, covering over 25 million motor insurance policies, 30 million private vehicles and 4 million commercial vehicles.

Insurance Fraud Register (IFR): The IFR is the first industry-wide database of known insurance fraudsters.⁸⁶ Founded in 2013 the IFR is run as a joint venture between the ABI (association of British insurers) and the insurance Fraud Bureau which is a not-for-profit enterprise, it is funded by the ABI. The data that it looks to hold is focused on the individual parties who have been identified as being involved in fraudulent claims. The database holds the identities of individuals who have been detected acting fraudulently towards insurers, whether in the process of applying for or renewing insurance cover, or when making a claim and are added to the IFR by the insurer. Both policyholders and third parties will be loaded onto the IFR, as will suppliers and other professional enablers who can be shown to have acted fraudulently towards an insurer.

⁸³ Motor Insurers' Bureau, *CUE & MIAFTR Key databases to help fight insurance fraud*, <https://www.mib.org.uk/managing-insurance-data/mib-managed-services/ids/>.

⁸⁴ Association of British Insurers, *Code of Practice for the Disposal of Motor Vehicle Salvage*, (March 2007), <https://www.abi.org.uk/~media/Files/Documents/Publications/Public/Migrated/Motor/Code%20of%20practice%20for%20disposal%20of%20motor%20vehicle%20salvage.pdf>.

⁸⁵ Experian, *Motor Insurance Database*, <http://www.experian.co.uk/consumer-information/motor-insurance-database.html>.

⁸⁶ The Insurance Fraud Register, *About the IFR*, <http://www.theifr.org.uk/en/about/>.

Croatia

Information Centre –WEB Services and Databases - the information centre at the Croatian Insurance Bureau (the Croatian Insurance Bureau has a wide remit including the association of insurance companies having their head offices in Croatia) operates a claims database aimed at combating motor insurance fraud by giving its members access to claims data in order to enable the detection of multiple and fraudulent motor insurance claims. They created a central database to maintain data on motor third-party and damage claims submitted to insurance companies. The database has been expanded to include data to facilitate the detection of insurance fraud and modified to apply to other insurance classes. The information centre at the Croatian Insurance Bureau also operates a claims database aimed at combating motor insurance fraud by giving its members access to claims data in order to enable the detection of multiple and fraudulent motor insurance claims. The Croatian Insurance Bureau has established itself as the central national insurance statistics source accessible to the insurance industry since the beginning of 2008 and also available to the public through the website of the Croatian Insurance Bureau.

Czech Republic

Insurers can obtain information about an applicant's claims history from the database operated by the Czech Insurance Bureau a professional association of insurance companies operating in the Czech Republic.

New Zealand

The Insurance Claims Register (ICR) - The ICR enables insurance companies to check the accuracy of the data submitted with policy applications and claims.⁸⁷ The ICR detects and prevents fraud, particularly purposeful non-disclosure, and double dipping at claim time. The ICR is an electronic register that holds a central record of all claims lodged with participating insurance companies, so that those companies can access a claims history of a client, when underwriting new business and processing claims, for the specific purpose of checking for fraud. The register is maintained by the Insurance Council of New Zealand, the representative body of the insurance industry in New Zealand.

⁸⁷ Insurance Council of New Zealand, *Insurance Claims Register*, <http://www.icnz.org.nz/for-consumers/insurance-fraud/insurance-claims-register/>.

Canada

Automobile Claims Database - makes available to insurers licensed to operate in Québec information on all insurance claims involving Québec drivers.⁸⁸ The tool allows insurers to access claims file Information to verify statements made by clients when underwriting new risks. The Automobile Claims Database therefore provides insurers with reliable data for certain rate setting criteria, i.e. the statistics observed now adequately match the definitions of applicable criteria in driving records.

Italy

ATRC (Banca Dati Attestati di Rischio – Risk Statement Database) is a database where all historical information on the claims experience for the last 6 years is stored.

Claims Databases

UK

Ministry of Justice - Claims Portal: The Claims Portal is the default method of dealing with personal injury claims that fall within the guideline amounts of between £1,000 and £25,000, in the UK.⁸⁹ The Ministry of Justice has mandated that personal injury claims falling within the scope of the pre-action protocols must be processed using the Claims Portal. It acts as a go-between for claimants and defendants, making it straightforward to pursue a road traffic accident or personal injury claims. Claims Portal Ltd is a not-for-profit company made up of 13 non-executive directors, including an independent chairperson. The Board of directors is equally balanced, with six representing the claimant community and six representing compensators.

Australia

The Australian Capital Territory (ACT) Compulsory Third-Party Insurance Regulator (CTP regulator), an independent statutory regulator which is responsible for oversight, monitoring and reporting of CTP activities in Australia. Personal Injury Register (PIR) database is the electronic register of all motor accident claims occurring in the ACT. As claims data are progressively added to the PIR, this will allow data, scheme statistics and trends to be interrogated and analysed.

⁸⁸ Autorité des marchés financiers, *Automobile Claims Database*, <https://www.lautorite.qc.ca/en/automobile-claims-database.html>.

⁸⁹ Claims Portal, *Why the Claims Portal?*, <http://www.claimsportal.org.uk/en/about/why-the-claims-portal/>.

Examples of data maintained:

- Claim duration by insurer—motor accident personal injury register
- Claimants by age and gender—motor accident personal injury register
- Claim frequency and propensity—motor accident personal injury register
- Claim payments on finalised claims—motor accident personal injury register
- Claims by insurer—motor accident personal injury register⁹⁰

In January 2005 the Australian Prudential Regulation Authority (APRA) launched a National Claims and Policies Database (NCPD) for public and products liability and professional indemnity insurance.

The Database provides insurers, the community and the government with a better understanding of public and products liability and professional indemnity insurance. It aims to help make public and product liability and professional indemnity insurance products more affordable and available by:

- providing insurers with detailed information to help them assess risks and determine appropriate premiums for these insurance products; and
- helping insurers develop or enhance the products available to policyholders in the future.

It also enables the government, the community and insurers to identify trends and implement changes to reduce the number of claims or lower the cost of claims for public and product liability and professional indemnity.

All APRA-regulated insurers that provide these types of insurance policies are required to contribute claims and policies data to the NCPD. Other organisations, such as state and territory insurers also submit data to the NCPD. The first data collection occurred in early 2005 and included claims and policies data for the period from 1 January 2003 to 31 December 2004. While detailed individual policy and claims data is collected reporting to date has been at a very high level because of difficulties in resolving concerns about release of data that might be commercially sensitive.

⁹⁰ Queensland Government, *Compulsory Third Party (CTP) Statistics*, <https://data.qld.gov.au/dataset/compulsory-third-party-ctp-statistics>.