

# The Irish Public Liability Insurance Market

Public Consultation

DATE 12/06/2020



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission

The **closing date** for receipt of submissions is **Friday 3 July 2020**.

Please send your responses to **by email:** [PublicLiability@ccpc.ie](mailto:PublicLiability@ccpc.ie)

**1. Confidentiality of submissions:** Respondents are requested to note that the Competition and Consumer Protection Commission (CCPC) intends to publish details of the submissions received on its website. Should you consider that any material should be redacted please ensure that such material is clearly indicated in your submission.

**2. Relevant provisions of the Freedom of Information Act 2014:** We would like to draw your attention to the fact that information provided to the CCPC may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, please identify any information you consider personal or commercially sensitive, and specify the reason for its sensitivity. The CCPC will consult with anyone potentially affected regarding information identified as sensitive before making a decision on any Freedom of Information request.

For any queries please contact Jonathan Small:

**By phone:** + 353 1 4703663

**By email:** [PublicLiability@ccpc.ie](mailto:PublicLiability@ccpc.ie)

## Table of Contents

---

<b>1.</b>	<b><u>Introduction</u></b> .....	<b>1</b>
	<u>Consultation Overview</u> .....	2
<b>2.</b>	<b><u>Public consultation</u></b> .....	<b>5</b>
	<u>Competition</u> .....	5
	<u>Brokers and Switching</u> .....	6
	<u>The Insurance Cycle</u> .....	7
	<u>Cost Inflation</u> .....	7
	<u>Digitalisation</u> .....	9
	<u>Further reforms</u> .....	10
	<u>Other views</u> .....	11

# 1. Introduction

---

- 1.1 The Competition and Consumer Protection Commission (“CCPC”) was established on 31 October 2014 following the amalgamation of the National Consumer Agency and the Competition Authority. The CCPC has a broad mandate, covering all sectors of the economy, with statutory responsibility for the enforcement of competition and consumer protection law.
- 1.2 The mission of the CCPC is to use our knowledge, skills and statutory powers to promote competition and enhance consumer welfare. Our vision is for open and competitive markets where consumers are protected and businesses actively compete.

## Ministerial Request

- 1.3 On 15 August 2019, the Minister for Business, Enterprise and Innovation announced that she had requested, pursuant to section 10(4) of the 2014 Act, that the CCPC commence a market study into the public liability insurance sector in Ireland (the “Study”). The Minister’s request to the CCPC specified that the Study should examine *“how the [public liability insurance] market operates, how competition works in that market and whether any practice or method of competition affects the pricing levels of public liability insurance within that market”*<sup>1</sup>. The Study will assess the functioning of the public liability insurance sector and consider how competition works in that sector at present.

## Terms of Reference

- 1.4 In respect of the request of the Minister for Business, Enterprise and Innovation, and in line with section 10(4) of the Competition and Consumer Protection Act 2014, the CCPC has been undertaking an exercise that will involve the following:
  - (a) **A review of current issues and recent studies in the sector**

---

<sup>1</sup> See press release “Minister Humphreys requests CCPC to undertake a study of the public liability insurance market” (15 August 2019), available at <https://dbei.gov.ie/en/News-And-Events/Department-News/2019/August/15082019.html>.

- (b) **An overview of how the market operates and how public liability insurance is procured**
- (c) **An analysis of the market structure and levels of competition**
- (d) **Determinants of costs, premia and profitability**
- (e) **An assessment of barriers to entry and exit**
- (f) **A review of similar markets and studies internationally**
- (g) **Based on the evidence collected, the CCPC will make recommendations to address the issues in the sector**

### **Consultation Overview**

1.5 Since the commencement of this study the CCPC has carried out a series of meetings with stakeholders in the insurance market including; representative groups, public bodies, industry representatives, and customers<sup>2</sup>. During these meetings a number of relevant issues and themes have emerged. In addition, the CCPC conducted customer focussed market research in early 2020 among a representative sample of businesses, community groups and sports organisations. The preliminary results have helped to inform the content of the questions contained in this consultation paper.

1.6 This consultation is intended to provide the CCPC with further evidence to allow it to make a fully informed examination of the market. We recognise that the coronavirus (COVID-19) pandemic in early 2020 may have a significant impact on this market, however the focus of this Study and this consultation paper is concerned with issues and trends existing in the market prior to the outbreak of COVID-19. The CCPC is keen to hear the views of as many stakeholders as possible in this important market.

### **Context to the Consultation**

1.7 The cost and availability of insurance has been an issue of considerable public interest during the past five years, in particular. Rising cost pressures in respect

---

<sup>2</sup> For the purposes of this consultation customers are understood to include any organisations or sole traders that for the purposes of their activities have needed to avail of insurance coverage for public liability risks.  
The Irish Public Liability Insurance Market - Public Consultation

of private motor insurance led to the establishment by the Department of Finance in 2016 of the Cost of Insurance Working Group ('the CIWG'). The objective of the CIWG is 'to identify immediate and longer term measures which can address increasing costs, while bearing in mind the need to maintain a stable insurance sector'<sup>3</sup>. The CIWG issued two comprehensive reports on the cost of Motor Insurance and the cost of Employer and Public Liability Insurance. In order to encourage greater price stability both reports made a series of recommendations for reform<sup>4</sup>. The CCPC's Study will in particular take full cognisance of the second report of the CIWG, the *Report on the Cost of Employer and Public Liability Insurance*. Not least because it makes a number of recommendations for reform which are either in the process of being implemented at the time of writing, or have been implemented for a relatively short period and may not yet have shown a demonstrable effect on conditions in insurance markets.

- 1.8 One recommendation of the CIWG *Report on the Cost of Motor Insurance* was for the establishment of a Personal Injuries Commission (PIC)<sup>5</sup>. The PIC in turn issued two reports which contained a number of recommendations, including in relation to reform of the process of resolving personal injury claims. The CCPC's Study will take full cognisance of the recommendations of the PIC as they relate to public liability insurance.

## Market Overview

- 1.9 As this exercise is a market study it will involve the examination of a range of issues of relevance to competition in the market for public liability insurance<sup>6</sup>. Much of the commercial insurance market in Ireland is intermediated by brokers between the buyer of insurance (for example a business) and the seller (an

---

<sup>3</sup> <https://www.gov.ie/en/organisation-information/fbc791-the-cost-of-insurance-working-group/>

<sup>4</sup> The CIWG issued the *Report on the Cost of Motor Insurance* in January 2017. A second report, the *Report on the Cost of Employer and Public Liability Insurance* was issued in January 2018.

<sup>5</sup> The CCPC was represented on the PIC.

<sup>6</sup> The CCPC is aware that public liability insurance may in many instances not be sold as a distinct product. To that end we will accept views in response to this consultation which address the issue of business or commercial insurance more generally. However it is imperative that any views or evidence provided to this study relates to organisations which have a requirement for public liability cover. The study is not concerned with business or commercial insurance products which do not include a public liability element.

insurance undertaking which underwrites the risk to be insured)<sup>7</sup>. Brokers can play an important role in facilitating competition between insurers and to that end competition must be considered in the context of how insurance is distributed between insurers, intermediaries and the end customer. In order to get a full picture of the operation of the market it will be important to understand how customers interact with intermediaries - such as brokers – as well as with insurers.

- 1.10 Commercial insurance, such as public liability insurance, is a means to transfer a degree of risk from organisations to insurers thereby allowing those businesses and other organisations to engage in economic activities, particularly those that they may not otherwise engage in. In this way the provision of insurance aids the functioning of a market economy. This also has broader societal benefits as business hire more workers and provide a wider range of services than they might otherwise. A further consideration therefore relates to the possible effects of insurance premiums on the cost base, and thereby the cost competitiveness, of business customers for public liability insurance<sup>8</sup>.

---

<sup>7</sup> Market research conducted for the CCPC found that 72% of organisations surveyed arrange for insurance coverage through a broker. 24% reported arranging insurance directly with an insurer. A small percentage avail of captive insurance (a captive insurer is owned and controlled by the insured entities). 3% of respondents answered 'Don't know'.

<sup>8</sup> For recent commentary in this regard see the National Competitiveness Council report '*Ireland's Competitiveness Challenge 2019*'.

## 2. Public consultation

---

This consultation paper seeks views in relation to the competitive conditions in the market for public liability insurance, including on the conditions of entry, expansion, and exit, the influence of the ‘insurance cycle’ on price and availability of public liability insurance, the role of switching in the market, the degree of cost inflation that can be observed in the market, and issues in regard to the digitalisation of the delivery of insurance services.

We ask respondents, where possible, to answer each of the questions by, providing specific examples and evidence to support the answers provided.

### Competition

- 2.1 Ireland operates an open insurance market meaning that effective competition – entry into the market and rivalry between firms in the market – is essential to ensure that premiums are affordable and coverage of risks is available to customers. Please provide specific examples and evidence to support your answers.
- (a) In your/the view of your organisation, how would you characterise the current level of competition between insurers in the public liability insurance market in Ireland?
  - (b) In your/the view of your organisation, how would you characterise the current level of competition between brokers in the public liability insurance market in Ireland?
  - (c) In your/the view of your organisation, how has the availability of insurance coverage for public liability risks changed in Ireland in the past five years?
  - (d) In your/the view of your organisation, how has the exit of some insurers from the market affected the availability of insurance coverage for public liability risks in Ireland in the past five years?

### Barriers to Entry and Exit

- 2.2 Possible barriers to entry in the Public Liability Insurance Market could include expected profitability, the behaviour of incumbent firms, the requirement for accurate data in specific market niches, access to distribution channels (e.g.



brokers), access to capital to underwrite public liability insurance in Ireland, or the regulatory environment.

2.3 The CCPC notes from initial discussions with stakeholders that it has been suggested that exits from the market have been more a prominent issue in recent years and that the degree of entry has been low. We are keen to receive the views of organisations on any potential barriers to entry as well as their views on the degree of exit and the factors that explain that. Please provide specific examples and evidence to support your answers.

- (a) In your/the view of your organisation, are there barriers to entry in the public liability insurance market in Ireland? If so, what are those barriers?
- (b) In your/the view of your organisation, are there barriers to expansion in the public liability insurance market in Ireland? If so, what are those barriers?
- (c) In your/the view of your organisation, are there barriers to exit (e.g. sunk costs) in the public liability insurance market in Ireland? If so, what are those barriers?
- (d) In your/the view of your organisation, to what degree has there been exit of insurers and/or brokers from the public liability insurance market in Ireland? Has exit been more prominent in particular sub-sectors?
- (e) In your/the view of your organisation, what have been the drivers for exit from the public liability insurance market in Ireland?
- (f) In your/the view of your organisation, are there any regulatory barriers to entry in the public liability insurance market in Ireland?
- (g) In your/the view of your organisation, what, if any, measures are required to facilitate or incentivise entry into the public liability insurance market in Ireland?

### **Brokers and Switching**

2.4 Commercial insurance policies are predominantly intermediated between the customer and the insurer by brokers. Brokers provide several services to their customers. These services can include engaging with the customer to develop the risk profile to be insured, searching across insurers to determine coverage options, explaining these options to customers, and arranging insurance cover once an option has been selected. Our research to date suggests that customers

pay brokers via fixed fees as commonly as they pay via commission. Please provide specific examples and evidence to support your answers.

- (a) In your/the view of your organisation, how do brokers facilitate competition between insurers in the public liability insurance market?
- (b) In your/the view of your organisation, do customers engage sufficiently with their broker when seeking appropriate coverage in the marketplace?
- (c) In your/the view of your organisation, are there ways in which customers could be facilitated to better engage with their broker and the marketplace?
- (d) Switching can be facilitated by brokers or, in the case of organisations that insure directly, by engagement with the marketplace. In your/the view of your organisation, does the structure of the market allow for sufficient switching between insurers?
- (e) Do you/your organisation have views in relation to the ease or otherwise of the switching process?

### **The Insurance Cycle**

2.5 Insurance markets are regarded as inherently cyclical. The insurance cycle is understood to fluctuate between a ‘soft’ part of the market in which prices are generally lower and there is greater availability of insurance, and a ‘hard’ part of the market in which prices generally rise and availability is reduced. Please provide specific examples and evidence to support your answers.

- (a) In your/the view of your organisation, how has the insurance cycle in the public liability insurance market in Ireland evolved since 2015?
- (b) It has been suggested that the impact of the insurance cycle is more pronounced in Ireland than elsewhere. Do you/your organisation share this view? If so, can you/your organisation identify particular factors to explain this?

### **Cost Inflation**

2.6 The CIWG *Report on the Cost of Employer and Public Liability Insurance* made a number of recommendations for actions which are intended to put downward

pressure on cost inflation in the employer and public liability insurance markets<sup>9</sup>. Those recommendations included the expansion of the scope of the National Claims Information Database (NCID) to include a report on Employer Liability and Public Liability (EL/PL) insurance<sup>10</sup>. Such a report would provide the most comprehensive analysis of cost trends in relation to premiums, claims and settlement costs across those lines of insurance to date. The CCPC does not intend for the Study to replicate the analysis of claims trends which will be undertaken by the NCID, however in order to gain a more comprehensive picture of market conditions it is important to understand trends in costs over time.

- 2.7 The CCPC also notes the establishment of the Personal Injury Guidelines Committee of the Judicial Council of Ireland which will produce guidelines in relation to the level of damages awarded for personal injuries by courts in the State. It is anticipated that draft guidelines will be prepared before the end of 2020<sup>11</sup>. The CCPC further notes the Law Reform Commission's (LRC) Fifth Programme of Law Reform, in which the LRC will examine whether it is appropriate to legislate for a cap to be placed on the levels of damages which a court may award in respect of some or all categories of personal injury claims.
- 2.8 The cumulative effect of these reforms are intended to lead to a greater degree of transparency in the drivers of cost inflation in relation to EL/PL insurance. Notwithstanding the recommendations of the CIWG, the CCPC is seeking views on the extent to which cost inflation has been a factor in driving up premiums and/or reducing the availability of public liability insurance to organisations. As the Study will provide an analysis based on a period of time before key reforms have been implemented it will be informative to garner views on what has contributed to cost inflation and what implications this has had for the functioning of the market. In addition, the Study will be informed by views on

---

<sup>9</sup> One recommendation was that the Central Statistics Office (CSO) consider the feasibility of collecting price information on the cost of insurance to business. The CCPC understands that the CSO is developing its approach in regard to this recommendation.

<sup>10</sup> The NCID is operated by the Central Bank of Ireland and its functioning is provided for by the Central Bank (National Claims Information Database) Act 2018. In a report on the merits and feasibility of including EL/PL data in the NCID, issued in May 2020, the Central Bank indicated that a first report of the NCID in relation to EL/PL data will be published in the first half of 2021. The feasibility report is available here: <https://www.centralbank.ie/docs/default-source/statistics/data-and-analysis/national-claims-information-database/ncid-el-pl-feasibility-study.pdf?sfvrsn=4>

<sup>11</sup> <https://judicialcouncil.ie/personal-injuries-guidelines-committee/>

whether technology could be deployed to reduce costs (e.g. through greater efficiencies in legal processes, detecting fraud, pricing risk or managing claims handling processes). The CCPC is aware that the deployment of technologies can also have negative effects and welcome views in that regard. Please provide specific examples and evidence to support your answers.

- (a) In your/the view of your organisation, has the price of public liability insurance risen, fallen or remained stable in the past five years?
- (b) In your/the view of your organisation, have the costs of inputs (e.g. settlement awards, legal or investigatory costs) to the calculation of premiums increased, fallen or remained stable in the past five years?
- (c) In your/the view of your organisation, what, if any, factors have been the main drivers of cost inflation in the public liability insurance market in the past five years?
- (d) In your/the view of your organisation, has the frequency or volume of claims had an impact on the cost and/or availability of public liability insurance in the past five years?

## Digitalisation

- 2.9 The impact of the COVID-19 pandemic, and the measures taken to respond to it, has highlighted the extent to which digital technology is of central and increasing importance to the functioning of the economy and society. It has been suggested that one impact of the crisis may be to increase the reliance on remote working and digital technology in the workplace. More generally, digitalisation has begun to significantly impact the delivery of financial services<sup>12</sup>. Directive (EU) 2015/2366 on payment services ('PSD2') has created a European Union wide framework mandating the right of access to payment account data to increase innovation and competition in the payments sector. This is most commonly associated with developments in Open Banking. More recently there has been an increased focus on the potential for Open Finance in the broader context of the digitalisation of financial services<sup>13</sup>. In addition,

---

<sup>12</sup> <http://www.oecd.org/finance/Financial-markets-insurance-pensions-digitalisation-and-finance.pdf>

<sup>13</sup> The European Commission is, at the time of writing, consulting on the development of a new Digital Finance Strategy/FinTech Action Plan. The consultation paper poses a series of questions regarding the potential benefits and risks of developing an EU wide approach to Open Finance. The consultation paper is available here:

[https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/2020-digital-finance-strategy-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-digital-finance-strategy-consultation-document_en.pdf). In addition, the Financial Conduct Authority (FCA) in the United Kingdom established an Advisory Group in 2019 to develop a future strategy of Open Finance. A

the emergence of InsurTech, peer-to-peer insurance, and an increased prevalence of online platforms has altered the nature of a number of insurance markets. The CCPC is keen to receive views on the role of digitalisation in the public liability insurance market. Please provide specific examples and evidence to support your answers.

- (a) In your/the view of your organisation, what, if any, impact has digitalisation had on the provision of public liability insurance in Ireland?
- (b) In your/the view of your organisation, how could digitalisation further impact on the provision of public liability insurance in Ireland?
- (c) In your/the view of your organisation, could digitalisation contribute to further entry into the market for public liability insurance in Ireland?

#### **Further Reforms**

2.10 As noted above, the CIWG *Report on the Cost of Employer and Public Liability Insurance* made a number of recommendations for actions which are intended to put downward pressure on cost inflation in the employer and public liability insurance markets. The CCPC is cognisant that many of those measures are in the process of being implemented or have been in place for a relatively short time. As such the measures may not yet have demonstrated an effect on the price and availability of insurance.

2.11 The CCPC is keen to receive views on whether there are any further measures which could improve the functioning of the public liability insurance market. These measures might include further public policy reforms or could involve market-based solutions. Please provide specific examples and evidence to support your answers.

- (a) In your/the view of your organisation, what measures could be implemented to reduce or lessen the impact of fluctuations in the cycle?
- (b) In your/the view of your organisation, what, if any, improvements are possible in the use of technology to allow for more accurate pricing of risk in the public liability insurance market in Ireland?

- (c) In your/the view of your organisation, what if any improvements could technology allow for in claims handling in the public liability insurance market in Ireland?
- (d) In your/the view of your organisation, what, if any, improvements are possible in the use of technology to allow for more efficient legal processes in relation to the settlement of public liability insurance claims in Ireland?
- (e) In your/the view of your organisation, are there measures that buyers of insurance could take to improve their ability to avail of insurance at an affordable price?
- (f) In your/the view of your organisation, are there measures that could be taken to pool risk more effectively in the public liability insurance market in Ireland?

#### **Other Views**

Please provide any further evidence based views your organisation may have on the public liability insurance market in Ireland.

ENDS

