Public Liability Insurance Market Study

CCPC

Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí

Competition and Consumer Protection Commission

Table of contents

Executive Summary

Contents

Introduction

- The Study presents the competition review of the public liability insurance market by the Competition and Consumer Protection Commission (CCPC). It was undertaken following a request by the then Minister for Enterprise, Trade and Employment Heather Humphreys in July 2019 that the CCPC carry out a study and 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*".

- The Study was undertaken against a background of concerns about the operation of the wider non-life insurance market i.e. private motor insurance and employer liability and public liability insurance. These issues, which specifically relate to year on year volatility and difficulty in obtaining cover or non-availability of cover, are the focus of the analysis undertaken in the Study.

Information Gathered for the Study

- The Study provides the most comprehensive competition review of the market that is currently feasible which is based on a range of data and information sources:

  - Market research was undertaken to understand the experiences of buyers in relation to their level of understanding of public liability cover, switching behaviours, working with brokers and overall engagement in the market.

  - A representative dataset of the insurers that are active in the market was used in the Study. Key insurer information was requested from Insurance Ireland (II) in relation to their members for 2008 to 2018 which the CCPC has estimated represent 70% of this market. This approach was taken as a dataset of all the insurers that are active in the market is not available and as such it is a partial view of the market.

  - The CCPC met with key private and public stakeholders, completed a public consultation process and reviewed Irish and international publications to understand the range of issues and potential best practice for the sector.

- This approach has allowed the CCPC to capture the relevant competition issues in the public liability insurance market and to facilitate the formation of evidence-based policy recommendations. The wide ranging nature of the market research and the limitations of the insurer-related data, have meant that the CCPC can indicate rather than be definitive on the causes of the issues identified in the Study.

Market Overview

- The Study confirms the importance of public liability insurance in supporting the activities of commercial and non-commercial organisations. While it is not a legal requirement, 97% of respondents to the market research have a policy[1]. Public liability insurance accounts for about 12% of premiums overall, or about a quarter of commercial gross written premiums.

- Public liability insurance is an internationalised market, where most providers operate in Ireland on a Freedom of Establishment (FOE) or Freedom of Services (FOS) basis[2]. There are two Irish headquartered insurers in the market where one is a specialist provider to the public sector. Long term profitability will depend on the ability of an insurer to price risk and calculate break-even premiums where key information to undertake this analysis includes the buyer risk profile and claims history, and claims costs. Public liability insurance can be harder to price than other lines of insurance as claims can be filed many years after the time they originated.

- Public liability insurance is a more complex product than other non-life insurance lines and is often bought as part of a commercial package of products. Brokers provide a range of services to assist buyers to navigate the market where 72% of respondents said they use their services to obtain public liability insurance. Brokers are either paid flat fees for their services or through commission, as a percentage of the premium secured. For surveyed organisations that used a broker, 36% paid their broker a flat fee; 28% paid a percentage of premium based commission; and 33% did not know the structure of their payments to their broker.

- The Central Bank of Ireland (CBI) is responsible for financial regulation and supervision. The key legal regulatory instruments at an EU level are the Solvency II and Insurance Distribution Directives. At national level, the Consumer Protection Code and Non-Life Insurance Regulations are the primary basis for conduct supervision. Competition between financial services firms is considered as a factor within the broader context of financial sector regulation, but it is generally not an explicit objective of the framework.

- Competition law in the State is enforced by the CCPC and by the European Commission when suspected breaches may affect EU cross border trade. In August 2020, the CCPC published an update on the preliminary findings on the engagement with a number of organisations on concerns about possible anti-competitive conduct in the provision of private motor insurance in 2015. In May 2019, the European Commission announced it had opened a formal investigation into II to assess whether the conditions of access to its Insurance Link data pooling system may restrict competition in the Irish motor insurance market, in breach of EU rules.

1 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: Has your organisation ever held a commercial insurance policy that includes coverage for public liability insurance? Base: All respondents to survey (508 respondents).

2 Insurers authorised by the competent insurance authority in their home state within the European Economic Area can provide insurance in Ireland either on a FOE basis, where an insurer establishes a branch in Ireland, or on a FOS basis, where they provide the insurance directly from their home state.

- External and/or unplanned events will cause periods of growth and retraction in national economies and specific industries, and as a result, market dynamics can change quickly. Brexit has the potential to have a significant impact on the public liability insurance market due to the presence of a large (if unquantified) number of UK based providers in Ireland. In addition, since the CCPC commenced the Study, Covid-19 has also tested the resilience of the insurance sector, where the long-term impact has yet to emerge, though it is unlikely to alter the fundamental issues identified in the Study.

Key Findings

- The CCPC's findings are not intended to suggest that the market is not working for all public liability buyers, rather they indicate the degree to which organisations that have been impacted are affected.

- The CCPC completed an initial assessment to understand, whether and the extent to which increasing premiums and limited availability are an issue in this market. The key findings are below:

  - High premium increases are an issue across all sectors. The respondents to the market research said the increases averaged 15-20% in the past three years. While most organisations now pay higher premiums, the reasons for the price increases were not always clear and 70% of respondents said the price rises were not fair or justified.
  - Availability issues seem to be primarily impacting certain sectors such as community and sports groups. The further exit of insurers from the market could mean that availability will become an issue, for a potentially greater number of sectors in the future.

- The extent to which competition, or other related factors, may be driving or contributing to the issues identified in the market was considered in the Study using a Theory of Harm approach, where the key findings are below.

- **Theory of Harm 1 - Barriers to Entry:** If barriers to entry exist, they can reduce the degree of competition and in turn enhance the market power of incumbent firms. The barriers to entry that seem to exist in the market are as follows:

  - *Access to Insurance Market Data*: Developing an understanding of the public liability insurance market is a prerequisite when considering entry.

    Issue: There is a lack of publicly available, detailed and timely market data from an independent source which covers all of the insurers that are active in the market. This has created an imbalance in the information available to incumbents and potential new entrants, and therefore could operate as a barrier to entry.
  - *Access to Claims History Information:* Insurers only discover their claims costs after they set prices, which for public liability insurance can often be years later. The more information an insurer has on the claims profile of a customer, the more precisely they can calculate their expected costs and the more keenly they can price.

    Issue: The ability of all insurers in the market to access the claims history of buyers, which is a practical necessity for sustainable entry, does not apply and therefore could act as a barrier to entry.

- *The Insurance Cycle:* The characteristics of the public liability insurance market where a buyer does not have the option to switch to a similar type product and insurers face a long claim timeline can make it more inclined towards more severe hard markets.

  Issue: While the higher prices associated with a hard market should act as a stimulus for new entry, the other barriers to entry may deter potential entrants from coming into the market. Insufficient market entry may cause the market to persist in the hard cycle for longer than it might otherwise have done. The operation of the insurance cycle in this manner may create a perception to new entrants that public liability is a more risky market, which has the effect of it being a barrier to entry.

- **Theory of Harm 2 - Switching Behaviour:** Competition often requires that buyers are engaged in the market and actively search for the best available product between choices of providers. The degree to which switching is supporting the operation of the market in this way is as follows:

  - A quarter of buyers switched their insurer in the last five years, primarily for price related reasons, where the levels of switching are similar across all sectors. The organisations who use a broker have higher switching rates than the organisations that insure directly at 31% vs 15%.

  - Of the organisations that did not switch their insurer in the last five years, 51% had shopped around for an alternative provider over the same period, where most of these organisations did not switch because their existing provider offered a better price. Around one third of organisations did not switch due to a real or perceived barrier to switching such as lack of alternatives, time or complexity.

  - While price is prioritised over other considerations in respect of their public liability policy, 66% of organisations have not switched broker to obtain a better priced plan in the past ten years.

  - The level of engagement by buyers in the market is relatively low. 25% of respondents did not know what their organisation paid in an annual public liability premium. While 82% of respondents felt they understood their insurance either very well or fairly well, they did not always comprehend key distinctions in relation to insurers and brokers or how their broker is paid or who their insurer was.

- **Theory of Harm 3 - Cost Inflation:** Cost increases over time are usually passed through from sellers to buyers where the level of any increase is subject to the ability of the buyer to absorb that cost rise. While this is not a direct competition issue, if some costs become too high or volatile insurers may decide to exit a sector which in turn impacts on competition.

- The CCPC has reviewed the available data on cost inflation in the claims environment to understand the degree to which these costs are having an adverse effect on competition. The findings are as follows:

  - Information published by the Personal Injuries Assessment Board (PIAB) and the Courts Service indicates that the number of claims, and the level of awards, have been largely stable in recent years and a significant proportion of claims costs seem to relate to the associated costs of settling a claim (e.g. legal costs). The CBI's National Claims Information Database (NCID) report on the costs associated with each settlement channel for employer liability and insurance liability, which is due to be published in June 2021, will improve transparency in this area.
  - In addition to claims, the CCPC's review suggests that other factors may also be drivers of cost inflation. Calculating a premium will include a range of factors in relation to the nature of the risk or risks to be insured, an organisation's payroll or turnover, the level of excess attached to the policy, the charges incurred in ceding premiums to reinsurance, and the reserves required to cover the cost of potential claims.
  - The CCPC notes that industry stakeholders have stated that rising claims costs and related uncertainty of costs are the primary reasons for insurers leaving the Irish market and being unwilling to enter despite increased premiums.

Recommendations

Introduction

- The CCPC acknowledges that considerable effort has been expended across Government in recent years, in particular through the Cost of Insurance Working Group (CIWG) (the work of which recently concluded), to understand the reasons for the current market issues and undertake measures to address them.

- The CCPC's recommendations are intended to complement and support the work of Government so that this market can work better for buyers of public liability insurance over time. As part of this process, the CCPC welcomes the Action Plan for Insurance Reform which outlines the actions to deliver on Programme for Government (PfG) commitments up to 2022. The CCPC supports the inclusion of a 'whole of Government' approach to oversee the implementation of the reform agenda and notes the recently established Sub Group of the Cabinet Committee on Economic Recovery and Investment and the Insurance Industry Development Forum (Forum).

- In tandem with the current reform agenda the CCPC considers it equally important that an overarching long-term strategy and shared vision for the market is put in place to frame policy debate on insurance. This should, in the CCPC's view be supported and facilitated by a co-ordinated approach to reform across the Departments and Agencies with a role in the oversight of the non-life insurance market.

1. Improve Data Availability to Support Supply and Allow for Public/Policymaker Scrutiny

What is the Problem?

- A full dataset on the market is not available for the range of insurance entities that operate in the public liability insurance market. At present most of the data that is published on the market comes from the insurance industry representative body. In addition, access to claims history data to price risk is not readily accessible for all competitors and new entrants may not have the ability to price in a sustainable manner, which could deter new entry.

- These data issues may make it difficult for an insurer to enter a new sector in a sustainable manner. This information gap is also impacting on the State's ability to develop an evidence base to inform policy for this market.

What is the Solution?

Market Data

- The work underway by the CBI to collect employer liability and public liability insurance information for the NCID is particularly relevant as it will mark the start of an incremental process to deliver greater transparency in the market. The CCPC understands that the first NCID report in 2021 will publish aggregated premiums, claims and settlement data; and historical trends at NACE Code 1 level.

- The CCPC recommends that the CBI publish NCID information at insurer level. It could be used by the industry and the State to assess market size, market share and profitability, which over time would provide insight on market trends, to include entry and exit. Also, having details of active insurers would be useful to buyers in the market and would allow for more shopping around and switching.

- In relation to the current NCID report, the CCPC recommends that as soon as practicable that the CBI develop the data collection exercise to provide aggregated information at subsector (that is, below NACE Code 1), in future iterations of the report.

Claims History Information

- The most reliable source of information on the claims history of an insured party in the State is the Insurance Link database, which is controlled by II. The CCPC believes that it is essential that all insurers and their agents have open access to claims history information. This may require action by the State to ensure that arrangements are in place for data access and conversely to ensure that access to this data does not have the effect of being a barrier for new entrants.

- To best facilitate this, it is preferable that this data is managed by an independent body, so the information is accessible to all insurers in a fair, reasonable and non-discriminatory manner.The CCPC notes that the development of legislation by the European Commission to establish an 'Open Finance'[3] framework for financial services in the EU by 2024 could also facilitate the implementation of this recommendation. This legislation will provide for greater use of a wide range of data sources to allow for more accurate pricing in insurance markets, however it is suggested that beneficial progress could be made in the State in the intervening period.

2. Develop Focused Supports for Buyers

What is the Problem?

- The CCPC's market research has confirmed the importance of public liability insurance, which has an almost universal uptake by the respondents, at 97%. The research indicates that buyers are experiencing significant price increases and a lack of availability in some sectors.

- While switching is a feature of the market, where a quarter of respondents switched in the last five years, the levels seem to be relatively low given the premium increases in the market. This may indicate that buyers are not fully engaged in the market, which is also supported by the research as while 82% of respondents felt they understood their insurance either very well or fairly well, they did not always comprehend key distinctions in relation to insurers and brokers, how their broker is paid or who their insurer was.

What is the Solution?

Consumer Information

- The CCPC is of the view that the level of transparency in this market, as well as buyer confidence and understanding as to why premiums change could be improved. The CCPC recommends that the approach used by insurers when implementing and communicating premium increases should be reviewed by the CBI to ensure insurers are adhering to disclosure requirements, assessments of suitability and presentation of information that are in place as part of the conduct supervision regime.

- The existing legislative framework can provide the basis for the CBI to provide further oversight in the medium to long term. In the longer term, facilitating competition in the market through 'InsurTech'[4] entry and the potential development of 'Open Insurance' should be considered by the CBI and Department of Finance.

3 In an insurance context the European Insurance and Occupational Pensions Authority (EIOPA) has defined 'Open Insurance' as 'sharing consumers' insurance services-related data with other insurers, intermediaries or third parties to build applications and services'.

4 InsurTech refers to technology-enabled innovation in insurance that could result in new business models, applications, processes or products.

Buyer Engagement

- The market research suggests that organisations would benefit from being more informed about issues relevant to liability insurance so that they are better equipped to engage more effectively with a broker or insurer. The CCPC welcomes that buyer engagement will be considered by the recently established Forum, where areas that could be considered are as follows:

  - Provide information to organisations on active public liability insurers;
  - Assist organisations in profiling their risk and identify possible options to reduce it, including the full suite of potential supply options in the market (the exact nature of the support here would need to be carefully considered so as not to encroach on the commercial activities of brokers), and;
  - Improve choice for organisations by supporting greater market entry through the development of an international outreach programme to build confidence in the Irish market.

3. Promote the Development of a More Stable and Lower Cost Claims Environment

What is the Problem?

- Rising premiums in the market have been widely attributed to the costs associated with the claims process though sufficient data is not yet available to understand where significant cost increases might have occurred in the claims environment. There is also a general perception that the claims environment in Ireland is unstable where there is uncertainty on the total cost of claims that an insurer could become liable for in the future.

What is the Solution?

- The CCPC acknowledges that considerable work has been undertaken on this area by the CIWG and that the Action Plan for Insurance Reform includes a commitment to enhance and expand the role of PIAB. The CCPC has undertaken its analysis within this context, which has informed the recommendations to achieve a more stable claims environment.

Personal Injury Award Levels

- The CCPC has reviewed the information that is publicly available on award levels since 2015 and they do not seem in themselves to be a significant contributor to cost inflation. It is expected that the Personal Injury Guidelines when they take effect from July 2021 will introduce a greater level of consistency to Court awards. In turn, PIAB will apply the Guidelines in making awards. Finally, as the majority of settlements occur directly between the parties to a claim, it is expected that insurers will also have regard to the Guidelines, though they will not be legally bound to do so.

Claims Costs and Timelines

- The NCID Private Motor Insurance Reports published in 2019 and 2020 demonstrate that different settlement channels have a significant impact on the total cost of claims. The NCID Employer Liability and Public Lability Report in 2021 will provide a similar level of insight into claims costs and settlement channels. NCID Private Motor Insurance Reports highlighted that legal costs account for 63% of the compensation awarded for litigated claims as against 4% through the PIAB settlement channel. PIAB settled cases in 2.9 years as against 4.7 years for litigation.

- As it seems that the PIAB model is the most cost effective and timely settlement route, the CCPC recommends enhancing and expanding the role of PIAB to provide for it to become the main personal injury settlement channel in the State. This, in the CCPC's view, has the potential to deliver significant benefits for insurers, organisations and claimants due to the reduced time and cost of pursuing claims. This could be done by allocating a range of additional functions such as mediation and/or quasi-judicial powers to PIAB.

1 Introduction

1 Contents

1.1 Why Public Liability Insurance is Important

1.1.1 Public liability insurance, the focus of the Study, is a class of non-life insurance which provides essential cover for organisations against potential liability for damage or injury to members of the public arising from their business activities. While public liability insurance is not a compulsory class of insurance in Ireland, it is an integral part of the insurance cover for organisations that interact with the public.

1.1.2 Public liability insurance is a key facilitator of activity in both the commercial and non-commercial sectors of the economy, as it allows organisations to transfer some of their risks to firms that specialise in absorbing risk. In doing so, organisations are able to undertake a broader range of activities and in particular, a higher level of economic activity than they would otherwise have been able to do. In this way, public liability insurance, like other forms of insurance, facilitates higher levels of activity in the economy and community.

1.2 Issues in the Market

1.2.1 Due to the importance of public liability insurance it is essential that the sector operates in as efficient a manner as possible. In Ireland concerns have been raised in recent years about the operation of the wider non-life insurance market, and in particular in relation to private motor insurance and employer liability and public liability insurance. These issues specifically relate to significant premium increases, year-on-year price volatility and, in some cases, difficulty in obtaining cover or non-availability of cover.

1.2.2 These issues existed in the non-life insurance market in the early 2000s and one of CCPC's predecessor organisations, the Competition Authority (TCA), completed a market study *Competition Issues in the Non-Life Insurance Market* in 2005, as part of its Advocacy remit. The TCA's recommendations were wide ranging with an objective to make a better functioning market where buyers are well-informed and can switch easily; new firms can enter the market and, existing suppliers compete vigorously with each other.

1.2.3 The majority of the TCA's recommendations were directed at the then Irish Financial Services Regulatory Authority (which was known as the Financial Regulator)[5] and are outlined in Appendix E. They have in the main either been implemented or overtaken by events. The Government at the time also undertook two significant initiatives, the establishment of the Personal Injuries Assessment Board (PIAB) and the enactment of the Civil Liability and Courts Act 2004, to address what was perceived as a very costly litigation process.

1.2.4 To address price and availability issues more recently, the Minister for Finance established the Cost of Insurance Working Group (CIWG) in 2016, with an objective '*to identify immediate and longer term measures which can address increasing costs, while bearing in mind the need to maintain a stable insurance sector*'[6]. The work of the CIWG focused, among other things, on cost inflation in the claims environment, reducing fraud and increasing transparency.

1.2.5 The CIWG issued two comprehensive reports, *Report on the Cost of Motor Insurance* in 2017 and *Report on the Cost of Employer and Public Liability Insurance* in 2018, which included a series of recommendations for reform[7]. The recommendations identified to address the increasing costs in respect of employer liability and public liability insurance covered the availability of data about costs and claims, the levels

5 The Financial Regulator was the single regulator of all financial institutions from May 2003 to October 2010 when it was reunified with the Central Bank of Ireland (CBI).

6 https://www.gov.ie/en/organisation-information/fbc791-the-cost-of-insurance-working-group/

7 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.

of awards for damages, the litigation framework and the availability of insurance. The Eleventh and Final Report of the CIWG was published in 2020 and many of the recommendations are either in the process of implementation at the time of writing, or have been recently implemented and may not yet have shown a demonstrable effect on conditions in those insurance markets. The recommendations that specifically cover employer liability and public liability are provided in Appendix E. The CIWG did not consider whether cost increases were due to insufficient competition.

1.2.6 Since the CCPC commenced the Study, an additional source of pressure has emerged in the non-life insurance market due to the Covid-19 pandemic. As is the case for other parts of the economy a high level of uncertainty currently exists on its long-term impact on the sector. The potential implications for the issues reviewed in the Study for public liability insurance are also considered in more detail as part of 'Chapter 3 - Market Overview'.

1.2.7 Uncertainty also continues on the long-term implications of the UK European Union Membership Referendum (Brexit) where a majority voted to leave the European Union (EU) in 2016. The transition period will end on 1 January 2021[8] when the UK will leave the European Single Market and European Union Customs Union. At the time of publication negotiations are underway on a new trade deal and if an agreement is not reached the UK and EU will trade on World Trade Organisation (WTO) terms. The outcome of the negotiations is of particular relevance to the Study as UK based insurers are a significant part of the public liability market. The preparations underway to manage this issue, which are subject to the approach to trade that will take effect from 1 January 2021, are provided in 'Chapter 3 - Market Overview'.

1.3 Context and Remit of the Study

1.3.1 On 17 July, 2019, the then Minister for Business, Enterprise and Innovation, Heather Humphreys TD, formally requested that the CCPC carry out a study on the public liability insurance market.

1.3.2 Under Section 10 (4) of the Competition and Consumer Protection Act 2014, the Minister for Enterprise, Trade and Employment may request the CCPC to carry out a study or analysis. The Minister's formal 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*"[9].

1.3.3 In order to undertake the Study in a timely manner, the CCPC completed a scoping exercise and developed a detailed Terms of Reference (TOR) which is set out in Appendix A. In summary, the TOR was informed by the current issues being experienced by buyers in the market in relation to premium increases and availability of cover where it set out to consider whether, and the degree to which, this market works well for buyers of public liability insurance.

1.3.4 While the Study has a competition focus it also takes account of the ongoing reform agenda in respect of the insurance sector, including the *Report on the Cost of Employer and Public Liability Insurance*, the work of the Personal Injury Guidelines Committee of the Judicial Council of Ireland and the current Programme for Government (PfG).

1.3.5 In addition to market studies the CCPC is also responsible for the identification of possible competition law breaches across the economy. It is important to emphasise that market studies are distinct from investigations into breaches of competition law and are intended to analyse issues in markets which do or may affect competition in that market, and that do not fall within the remit of competition law.

8 The UK officially withdrew from the EU on 31 January 2020 and a transition period is in place form 1 February 2020 to 31 December 2020.
9 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.

1.4 Acknowledgements

1.4.1 The research process included a wide ranging consultation process with key stakeholders in the public liability insurance sector, on both the demand and supply sides, as well as with Government stakeholders, representative bodies and public agencies, which included meetings and a public consultation process. The CCPC acknowledges and is grateful for the input that was provided by all stakeholders during the course of the Study, where their details are provided in Appendix C and D.

1.5 Structure of the Study

1.5.1 The remainder of the Study provides the following information:

- **Chapter 2 - Methodology** provides an overview of the approach used to undertake the competition assessment. The information gathered to complete the Study is outlined where the impact of data limitations is explained.
- **Chapter 3 - Market Overview** explains why insurance is bought, the different type products and the size of the public liability market. The operation of the market from a supply and demand perspective is outlined. The regulatory environment is explained and the impact of the insurance cycle, Covid-19 and Brexit are considered.
- **Chapter 4 - Assessment of Competition** diagnoses whether, and the extent to which an issue exists with pricing levels and the availability of cover, where the level of competition in the market is considered. The findings inform an assessment, using three 'Theories of Harm', i.e. Barriers to Entry, Switching Behaviour and Cost Inflation, of whether and the extent to which these areas have been contributing to adverse outcomes in the market. The key findings of the competition assessment are then outlined.
- **Chapter 5 - Recommendations** sets out the conclusions of the CCPC on the key problems in the market where solutions are outlined, with supporting rationale. The recommendations are intended to align with the work of Government on insurance reform so that the public liability market can work better for buyers.
- **Appendices A to F** contain further background detail and cover:

  A. Terms of Reference
  B. Market Research Report
  C. Stakeholder Engagement
  D. Public Consultation Report
  E. Public Liability Insurance Reform Recommendations
  F. List of Acronyms

1.6 Outcomes of the Study

1.6.1 The findings of the Study have informed the recommendations, as outlined in Chapter 5, to support more effective competition in the public liability insurance market, which are as follows:

1. **Improve Data Availability to Support Supply and Allow for Public/Policymaker Scrutiny**
2. **Develop Focused Supports for Buyers**
3. **Promote the Development of a More Stable and Lower Cost Claims Environment**

2 Methodology

2 Contents

2.1 Research Methodology

2.1.1 A competition analysis for a market begins with a definition of the product and geographic dimensions, which is as follows for the public liability insurance market:

- The product characteristics mean that a buyer cannot switch to another product in response to price increases nor can a firm supply a similar type product as a means to improve competition. This is because the cover provided by a public liability insurance policy is not substitutable with other types of insurance (e.g. a public liability risk will not be considered in terms of a motor or employer liability policy). While it is often sold as part of a bundle with other insurance such as employer liability or property insurance, the product market for public liability insurance, from both a demand and supply side, is no wider than that category of insurance.
- The geographic market is at least national in scope, and it is noted that the provision of public liability insurance in Ireland has an international, cross-border dimension. Buyers have long been supplied with insurance by firms based in other states (e.g. the UK). The extent and the type of cross-border supply in this market is further explored in this chapter.

2.1.2 In a well-functioning market, competition leads to the best outcomes for buyers through increased choice, lower prices and better quality products. There are many reasons why markets may not function as they should. Such impediments to well-functioning markets can harm buyers through suboptimal outcomes such as higher prices or negative effects on choice or quality of products or services. The concerns about the public liability insurance market in relation to premium increases and the availability of cover are initially reviewed to assess if and the extent to which an issue exists. This issue diagnosis is provided in 'Chapter 4 - Assessment of Competition'. Broadly, the reasons for outcomes that have an adverse impact on buyers in the market can fall into two categories:

- The behaviour of firms themselves that may impact competition, and;
- Market features that are not directly caused by the behaviour of individual firms, but that may impact on competition.

2.1.3 The reasons that the behaviour of firms or market features may lead to consumer harm are referred to as 'Theories of harm'. Theories of harm are most commonly known in relation to the conduct of firms and competition law, where a theory of harm is used to explain why a type of firm conduct may cause harm to competition such that it should be prohibited[10]. However, not all conduct or functioning of the market that harms competition in some way is a breach of competition law and theories of harm remain an equally applicable framework in such instances. Therefore, a theory of harm approach has been used in the Study to identify potential explanations for suboptimal outcomes for buyers. These then provide a basis for a systematic evaluation of the market where the available information is tested against these theories.

10 In these cases, relevant legal tests are undertaken to ascertain whether an infringement of competition law is likely to have, or would likely take place.

2.1.4 There are a large number of behaviours by firms and features in a market previously identified in economic theory that may have an adverse impact on competition. For the Study, the CCPC has focused on three theories of harm as being most relevant for the public liability insurance market. These potential theories were identified from reviewing international literature and experiences in other markets, previous studies of the Irish market, market data, and information from stakeholders.

2.1.5 These theories of harm form the basis for an in-depth analysis to explain how lack of competition, or other factors, may be driving or contributing to the higher prices and reduced availability in the public liability insurance market. The theories of harm are not mutually exclusive and there may be several drivers of increased prices and reduced availability. The potential theories of harm are summarised below:

Barriers to Entry

2.1.6 Barriers to entry in public liability insurance and/or certain market segments could soften competition and reduce availability. Possible barriers include:

- Access to market data
- Access to capital
- Access to distribution channels
- Access to information
- The insurance cycle
- Switching behaviour (Considered separately as Theory of Harm 2)
- Cost inflation (Considered separately as Theory of Harm 3)

Switching Behaviour

2.1.7 Real or perceived barriers to switching insurer could lead to incumbent insurers having market power over individual buyers with the incentive and ability to raise prices above the competitive level. Such barriers could include:

- Transaction costs, including administration;
- Concerns about losing coverage should a buyer switch to a new entrant who subsequently exits the market;
- Role of brokers in facilitating switching, and;
- Levels of buyer engagement in the market.

Cost Inflation

2.1.8 A clear relationship will exist between cost inflation and higher premiums. While cost inflation may arise for many reasons besides a lack of competition, uncertainty on the level of cost inflation may hinder the effective functioning of competition. For example, uncertainty on inflation in the cost of claims may cause an increase in premiums and some insurers may withdraw from the market leading to fewer competitors and potentially to a greater level of concentration in the market.

2.1.9 Additionally, cost inflation has been a central focus of the public conversation in respect of the public liability insurance market, where the drivers of cost inflation have been looked at in detail by the CIWG, with clear recommendations that aim to put downward pressure on costs. For both of these reasons, it is appropriate for it to be considered in the Study.

2.1.10 In 'Chapter 4 - Assessment of Competition' each of these potential theories of harm are tested against the available data and information, and conclusions are drawn on the extent to which each factor is likely to drive adverse outcomes in the market.

2.2 Information Gathered in the Study

2.2.1 To ensure that the CCPC has adequately captured the relevant competition issues in the public liability insurance market and to facilitate the formation of evidence-based policy recommendations to support the market to work better, a range of information and data was gathered in the following manner:

- Extensive desk-based research was undertaken on international best practice for the regulation of insurance markets;
- All known publicly available data on the insurance sector in Ireland was examined;
- Ipsos MRBI was commissioned to carry out market research[11] on the views and behaviours of organisations across the economy who purchased public liability insurance;
- A data request and questionnaire was issued to Insurance Ireland (II) and Brokers Ireland (BI);
- In-depth interviews were completed with industry stakeholders, including representative groups and individual insurers and brokers;
- A public consultation process was conducted on key competition issues covering barriers to entry and exit, brokers and switching, the insurance cycle, cost inflation and digitalisation, and;
- Frontier Economics (Frontier) was commissioned to support the stakeholder engagement process and undertake a competition assessment based on the available data and information.

2.3 Market Data

Data Used to Conduct the Study

2.3.1 Non-life insurance is provided by three broad categories of insurer in the Irish market as follows:

- An insurer with a head office in Ireland can provide insurance if they are authorised by the Central Bank of Ireland (CBI);
- An insurer with a head office in another European Economic Area (EEA) Member State can provide insurance on a Freedom of Establishment (FOE) basis if they have a branch in Ireland, where the authorisation is provided through their EEA Member State, and;
- An insurer can write business from their 'home' state on a Freedom of Services (FOS) basis, where the authorisation is provided through their EEA Member State. FOS providers may in turn use intermediaries based in Ireland to distribute their insurance products in the market.

11 Completed by Ipsos MRBI on behalf of the CCPC.

2.3.2 As part of the competition analysis, the CCPC, in keeping with previous market studies, would ideally have compiled a dataset[12] of all the insurers that are active in this market. As this information is not available, a more limited but most likely representative dataset, has been used, where these data issues are explained further in the next section of this chapter. The dataset is based on the member insurers of Insurance Ireland (II), the representative body for insurance companies in Ireland, where the data is either publicly available or has been provided directly to the CCPC[13], and covers a ten-year period from 2008 to 2018.

2.3.3 The CCPC's analysis indicates that II members accounted for circa. 70% of the public liability market in 2015[14], The remaining 30% comprises FOS providers at circa. 25% and other FOE providers, who are not members of II, at circa. 5%. This estimate was completed for 2015 as it was the last year that individual insurer data, as provided in the Insurance Statistics (commonly known as the 'Blue Book'), was published by the CBI. The Blue Book contained insurance statistics based on data provided to the CBI by insurers under the prudential regulatory regime known as 'Solvency I'. The publication provided a detailed overview of data on premiums, claims costs, investment returns and expenses from insurers with head offices or branches (i.e. FOE) in Ireland. The data was provided at general liability level which covers employer liability and public liability insurance.

2.3.4 The CBI stated there were a number of reasons for discontinuing the Blue Book. These reasons included that the introduction of a new reporting regime under the 'Solvency II' Directive meant that much of the underlying data previously recorded in the Blue Book is no longer directly comparable with the new data reported; that there is an increased level of confidentiality attaching to the regulatory returns made under the Directive, and; that reduced reporting requirements mean that insurers with cross-border operations are not obliged to produce regulatory reports on an individual branch basis.

2.3.5 The estimated market share of II members is based on premium data for 'general liability' insurance, which includes both employer liability and public liability insurance, as publicly available information is not broken down to the level of individual insurance lines. This has required that the CCPC estimate the proportion of general liability insurance that public liability insurance accounts for, which is based on data from the II Factfile[15].

Limitations of the Available Data

2.3.6 The absence of granular data since 2015, due to the discontinuation of the Blue Book, has meant that the CCPC cannot fully assess at insurer level what has happened in the market since then. In addition, the Blue Book provided a partial view of the market, as it did not include the insurers who operate in Ireland on a FOS basis.

12 This data should include turnover, claims and costs data.
13 The CCPC issued a Notice to II to provide information pursuant to section 18(1)(d) of the Competition and Consumer Protection Act 2014 for member company information from 2008 to 2018.
14 This estimate is based on the information provided in CIWG *Report on the Cost of Employer and Public Liability Insurance,* where Tables 4.1 and 4.2 provide market share based on gross written premium which is in turn based on the Blue Book data published by the CBI up to 2015.
15 II publish the 'Factfile' which contains information on the business activities of its member insurers. The most recent version provides data up to 2017.

2.3.7 The approach used by the CCPC in the Study reflects that there is a lack of suitable publicly available data on all of the insurers that operate in this market. For instance, the II Factfile is the only information published on this market and it has a number of limitations. Firstly, it is a partial view of the market as it only covers the insurers who are members of II, with either a head office or a branch office in the State. Secondly, the timeliness of the information is limited; as an example, at the time of writing that data is only available up to 2017.

2.3.8 As previously noted, the II Factfile does not include foreign-based insurers that provide public liability insurance on a FOS basis. While this foreign-based capacity could represent up to 25% of the activity in the market, the publicly available information is limited to confirmation that they are authorised to write general liability insurance in Ireland (which includes both employer liability and public liability). The fact of authorisation does not mean that such insurers intend to, or do, write business in Ireland[16].

2.3.9 Compiling a full dataset would require that the CCPC contacted a very large number of insurers based in all EEA countries that are currently authorised to write general liability insurance in Ireland. In the context of the Study, it was considered that the time required to undertake this exercise would be prohibitive, with no guarantee that the CCPC would establish a full dataset as it would also be a matter for each insurer to decide whether they wanted to provide the requested information.

2.3.10 During the planning phase of the Study, the CCPC was aware that the CBI was considering the feasibility of collecting similar type data from these same FOS insurers for public liability as part of the National Claims Information Database (NCID) process, where unlike the CCPC in respect of insurers based outside of the State, they have the legal power to request the information. The CCPC understands that the CBI has commenced this data collection exercise and a report will be published in 2021, which will provide greater transparency on the claims environment for employer and public liability insurance.

Data Issues in the Market

2.3.11 The CCPC's experience of lack of availability of data is not a new occurrence for studies of the insurance sector. It was most recently highlighted in the *CIWG: Report on the Cost of Employer and Public Liability Insurance* and forms the basis for the actions agreed for 'Objective 1: Increasing Transparency'. The NCID report is a related action to address this and is of particular relevance to the Study, which is considered further in 'Chapter 5 - Recommendations'.

2.3.12 The other actions in the CIWG transparency objective are set out in Appendix E where the development of information across of a range of areas was highlighted. While the work of the CIWG has now concluded, the CCPC welcomes that improving data transparency was a priority, as more information will deliver a better understanding of the market and support evidence-based policy making.

16 As of October 2020 there were a total of 597 insurance entities authorised to write general liability insurance in Ireland on a FOS basis. This list includes multiple branches of the same company and some insurers are classified as 'run off' meaning they are no longer accepting new business and are running down the book of business.

2.3.13 The TCA Study in 2005 highlighted the lack of timely and complete market data and included recommendations to address them. The recommendations relevant to public liability included that the Blue Book data should be published earlier in the year (which was accepted, although the CBI discontinued the Blue Book in 2015); the establishment of a system for the collection and publication of "raw" policy data on market-wide mass risk policies which should be reported by relevant industry segments (which was overtaken by other initiatives), and; the collection and publication of retrospective annual data on retained reserves and the ultimate costs of accidents paid out in the relevant year (which was not progressed as it was considered too expensive).

2.4 Market Research

2.4.1 The CCPC's methodology includes an analysis of the experiences of buyers in this market which was undertaken to offer additional insight on the type of outcomes being delivered in this market, and which has informed 'Chapter 5 - Recommendations'. Feedback was obtained from a nationally representative sample of organisations covering retail, services, manufacturing, sports groups and community groups[17]. In the Study, reference to sectors of the economy should generally be understood to mean a reference to 'retail', 'services' or 'manufacturing'[18]. The market research also took account of the breakdown of business by size across the economy, when the multinational sector is excluded, where 97% of the respondents are small and medium-sized enterprises (SMEs) and micro enterprises (MSMEs)[19].

2.4.2 In order to obtain robust findings, the CCPC used a sample size of 508 that was double what was statistically required to obtain representative feedback from all organisations in the State, where the findings have a 3-4% margin of error. The findings are provided in the Study at a sectoral level only where the respondent sample size allows for definitive conclusions to be drawn.

2.4.3 As this is the first time such a body of research has been undertaken in the State, the survey covered a wide range of areas including the level of understanding of public liability cover, switching practices, working with brokers and overall engagement in the market. The survey also collated information on premiums and claims to support the market data as part of the assessment of these areas.

2.4.4 The CCPC believes that the analysis completed for the Study could be built on to develop a greater understanding of the policyholders issues as currently presented, which could inform the implementation of Recommendation 2 as outlined in 'Chapter 5 - Recommendations'.

17 100 places were reserved for sports and community groups so that their experience of the public liability insurance market are captured in the market research.

18 These sectors do not compare to the NACE Code sectors as employed by the Central Statistics Office (CSO). In addition, 7% of respondents were categorised in the market research as 'Other' reflecting the significant variation in activities captured outside of the other three sector categories.

19 SMEs have staffing levels from 10 up 50 and MSMEs have staffing levels of 1 to 9.

2.5 Conclusion

2.5.1 The competition assessment undertaken for the Study is based on the data that the CCPC could obtain in a timely manner and any other relevant publicly available information. As such, it is the most comprehensive view of the market that is currently feasible, which the CCPC acknowledges is a partial view of the insurers that operate in the market. The data limitations mean that the CCPC can indicate rather than be definitive on the underlying causes of any issues identified in the Study.

2.5.2 Notwithstanding these difficulties, the CCPC has obtained sufficient data and information to undertake an analysis that supports the development of a comprehensive range of initiatives which are provided in 'Chapter 5 - Recommendations'. These include actions by the State to develop publicly available data to deliver greater market transparency and support evidence based policy development.

3 Market Overview

3 Contents

3.1 Why Insurance is Bought

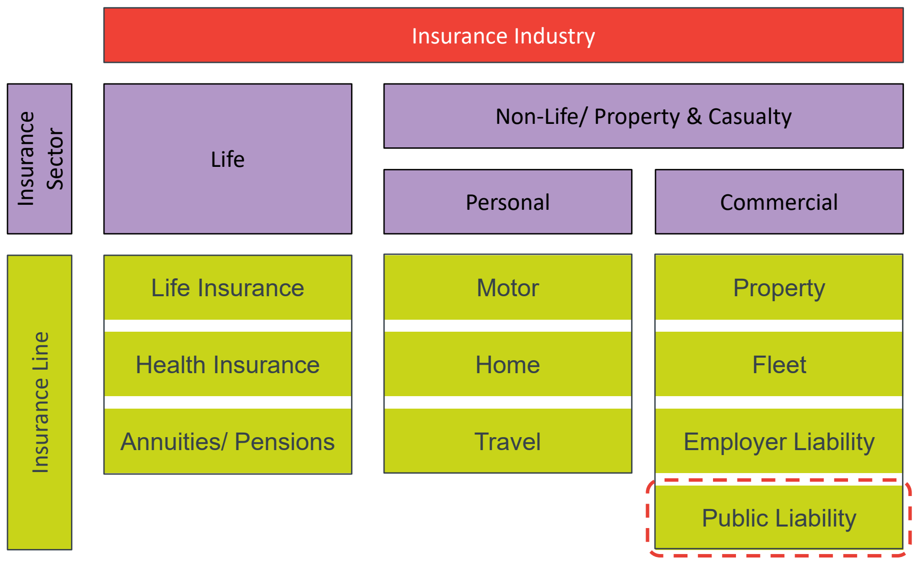
3.1.1 In the main, organisations and individuals prefer to minimise risk and uncertainty in a manner that can be broken down into three parts: reduction, retention and transfer. Risk reduction involves taking steps to identify and minimise the risks that arise from carrying out certain activities (where health and safety measures are a straightforward example). Risk retention, in an insurance context, can occur when an organisation self-insures by creating a fund to meet liabilities either in-house or through its own "captive" insurer[20]. Risk transfer occurs when an organisation decides to shift some of their risks onto others and purchasing insurance is the means of doing this.

3.1.2 The extent to which an organisation will require insurance will depend on their ability to reduce or retain risk but it is usually the case that insurance is an integral part of most organisations' overall risk management strategy. Insurance essentially allows an organisation to receive financial protection against losses from an insurer who pools their client's risks to make payments more affordable for the insured party. The insured organisation is protected from identifiable risks for a fee, with the fee being dependent upon the frequency and the severity of the event that gives rise to the risk occurring.

3.2 The Different Types of Insurance

3.2.1 Insured events are generally grouped into two categories known as life and non-life insurance. Each of these categories contain a range of insurance lines where the main areas are detailed below and presented in

Figure 1. Insurance Types



Source: Frontier

3.2.2 The '**life**' sector consists primarily of the following insurance lines:

- Life insurance: Pays out if death occurs;
- Health insurance: Covers the cost of medical care if needed, and;
- Annuities/ pensions: Pays out every year until death occurs.

20 A captive insurer is generally defined as an insurance company that is wholly owned and controlled by its insureds. Its primary purpose is to insure the risks of its owners, and its insureds benefit from the captive insurer's underwriting profits

3.2.3 The '**non-life**' or '**property & casualty sector**' consists primarily of the following personal and commercial insurance lines[21].

- Personal insurance lines:
  - **Motor insurance**: Covers financial loss in the event of a road accident;
  - **Home insurance**: Covers against damage to homes which includes natural disasters, and;
  - **Travel insurance**: Covers unforeseen losses incurred when travelling.
- Commercial insurance lines:
  - **Property insurance:** Covers loss or damage of business property, including buildings and contents, business interruption insurance can be added to cover loss of earnings;
  - **Fleet insurance**: Covers liability for third party damages caused by a business's vehicles;
  - **Employer liability insurance**: Covers legal costs and compensation paid to employees for injuries that occurred during the course of their work, and;
  - **Public liability insurance:** Covers legal costs and compensation paid to a member of the public for damages the business is liable for, such as injuries or damaged property.

3.2.4 For the non-life sector, insurance cover for personal insurance lines is sold separately to customers whereas the commercial insurance lines can also be sold as a bundled product.

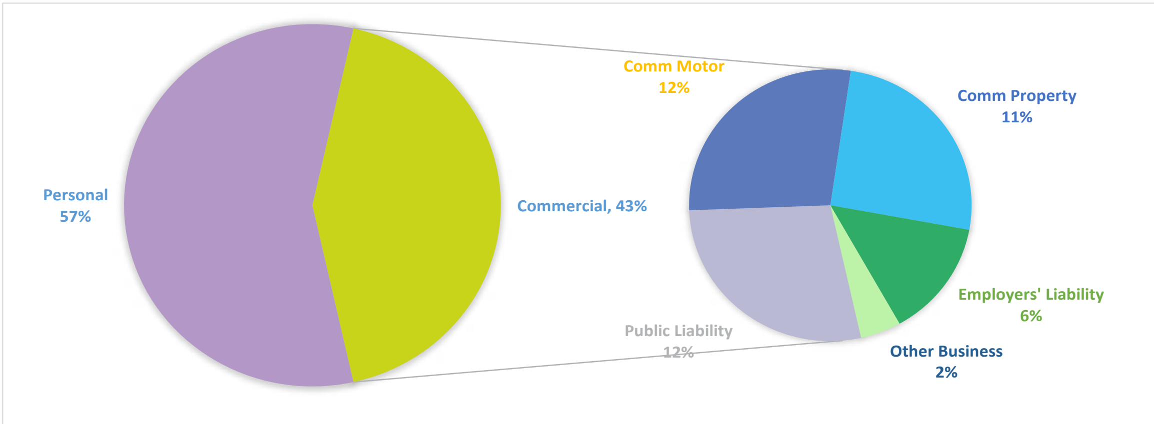
3.2.5 In a similar way to buyers of insurance, insurers do not retain all of their risk, but also transfer some of the risk they cover onto other insurance companies in a process known as reinsurance. The cost of that reinsurance is then factored into the cost of the premium for the policy it relates to. Reinsurance is an international market where very large risk exposures are spread so as to exploit the benefits of the law of large numbers, which is considered further in this chapter.

21 Further types of commercial insurance cover more niche risks such as professional indemnity and cyber insurance.

3.3 The Size of the Market

3.3.1 Public liability is only one type of non-life insurance offered in the market. The figure below, which is based on gross written premium[22] information from the II 2017 Factfile, shows that personal lines account for about 57% of the market, and commercial lines about 43%. Public liability insurance accounts for about 12% of premiums overall, or about a quarter of commercial gross written premiums.

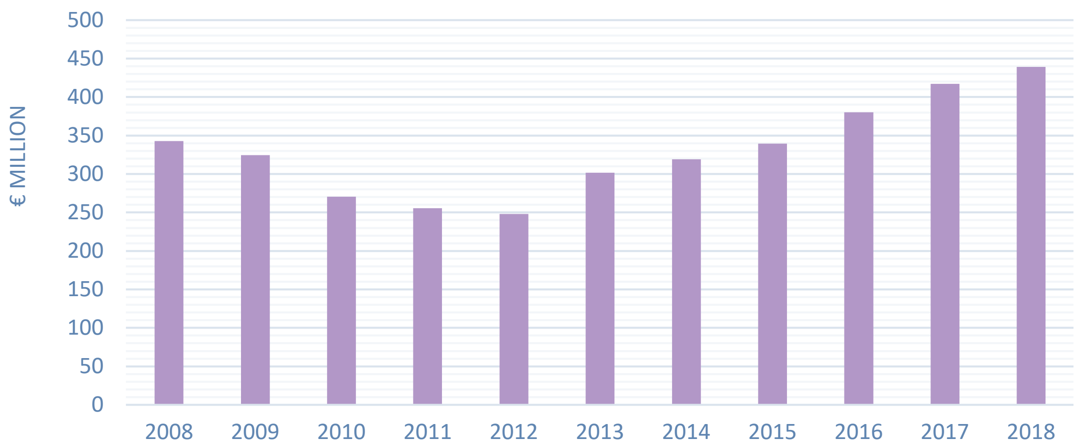
Figure 2: Proportion of Insurance Premiums within Total Non-Life Premiums Written



Source: II Factfile 2017
Note: The information is based on II member data and is a partial view of the market

3.3.2 3.2.2 In terms of market value Figure 3 shows the value of gross premiums written by II members for public liability was €439 million in 2018, which has increased year on year since 2012. 2018 was the most recent year for which data was available. Data is not available to understand the extent to which the increase in the size of the market is due to an increase in the number of policies being written or due to premium increases on existing policies.

Figure 3: Public Liability Insurance Gross Premiums Written



Source: Data provided by II to the CCPC
Note: The data provided by II to the CCPC is a partial view of the market

22 Gross premium is the total amount of premium income of an insurer in the reporting period before deductions for reinsurance.

3.3.3 The CCPC market research found that 97% of respondent organisations hold public liability insurance which confirms that there is widespread demand for this type of insurance cover. However, data is not currently available to understand the breakdown, or trends, for premiums written at a sectoral level (e.g. retail, manufacturing, etc.). Addressing this lack of market data, which is a key requirement to understand the market and inform policy development, is considered further in 'Chapter 5 - Recommendations'.

3.4 How the Market Works for the Key Participants

3.4.1 The public liability insurance model comprises three key participants which are the policyholder; the insurer, and; the intermediary. A brief overview of each of them is now provided.

The Policyholder

3.4.2 The policyholder can be an individual or organisation that buys an insurance policy and creates the demand in the market.

Who buys insurance?

3.4.3 Buyers of insurance, or policyholders, can be private individuals, firms of any size, public bodies or not-for-profit organisations (including charities and sports and community groups). Public liability insurance insures the policyholder from the financial risks associated with a member of the public incurring an injury within the organisation's premises or due to the activity of the organisation and making a claim against the organisation. For example, public liability insurance can protect a swimming pool operator from claims costs arising from a customer slipping and falling on the premises. An organisation can incur a legal liability to the injured party if they are at fault for the injury suffered. Public liability insurance is intended to provide cover for any such liability that arises.

3.4.4 While public liability insurance is not a legal requirement it is usually seen as a necessary part of doing business. Consistent with this, 97% of organisations surveyed by the CCPC have public liability insurance: 100% of sports and community groups and manufacturers; 97% of services firms; and 93% of retailers[23].

What value does the policyholder get from insurance?

3.4.5 A policyholder chooses to buy insurance if they would rather pay the known level of the upfront premium than incur the risk of paying an unknown larger cost should a member of the public incur an injury where the organisation is liable. This means that they are generally assumed to be risk averse where the policy reduces their uncertainty in relation to the cost of potential claims from an injured party.

23 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: Has your organisation ever held a commercial insurance policy that includes coverage for public liability insurance? Base: All respondents to survey (508 respondents).

3.4.6 The level of premium a policyholder is willing to pay is fundamentally dependent on:

- The probability of the loss occurring;
- The cost that would be incurred if the loss happens, and;
- How risk averse the policyholder is[24].

3.4.7 Public liability insurance has also become a practical requirement for most firms and public facing organisations to operate[25]. For example, the ownership of public liability insurance is a condition of many tenders for contracts. This creates a fourth factor that influences the amount of premium a policyholder is willing to pay:

- How important the ownership of the policy is for other reasons, such as from being a requirement to undertake certain business.

3.4.8 The importance of public liability insurance means that organisations may be willing to pay a higher premium than they otherwise would if the type of insurance was not a practical requirement. As a result, the demand for public liability insurance as a product in itself can be relatively price insensitive overall[26]. However, this can be counterbalanced within the wider market as the policies from different insurers can be regarded as very similar by buyers[27] so that the demand for public liability insurance from an individual insurer can be relatively price sensitive.

3.4.9 Therefore, in a competitive market, if a single insurer raises the price of its public liability premiums, its demand may drop substantially as buyers are able to switch to other public liability insurance providers and behave in a price sensitive way. However, the effect of the hard part of the insurance cycle could mean that all insurers raise their public liability premiums at the same time and, in addition, some insurers may exit the market. This results in policyholders being left with very limited options for other substitutes and therefore must buy the public liability insurance at a higher price. This is explored in the context of the Irish market in 'Chapter 4 - Assessment of Competition'.

The Insurer

3.4.10 The insurer is a business that provides insurance policies and creates the supply in the market.

Who can sell insurance?

3.4.11 In order to sell insurance an insurer requires appropriate authorisation from the relevant financial regulator in its 'home' state. That process supports the operation of the Single Market whereby an insurer in one Member State can provide insurance across the EU. As previously explained in 'Chapter 2 - Methodology' an insurer with a head office in Ireland obtains authorisation from the CBI, which is valid for other EU Member States. Insurers authorised by the competent insurance authority in their home state within the EEA can also provide insurance in Ireland. This can be undertaken either on a FOE basis, where an insurer establishes a branch in Ireland, or on a FOS basis.

24 Dionne & Harrington (2017) *Insurance & Insurance Markets*.
25 Private individuals would not tend to buy public liability insurance.
26 Feldblum (2001) *Underwriting Cycle and Business Strategy*.
27 Feldblum (2001) *Underwriting Cycle and Business Strategy*.

3.4.12 The authorisation to provide public liability insurance is provided under the general liability business class. The CBI maintains registers of all non-life insurance undertakings authorised to write business in, or from, Ireland on a head office, branch or FOS[28] basis. The register dated 5 June 2020, highlights that the majority of these insurers are registered to provide public liability insurance[29], where the authorisation is usually in addition to other non-life business classes[30]. There is not a direct co-relation between being authorised to and actually providing public liability insurance in Ireland. For instance, while 92 insurers with a head office or office in Ireland are authorised compared to 597 insurers on a FOS basis, their respective share of the public liability insurance market by value in 2015 was 76% and 24% respectively. A broadly similar breakdown for more recent years was suggested as part of the stakeholder feedback.

3.4.13 In relation to actual activity in the market, industry stakeholders stated that small risks tend to be insured by Irish domiciled insurers (that have their head office or a branch in Ireland) and larger or more complex risks are commonly insured by both Irish domiciled and international insurers, particularly those from the Lloyds London Market[31]. This has been a consistent feature of the Irish market, as the same was found by the TCA in its 2005 market study of the non-life insurance market[32].

How does an insurer make money?

3.4.14 An insurer receives upfront premiums from policyholders in exchange for the commitment to pay out on claims for damages should this occur. At the individual policy level, an insurer typically makes a realised profit from the policies that it doesn't have to pay claims for and a realised loss from the policies that it does have to play claims for. From a business perspective, insurers focus on the profit across the portfolio of policies, rather than the profitability of each individual policy.

3.4.15 An insurer is able to pool together many individual policy risks and reduce the overall level of risk by the 'law of large numbers'[33]. The more policies an insurer writes, the more certain the average claims per policy becomes[34]. Insurers can expect to earn a profit if the premium they charge for each policy is higher than the risk-adjusted expected net present value of future claims and any other relevant expenses for that policy[35].

28 It is possible for an insurance entity authorised in one EU/EEA state to conduct business in another EU/EEA state. This business can be conducted in two ways; 1. The undertaking; establishes a branch operation and conducts business on a FOE basis. 2. The undertaking writes business from their home state to the host state on a FOS basis.

29 78% of insurers with a head office in Ireland (i.e. 72 entities), 65% of FOE insurers (i.e. 20 entities) and 71% of FOS insurers (i.e. 597 entities) are authorised to provide public liability insurance. This list also includes multiple branches of the same company and some insurers are no longer accepting new business and are running down the book of business.

30 There are eighteen business classes provided in the register.

31 Lloyds is a specialised insurance and reinsurance market in London, where the majority of the business is placed by the insurers who operate from this market through brokers who have been approved by Lloyds. The insurance is typically provided on a FOS basis.

32 CCPC (2005) *Competition Issues in the Non-Life Insurance Market: Volume I.*

33 As a sample size grows, the sample's mean tends to become closer to the population mean.

34 Assuming the probabilities of paying out claims is not perfectly correlated across all policies.

35 Myers & Cohn (1986) *A Discounted Cash Flow Approach to Property-liability Insurance Rate Regulation.*

3.4.16 An insurer also make money from holding premiums before the cost of claims come out. These premiums are invested and generate returns which form an important source of income for insurers and allow them to offer lower premiums in a competitive market. If investment income falls, this can drive up premiums and may cause the market to harden.

3.4.17 As previously detailed, an insurer may themselves purchase insurance, known as reinsurance, in order to transfer portions of their risk to other parties (reinsurers) and protect themselves from large claims events. An insurer that purchases reinsurance will pay a premium to the reinsurer, who in exchange will pay a portion of the claims incurred by the insurer. Insurers are required to have sufficient capital to ensure that they are able to pay potential future claims related to the policies they have written. By reducing the responsibility for the potential future claims, an insurer reduces the amount of capital that it needs to have to comply with regulations. In this way, purchasing reinsurance expands the capacity of an insurer to take on risk and underwrite more, or larger, insurance policies[36].

3.4.18 The lowest premium an insurer would be willing to charge (i.e. the 'break-even premium') is equal to the risk-adjusted expected net present value of future claims and any other relevant expenses. The level of the break-even premium is affected by the 'fundamental' determinants of price[37]:

- Predicted claim costs;
- Underwriting expenses;
- Tax and agency costs of holding capital[38];
- Risk-free interest rates[39], and;
- Systematic risk of claims costs[40].

What does an insurer need to price accurately?

3.4.19 In order to price risk and calculate break-even premiums accurately an insurer will need the following information:

- Clear definitions of the events causing the insured loss;
- Sufficient information to estimate the frequency and severity of accidents;
- All of the buyer's relevant information about their risk propensities and claims history;
- The frequency, amounts and volatility of compensation awards, and;
- Legal and associated claims costs.

36 Underwriting services are provided by financial institutions, including insurance companies. Underwriting is the process by which, based on a risk assessment, the insurer guarantees payment in case of damage or financial loss and accepts the liability arising from this guarantee.

37 Dionne & Harrington (2017) *Insurance & Insurance Markets*.

38 When predicted claims costs, underwriting expenses, and tax and agency costs of holding capital increase, insurers must raise premiums in order to cover their higher costs.

39 When risk-free interest rates increase, insurers earn a higher return from the capital they hold against future claims. This reduces the break-even premium as the insurers' discount rate increases and the net present value of future claims decreases.

40 When future claims costs become more systematically risky, the risk-adjusted value of future claims increases as insurers have to be prudent and hold more capital to issue the same level of coverage. This increases the break-even premium.

3.4.20 While the Civil Liability and Courts Act 2004 (as amended) places an obligation on the injured party to notify a claim promptly, public liability insurance can be harder to price than other lines of insurance due to the "long tail" of claims – claims can be filed many years after the time they originated[41]. For example, a member of the public who slipped and fell in the policyholder's building may not file a claim until some time after the fall, as the full extent of any injury may not be evident when the accident occurred. This means there can be a long delay between the time when an insurance provider underwrites a policy and the time when it knows the final level of claims from the policy, which opens up uncertainty and makes it hard to accurately price.

3.4.21 The impact of this uncertainty is discussed further in the Theory of Harm 1: Barriers to Entry section in 'Chapter 4 - Assessment of Competition'.

The Intermediary

3.4.22 An intermediary is an agent, such as a broker, who assists a policyholder to find the insurance cover that is most suited to their requirements.

The role of the broker and who use them?

3.4.23 An organisation can acquire insurance either through an intermediary such as a broker or directly with an insurer. A broker will search across insurers to determine coverage options, explaining these options to buyers, and arranging insurance cover once an option has been selected[42]. The Insurance Act 2000 defines 'insurance intermediaries' (i.e. brokers) as "any person, who on a professional basis (a) assists or offers to assist third parties in the placing or taking-up of insurance, or (b) gives or offers to give advice regarding insurance policies to third parties"[43].

3.4.24 Insurance intermediaries can generally be classified as either retail brokers or wholesale brokers. Retail brokers engage directly with the buyers of insurance but arrange for the insurance cover in turn through the marketplace, including directly from insurers or through specialist brokers that act as intermediaries with insurers. In general there are two types of specialist broker: managing general agents (MGAs) and wholesale brokers. Wholesale brokers will engage with the retail broker and insurer, but unlike MGAs do not have binding authority in regard to insurance contracts from the insurer. Wholesale brokers are generally understood to have a greater degree of specialisation or access to specialist insurers, and are often used to place cover for harder to cover risks.

3.4.25 The services that a retail broker provides to help their clients acquire insurance will vary by client and by insurance line. The public liability risks faced by a policyholder can vary significantly and detailed data relating to the risks specific to the client is often required by insurers[44]. Due to public liability insurance being less straightforward than for instance motor insurance, and where it is often bought as part of a commercial package of products, a broker can provide support in a range of areas as follows:

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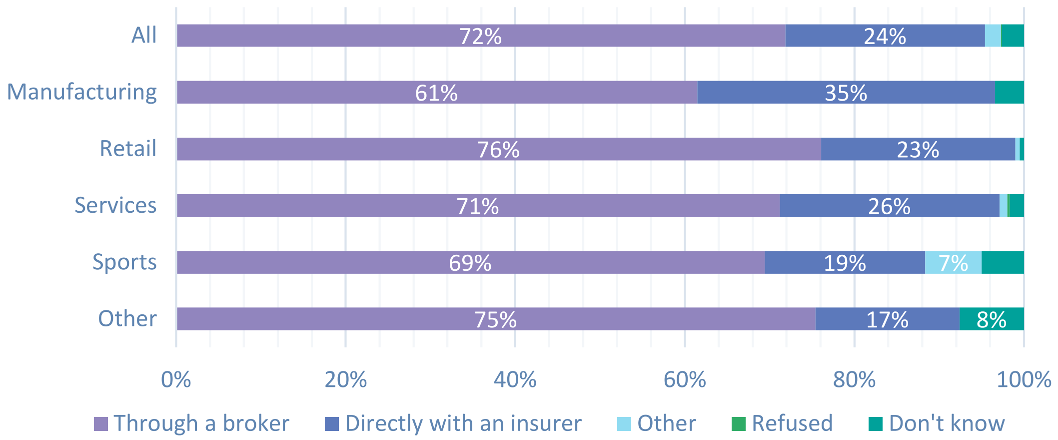
41 CCPC (2005) *Competition Issues in the Non-Life Insurance Market: Volume I.*
42 CCPC (2005) *Competition Issues in the Non-Life Insurance Market: Volume I.*
43 http://www.irishstatutebook.ie/eli/2000/act/42/enacted/en/html
44 CCPC (2005) *Competition Issues in the Non-Life Insurance Market: Volume I.*

- Collect data to create risk profiles that can be presented to insurers;
- Help identify the client's commercial insurance requirements;
- Advise on risk management;
- Approach and negotiate with a range of insurers;
- Assist the client to assess the best value plan, and;
- Assist with filing claims.

3.4.26 The importance of brokers in the market is highlighted in the market research where 72% of surveyed organisations stated they acquired public liability insurance through a broker, compared to just 24% who went directly to their insurer[45]. Figure 4 provides a breakdown by sector where the organisations in retail were most likely to go through a broker (76%) and those in manufacturing had the highest proportion insuring directly (35%).

Figure 4: Proportion of Organisations with Public Liability Insurance that use a Broker or went directly with an Insurer



Source: Ipsos MRBI (2020) CCPC Public Liability Insurance Research
Sample size: 491 respondents

How much do brokers charge?

3.4.27 Brokers are either paid flat fees for their services or through commission, as a percentage of the premium secured. For surveyed organisations that used a broker, 36% paid their broker a flat fee; 28% paid a percentage of premium based commission; and 33% did not know the structure of their payments to their broker[46]. 'Chapter 4 - Assessment of Competition' also presents further data on the level of fees and commissions charged.

45 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "Does your organisation arrange public liability insurance through a broker or directly with an insurer?" (491 respondents).

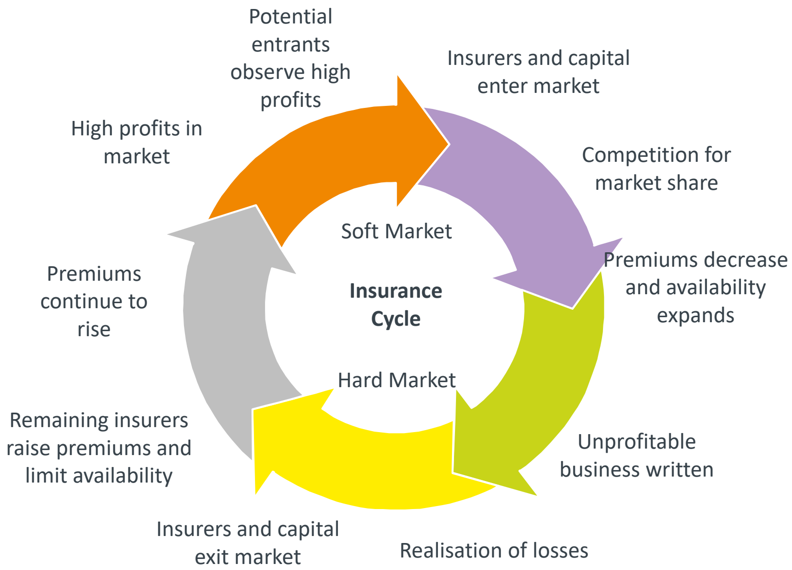
46 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "Thinking of your organisation's broker is paid for their services, which of the following best applies?" Base: All those who use a broker (348 respondents). A final 3% provided an 'Other' response.

3.4.28 The CBI introduced stronger consumer protection measures in September 2019 to support greater transparency for the commission arrangements between brokers and product providers, which includes public liability insurance. The amendments to the CBI Consumer Protection Code 2012 mean that certain criteria apply for a commission to be acceptable. Commission linked to targets that do not consider a buyer's best interests is deemed a conflict of interest and is prohibited. Rules also apply to the use of the term 'independent'[47].

3.5 The Insurance Cycle

3.5.1 All economies and industries can experience cycles of growth and retraction. When this occurs in the insurance sector, it is known as the 'insurance cycle' or 'underwriting cycle'. During an insurance cycle, a market will move between a "hard" market where insurers are unprofitable, buyers face premium increases and there is exit from the market, and a "soft" market where profitability has returned to the market, premium levels reduce and insurers enter or return to the market. The transition between hard and soft markets can be gradual and the dynamics of the process are illustrated below in Figure 5.

Figure 5: The Dynamics of an Insurance Market Cycle



Source: Frontier

3.5.2 Research on the insurance cycle has been conducted in a number of countries[48]. Three prominent schools of thought on the causes of an insurance cycle are as follows:

- The unexpected depletion of an insurers capital reserves;
- Differences in insurers' expectations of future claims or in their willingness to incur solvency risk,
- The type of incentive structure for underwriting policies.

3.5.3 The insurance cycle is considered further as part of 'Chapter 4 - Assessment of Competition' on the extent to which the characteristics of the Irish public liability market could result in a longer "hard cycle" than in other countries, which may have the effect of being a barrier to entry. This analysis also informs 'Chapter 5 - Recommendations', on the type of measures that could assist in mitigating the hard part of the cycle.

47 https://www.centralbank.ie/news-media/press-releases/press-release-intermediary-commissions-25-sept-2019
48 The CCPC is not aware of research to understand and explain insurance cycles using insurance market data in Ireland.

3.6 Market Regulation

Requirement for Regulation

3.6.1 In general, suppliers competing against each other for buyers in a market can be expected to drive down prices and improve quality and innovation. When market forces are not working in the interests of buyers and it is concluded that “market failure” has occurred, some form of regulatory intervention is usually undertaken in the marketplace. A range of remedies can be considered and tailored to address the particular market concerns, which include voluntary codes of conduct, self-regulation, use of contracts between parties and finally, regulation by the State.

3.6.2 Statutory regulation is in place for insurance markets in most countries due to the importance that is placed on having solvent and sound financial institutions to ensure that customers are protected. Equally, insurance is integral to the effective functioning and development of the economy and society in general. Sector specific rules and laws are applied to this end with the intention of ensuring financial stability.

Overview of Financial Regulation

3.6.3 Insurance legislation in Ireland is largely derived from EU directives. Financial sector regulation is situated within the European System of Financial Supervision and managed by a range of EU organisations[49] at a macro-prudential (stability of the system) and micro-prudential (conduct regulation of individual entities) level. National competent authorities sit underneath these agencies and in Ireland the national competent authority for both macro and micro prudential regulation and supervision is the CBI[50].

3.6.4 The prudential rules contained in the ‘Solvency II’ Directive[51] provide for the harmonised supervision across the EU of insurance and reinsurance entities based on a risk based approach to their capitalisation, governance and risk management requirements[52]. Solvency II requirements are intended to reduce the likelihood of an insurer failing and provide policyholders with increased protection. As such, prudential regulation also includes aspects of consumer protection, as financial stability by its nature protects policyholders.

3.6.5 At EU level the basis for conduct supervision is provided for under the Insurance Distribution Directive (IDD). The European Insurance and Occupational Pensions Authority (EIOPA)[53] has been developing its capacity in relation to conduct of business supervision[54] and, in addition, provided guidance in 2019 for national competent authorities in relation to assessing conduct risk through the product cycle[55].

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49 Macro-prudential supervision is the responsibility of the European Systemic Risk Board (ESRB). Micro-prudential supervision is organised across three supervisory agencies; the European Supervisory Authorities (ESAs): the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities Markets Authority (ESMA).

50 https://www.centralbank.ie/consumer-hub/explainers/how-does-the-central-bank-supervise-financial-services-providers

51 Transposed as the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) and entered into force on 1 January 2016.

52 It should be noted that the Solvency II framework was due to be reviewed by the European Commission by the end of 2020 - to be based on advice from EIOPA - however Covid-19 has resulted in a delay in this process.

53 EIOPA is an independent advisory body to the European Commission, the European Parliament and the Council of the European Union. It is one of the EU agencies carrying out specific legal, technical or scientific tasks and giving evidence-based advice. In this way, it helps shape informed policies and laws at EU and national level.

54 https://www.eiopa.europa.eu/sites/default/files/publications/pdfs/eiopa-16-015_eiopa_strategy_on_conduct_supervision_framework.pdf

55 https://www.eiopa.europa.eu/content/eiopa-sets-out-framework-identifying-conduct-risks-0_en

3.6.6 At national level, the Consumer Protection Code and Non-Life Insurance Regulations[56] are the primary basis for conduct supervision. In addition, the Consumer Insurance Contracts Act 2019 provides for reform of the relationship between the insurer and the consumer which includes what is disclosed in advance of forming a contract and the provision of information to the consumer at the point of renewal[57]. The CBI can monitor compliance with conduct requirements in a number of ways including inspections, thematic reviews, research, or mystery shopping and this may also include publishing relevant data and/or reports on the sector. The Financial Services and Pensions Ombudsman (FSPO) also has a role in the resolution of complaints against providers of financial services.

3.6.7 In the context of the Study it should be noted that competition between financial services firms is considered as a factor within the broader context of financial sector regulation, but it is generally not an explicit objective. Section 117(2) of the Central Bank Act 1989 requires the CBI to have regard to the 'the promotion of fair competition in financial markets in the State' when drawing up codes of practice for license holders. The need for a competitive market to deliver products and services to buyers in financial regulation is generally balanced with, among other things, considerations of prudential oversight and financial stability.

Development of Financial Regulation

3.6.8 Many of the most significant changes in financial services are being driven by the ongoing digitalisation of the sector, where more products and services are being delivered digitally to the end consumer, in tandem with greater innovation by firms in bringing products and services to market.

3.6.9 To support the digital transition in the EU, the European Commission has set out the strategic objectives for the financial services sector in the *Digital Finance Strategy for the EU*[58], which has the following priorities:

- Tackle fragmentation in the digital single market for financial services;
- Ensure the EU regulatory framework facilitates digital innovation in the interest of consumers and market efficiency;
- Create a European financial data space to promote data-driven innovation, building on the European data strategy[59], including enhanced access to data and data sharing, and;
- Address new challenges and risks associated with the digital transformation.

3.6.10 These priorities will be given effect by new legislative developments, which is covered in 'Chapter 5 - Recommendations'.

56 Based in the Insurance Act 1989.
57 Sections 10, 11, 12, 13, 14 and 16 fall within the regulatory functions of the CBI.
58 Issued in September 2020: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591
59 https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1593073685620&uri=CELEX%3A52020DC0066

Overview of Competition Regulation

3.6.11 The CCPC is responsible for the enforcement of competition law in the State including financial services and the insurance market[60]. Competition law is applied on an economy wide basis and covers, under Section 4 of the Competition Act 2002 as amended (the 2002 Act), anti-competitive agreements, decisions and concerted practices between undertakings and associations of undertakings[61], and, under Section 5, abuses of a dominant position which can be investigated after an alleged breach of competition rules has begun. The CCPC is also empowered to enforce Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) which prohibit the same kind of conduct as that prohibited by Sections 4 and 5 of the 2002 Act, provided it can be shown that the conduct in question may have an effect on trade between Member States of the EU.

3.6.12 The European Commission in turn investigates suspected breaches of Articles 101 and 102 of the TFEU which may affect cross-border trade in the EU[62]. Furthermore, mergers over a certain financial threshold must be notified to the CCPC for review as required by the Act. The CCPC then undertakes a merger review process before making a determination on whether or not to clear the transaction - potentially subject to conditions - or prohibit it. The European Commission in turn examines larger mergers with an 'EU dimension', meaning that the merging firms reach certain turnover thresholds[63].

3.6.13 In relation to the enforcement of competition law, the CCPC has maintained an active presence in the insurance sector. This has included engaging with a number of organisations active in the provision of private motor insurance in 2015 with regard to concerns about possible anti-competitive conduct[64]. In September2020 the CCPC published an update on the preliminary findings[65].

60 The Commission for Communications Regulation (ComReg) has concurrent powers to enforce competition law in the field of electronic communications networks, services and associated facilities.

61 In Irish law, an undertaking 'means a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service and, where the context so admits, shall include an association of undertakings'.

62 Council Regulation (EC) No. 1/2003 provides for a system of effective and uniform application of the competition rules in the EU whereby the national competition authorities in each Member State can apply Articles 101 and 102 in co-operation with the European Commission and through a network of those competition authorities. Article 11(6) of the Regulation provides that the opening of proceedings by the European Commission relieves the competition authorities of the Member States of their competence to apply EU competition rules to the practices concerned.

63 There are two alternative ways to reach turnover thresholds for EU dimension. The first alternative requires: (i) a combined worldwide turnover of all the merging firms over €5 000 million, and (ii) an EU-wide turnover for each of at least two of the firms over €250 million. the second alternative requires: (i) a worldwide turnover of all the merging firms over €2 500 million, and (ii) a combined turnover of all the merging firms over € 100 million in each of at least three Member States, (iii) a turnover of over €25 million for each of at least two of the firms in each of the three Member States included under ii, and (iv) EU-wide turnover of each of at least two firms of more than €100 million. In both alternatives, an EU dimension is not met if each of the firms achieves more than two thirds of its EU-wide turnover within one and the same Member State

64 The conduct in question related to alleged anti-competitive cooperation consisting of public announcements of future private motor insurance premium rises as well as other contacts between competitors, all of which reduced levels of competition between the parties.

65 Price signalling occurs when businesses make their competitors aware that they intend to increase prices, in turn causing further price increases across the sector.

3.7 The Potential Impact of Covid-19

3.7.1 Since the CCPC commenced the Study, Covid-19 has been testing the resilience of the insurance sector in unprecedented ways[66]. In planning for the potential impact of Covid-19, the CBI states that insurers need to consider[67]:

- New business volumes
- Lapse rates
- Future product pricing margins
- Claims inflation rates
- Claims trends
- Investment returns
- Counterparty default rates
- Expense levels

3.7.2 Scenario 3 is the worst case scenario, where UK and Gibraltar based insurers could not deliver services to policyholders in EEA States unless they have established an authorised branch in each country (or unless the policies have been transferred before 1 January 2021 to an EEA authorised insurer as a subsidiary). The CBI and Department of Finance have developed a temporary 'run-off' regime for insurers and intermediaries that have not been authorised in another EU Member State, so that they can continue to service existing customers in Ireland without acquiring new business. At the time of publication the regime will be given effect, and is being progressed via, the General Scheme of Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020. A time period of fifteen years has been proposed for the 'run off' regime to persist.

3.7.3 On the other hand, Covid-19 has led to a significant slowing down in the economy. In particular, public health restrictions have severely impacted high footfall business, both in Ireland and elsewhere, where the negative economic impact of Covid-19 is likely to continue. As such, this may reduce the rate of new business and the renewal of existing business, leading to a slowdown in demand. In a competitive market, this would likely put downward pressure on prices.

3.7.4 Regardless of the aggregate impact of Covid-19 on the price and availability outcomes of public liability insurance, the impact is unlikely to alter the issues identified in the Study in the long term, even if it does impact on current trends in prices and availability. 'Chapter 5 - Recommendations' focus on actions that can contribute to sustainable competition in the sector which can support the ability of the sector to adapt to external shocks when they occur in the future.

66 CBI, Insurance Newsletter, September 2020.
67 CBI, Insurance Newsletter, September 2020.

3.8 The Potential Impact of Brexit

3.8.1 The CBI established a Brexit Task Force in 2015 to prepare for the economic changes to financial services arising from Brexit. The Task Force identified three scenarios for the continued operation of insurers in the Irish market that are dependent on the terms of a trade agreement between the EU and the UK:

- Scenario 1: A trade arrangement where FOS authorisation would no longer be possible but insurers could operate under the FOE authorisation process;
- Scenario 2: An EEA style arrangement where FOE and FOS authorisation could continue to exist, and;
- Scenario 3: No new trading relationship is put in place, and sales could only continue via a subsidiary.

3.8.2 Scenario 3 is the worst case scenario, where UK and Gibraltar based insurers can not deliver services to policyholders in EEA States unless they have established an authorised branch in each country (or unless the policies have been transferred before 1 January 2021 to an EEA authorised insurer as a subsidiary). The CBI and Department of Finance have developed a temporary 'run-off' regime for insurers and intermediaries that have not been authorised in another EU Member State, so that they can continue to service existing customers in Ireland without acquiring new business. The regime will be given effect by the *General Scheme of Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020.* A time period of fifteen years has been proposed for the 'run off' regime to persist.

3.8.3 The CCPC understands that insurers and intermediaries have been engaging with the CBI to prepare contingency plans in the event of a disorderly exit by the UK. The feedback provided by industry stakeholders for the Study indicated that Brexit was not a significant source of exit from, or uncertainty in, the public liability insurance market.

4 Assessment of Competition

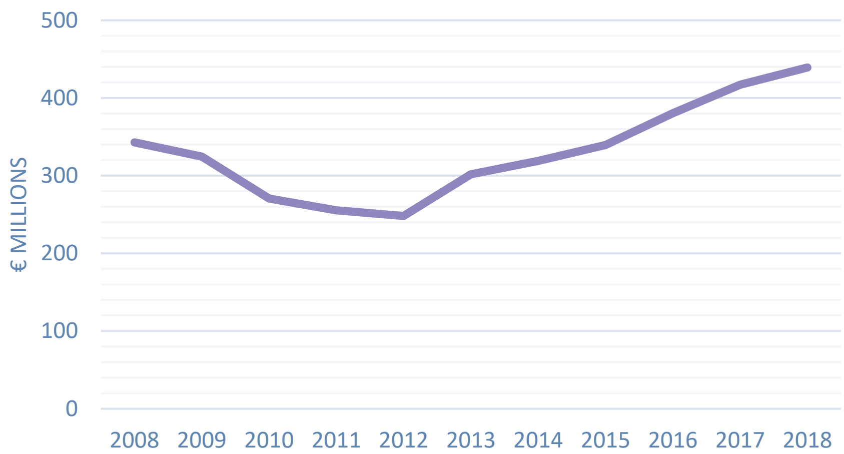
4 Contents

4.1 Issue Diagnosis

Recent Premium Trends

4.1.1 The market data shown in Figure 6, suggests that the total premiums written in the public liability insurance market have been increasing for much of the past decade. From 2012 to 2018, gross written premiums increased by 77%, having decreased by 28% from 2008 to 2012[68]:

Figure 6: Total Public Liability Gross Written Premium by Year



Source: II member data provided to the CCPC
Note: The data was provided by II and is a partial view of the market

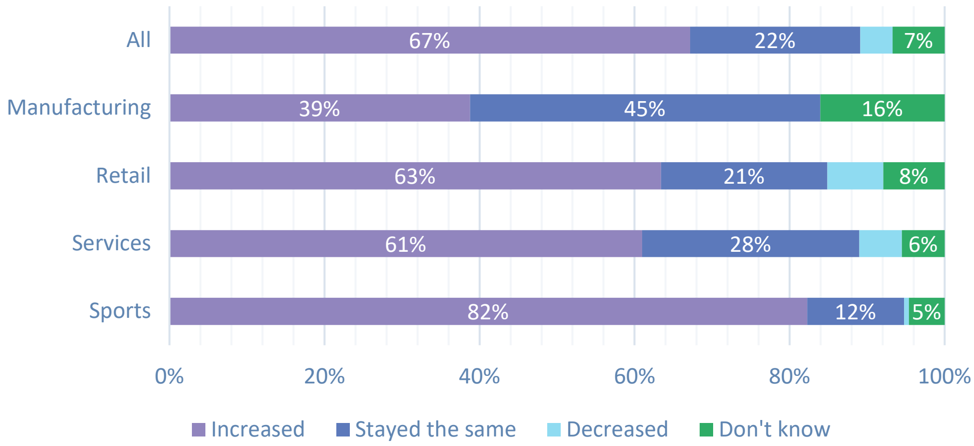
4.1.2 The data does not provide insight on the extent to which the increase in total premiums is due to an increased number of policies written, versus the extent to which it is due to increased premiums on existing policies.

4.1.3 The market research results indicate that 67% of organisations have experienced premium increases in the past ten years[69]. Within this data set, the results differed by sector, with premiums increasing for 82% of sports clubs compared to 39% of manufacturers, as detailed in Figure 7.

68 Gross written premium represent the total revenue from an insurance policy before deductions for reinsurance.

69 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: “Over the last ten years did your organisation’s public liability insurance premium increase decrease or stay the same?” Base: All who answered an amount for premium (346 respondents).

Figure 7: Changes in Public Liability Premiums in the last Ten Years



Source: Ipsos MRBI (2020) CCPC Public Liability Insurance Research
Sample size: 346 respondents

4.1.4 The average public liability premium in 2019 was €7,226, and when outliers are excluded the average drops to €5,550[70]. There were variations in average premiums across the sectors when outliers were excluded. In manufacturing the average premium was €6,415, in services the average was €1,738, in retail the average was €3,935, while for sports and community organisations the average premium was €4,712. There was significant variation on the type of business activity within the sectors which cautions against over-interpreting average premiums on a sector wide level. As public liability insurance covers a very wide range of organisations, it is natural to encounter significant variation in the premiums paid as the risks to be insured will vary considerably.

4.1.5 47% of the respondents paid an annual premium of €2,500 or less. Of the organisations that said they experienced a public liability premium increase over the past ten years, respondents reported that premiums have increased by 28% on average over the last three years[71] and by 15-20% when outliers are excluded[72].

4.1.6 Industry stakeholders also stated that premiums have increased in recent years. Insurers stated that this has largely due to increases in the total cost of claims, increased uncertainty of claims costs and the exit of foreign capacity from the market[73]. It was also recognised by industry stakeholders that public liability premiums increase when an organisation's turnover or payroll increases. The impact of these drivers, and others, will be discussed further in the next section of this chapter to the extent that the available data permits.

70 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "Thinking about your organisation's current public liability insurance policy, how much is the annual premium?" Base: 491, with 346 providing a figure.

71 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "Can you provide or estimate by what percentage your organisation's public liability insurance premium increased by in the last three years?" Base: 250, with 225 providing an answer. As this percentage increase pertains to the subset of buyers which have had an increase in the last ten years, it is likely that the average public liability premium increase across all organisations is lower.

72 The market research results found in each sector that a small number of outliers were present. An outlier is where an organisation was charged a very low or very high premium as against the average in that sector.

73 Further stakeholder input suggested that there has been a reduction in the number of FOS insurers willing to underwrite risks in this market in the past four years.

4.1.7 Similarly, conversations with trade organisations confirmed that premiums have increased significantly in certain sectors in recent years. The Vintners' Federation of Ireland said that its members have seen premium increases year-on-year from 2013 through late 2018, with these increases in the range of 15% to 20% per annum from 2015 to 2017. Early Childhood Ireland (ECI) stated that its members have reported annual premium increases from 2011 through 2018 where the premium for a sessional service[74] has doubled in that timescale, though ECI indicated that they started from a low premium base.

Recent Availability Trends

4.1.8 The data provided to the CCPC by II shows that there were some entries and exits from the public liability insurance market among II members from 2008 to 2018, with Quinn Insurance the most notable exit from the market (While Quinn Insurance exited from the entire non-life insurance market much of its business was acquired by Liberty Insurance). The majority of II members have continued to operate in the public liability insurance market during this period. It was not possible to discern from the data whether these insurers were entering, expanding or exiting writing policies for certain economic sectors, such as retail or services, in the public liability market[75].

4.1.9 Similarly, the publicly available II Factfile does not provide information on the activity of insurers to this level of detail. Except where it is known that an insurer has exited the public liability market altogether, it is not clear whether some insurance companies have increased or decreased their market position among certain types of public liability insurance buyers.

4.1.10 The data provided to the CCPC by II also indicates that from 2016 through 2018, underwriting margins[76] for II members were negative. This suggests that a lack of profitability could also be having an impact if insurers are withdrawing from some segments of the market.

4.1.11 The market research results indicate that some organisations are experiencing difficulties in relation to the availability of public liability insurance. Respondents were asked if the cost or availability of public liability insurance was a higher or lesser priority for their organisation now than three years previously. 70% of organisations stated that costs and availability were of the same order of priority as three years ago while 26% stated that they were a higher priority[77].

74 A sessional service usually refers to a preschool service offering a planned programme to preschool children for no more than 3.5 hours per day for between 38 to 50 weeks per year.

75 As noted in 2.4.1 the CCPC market research categorised firms into 'retail', 'services', 'manufacturing' and 'other'.

76 Underwriting margin is the difference between an insurer's earned premiums and their expenses and paid claims. It does not include any investment income earned on held premiums.

77 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "Are public liability insurance costs or availability a higher or lesser priority for your organisation now than they were 3 years ago or is it the same now as it was 3 years ago?" Base: All respondents (491). Note that 1% of respondents stated that it was a lesser priority and 3% answered 'don't know'.

4.1.12 Among organisations that experienced a premium increase (70%) the percentage that stated the level of priority was the same was 65%, while 33% stated that it was a higher priority. Respondents were asked if they found it more or less difficult to secure public liability insurance in the past five years. While 73% of organisations reported no difference, 18% of respondents, representing all organisation types, found it more difficult to acquire public liability insurance to the degree they required[78]. The sample sizes in the market research are small and caution against making definitive judgments, however organisations in the sports/community and services sector were more likely than organisations in the manufacturing or retail sector to encounter difficulty in getting insurance cover due to a lack of alternatives in the market.

4.1.13 After price, availability is a key driver of switching in this market. 9% of organisations that switched their insurance provider did so as their previous provider would no longer cover their organisation[79]. Similarly, 11% of the organisations surveyed that switched their provider did so because their previous insurer was no longer operating in the Irish market. While some organisations have switched due to their existing provider exiting the market, other organisations cannot switch as they were unable to find alternatives. Of the organisations that did not switch their insurance provider in the last five years (69%)[80], 51% had shopped around during this period. A large majority of buyers in this category used the services of a broker (76%). While many of those that shopped around did not switch for price-related reasons, predominantly due to receiving a better price with their current provider, 15% did not switch as they were unable to find an alternative provider[81].

4.1.14 Industry stakeholders stated that most organisations can avail of cover and in more recent years there has been exit from the public liability insurance market without any significant new entry. In particular, in 2018 and 2019 FOS capacity exited the market (e.g. Lloyd's syndicates) that had typically served what were identified as higher risk buyers. It was generally considered that recent exits have particularly impacted certain sectors, such as the leisure sector, childcare and crèches. Brokers also stated that most domestic-based insurers have been moving out of what they described as 'riskier market segments'.

Structural Competition Indicators

4.1.15 Market concentration is a proxy measure for assessing the level of competition in a market. For instance, a concentrated market has a small number of firms with high market shares, while a less concentrated market has a large number of firms with small market shares.

78 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "In the past five years has your organisation found it more difficult or less difficult to secure public liability insurance to the degree that it requires?" Base: All who have/had commercial policy for public liability (491).

79 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "What was the reason for your most recent switch in public liability insurance provider?" Base: "All who have switched in the past five years" (93). Note the small sample size of 93 in response to this question.

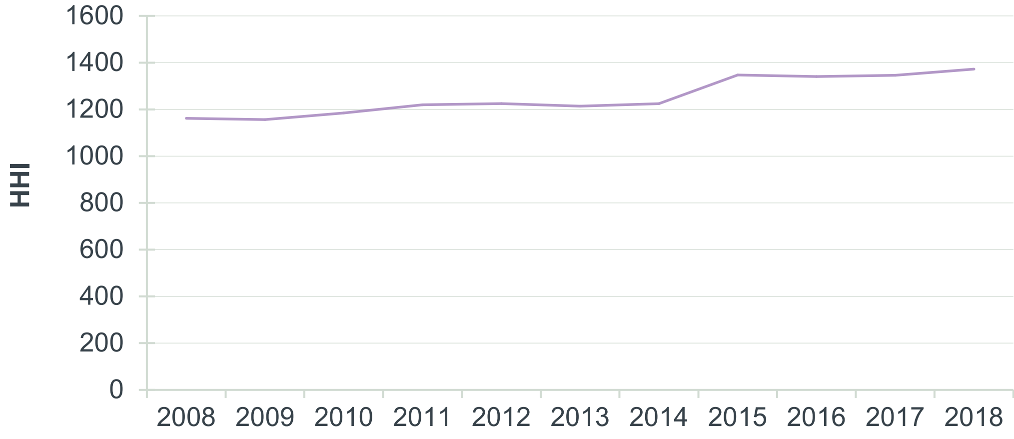
80 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "In the last five years has your organisation or your broker shopped around for an alternative public liability insurance provider?" Base: "All who have not switched in the past five years" (222). Note the sample of 334 in response to this question about switching.

81 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "For what reasons did your organisation choose to stay with your existing public liability insurance provider?" Base: "All who shopped around for an alternative public liability insurance provider" (119). Note the sample of 119 in response to this question.

4.1.16 A commonly used measure of market concentration is the Herfindahl-Hirschman Index (HHI)[82]. This has been used by both the European Commission as well as the CCPC when assessing the potential impact of a proposed transaction on a particular market. The CCPC guidelines[83] on post-merger HHI market values state that a market with a post-merger HHI greater than 1,000 may be regarded as concentrated and highly concentrated if greater than 2,000. A highly concentrated market is therefore a potential competitive concern, meaning that the market needs to be assessed in greater detail.

4.1.17 Figure 8 outlines that the HHI for the public liability insurance, measured by gross written premium, increased from 1,156 in 2009 to 1,372 in 2018, a 19% increase. While this is an upward trend, it is towards the lower end of the HHI range of 1,000 to 2,000 and does not suggest a highly concentrated market.

Figure 8: HHI of Irish Public Liability Market by Gross Written Premium



Source: Frontier analysis of II data provided to the CCPC
Note: The data represents a partial view of the market

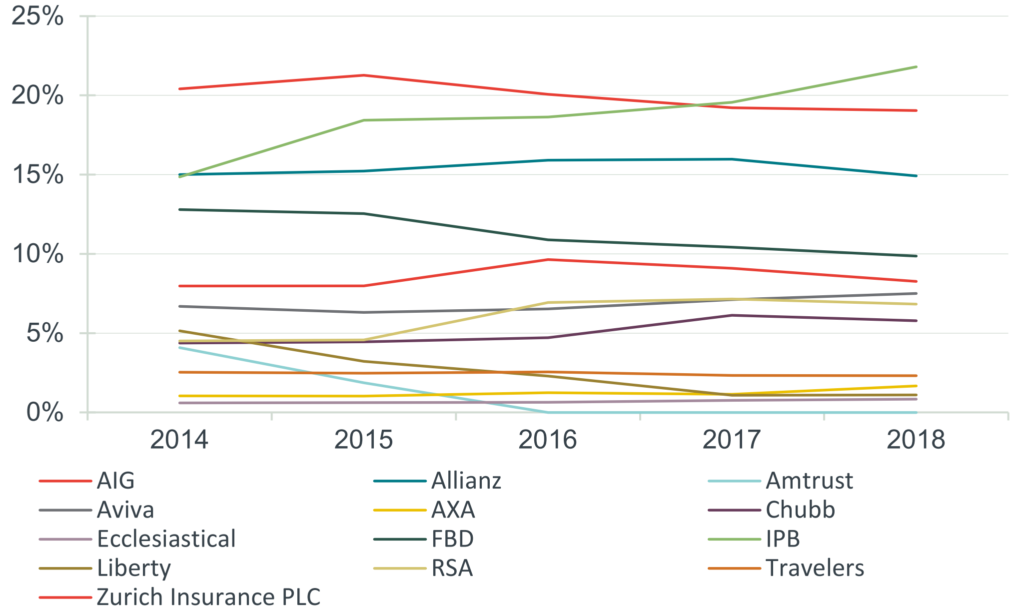
4.1.18 Market share can also provide useful insight on the level of competition in a market. The market share by revenue for public liability insurance for II member companies, from 2014 to 2018, is provided in Figure 9 and indicates that market shares have been relatively stable for most insurers. IPB Insurance[84] had the largest increase in market share, from 15% to 22%. Both Amtrust and Liberty had the largest decrease in market share which reflects their exit from the public liability insurance sector. Amtrust had a 0% market share from 2016 onwards and Liberty's market share declined as it stopped writing public liability insurance in certain sectors over the period shown (with a full exit from the provision of commercial liability announced in 2020).

82 The HHI is an economic concept widely applied in competition analysis as it provides a measure of the size of firms in relation to the industry and is an indicator of the amount of competition among them. The index ranges from 0 to 10,000 points, where 10,000 represents a market served by a single monopoly supplier.

83 European Commission (2004) *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*.

84 IPB Insurance specialise in providing insurance for the public sector and complementary markets in the semi-state and private sectors.

Figure 9: Insurer Market Share by Revenue for Public Liability Insurance



Source: Frontier analysis of II data provided to the CCPC
Note: The data represents a partial view of the market

4.1.19 Industry stakeholders stated that successful entry has been undertaken in the past but that prices or margins need to be sufficient to attract new entrants and the low levels of recent profitability being experienced by II member companies as outlined in 4.1.10 may also be a key contributing factor in hindering entry into the market.

Key Conclusions

4.1.20 The available data suggests that while most organisations can avail of public liability insurance, increasing premiums and limited availability are an issue for some buyers in the market. The incidence of increasing premiums is spread across all sectors and while availability issues seem to affect all sectors, they may be more significantly impacting certain segments of the market such as sports and community organisations.

4.1.21 The market research results indicate that 26% of organisations regarded public liability insurance costs and availability as a higher priority now than three years ago. However sufficient data is not currently available to fully assess the extent of the issue. From an overall market perspective, the further exit of existing insurers could mean that availability will become an increasingly prevalent issue, for a potentially greater number of buyers.

4.1.22 The structural competition indicators suggest that public liability insurance is a somewhat concentrated market with some reduction in the availability of insurance in recent years. This points to a lack of recent significant entry or expansion and suggests that some barriers to entry may exist in this market. Sufficient data is not available to assess this more definitively.

4.2 Theory of Harm 1: Barriers to Entry

Overview

4.2.1 Barriers to entry in any market can reduce the degree of competition and in turn enhance the market power of incumbent firms. The European Commission states that:

> ‘*Entry barriers are measured by the extent to which incumbent companies can increase their price above the competitive level without attracting new entry. In the absence of entry barriers, easy and quick entry would render price increases unprofitable. When effective entry, preventing or eroding the exercise of market power, is likely to occur within one or two years, entry barriers can, as a general rule, be said to be low”.*
>
> *“Entry barriers may result from a wide variety of factors such as economies of scale and scope, government regulations, especially where they establish exclusive rights, state aid, import tariffs, intellectual property rights, ownership of resources where the supply is limited due to for instance natural limitations, essential facilities, a first mover advantage and brand loyalty of consumers created by strong advertising over a period of time.”*[85]

4.2.2 The existence and magnitude of barriers to entry is an important part of a competition analysis, where lower barriers to entry are considered a key way to facilitate competition in the market. Entry usually refers to the ability of new suppliers to enter and sell in a market. It can also occur through mergers and acquisitions of existing market participants, though that generally has not been a feature of the public liability insurance market. Existing suppliers should also have the ability to expand their business, for example, to enter new segments in a market in a profitable manner.

4.2.3 In a competitive market it is also important that exit signals can be identified. For example, a market where firms do not enter or exit would suggest, at first glance, that there is insufficient rivalry between firms. In respect of the Irish public liability market, the initial review of potential competition issues suggested that barriers to entry and expansion are the most relevant.

Existing Barriers to Entry

4.2.4 The CCPC identified a range of potential barriers to entry to the public liability insurance market[86], where the review of the available data and information suggests that the following barriers to entry exist:

- Access to insurance market data
- Access to claims history information
- The insurance cycle

85 Guidelines on Vertical Constraints https://ec.europa.eu/competition/antitrust/legislation/guidelines_vertical_en.pdf

86 The range of barriers to entry that could exist in the public liability insurance market were reviewed as part of the Study research methodology and are outlined in in 2.1.6.

Access to Insurance Market Data

4.2.5 Developing an understanding of the public liability insurance market is a prerequisite to considering entry. A reliable data source on market conditions provides greater transparency and certainty in respect of investing in a new market and supports the potential for attracting new entry by insurers.

4.2.6 Very limited data has been publicly available since the last time the CBI published the Blue Book in 2016. Since then, the II Factfile has been the only publicly published source of market data. This data only covers its member insurers and is not published on a set schedule. As a result, the II Factfile cannot be relied upon by new entrants to provide a complete picture of the market. It is also not a timely publication where the most recent version of the Factfile was published in 2019 and covered 2017 data and results.

4.2.7 The lack of independent, publicly available, detailed and timely market data, was stated by multiple industry stakeholders as leading to an imbalance in the information available to existing insurers and potential new entrants, and therefore could operate as a barrier to entry. One insurer stated that this issue related to entry both to the wider market and to individual economic sectors, as entering a sector where an insurer had no underwriting experience would be difficult without publicly available market data and would increase the amount of capital required to trial the area. They stated that it would take up to eight years to build up sufficient data to price accurately.

4.2.8 The CCPC's review has identified the following key considerations for the publication of market data that is meaningful and relevant:

- **Frequency / timeliness of data:** Data that is outdated or published infrequently will have a limited impact on reducing this barrier to entry, which is particularly the case in a dynamic and changing market such as the public liability insurance sector;

- **Insurer coverage***:* Given the significant, if currently unquantifiable, FOS capacity in certain sectors of the market, there is a benefit in including the data of all the active insurers in the market, and;

- **Granularity***:* While data which is aggregated at sector and market level is informative, the ongoing monitoring of actual changes in insurer' premiums require access to the data at a more granular level (i.e. insurer level).

4.2.9 An unusual feature of insurance is that insurers only discover their costs after they set prices, which for public liability insurance can often be years later. Therefore, detailed information on the likelihood, frequency and severity of claims is a practical necessity for entry into the public liability insurance market. In principle, the more information an insurer has on claims, the more precisely they can calculate their expected costs and the more keenly they can price. From a competition law perspective, the sharing of, for example, limited credit or insolvency information between financial institutions may be permissible, and may potentially support a more competitive market. This will depend on the economic conditions on the market and the characteristics of the information exchange, including the type of information exchanged[87].

4.2.10 The Claims and Underwriting Exchange (CUE) in the UK and Informa HIS in Germany are examples of claims history databases where information is exchanged between insurers on the characteristics of the insured. Both of these databases allow insurers to check the claims history of a consumer prior to concluding an insurance contract, which assists in the detection of possible fraud and supports the insurer in pricing risk.

4.2.11 In Ireland, this information is provided by Insurance Link, which is a claims-matching computer database that helps users to identify possible fraudulent claims. It contains information on claims involving personal injury in motor accidents, employer and public liability insurance, as well as vehicle damage, household, commercial property, personal accident and travel insurance.

4.2.12 At the time of writing, the operation of Insurance Link by II is being investigated by the European Commission. That investigation relates to whether the conditions imposed on companies wishing to participate in and access the Insurance Link database may have had the effect of placing these companies at a competitive disadvantage on the Irish motor insurance market in comparison to companies already having access to the database[88]. Nothing in this Study should be understood as prejudging the outcome of that investigation.

4.2.13 The CCPC's analysis, based on publicly available information in respect of Insurance Link, indicates that not having access to claims history information may act as a barrier to entry. Therefore, the CCPC considers that this information should be available to new entrants as well as incumbents, so that they can accurately price risk.

87 C238-05 *Asnef-Equifax* (ECLI:EU:C:2006:734), para 58. In that case, the Court of Justice of the European Union ('CJEU') recognised that a credit information exchange system (such as a solvency register) does not, in principle, have the effect of restricting competition, provided that (i) the relevant market or markets are not highly concentrated, that that system does not permit lenders to be identified and that the conditions of access and use by financial institutions are not discriminatory, in law or in fact, or (ii) the cumulative conditions under Article 101(3) TFEU are fulfilled. In this regard, the CJEU noted that credit information exchange systems such as solvency registers "appear, in principle, to be capable of increasing the mobility of consumers of credit. In addition, those registers are apt to make it easier for new competitors to enter the market." (para 56). More generally, such data sharing agreements may be assessed in line with the guidelines on the applicability of Article 101 TFEU to horizontal cooperation agreements (the Horizontal Guidelines).

88 https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2509

4.2.14 The nature of an insurance cycle means that the hard part of the cycle can result in price increases and a reduction in the availability of cover. Some characteristics of the public liability insurance market can make it inclined towards more severe hard markets:

- The public liability claim timeline is often longer than other insurance lines where it can take some time for insurers to realise that premiums are unprofitable[89]. This may result in a longer pricing readjustment process by insurers to reach profitability which can cause a more severe hard cycle.
- High levels of differentiation exist between different general liability products (e.g. public liability and employer liability), and the demand for each insurance product is relatively inelastic where a buyer does not have the ability to switch to a similar type product. When public liability insurers start to exit the market it can result in a lack of suitable alternatives for buyers in the short term[90], which can cause a more severe hard cycle.
- The public liability market in Ireland is small and may be more susceptible to the entry and exit of transient insurers than is the case in a larger market. If these insurers incur losses they are more likely to exit, which results in the start of a hard market which may be longer than is the case for larger economies.

4.2.15 As is the case with all insurance markets, if uncertainty exists about the cost of claims it can become more difficult for insurers to judge the profitability of policies which can result in a hardening of the market. This seems to currently be the case in Ireland which is considered further in 'Theory of Harm 3: Cost Inflation' in this chapter.

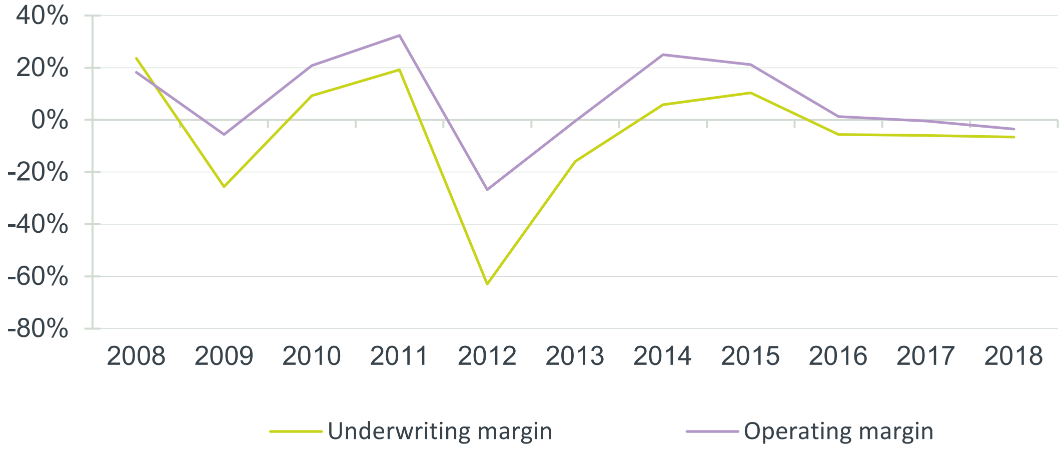
4.2.16 Brokers are a key intermediary in the public liability insurance market where they assist the majority of buyers in sourcing insurance, which is considered in the context of the switching process in 'Theory of Harm 2 - Switching Behaviour'. In principle, their activities in obtaining the best value for their customers should result in price competition, which can also have the effect of exacerbating a soft market. Conversely, brokers can also dampen hard markets by facilitating the entry of transient capacity and a return to price competition.

4.2.17 Sectoral profitability is a useful starting point to understand where the public liability insurance market could be in the insurance cycle. Figure 10 shows the underwriting and operating margins of the II insurer data provided to the CCPC. From 2016 through 2018, underwriting margins were negative, though they were still above the lowest levels seen in 2012. This compares to other non-life sectors in Ireland that saw increased profitability over this period[91].

89 Fitzpatrick (2004) *Fear is the Key: A Behavioural Guide to Underwriting Cycles*.
90 In the long-term, if existing insurers are pricing at an uncompetitive level which results in excess profits, new insurers would be expected to enter the market which would lower the price to a competitive level.
91 Based on data contained in the II Factfile.

4.2.18 Insurer operating margins have also been steadily declining from 2014 to 2018. This may indicate that the realisation of losses has led to a hardening of the market in 2017 and 2018 which in turn, would lead to insurers and capital exiting the market.

Figure 10: Underwriting and Operating Margins as a % of Net Earned Premium[92]



Source: Frontier analysis of II data provided to the CCPC
Note: The data represents a partial view of the market

4.2.19 Industry stakeholder interviews suggest that the market has been hardening where it was stated that profitability is yet to return to the market:

- II stated that public liability insurance entered a hard market in approximately mid-2018 and may have been exacerbated by an uptick in the economy which led to more organisations seeking insurance in a market with limited capacity.
- Some insurers stated that Ireland is currently not in a hard part of the cycle as it is not in a period of "excess profits"[93]. One insurer stated that 2019 was the first year they did not make a loss in recent years and that premiums are where they need to be to remain viable.

4.2.20 The CCPC's review suggests that, on balance, some characteristics of a hard market have been present in the public liability market in the past three years. The other barriers to entry identified in the Study may also have an indirect effect of increasing the severity and length of the public liability insurance cycle in Ireland. This is reflected in the BI feedback that the price levels resulting from a hard market should attract in more capacity, but they are not seeing any entry. BI also stated that the lack of capacity is a significant problem in the public liability insurance market, which is more of a serious issue now than at any time in the last fifteen years.

92 Note: 0% represents the breakeven point for insurers, with losses represented by negative margins and profits represented by positive margins.

93 In principle, excess profits are considered a feature of a hard market and which may occur before it begins to soften. The excess profits may be used to bolster an insurer's capital and in turn to allow for lower prices in the search for greater market share, signalling the softening of the market.

Other Potential Barriers to Entry

4.2.21 The CCPC's review of the available data and information suggests that the following barriers to entry do not seem to exist in the market:

- Access to capital
- Access to distribution channels

Access to Capital

4.2.22 Insurers are constrained in their ability to enter or expand in markets by the amount of internal capital they have available. In turn, their decision to allocate capital to, or withdraw capital from a market is reliant on a range of factors, including the profitability of a sector or business line and considerations regarding risk diversification. The prudential regulatory framework, through Solvency II, also imposes capital requirements on insurers and reinsurers.

4.2.23 The industry stakeholder feedback provided in the Study indicated that access to capital is not considered a significant barrier to entry. Rather, insurers stated that there is sufficient capital to support business development but that entry or expansion is subject to achieving a sufficient return in the market.

Access to Distribution Channels

4.2.24 The majority of public liability insurance is sold via brokers where 72% of organisations surveyed for the market research indicated that they used a broker[94]. The high degree of broker usage by buyers should, in principle, support market entry as entrants do not have to build their own distribution channels and can avail of a broker to distribute their products.

4.2.25 The market also has a large, if unquantified, number of insurers based in other states. The presence of MGAs in the public liability insurance market can also attract entry from insurers operating on a FOS basis. For instance, MGAs can support a FOS insurer for claims handling and underwriting activities and arrange for the distribution of insurance policies among approved brokers.

94 It should be noted that the percentage of organisations using the services of intermediaries such as brokers is likely to be higher than 72%. A small percentage of respondents in the CCPC market research appear to have not fully understood the distinction between broker and insurer and when asked for the identity of their insurer provided that of their broker instead.

4.2.26 Distribution agreements are a feature of the market between insurers and intermediaries. Agreements between firms at different levels of the distribution chain are usually referred to as "vertical agreements"[95]. Vertical agreements can be pro-competitive, for example, by facilitating more efficient distribution of goods and services than would otherwise be possible. Legislation is in place to address anti-competitive agreements under Section 4 of the 2002 Act[96] and under Article 101 TFEU. Certain exemptions from the application of Section 4 of the 2002 Act are also provided for in the CCPC's *Declaration in respect of vertical agreements and concerted practices* (the Declaration)[97]. In addition, the European Commission Vertical Block Exemption Regulation (the VBER) provides similar exemptions under Article 101 TFEU[98].

4.2.27 In a market as highly intermediated as the public liability market, distribution agreements that fall within the terms of the Declaration should generally be a means by which to facilitate entry and expansion by insurers. Industry feedback provided in the Study suggested that distribution channels in this market have been a means by which to encourage entry and to facilitate competition in the market.

Key Conclusions

4.2.28 The analysis suggests that the most significant barriers to entry in the public liability insurance sector are access to market data, access to information and the insurance cycle. In addition, access to market data and access to information may also exacerbate the effect of the insurance cycle where it may take longer to come out of a hard market.

4.2.29 The requirement to create a more transparent market by improving data availability in a manner that can support market entry, and also assist the market to move back more swiftly to a stable equilibrium, is considered further in 'Chapter 5 - Recommendations'.

95 In general, the term vertical agreement means an agreement between two or more firms, operating at different levels of the production or distribution chain and further relates to the conditions under which these firms buy or sell certain goods or services.

96 Section 4(1) of the Competition Act 2002 prohibits all agreements between undertakings, decisions of associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State.

97 Accessible here: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/10/Amended-Declaration-In-Respect-of-Vertical-Agreements-and-Concerted-Prac....pdf. It should be noted that vertical agreements that do not benefit from the exemption under the Declaration can nonetheless benefit from the Section 4(5) exemption on an individual basis.

98 An anti-competitive agreement may infringe both Section 4 of the 2002 Act and Article 101 TFEU.

4.3 Theory of Harm 2: Switching Behaviour

Importance of Switching

4.3.1 Competition often requires that buyers search for the best available product between a choice of providers. If they demonstrate too much loyalty to insurers (or brokers), or inertia, then the benefits of competition cannot be realised. Real or perceived barriers to switching insurer could lead to incumbent insurers having market power over individual buyers, who may then have the ability to raise prices over time unchecked. They also act as a deterrent to a potential entrant as they will be aware that it could be difficult to win sufficient business to sustain market entry.

Switching Levels

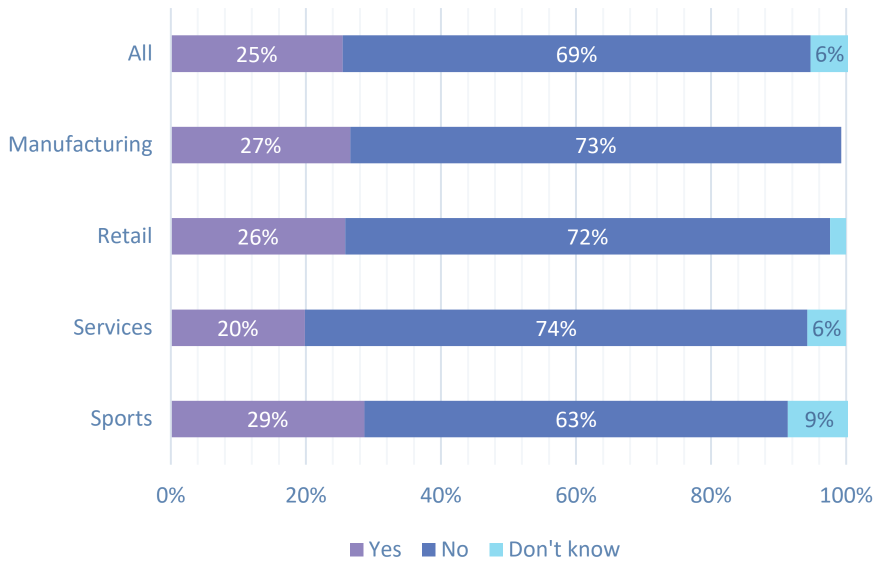
4.3.2 The market research suggests that around a quarter of buyers switched their insurance provider in the last five years, primarily for price-related reasons. While the CCPC does not have information on the annual switching rate for the last five years, it is reasonable to assume these switching figures may have been higher in recent years due to the issues being experienced by buyers in the market. This in turn, suggests that switching rates may have previously been quite low. While the CCPC accepts that direct comparisons cannot be made, it is useful to note that the switching rate for private motor insurance in 2016 was 28%[99] when this market was experiencing a similar type of price inflation to public liability, which is more than has occurred in total in the public liability insurance market over five years.

4.3.3 As shown in Figure 11, the level of switching is similar across sectors. On average, organisations received a quote from 2.8 insurers prior to switching, with the total switching process taking an average of 2.9 weeks (based on a small sample of 93 respondents)[100].

99 2016 represents the most recent year that research on switching rates was undertaken by the CCPC.

100 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Questions: “Thinking of the most recent time your organisation switched your provider for public liability insurance from how many public liability insurance providers did you get a quote from prior to switching (excluding your current provider)?” and “Including researching discussion of options and communication with your organisation’s provider or broker how many weeks did the process of switching public liability insurance take?” Base: “All who switched in the past five years” (93). Please note that it is a small sample.

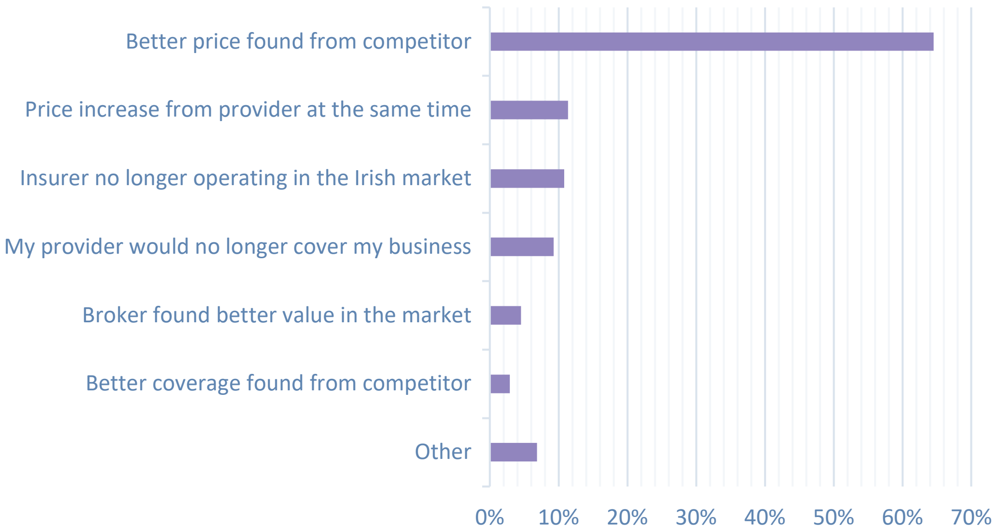
Figure 11: Proportion of Organisations that Switched Insurer in last Five Year[101]



Source: Ipsos MRBI (2020) CCPC Public Liability Insurance Research
Sample Size: 334 respondents

4.3.4 Figure 12 shows the reasons provided by organisations for switching. As noted above, finding a better price from a competing insurer was the most common reason cited for switching. Additionally, 11% of respondents that switched had to do so as their insurer had exited the market. No further conclusions can be drawn on whether any sector is particularly affected, as the sample size for each sector is not large enough.

Figure 12: Reasons Provided by Organisations for Switching

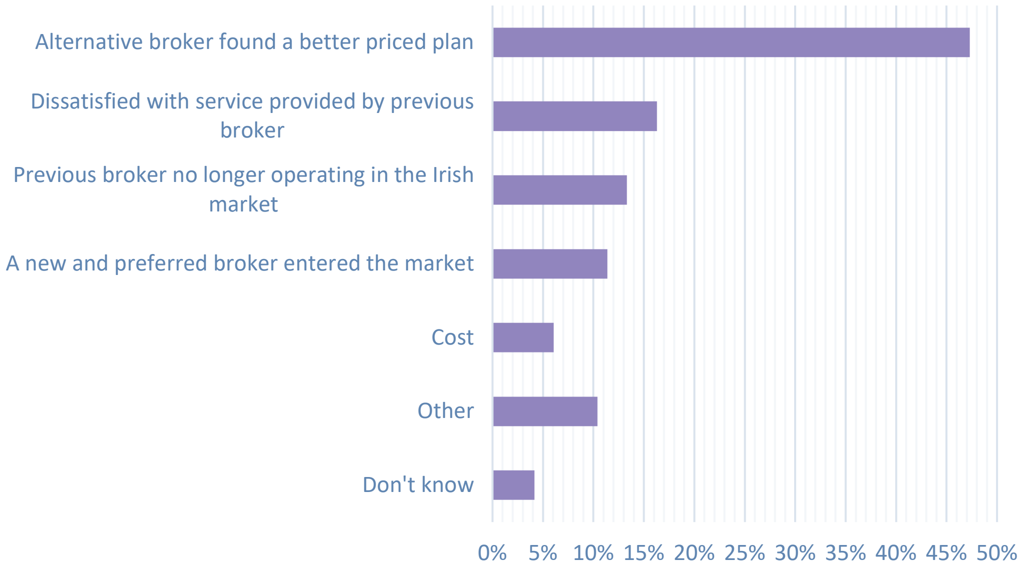


Source: Ipsos MRBI (2020) CCPC Public Liability Insurance Research
Sample size: 93 respondents

101 The percentages do not add up to 100 due to rounding.

4.3.5 The market research found that 30% of the organisations that use a broker have switched broker in the last ten years: 12% in the last three years, and a further 18% more than three years and less than ten years ago[102]. Figure 13 demonstrates that the most commonly cited reason for switching broker was that another broker found a better priced insurance policy for the buyer. The market research suggests that the average premium increase for organisations that switched broker were slightly lower than those that didn't switch[103].

Figure 13: Reasons for Switching Broker



Source: Ipsos MRBI (2020) CCPC Public Liability Insurance Research
Sample Size: 112 respondents

Potential Barriers to Switching

4.3.6 As previously noted, the market is heavily intermediated and Figure 14 shows that the organisations who use a broker have higher switching rates than the organisations that insure directly. This suggests that brokers provide value to customers by reducing search and switching costs due to their knowledge of the market[104].

102 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "In the past ten years has your organisation switched broker?" Base: "All those who use a broker (361)".

103 Organisations that switched broker reported an average premium rise of 17.5% over the past ten years, while organisations that stayed with their broker reported an average premium rise of 18.3%. Caution should be employed when interpreting these figures as the sample sizes were small in both instances.

104 This may contrast to other insurance markets where search and switching tools make it easy to switch when purchasing directly; whereas brokers may be able to negotiate better deals for certain buyers with their current provider.

Figure 14: Proportion of Organisations that Switched Insurer in the past Five Years[105]

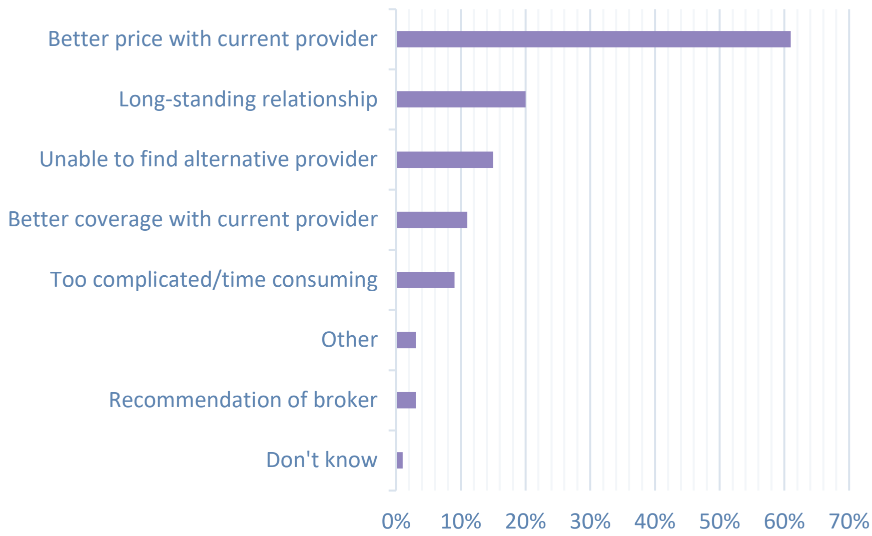
	Insured through a Broker	Insured directly with an Insurer
Switched	31%	15%
Did not Switch	62%	82%
Don't Know	6%	4%

Source: Ipsos MRBI (2020) CCPC Public Liability Insurance Research
Sample Size: 334 respondents

4.3.7 Market research conducted for the Study found that, of the organisations that did not switch their insurer in the last five years, 51% had shopped around for an alternative provider over the same period[106]. For the respondents that shopped around, Figure 15 shows that most organisations did not switch because their existing provider offered a better price. However, a lack of alternative providers also seems to be impacting the ability of some buyers to switch.

4.3.8 After removing the positive reasons for staying with an existing insurer (e.g. better price, relationship or coverage), around one-third of organisations did not switch due to a real or perceived barrier to switching such as lack of alternatives, time or complexity.

Figure 15: Reasons for not Switching after Shopping Around



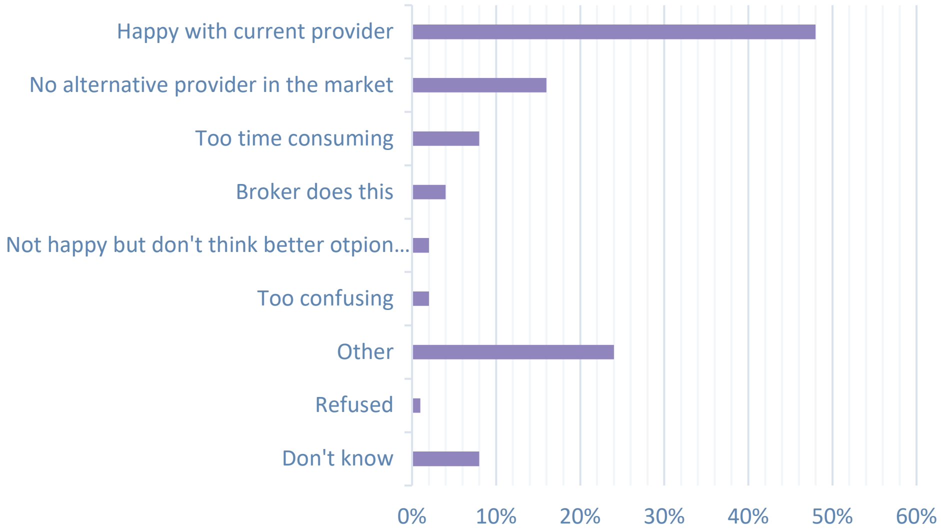
Source: Ipsos MRBI (2020) Public Liability Insurance Research
Sample Size: 119 respondents

105 The percentages do not add up to 100 due to rounding.

106 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "In the last five years has your organisation or your broker shopped around for an alternative public liability insurance provider?" Base: "All who have not switched in past five years (222)"

4.3.9 Of those organisations that did not shop around for an alternative provider, Figure 16 shows that 48% said they were happy with their current provider and premium as the reason behind this. A further 16% did not shop around as there were no alternative providers in the market, while 8% considered that shopping around is too time consuming. This points again to a lack of alternative providers as a potential barrier to switching, though it is not clear that buyers who do not test the market have formed this opinion based on an analysis of the market.

Figure 16: Reasons for not Shopping Around



Source: Ipsos MRBI (2020) CCPC Public Liability Insurance Research
Sample Size: 87 respondents

4.3.10 The market research indicates that the level of engagement by buyers in the market could also be affecting switching behaviour. For instance, 25% of respondents did not know what their organisation paid in an annual public liability premium[107]. This could also reflect the fact that public liability insurance is an annual purchase and is not front of mind with buyers during the year.

4.3.11 While price is regarded as an issue in the market, the market research indicates that only 44% of organisations have taken actions to try to reduce premiums, where 17% did so by shopping around[108]. Lesser used actions taken by respondents to reduce their premiums include undertaking a risk assessment (7%), health & safety training/improvements (2%), pooling risk with other organisations (2%), joining a group scheme (1%) and sourcing insurance outside Ireland (1%)[109]. The low levels of activity in these other areas could be accounted for by the size of the organisations, where 97% of the respondents are MSMEs.

107 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "Thinking about your organisation's current public liability insurance policy how much is the yearly premium?" Base: "All who have/had commercial insurance policy for public liability (491)".

108 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "What if anything has your organisation done to reduce or try to reduce your public liability insurance premium?" Base: "All who have/had commercial insurance policy for public liability (491)".

109 This results suggests that a number of respondents may not have regarded insuring with an FOS provider through a broker based in Ireland as being equivalent to sourcing insurance outside Ireland. In addition, as noted in paragraph 4.3.10 many respondents were not aware of the identity of their insurer.

4.3.12 While 82% of respondents felt they understood their insurance either very well or fairly well[110], they did not always comprehend some key distinctions in relation to insurers and brokers[111]or how their broker is paid[112]. Similarly a significant number of respondents, at 29%, did not know who their insurer was[113]. While price is prioritised over other considerations in respect of their public liability policy, as noted above, 66% of businesses have not switched broker to obtain a better priced plan in the past ten years.

Key Conclusions

4.3.13 The switching rates imply that it is not a solution for all buyers as there may not always be alternative providers to switch to in some sectors. Disaggregated data is not available to show the extent to which some segments are particularly impacted. The market research findings suggest that brokers, in their capacity as a key intermediary in the market, seem to support the process of switching insurers for buyers, which can mitigate the price increases.

4.3.14 There seems to be a lack of engagement by buyers in the public liability insurance market, which is a concern as engaged buyers underpin switching behaviour, which is a key driver of competition.

110 Ipsos MRBI (2020) *CCPC Public Liability Insurance Research*. Question: "How well, if at all, do you feel your organisation understands the terms of your public liability insurance plan?" Base: "All who have/had a commercial insurance policy for public liability (491)".

111 A number of respondents named brokers when asked for the identity of their insurer.

112 28% of the respondents who used a broker responded 'don't know' when asked to choose between flat fee or commission.

113 29% of respondents did not know who their insurer was.

4.4 Theory of Harm 3: Cost Inflation

Effect of Costs on Competition

4.4.1 Cost increases over time are usually passed through from sellers to buyers where the level of an increase is subject to the ability of the buyer to absorb that cost rise. By some definitions cost inflation is not a competition issue in itself, however, if insurers consider that some costs have become too high or volatile they may decide to exit segments of the market which has a negative impact on competition and buyer choice. In addition, high and persistent cost inflation may dampen competition; if consumers feel that price increases are inevitable, they may be less inclined to seek better value by shopping around.

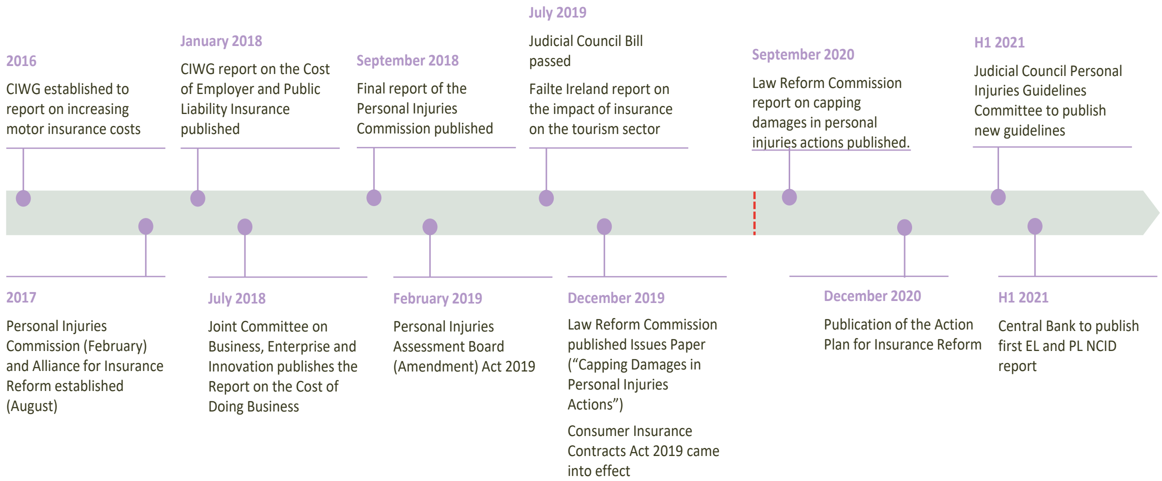
4.4.2 The CCPC has reviewed the available information on cost inflation in the claims environment to understand the degree to which these costs are having an effect on competition. It is not intended to draw conclusions on the specific drivers of cost inflation as there is insufficient data to make firm conclusions[114]. Instead, the analysis has focused on the key areas that underpin the total cost of claims.

Ongoing Reform Agenda

4.4.3 The CCPC has completed the Study within a wider context where the State has undertaken a significant amount of work and policy interventions in the insurance sector. This has been led by the CIWG with the aim of putting downward pressure on cost inflation, and which has specifically focused on the claims environment. Of particular note in relation to the Study is the CIWG *Report on the Cost of Employer and Public Liability Insurance.*

4.4.4 The processes that are underway or have been completed in recent years are summarised in Figure 17 below.

Figure 17: Summary of Processes and Publications Relating to Insurance



Source: Frontier Summary of Publicly Available Information

114 The forthcoming NCID report on employer and public liability insurance will provide a more comprehensive overview of claims costs, including a breakdown of costs by settlement channel.

Key Drivers of Claims Cost Inflation

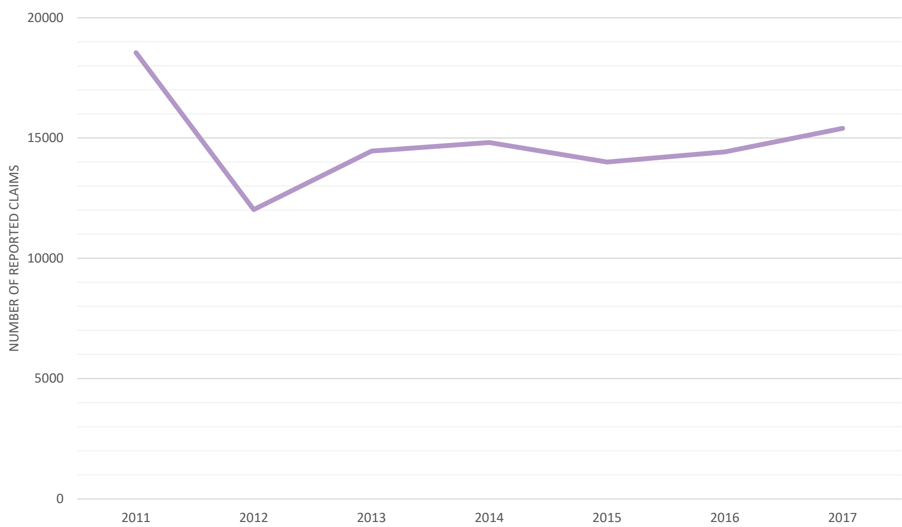
4.4.5 The key areas that underpin the total cost of claims are considered and stakeholder views are presented as follows:

- Number and net cost of claims[115];
- Changes in awards over time;
- Costs by settlement channels, and;
- Stakeholder views.

Number and Net Cost of Claims

4.4.6 Figure 18 details a relatively stable trend for the number of public liability claims notified to II members from 2013 to 2016, following a sharp decline from 2011 to 2012. However, it is a partial view of the market as it is based on II Factfile data.

Figure 18: Reported Claims for Public Liability Claims by Year



Source: Report of the CIWG on Employer Liability and Public Liability (Table 4.4)

4.4.7 PIAB figures provide more information as they include data on claims lodged under motor, employer and public liability on an annual basis. For example, PIAB made 2,305 public liability awards in 2017, compared to a total of 8,857 notified claims. This can be compared to 15,403 new claims lodged with II members in 2017. It is not currently clear why the number of notified claims to PIAB is so much lower than the new claims lodged with II members. All relevant personal injury claims[116] must be submitted to PIAB[117] unless they are settled early between the parties, and it is possible that the difference between the two sets of figures is due to early settlement of claims between the parties. Also, the number of claims lodged with non-II members is unknown.

115 Net claims take account of recoveries from reinsurers that are due to an insurer.

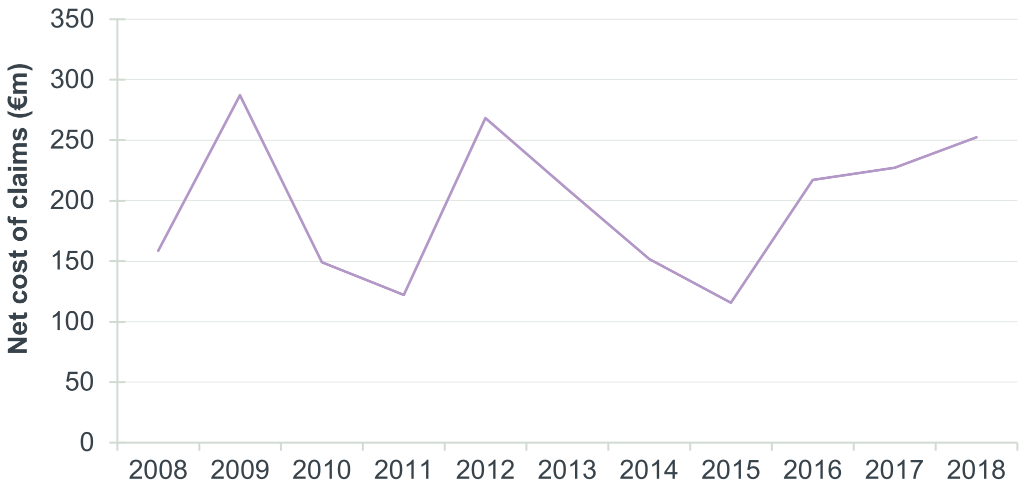
116 Section 3 of the *Personal Injuries Assessment Board Act 2003* provides for claims based on the following civil actions: (a) a civil action by an employee against his or her employer for negligence or breach of duty arising in the course of the employee's employment with that employer,(b) a civil action by a person against another arising out of that other's ownership, driving or use of a mechanically propelled vehicle, c) a civil action by a person against another arising out of that other's use or occupation of land or any structure or building, (d) a civil action not falling within any of the preceding paragraphs (other than one arising out of the provision of any health service to a person, the carrying out of a medical or surgical procedure in relation to a person or the provision of any medical advice or treatment to a person).

117 Is a requirement under section 11 of the *Personal Injuries Assessment Board Act 2013*.

4.4.8 The data on losses incurred (net cost of claims) provided by II to the CCPC suggests there has been an upward trend in claims costs since 2015. Figure 19 shows that claims costs in 2018 were 118% higher than the 2015 low. These figures do not correspond directly to the number of claims recorded for each year and can reflect costs incurred at an earlier point in time. This explained by the CIWG *Report on the Cost of Employer and Public Liability Insurance* as follows:

> *"Claims uncertainty has resulted in an increase in technical provisions[118] which means that based on prevailing market conditions, (insurers) believe they may have to settle claims for a higher amount than had been envisaged at the time a policy was sold. As personal injury claims in particular can take a number of years to resolve, it will be some time before it can be determined whether these provisions reflect accurately the actual cost of a settlement".*

Figure 19: Net Cost of Public Liability Claims



Source: Frontier analysis of II data provided to the CCPC
Note: The data represents a partial view of the market

4.4.9 The market research found that circa. 8% of organisations had a claim against their public liability insurance policy in the past five years. This figure rose to 19% for organisations in the sports and community sector.

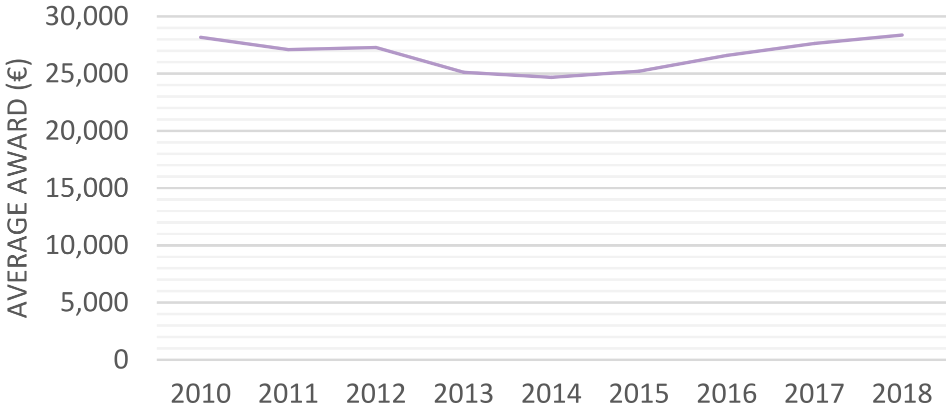
Changes in Awards over Time

4.4.10 PIAB[119] and the Courts Service award levels data were reviewed to consider whether they can provide insights on the upward trend in claims costs recorded by II members. The PIAB statistics provided in Figure 20 show that while the average award for public liability claims increased in recent years by 2018 they were back at the 2010 levels.

118 Technical provisions are provisions made by insurers for claims that will be paid in the future. Although the average duration on technical provisions is short, approximately three years, certain claims, such as bodily injury claims, can take up to ten years to settle.

119 PIAB is an independent State body which assesses personal injuries compensation where liability for an accident is not contested.

Figure 20: Personal Injuries Assessment Board Average Award by Year

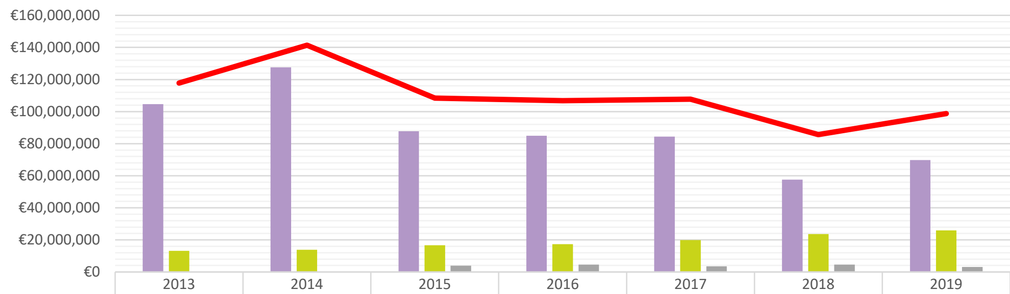


Source: PIAB Annual Report

4.4.11 As the number of PIAB public liability claims for compensation are a proportion of the total number of claims in a given year[120] the data published annually by the Courts Service[121] has been considered to provide further insight on this area. By way of background, prior to 2014 all personal injury litigation was heard in the first instance in the Circuit Court and the High Court. From 3 February 2014[122] the monetary jurisdiction of the Circuit Court was increased to €75,000 (personal injuries increased to €60,000) and the District Court to €15,000. The intention of the policy change was to reduce the number of cases in the High Court - which attract a higher set of legal costs than in the District or Circuit Courts - with the aim of reducing the quantum of legal costs relating to litigation. These reforms have increased the number of cases heard in the District and Circuit Courts while, in turn, the number of cases in the High Court have reduced.

4.4.12 Figure 21 shows the trend in awards across the District, Circuit and High Court since 2013. The overall quantum of awards peaked in 2014, the year of the change in monetary jurisdiction and have trended downwards since then.

Figure 21: Personal Injury Court Awards



	2013	2014	2015	2016	2017	2018	2019
High Court	€104,609,294	€127,590,473	€87,816,875	€84,937,070	€84,337,288	€57,523,833	€69,752,469
Circuit Court	€13,243,153	€13,794,354	€16,626,607	€17,314,830	€19,874,648	€23,596,553	€25,920,902
District Court			€3,982,645	€4,594,275	€3,493,105	€4,536,733	€3,126,296
Total	€117,852,447	€141,384,827	€108,426,127	€106,846,175	€107,705,041	€85,657,119	€98,799,667

CCPC analysis of Courts Service Annual Report data

120 There are a number of grounds on which a party to the assessment by PIAB can opt to proceed instead to litigation (including rejection of the PIAB assessment).
121 It should be noted that this data relates to all personal injury actions and therefore includes motor, employer and public liability actions.
122 Part 3 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 (No. 32 of 2013).

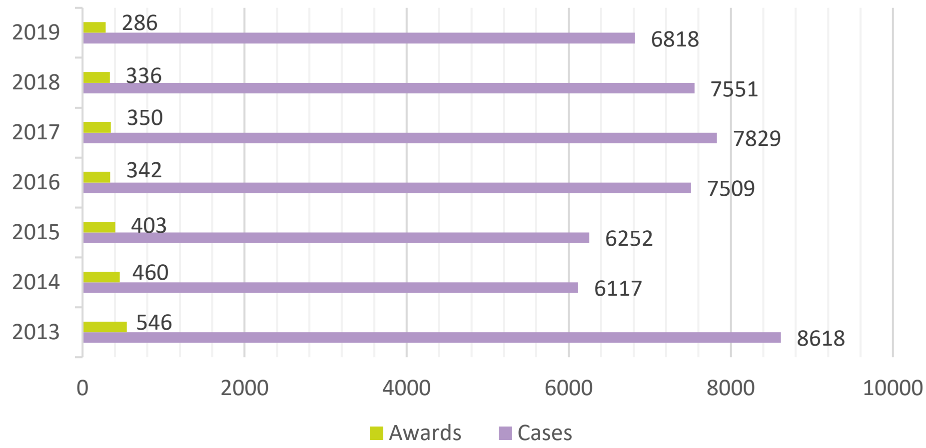
4.4.13 The PIAB and Courts figures represent a limited subset of awards as there are no published figures yet on direct settlements between the parties. The Courts data also does not allow for an analysis of the variation in awards between the types of cases (e.g. between motor and public liability) nor for a comparison of awards between public liability cases.

Costs by Settlement Channels

4.4.14 A significant proportion of claims costs relates to the cost of settling the claim. There are generally three ways in which a claim can be resolved: by way of direct settlement between the parties, by way of an award made through the PIAB process, or as a result of litigation. In Ireland, all personal injury-related claims must be registered with PIAB unless settled at an early stage[123].

4.4.15 Direct settlements can occur at an early stage and prior to a claim entering the PIAB process, or where the parties exit the PIAB process and enter into litigation and decide to settle the claim before a judge is asked to rule in the matter and make an award. Figures 22 and 23 indicate that the number of awards made each year in the Courts is much smaller than the cases that are initiated[124]. It is currently not clear why this is so and it may be the case that a large proportion of personal injury actions are resolved by direct settlement between the parties.

Figure 22: Number of High Court Personal Injury Cases and Awards

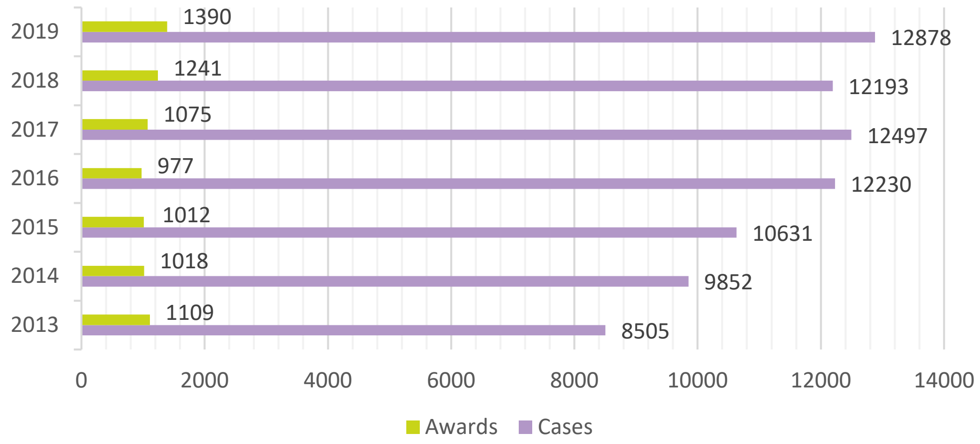


CCPC analysis of Courts Service Annual Report data

123 PIAB makes assessments in respect of personal injuries suffered in motor accidents, work place accidents and public liability accidents.

124 It should be noted that medical negligence cases, which are heard in the High Court, and reported in the Court Services Annual Report as part of the personal injury suits, are excluded from the figures. Medical negligence cases do not fall within public liability insurance policies.

Figure 23: Number of Circuit Court Personal Injury Cases and Awards



CCPC analysis of Courts Service Annual Report data

4.4.16 Some direct settlements may also be approved by a judge where the CCPC understands that these settlements will typically be agreed between the parties and the judge is simply asked to approve the terms of the settlement. This will typically arise where proceedings are paused to allow both sides to reach an agreed settlement, which is then submitted for approval to the judge. No judgment or Court award is made in these instances. In the remaining cases, judges rule on the facts of the case and may make an award of both general and special damages[125].

4.4.17 Figures are not currently published on the breakdown of settlements made directly between the parties[126]. The NCID Private Motor Insurance Reports published in 2019 and 2020 demonstrate that the different settlement channels have a significant impact on the total cost of claims. For example, 85% of claimants who settled injury claims through litigation from 2015 to 2019 settled for less than €100,000. Of those settlements, the average compensation was €23,572 which in turn attracted legal costs of €14,949[127]. Those legal costs account for 63% of the compensation awarded for litigated claims as against 4% through the PIAB settlement channel. The average award levels for claimants were broadly similar for both channels (i.e. PIAB-€22,600, Litigation-€24,208), however PIAB settled cases in 2.9 years as against 4.7 years for litigation.

4.4.18 The NCID report on employer liability and public liability will provide a breakdown of the time and cost of the various settlement channels at an aggregate level and offer further insight on this area. It is not possible to reach any substantive conclusions on the influence of choice of settlement channel on cost inflation in the public liability insurance market in advance of that publication.

125 General damages are awarded based on assessment of the injury incurred (sometimes referred to as damages for "pain and suffering"), while special damages are awarded based on an assessment of more specific loss arising from the injury, such as a loss of income.
126 This will include those which are made at an early stage and those made following the PIAB process.
127 NCID (2020) *Private Motor Insurance Report 2*.

4.4.19 The stakeholder interviews indicated that rising claims costs are one of the primary concerns in the sector. Insurers indicated that a number of factors have influenced this as follows:

- ***Increases in the total cost of claims:*** Insurers stated there has been award inflation, resulting in part from the changes to court jurisdictional limits introduced in 2014 and changes in the Irish discount rate in 2017[128]. They suggested this has led to Irish claims costs being significantly higher than European counterparts.
- ***Increased uncertainty of claims costs***: Insurers stated that judges have a degree of discretion when setting awards levels which can lead to significant differences in costs for similar claims. Special damages (e.g. loss of wages, medical bills) are particularly hard to forecast in the view of insurers, and are making up a significant amount of claims costs in recent years.
- ***Increasing number of claims***: Insurers stated that they have seen an increasing number of claims and highlighted that this may be because there are no disincentives to making a fraudulent claim. This impacts claims costs through increased legal fees, time, uncertainty, and potentially the level of pay-outs.

4.4.20 Trade organisations interviewed for the Study stated that there were a range of possible explanations for increased premiums, including increasing claims costs and the profitability of insurers. These organisations did not see an increase in the number or frequency of claims in their subsectors.

4.4.21 Other factors can also contribute to rising premiums, including the cost of reinsurance and any 'remediation' of a book of business[129]. In addition, stakeholder feedback suggests that premiums are usually based on an organisation's wages or turnover. One stakeholder stated that, as the Irish economy has been in an extended period of growth prior to 2020, many customers will have increased their payroll and turnover which, in turn, has led to a proportionate increase in their public liability insurance premium.

Key Conclusions

4.4.22 The available information suggests that the number of claims and award levels have been largely flat in recent years. The CBI's NCID report, which is due to be published in early 2021, will provide greater transparency on the extent to which the increased claims costs experienced by II members, could be due to the channel used to settle a claim. A similar report published by the CBI in 2019 and 2020 on the private motor insurance, provided a full view of all the claims in the market and also highlighted that the PIAB model is the most cost effective and timely settlement route.

128 The Department of Justice and Equality consulted on the discount rate in June 2020. The consultation paper provided a summary of the purpose of the discount rate: *"The discount rate is used in a relatively small number of very severe personal injury cases where substantial compensation, involving the calculation of future special damages, is awarded. The purpose of the discount rate is to convert an assumed future stream of income into a present lump sum. In the case of a personal injury award, this lump sum, when invested at a particular rate of return, will theoretically provide a person with the appropriate level of compensation for his/her level of injury as determined by the Courts".*

129 In this context remediation is understood to refer to an exercise wherein an insurer conducts a review of business and re-prices policies and/or reduces exposure to particular risks according to the outcome of the review.

4.4.23 While the CCPC has focused on understanding the degree to which claims are a driver of cost inflation, other factors may also be at play. Calculating a premium will include a range of factors in relation to the nature of the risk or risks to be insured, an organisation's payroll or turnover, the level of excess attached to the policy[130], the charges incurred in ceding premiums to reinsurance[131], and the reserves required to cover the cost of potential claims.

4.4.24 The CCPC notes that stakeholders state that rising claims costs are the primary reasons for insurers leaving the Irish market and being unwilling to enter despite increased premiums. The CCPC outlines actions to deliver a more transparent and cost effective settlement process in 'Chapter 5 - Recommendations', which can also address this negative perception of the market in a manner that builds on the CIWG reforms on award levels.

130 'Excess' refers to the amount that a customer is required to cover from their own funds when paying out on a claim against the insurance policy. The difference between the excess and the total claim cost if covered by the insurer.

131 An insurer may seek to further spread the risk it is covering by ceding premiums to another insurer called a reinsurer. When a claim is made on the policies ceded in this way the reinsurer covers the cost of meeting the claim. Ceding premiums to reinsurance involves a cost to the insurer.

4.5 Summary Findings on Competition

4.5.1 The Study was undertaken to assess whether issues exist in the public liability insurance market in relation to rising premiums and a lack of availability of cover. The initial diagnosis undertaken in the Study confirmed that premiums are increasing for all sectors of the market and that a lack of availability is an issue for some sectors. Sufficient data is not available to understand the extent to which availability is a problem in some sectors.

4.5.2 To assess whether the functioning of competition is causing these adverse outcomes three theories of harm were tested against the available data and information where the findings are summarised in the table below.

Figure 24: Summary Findings on Competition

Theory of Harm	Findings of the Study
1. Barriers to Entry	Access to insurance market data and access to claims history information are potential barriers to entry. The market has been hardening and the characteristics of public liability insurance make it particularly exposed to the insurance cycle. Sufficient information is not available to facilitate new entry to support the market to self-correct in a timely manner.
2. Switching Behaviour	Switching is a feature of the market, where brokers seem to ease the burden of switching insurers for buyers. However, there are not always alternative providers to switch to in some sectors. Buyers do not seem to be fully engaged in the market which may be impacting on switching when it is an option.
3. Cost Inflation	Uncertainty on claims costs are perceived as being a significant driver of increasing premiums. While the available data is insufficient to confirm the extent to which this is the case, this perception may be impacting on new entry.

4.5.3 'Chapter 2 - Methodology' outlines the approach taken by the CCPC to manage the data limitations that exist in this market, where their effect on the completion of the Study are outlined in Figure 25. Similarly the Study also confirms that the lack of available, detailed and timely data can be a challenge for new entrants and existing insurers that are considering expanding into other sectors. At a strategic level these data gaps are a limiting factor in the ability of the State to review and monitor the sector and undertake evidence-based policy development, and to assess the impact of any policy initiatives that are implemented.

Figure 25: Impact of Data Limitations on the Study

Analysis affected by the Data Gap	Data Used	Impact of the Data Gap
Premium Increases	Market research findings, II data and industry stakeholder interviews have been used to better understand the impact of premium increases.	The impact on the average premium, either for the market as a whole, or by sector, could not be quantified. The analysis of the gross written premium shows that it has been increasing, but it is unclear to what extent this is driven by an increase in the number of policies written, a shift from foreign to Irish capacity, or by increased prices on existing policies.
Entry and Exit	Market research findings, II data and industry stakeholder interviews have been used to better understand the level and impact of entry and exit on the market and various sectors.	While industry stakeholder feedback detailed there are certain sectors which have experienced a higher degree of exit (e.g. higher footfall sectors), this could not be quantified due to lack of data. The impact of foreign capacity exiting the market could not be quantified, though this featured prominently in the industry stakeholder interviews.
Market Size	II information on the gross written premiums of its members to estimate the size of the market from the supply side have been used. This has been supplemented with market research on the number of organisations that have a public liability insurance policy to better understand the ubiquitous need for public liability insurance from the demand side.	The gross written premium data used covered only the Irish-based insurers that are members of II which does not include a sizeable portion of the market which is underwritten by FOS insurers. Other gaps include non-II members and captive insurers. As a result, the total size of the market being studied could not be determined. Additionally, the available data only provides gross written premium for the total market, which does not allow for a breakdown of the market size by sector.
Concentration by Sector	Industry stakeholder feedback has been used to better understand which sectors may have fewer insurers available.	Market shares or changes in concentration in each sector could not be assessed.

4.5.4 'Chapter 5 - Recommendations' considers how best to address the areas highlighted as drivers of adverse market outcomes.

5 Recommendations

Contents

5.1 Introduction

5.1.1 The CCPC's competition analysis, as outlined in chapter 4 of the Study, suggests that the functioning of the public liability insurance market raises a number of concerns. Chapter 2 of the Study has identified that a number of difficulties arise from the limitations identified in respect of data on the market, which have precluded a full competition review from being conducted at this time. However, the information that is available indicates that premiums have increased by an average of 15-20% for most organisations across all sectors in recent years, and that the availability of insurance cover is an increasing concern for some organisations, in particular for the sports and community sectors.

5.1.2 The CCPC acknowledges that considerable effort has been expended across Government in recent years, in particular through the CIWG (the work of which recently concluded), to understand the reasons for these issues and undertake measures to address them. The CCPC's recommendations have been developed with the intention of complementing the ongoing reform agenda so that, over time, this market works better for buyers of public liability insurance.

5.1.3 As part of this process, the CCPC welcomes the Action Plan for Insurance Reform (Action Plan), which outlines the actions to deliver on PfG commitments up to 2022. The CCPC supports the inclusion of a 'whole of Government' approach to oversee the implementation of the reform agenda and notes the recently established Sub-Group of the Cabinet Committee on Economic Recovery and Investment and the Insurance Industry Development Forum (Forum).

5.1.4 In summary, improving the overall competitive conditions in this market will require that the lack of availability of key data and the uncertain claims costs environment are addressed as they may be having the effect of being barriers to entry in the market. In tandem, a more stable market will require that organisations seeking insurance are supported to become more informed and proactive, and insurance market legislation is applied to consider and address possible consumer protection issues. It is important to stress that each recommendation will not be sufficient in itself to address premium rises and insurer availability, but that all three would have an increasingly positive impact in the short to long-term. For ease of reading, **key points are highlighted below in bold.**

5.1.5 The Action Plan for Insurance Reform includes a range of measures that will progress the 'change agenda'. **The Study proposes other reforms where the CCPC suggests, to ensure that regulatory uncertainty does not occur in the market, that the implementation timeline is clearly defined and kept to a minimum through a co-ordinated approach across Government, where clear lines of accountability exist.** There are a number of ways that the CCPC's recommendations could be implemented where it is not the intention of the CCPC to be too prescriptive in this regard (although the CCPC does offer some options). Rather, the CCPC believes that the recently established Sub-Group of the Cabinet Committee on Economic Recovery and Investment and the Insurance Industry Development Forum (the Forum), as part of the Action Plan, are best placed to consider them[137].

137 The CCPC understands that the Forum will meet quarterly/bi-annually until the end of 2021 and serve as an advisory body for the Government's work on insurance reform.

5.1.6 The CCPC notes that the Forum has been set up to consider the development of a work programme for the proposed PfG Office to encourage competition. The CCPC considers it appropriate that the membership of the Forum comprises the key officials and agencies in the State with a role in insurance and/or competition, where the CCPC is committed to playing its part as a member of the Forum. The CCPC welcomes the intention of the Forum to also explore long term regulatory reform and competition policy measures to encourage greater entry and provide more alternatives and competition.

5.1.7 While the above approach has the potential to deliver effective change in a timely manner, **it is also important that an overarching long-term strategy and shared vision for the market is put in place to frame policy debate on insurance, which is supported by a co-ordinated approach to reform across the departments and agencies with a role in insurance.** This would provide the context in which the State makes decisions in relation to the market and ensure that short term responses to long-term structural changes are avoided.

5.2 Improve Data Availability to Support Supply and Allow for Public/Policymaker Scrutiny

What is the Problem?

5.2.1 An essential element for an insurance market to deliver competitive outcomes is that existing and potential competitors can access information to make strategic decisions to develop their business. As highlighted throughout the Study, in Ireland a number of issues arise in this regard, which could operate as barriers to entry. **A full dataset is not available for the range of insurance entities that operate in the public liability insurance market[138]. In addition, data to assess and price risk is incomplete and not readily accessible for all competitors. At present, most of the data published on the market comes from the insurance industry representative body.**

5.2.2 The lack of publicly available data may make it difficult for an insurer to enter a new sector. Stakeholder feedback indicates that where an insurer has no underwriting experience in a sector, they need to increase the amount of capital required to trial the area, where it could take 7-8 years to build up the data to price accurately. In the longer-term, the development of a more digitalised insurance sector, which should be a priority, could be undermined by the lack of access to relevant data sources.

5.2.3 This information gap is also impacting on the State's ability to develop an evidence base to inform the development of policy for this market. For instance, the Study has identified that the public liability market seems to be in the hard part of the insurance cycle, which dissuades entry, where the State does not have the requisite data to support appropriate policy responses (such as addressing specific drivers of increased risk or cost). The lack of transparency in the market also does little to promote public confidence in the sector.

138 Insurers with a head office in Ireland or who operate in the market on either a FOE or FOS basis.

5.2.4 The Study has highlighted that two data issues are affecting the supply side of the market:

- Insurance Market data: Understanding the market from an insurer and policy development perspective has not been possible since the CBI retired the Blue Book in 2015. While this information was at general liability level (which includes public liability and employer liability), it provided very valuable insight on the market conditions for insurer premium income, claims costs and other business expenses on an annual basis.
- Claims history information: The most reliable source of information on a policyholder's claims history to assist in accurately pricing risk is the Insurance Link database, where open access to this information by all insurers in the market does not apply.

What is the Solution?

Insurance Market Data

5.2.5 In considering how best to improve data transparency to support a more effective supply base, the work underway by the CBI regarding the CIWG[139] action to collect employer liability and public liability insurance information for the NCID is particularly relevant.

5.2.6 It is very positive that the **CBI has confirmed that the first NCID report will be published in 2021 which will mark the start of an incremental process to deliver greater transparency. The CCPC recommends that NCID information be published at insurer level**, as was the case with the Blue Book. The NCID will also be more useful than the Blue Book, as the data will be at employer and public liability level and include FOS insurers. **The publication of timely information could be used by the industry and the State to assess market size, market share and profitability, which over time would provide insight on market trends, to include entry and exit. Having details of active suppliers would also be useful to customers in the market.**

5.2.7 **The CCPC understands that the NCID report will publish aggregated premiums, claims and settlement data; and historical trends at NACE Code 1 level[140]. In the longer-term, the CCPC recommends that the CBI undertake a data collection exercise to provide this information at subsector (that is, below NACE Code 1), in future iterations of the report.**

139 CIWG *Report of the Cost of Employer and Public Liability Insurance* - Recommendation 2 of Objective 1: Increasing Transparency.

140 NACE codes identify economic sectors for the purpose of collecting statistical information in the EU. More information is provided in the link below: https://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=LST_NOM_DTL&StrNom=NACE_REV2&StrLanguageCode=EN&IntPcKey=&StrLayoutCode=HIERARCHIC&CFID=1110191&CFTOKEN=3ca0f6dadb71d377-1F2DE4F0-F7BF-BCAE-31C18C386EA88F92&jsessionid=f900daad75c14b465532m)

5.2.8 Using the NCID data in this manner would also ensure that the regulatory burden on insurers was kept to a minimum, as no further data collection exercise would be necessary. The CCPC understands that implementing this recommendation on market data is not straightforward due to the reporting requirements of Solvency II[141], which formed the basis for the CBI decision to discontinue the Blue Book. The CCPC acknowledges that in order to progress this recommendation, legislative change is required to the Central Bank (National Claims Information Database) Act 2018[142] or by way of a new instrument. Given the importance of making this data available, the CCPC recommends that the CBI analyse the data as part of the NCID reporting process and also publish the data, as was previously the case with the Blue Book.

Claims History Information

5.2.9 The ability to access claims history data is a key enabler for current and potential insurers to accurately price premiums in the non-life insurance market, which in turn supports a more stable and competitive market. Currently, **the most reliable source of information on the claims history of an insured party in the State is the Insurance Link database, which is controlled by II[143]** and accessed as part of a package of 'shared services'.

5.2.10 As was noted in 'Chapter 4 - Assessment of Competition' (4.2.15), the European Commission is currently investigating whether the conditions imposed on companies wishing to participate in and access the Insurance Link database may have had the effect of placing these companies at a competitive disadvantage on the Irish motor insurance market in comparison to companies already having access to the database.

5.2.11 The Insurance Link website states that the rationale for setting up the database was to assist II and the Self-Insured Taskforce members in the detection and defence of exaggerated claims. In this regard, it was considered as one means of providing an information base for the proposed Integrated Insurance Fraud Database arising from the CIWG Motor Insurance reforms[144]. Irrespective of whether Insurance Link is used to detect fraudulent claim patterns, **the CCPC believes that it is essential that open access for claims history information for all insurers and their agents is provided for. This may require action by the State to ensure that arrangements are in place for data access and conversely to ensure that access to this data does not have the effect of being a barrier for new entrants.**

141 The Blue Book was based on Solvency I data and the move to Solvency II meant that the underlying data that had been previously recorded as part of Solvency I was no longer directly comparable with the new data reported under Solvency II. The CCPC understands that Solvency II reporting requirements focus on insurers providing data some of which is not public, and where the CBI has confidentiality obligations in that respect. The risks covered by cross-border insurers can no longer be split out between different countries in the EU due to group reporting. This is an issue of particular relevance in Ireland due to the number of cross-border insurers in the market and small number of domestic focused insurers.

142 Section 8(9) states that any report of the NCID or CBI using the data collected for the purpose of the Act *'shall be combined in such a way so that no insurance undertaking or individual is identifiable from the data and any such report or other publication shall not otherwise identify any insurance undertaking or individual'*.

143 II include Insurance Link in their package of 'shared services' for the use of their members. Access to Insurance Link is also available to members of the Self-Insured Taskforce. II is the data controller of Insurance Link for data protection purposes. It is managed in turn by Verisk.

144 The Eleventh and Final CIWG Progress Report, published in October 2020 detailed that new criteria needed to be added to Insurance Link to detect fraudulent claim patterns. Following interaction with the Data Protection Commission there is a view that the additional benefit these new criteria would generate from a fraud perspective may not be sufficient to justify the impact on third parties who fall within its scope. The Action Plan on Insurance Reform includes it as a remaining action (No. 64) from CIWG as follows: 'To explore the feasibility of establishing a fully functioning integrated insurance fraud database for industry to detect patterns of fraud'.

5.2.12 **To best facilitate this, the CCPC is of the view that it is preferable that this data is managed by an independent body, so the information is accessible to all insurers in a fair, reasonable and non-discriminatory manner.** This is the case in the UK, where the Motor Insurers Bureau manages CUE for the insurance industry[145]. Adopting a model that is broadly similar to the UK would ensure that data is shared on relevant claims that occur in the market.

5.2.13 The CCPC acknowledges that the cost of collecting this type of data needs to be considered before a definite way forward is decided on. Adopting this approach would also support the wider development of a market for the data, as is the case in the UK, which could support the delivery of better data services for the sector in tandem with delivering further digitalisation in the market.

5.2.14 **Over the medium-term, the CCPC notes that the implementation of this recommendation could be facilitated through the development of legislation by the European Commission to establish an 'Open Finance' framework for financial services in the European Union by 2024 (noted in 5.3.9). This legislation will provide for a greater use of a wide range of data sources that can allow for more accurate pricing in insurance markets, however it is suggested that beneficial progress could be made in the State in the intervening period.**

5.3 Develop Supports for Buyers

What is the Problem?

5.3.1 **The CCPC's market research confirms the importance of public liability insurance for SMEs and MSMEs, which has an almost universal uptake by the respondents, at 97%. However, the research indicates a range of detrimental outcomes from significant price increases, lack of availability for some sectors, through to lack of engagement by some buyers in the market.**

5.3.2 Public liability insurance is one of a range of costs that an organisation will typically manage as part of its cost base. **The majority of organisations surveyed for the Study reported increases in public liability premiums of between 15%-20% in the past three years[146]**. It is important to note that this is an average which excludes some large outliers. The CCPC is aware from media reports and stakeholder interviews that some organisations have experienced increases which are far greater than this average[147], where its impact on these organisations have been significant. While premium volatility is an issue for some organisations, it was not possible to fully gauge its extent in the Study.

5.3.3 **While most organisations now pay higher premiums, the reasons for the price increases are not always clear.** The market research indicates that the most common explanation provided by a broker or insurer for premium increases has been 'inflation/price increases' (26%), followed by 'claims against the organisation' (18%). However, 40% of organisations with increasing premiums were given no reason for the increase while 70% of respondents felt that the premium increase was not fair and justified[148].

145 https://www.mib.org.uk/managing-insurance-data/mib-managed-services/cue-miaftr/
146 Premium amounts were requested for the last three years in the CCPC market research.
147 https://www.independent.ie/business/irish/expanding-clickandgo-plans-spin-off-of-back-office-search-platform-38957789.html https://www.bbc.com/sport/northern-ireland/51176935
148 Ipsos MRBI (2020) CCPC Public Liability Insurance Research. Question: "Which of the following comes closest to your organisation's view?"

5.3.4 **While switching is a feature of the market, where a quarter of respondents switched in the last five years, the levels seem to be relatively low given the premium increases in the market. Despite the issues being experienced by organisations they are not always fully engaged in this market, and are often very reliant on a single broker.** While 82% of respondents felt they understood their insurance either very well or fairly well[149], they did not always comprehend some key distinctions in relation to insurers and brokers[150], who their insurer was[151], or how their broker is paid[152]. While price is prioritised over other considerations for their public liability policy, 66% of organisations have not switched broker to obtain a better priced plan in the past ten years.

What is the Solution?

5.3.5 **It is important to note at the outset that by no means should it be inferred that the market is not working for all public liability buyers.** The impact of the issues identified in the Study are very varied across the market and further research is required to ensure that any supports are targeted at the areas where the commercial market is currently underserving certain categories of buyers. **Well informed and empowered buyers are an essential ingredient to ensure markets work well and underpin effective competition.** As such, the recommendations have been informed by the CCPC's experience of studying consumer switching rates and behaviours, where the similarities with organisations, particularly in relation to the provision of information by insurers, can be useful to promote buyer engagement in the public liability market. This section also draws on the CCPC's knowledge of the drivers of financial capability arising from its statutory consumer role in the area.

Consumer Information

5.3.6 The interaction between an organisation and an insurer should be underpinned by the principle that an insurer's commercial model provides the right policy at the right price, where the underlying reasons for premium levels and increases are transparent and communicated to buyers. **The CCPC is of the view that the level of transparency in this market, as well as buyer confidence and understanding as to why premiums change could be improved. The CCPC recommends that the approach used by insurers when implementing and communicating premium increases should be reviewed to ensure insurers are adhering to disclosure requirements, assessments of suitability and presentation of information that are in place as part of the CBI's conduct supervision regime.**

5.3.7 The CBI, as the State's financial regulator with a consumer protection remit[153], is best placed to review whether the practices of insurers could be improved. It is noteworthy that the 'Dear CEO' letter recently issued by the CBI on the first phase of the Differential Pricing Review drew attention to failures relating to senior management accountability and internal culture in relation to pricing practices in private motor and home insurance.

Base: All whose Public Liability Premium increased in the past ten years (250).

149 Ipsos MRBI (2020) CCPC Public Liability Insurance Research. Question: "How well, if at all, do you feel your organisation understands the terms of your public liability insurance plan?" Base: All who have/had commercial policy for public liability (491).

150 A number of respondents named brokers when asked for the identity of their insurer.

151 29% of respondents did not know who their insurer was - Ipsos MRBI (2020) CCPC Public Liability Insurance Research. Question: "Which insurer currently provides your organisation's public liability coverage?" Base: All who have/had commercial policy for public liability (491).

152 28% of the respondents who used a broker responded 'don't know' when asked to choose between flat fee or commission - Ipsos MRBI (2020) CCPC Public Liability Insurance Research. Question: "Thinking of how your organisation's broker is paid for their services which of the following best applies?" Base: All those who use a broker (361).

153 Consumer protection in the context of the insurance sector falls within the conduct supervision remit of the CBI.

5.3.8 Legislative developments provide the basis for the CBI to provide further oversight in the medium to long-term:

i. Insurance Distribution Directive[154] (IDD): The implementation of the IDD provides for Product Oversight and Governance Guidelines to be applied by financial regulators. EIOPA considers that these arrangements '*play a key role in customer protection by ensuring that insurance products meet the needs of the target market'.* Such Guidelines can provide a clear set of parameters for insurance firms in respect of their responsibilities relating to the products they sell and the conduct expected of them in doing so.

ii. Consumer Insurance Contracts Act[155]: The Consumer Insurance Contracts Act (the Act), among other things, requires insurers to ask all relevant questions of the consumer at the pre-contract stage, requires five years claims history and premium information to be provided at renewal, and improve the manner and speed at which claims are dealt with. The Act will also support a more efficient complaints resolution process. The implementation of the Act may have the effect over the longer-term of supporting competition based on quality (e.g. better customer service) as well as on price.

iii. Senior Executive Accountability Regime: The PfG contains a commitment to introduce a Senior Executive Accountability Regime (SEAR) to apply to financial services firms. The SEAR will drive changes in terms of culture, greater delegation of responsibilities, and enhanced accountability while simplifying the taking of sanctions against individuals who fail in their financial sector roles. SEAR could be a potential means to strengthen consumer protection in insurance firms as it will impose certain responsibilities on senior managers and their boards and encourage a more customer-focused culture. It is expected that heads of bill will be presented to Government in the coming months[156].

iv. The Consumer Protection Code: The CBI is currently reviewing the Consumer Protection Code and the findings from the Study could also inform developments, including digitalisation, to identify appropriate insurer practices.

5.3.9 **In the longer-term, facilitating competition in the market through 'InsurTech'[157] entry and the potential development of 'Open Insurance' should be considered by the CBI and Department of Finance.** Such developments could support more informed consumers and result in greater levels of competition. EIOPA has commenced a discussion with stakeholders on the type of balanced, forward-looking and secure approaches that could be possible for 'Open Insurance' which it defines as '*sharing consumers´ insurance services-related data with other insurers, intermediaries or third parties to build applications and services'.* Finally, the European Commission has recently published its *Digital Finance Strategy* which includes a commitment to propose legislation on an open finance framework by 2022[158].

154 http://www.irishstatutebook.ie/eli/2018/si/229/made/en/print
155 Organisations with a turnover of up to €3m are covered by the Act.
156 https://www.kildarestreet.com/wrans/?id=2020-07-07a.599&s=senior+executive+accountability+regime#g603.q
157 InsurTech can be understood to refer to 'technology-enabled innovation in insurance that could result in new business models, applications, processes or products'.
158 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591

5.3.10 Consultation responses for the Study have confirmed a relatively low level of digitalisation in the public liability market, which confirms existing evidence[159] that the insurance market in Ireland has not yet fully engaged with technology[160]. Digitalisation will also support greater use of data analytics, as noted above, which will allow for more accurate pricing of risk and premiums that consumers will benefit from.

Buyer Engagement

5.3.11 Public liability insurance is usually sold as part of a product bundle with other commercial insurance, which can make it more difficult for organisations to fully understand what they are buying. In addition, most organisations, and especially SMEs and MSMEs, may have very limited time to consider their options and make a fully informed decision. In this regard, brokers provide a useful service in assisting their clients to navigate the market and are the preferred means in the market to source public liability insurance where at least 72% of respondents use them.

5.3.12 The market research suggests that a significant number of respondents rely heavily on their broker. 66% of the respondents that use the services of a broker had not switched in the last ten years[161]. 84% of those respondents did not switch either due to them being happy with, or having a strong relationship with, their current broker[162]. Of the 30% who switched broker in the last ten years, securing a better priced plan was the reason to switch for 47% of the respondents[163], which suggests that better value is possible for some organisations from being more active in the market.

5.3.13 Brokers can be paid either on a flat fee basis or as a percentage of the overall premium. Respondents were not fully aware of the type of fees they paid or the level of costs associated with their broker. For example, 28% of respondents did not know which payment method they used[164]. Of the respondents who paid a flat fee, 49% did not know how much they paid[165]. For the respondents who pay based on the percentage of their premium, 76% did not know what that amounted to[166].

5.3.14 **The market research suggests that organisations would benefit from being more informed about issues relevant to liability insurance so that they are better equipped to engage more effectively with a broker or insurer.** This could include having a general understanding how the public liability market works in relation to costs, risk and claims, which organisations operate in it, how they can accurately profile their risk and what type of cover is the best fit for their circumstances. This knowledge is particularly important for MSMEs[167] as sourcing public liability insurance for an organisation can often become the responsibility of the owner, general manager or accountant by default.

159 https://www.milliman.com/en/insight/milliman-data-science-survey-for-non-life-insurance

160 The Brokers Ireland submission noted the following: 'Unlike private motor or household insurance in Ireland, where the entire transaction will be dealt with via Electronic Data Interchange (EDI), commercial insurance submissions to insurers generally are prepared manually by Insurance Brokers and submitted to insurers. In the UK, which is a much larger market, commercial insurance is traded by Insurance Brokers via EDI as software enabling this is widely available and has been invested in and supported by insurers.'

161 Ipsos MRBI (2020) CCPC Public Liability Insurance Research, Question: "In the past ten years has your organisations switched broker?" Base: All those who use a broker (361).

162 Ipsos MRBI (2020) CCPC Public Liability Insurance Research, Question: "For what reasons did your organisation decide not to switch broker?" Base: All who did not switch broker in the last 10 years (238).

163 Ipsos MRBI (2020) CCPC Public Liability Insurance Research, Question: "What was the reason for switching?" Base: All who switched broker (108).

164 Ipsos MRBI (2020) CCPC Public Liability Insurance Research. Question: "Thinking of how your organisation's broker is paid for their services which of the following best applies?" Base: All those who use a broker (361).

165 Ipsos MRBI (2020) CCPC Public Liability Insurance Research. Question: "Thinking of the last xx years, Question 33: How much does your organisation pay your broker per year in terms of a flat fee?" Base: All who pay a flat fee (128).

166 Ipsos MRBI (2020) CCPC Public Liability Insurance Research, Question: "How much does your organisation pay your broker each year as a percentage of the overall fee?" Base: All those who pay a percentage of the overall premium (126).

167 MSMEs are businesses with a staffing level of 1-9.

5.3.15 The OECD conducted a review of SME and entrepreneurship policy in Ireland in 2019[168]. That review identified the need for improvement in their financial capability and recommended that Ireland '*Develop an action plan for financial education to strengthen the financial skills and financial management of small business owners and manager*'. The CCPC understands that the outcomes from the OECD review include the development of an Entrepreneurship & SME Strategy by the Department of Enterprise, Trade and Employment and that the recently established SME Growth Task Force will develop a 'SME Growth Plan'. The CCPC believes that including measures to assist MSMEs to navigate insurance markets, as part of the development of their financial skills, should be considered in these initiatives.

5.3.16 In tandem, the CCPC recommends that **the State should also assist public liability buyers to become more engaged in the market as follows:**

i. **Provide information to organisations on active public liability insurance providers;**

ii. **Assist organisations in profiling their risk and identify possible options to reduce it, including the full suite of potential supply options in the market (the exact nature of the support here would need to be carefully considered so as not to encroach on the commercial activities of brokers), and;**

iii. **Improve choice for organisations by supporting greater market entry through the development of an international outreach programme to build confidence in the Irish market.**

5.3.17 As highlighted previously, it is important to note that such initiatives will not assist all public liability buyers who are currently experiencing unstainable large price increases or those who cannot obtain cover. With appropriate targeting however, which is likely to require some additional and ongoing market research, a significant number of public liability buyers, particularly those who are not currently members of group schemes or trade associations, could be assisted. **The CCPC welcomes that this area will be considered by the Forum that was recently established as part of the Action Plan.**

5.4 Promote the Development of a More Stable and Lower Cost Claims Environment

What is the Problem?

5.4.1 **Rising premiums in the market have been attributed by industry stakeholders to the costs associated with the claims process. As covered by Recommendation 1, sufficient data is not yet available to understand where significant cost increases have occurred in the claims environment.** For instance, while insurer claims costs (based on losses incurred) have increased by 118% from 2015 to 2018, PIAB data on public liability cases and the Courts Service data on personal injury cases suggests that the number of claims and level of awards have remained relatively stable in recent years.

168 https://www.oecd.org/publications/sme-and-entrepreneurship-policy-in-ireland-e726f46d-en.htm

5.4.2 **There is also a general perception that the claims environment in Ireland is unstable where there is considerable uncertainty on the total cost of claims that an insurer could become liable for in the future.** Insurers may respond to these circumstances by increasing the reserves they set aside, which has the effect of being an additional cost that is passed on to buyers through premium increases.

5.4.3 Industry stakeholders have stated that claims costs and uncertainty are the reason that some insurers withdraw from subsectors. They also state that the challenges presented by data availability and the claims environment are acting as a deterrent to sustainable market entry, where it seems that the problem of limited insurer availability for some organisations will persist until this issue is addressed.

What is the Solution?

5.4.4 The CCPC notes that this area has been extensively studied and a significant programme of reform is underway. Specifically, the CIWG reform agenda has addressed a range of issues that were highlighted as contributing to a high cost claims environment, where this work now continues through the Action Plan.

5.4.5 From a wider market perspective, delivering a claims environment that works better for buyers and insurers, while supporting a stable supply base, will ultimately depend on the following key outcomes:

- Personal injury award levels are consistent for the same type of harm;
- Additional costs are kept to a minimum and claims are resolved in a timely manner.

5.4.6 **In this context, and also noting the commitment in the PfG (which is also included in the Action Plan) on enhancing and reforming the role of PIAB, the CCPC offers the following analysis and recommendations as to why and how that might be achieved.** At the outset it is acknowledged that this is a complex area which would require further detailed consideration before significant progress could be made. Given the potential benefits however, it is suggested that such consideration would be worthwhile.

Personal Injury Award Levels

5.4.7 Award levels have been consistently highlighted by a range of stakeholders as an issue and the consideration of the appropriate level of award for general damages has progressed to the judiciary. The Personal Injuries Guidelines Committee was established in April 2020 by the Judicial Council[169] to prepare draft guidelines for award levels in personal injury cases for review by the Board of the Judicial Council. The Personal Injuries Guidelines were due to come into force at the end of October 2021, but will now be put in place by 31 July, 2021[170].

5.4.8 It is anticipated that the Guidelines, which will replace the Book of Quantum, will introduce a greater level of consistency to court awards. In turn, PIAB which currently uses the Book of Quantum to determine award levels, will apply the Guidelines in making awards. Finally, as the majority of settlements occur directly between the parties to a claim, it is expected that insurers will also have regard to the Guidelines, though they will not be legally bound to do so.

169 Provided for under Section 90 of the Judicial Council Act 2019.
170 https://www.irishtimes.com/news/ireland/irish-news/date-of-new-rules-to-set-out-personal-injuries-awards-brought-forward-1.4374769

5.4.9 **The NCID Private Motor Insurance Reports published in 2019 and 2020 demonstrate that different settlement channels have a significant impact on the total cost of claims.** For example, 85% of claimants who settled injury claims through litigation from 2015 to 2019 settled for less than €100,000. Of those settlements, the average compensation was €23,572 which in turn incurred legal costs of €14,949[171]. Those **legal costs account for 63% of the compensation awarded for litigated claims as against 4% through the PIAB settlement channel**. The average award levels for claimants were broadly similar for both channels (i.e. PIAB-€22,600, Litigation-€24,208), however **PIAB settled cases in 2.9 years as against 4.7 years for litigation.**

5.4.10 The NCID Employer Liability and Public Lability Report will offer further insight into claims costs and settlement channels. The data currently available from PIAB indicates that its public liability award levels have remained consistent from 2016 to 2019 at an average €26,000 - €28,000. It is anticipated that the employer liability and public lability findings, when published in 2021, will be broadly similar to the Private Motor Insurance NCID reports published in 2019 and 2020, which will confirm that the PIAB model delivers a low cost, stable and timely claims process. The Private Motor Insurance NCID reports also indicated that settlements that arise from litigation increased the overall cost of claims significantly with little difference in respect of the average award for the claimant.

5.4.11 A current limitation is that the PIAB legislation has had the unintended effect where a large proportion of the claims received by PIAB exit their settlement process. For instance, 42% of the parties to a claim consented that PIAB assess their claim in 2019. The parties that allow PIAB to assess their claim can then decide if they want to accept the awards proposed by PIAB based on the Book of Quantum, where the acceptance rate was 56% in 2019. Claimants who decide to move out of the PIAB process often proceed to litigation or direct settlement. The PIAB legislation also requires that a substantial number of claims are released to the courts, for instance, if they cannot be processed within a set timeline, cover psychological damage, require mediation or where the fee has not been paid.

5.4.12 **The CCPC recommends enhancing and expanding the role of PIAB to become the main personal injury settlement channel in the State. This, in the CCPC's view, has the potential to deliver significant benefits for insurers, organisations and claimants due to the reduced time and cost of pursuing claims.** Taking this approach would also strengthen the work of the Judicial Council, whose Personal Injury Guidelines will replace the Book of Quantum that has been applied by PIAB. **This could be done by allocating a range of additional functions such as mediation and/or quasi-judicial powers to PIAB.** This quasi-judicial model could include the principle of access to justice in the courts where the resolution process could be undertaken under the supervision of the courts[172].

5.4.13 The CCPC notes that a similar type model is used in Canada for motor vehicle personal injury claims. The Civil Resolution Tribunal (CRT) provides an online tribunal process with end-to-end dispute resolution services. A decision can be reached by agreement, negotiation, and facilitation or by an independent decision by a CRT member, which can be enforced like a Court Order. Recently enacted legislation will give the CRT jurisdiction over almost all motor vehicle personal injury disputes from 1 May 2021.

171 NCID (2020) *Private Motor Insurance Report 2*.
172 For example, the right to appeal to the High Court on a point of law would allow for continued access to the Courts.

5.4.14 Furthermore as illustrative precedent, models based on alternative dispute resolution mechanisms are already in place in the State as evidenced by the Workplace Relations Commission (WRC) and the Residential Tenancies Board (RTB). For instance, the WRC uses a suite of resolution mechanisms to ensure compliance with employment rights, as outlined in the Workplace Relations Act 2015, which includes an advisory, mediation and adjudication services where respondents must comply with WRC decisions. If needed, the WRC can legally enforce its decision by making an application to the District Court. The RTB was set up to replace the Courts in dealing with the majority of disputes between landlords and tenants through a dispute resolution service which can start with self-resolution through to a legally binding determination order which can be appealed to the High Court within 21 days.

5.4.15 Adopting a quasi-judicial role for PIAB would also provide the State with greater oversight of the claims environment and result in greater transparency on claims levels and trends, which could inform future policy development. The data collected by PIAB, as part of its enhanced role, could also be analysed to support a reporting function to provide greater market transparency for claims costs.

Appendices

Contents

A Terms of Reference

At a high level the goal of the study is to compile, as quickly as possible, a detailed assessment of the functioning of the market and make evidenced based recommendations as to how the Government may address the current issues around the cost and supply of Public Liability Insurance. This will encompass the following aspects:

- A review of current issues and recent studies in the sector;
- An overview of how the market operates and how public liability insurance is procured;
- An analysis of the market structure and levels of competition (both current and whether this has changed in recent years);
- Determinants of costs, premiums and profitability;
- An assessment of barriers to entry and exit;
- A review of similar markets and studies internationally, and;
- Based on the analysis, the CCPC will make recommendations to address the issues in the sector.

CCPC PUBLIC LIABILITY INSURANCE RESEARCH

Comisiún um Iomaíocht agus Cosaint Tomhaltóirí | Competition and Consumer Protection Commission

Ipsos MRBI
GAME CHANGERS

CONTENTS

Ipsos MRBI
GAME CHANGERS

INTRODUCTION

1

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OBJECTIVES & METHODOLOGY

400 interviews conducted across a representative sample of organisations. A further 100 interviews were conducted amongst a sample of sports & community groups. Using a fixed quota for these groups ensured a robust sample from the collection of organisations, instead of the survey cohort skewing to businesses.

Survey conducted via telephone, with fieldwork between 24th February – 3rd March 2020.

Quota controls to ensure nationally representative audience. % share of these quotas can be found overleaf in sample profile.

Data was then weighted in line with the most up-to-date estimates of the business population, determined by employee size, sector, and region. Sports clubs & community groups were not weighted. Base sizes for each question always refer to the number who actually responded. The data was weighted to reflect the most up-to-date estimates of the business population. Some may have been assigned a value of greater/less than 1 in final results - there may be some discrepancy between base sizes and figures calculated.

Objectives

- To develop an understanding of the Public Liability Insurance landscape, including organisations' most recent arrangements.
- To get a high-level understanding of how well customers seem to understand the Public Liability Insurance product.
- To better understand the details of organisations' premia, including the proportion of customers that have had their premiums increase and the scale of the increase in recent years.
- To better understand the switching behaviour of customers and how this may be impacted by the availability of alternative insurance providers.
- To explore how well customers understand the service provided by the broker and the extent to which they are actively engaged with the broker channel.

Questionnaire designed in consultation with the CCPC

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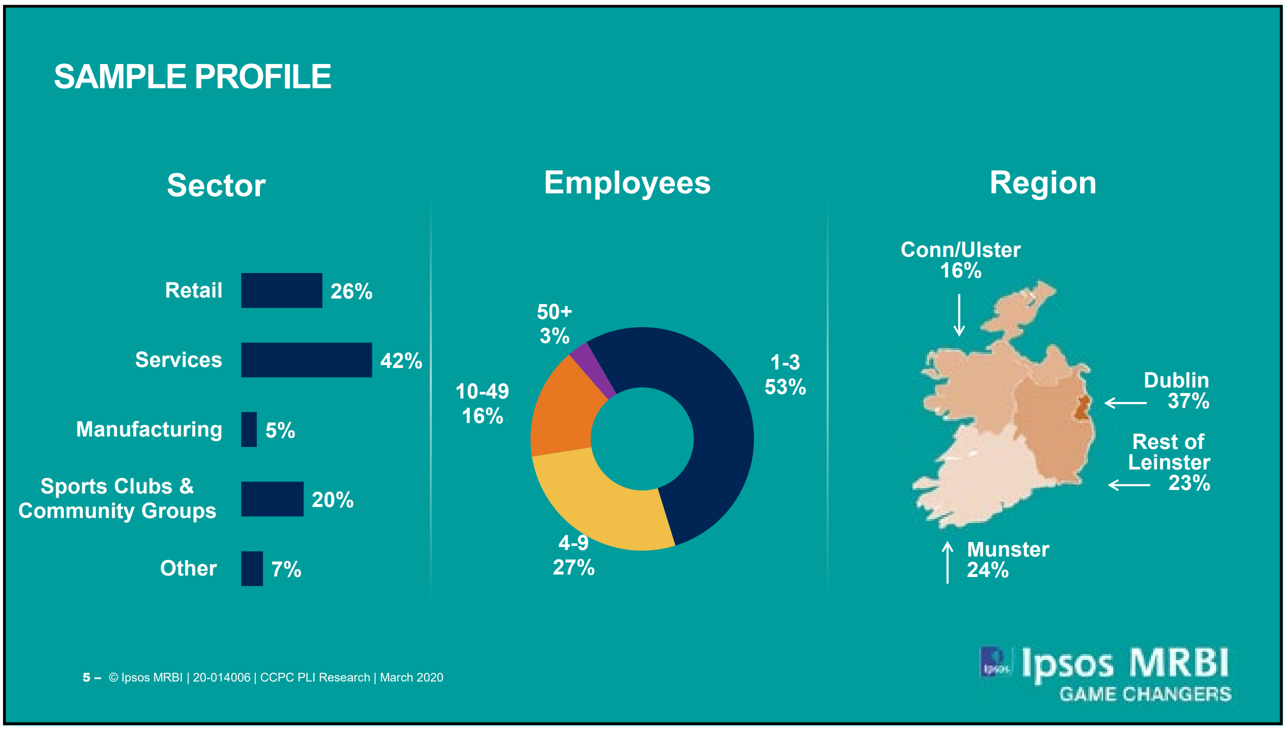
SAMPLE PROFILE
Sector
Retail 26%
Services 42%
Manufacturing 5%
Sports Clubs & Community Groups 20%
Other 7%
Employees
1-3 53%
4-9 27%
10-49 16%
50+ 3%
Region
Conn/Ulster 16%
Dublin 37%
Rest of Leinster 23%
Munster 24%
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EXECUTIVE SUMMARY
2
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EXECUTIVE SUMMARY

Current Insurance Status:

- As it is a practical requirement for most organisations, the vast majority (97%) are covered by Public Liability Insurance.
- Most organisations (72%) arrange their insurance through a broker. 24% do so directly through an insurer.

Most Recent Arrangements:

- A quarter of organisations have switched their Public Liability Insurance provider in the last five years.
- Of those who have not switched Public Liability Insurance provider in the last five years, half (51%) have shopped around for an alternative provider in the same time period.
- Of those who did not shop around, 48% cited that they were happy with their current provider and premium as the reason behind this.

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EXECUTIVE SUMMARY

Premium Details:

- For 47% of organisations, their yearly premium costs €2500 or less.
- Two thirds of organisations have experienced an increase in their public liability insurance premium in the last 10 years. Public liability insurance premiums have increased over the past 10 years for 82% of sports clubs and community groups.
- Likewise, 62% of organisations have experienced an increase in their commercial policy premium over the past three years.
- 7 in every 10 respondents feel that the reason for their Public Liability Insurance premium increase was not fair and justified.

Brokers:

- Of those that use the services of a broker, similar amounts of organisations pay with a flat fee (36%) as with a percentage of the overall premium (33%).
- 22% of Broker payments have increased in the past three years.

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EXECUTIVE SUMMARY

Claims:

- 8% of organisations had experienced a claim against them in the last five years.
- 19% of sports clubs and community groups have had claims in the same time period.

Attitudinal Statements:

- Just over a quarter of organisations (26%) say public liability insurance costs or availability are a higher priority now than 3 years ago.
- 18% of organisations have found it more difficult in securing Public Liability Insurance to the degree they require.
- 83% of organisations are confident they have found the best balance between cost and coverage of the Public Liability Insurance available to them.
- 82% of respondents feel their organisation understands the terms of their Public Liability Insurance plan either very well, or fairly well.

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FINDINGS 3

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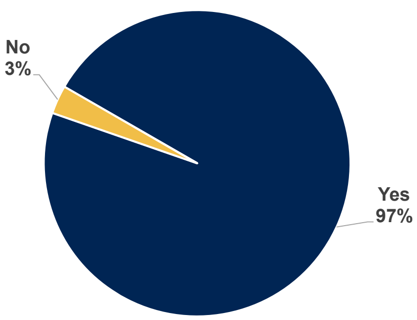
CURRENT INSURANCE STATUS

AS IT IS A PRACTICAL REQUIREMENT FOR MOST ORGANISATIONS, THE VAST MAJORITY ARE COVERED BY PUBLIC LIABILITY INSURANCE.

Public Liability Insurance Coverage

Has Public Liability Insurance



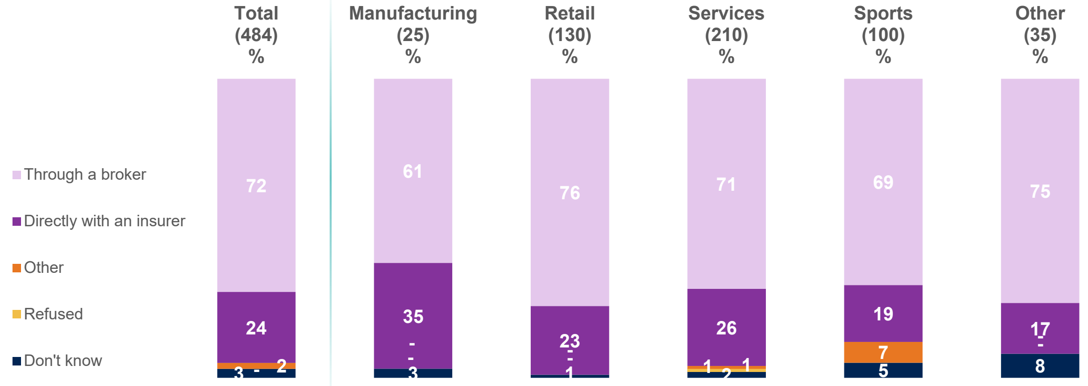
By Sector

	Manufactur-ing (25)	Retail (130)	Services (210)	Sports & Community Groups (100)
	%	%	%	%
Yes	100	93	97	100
No	-	7	3	-

Q.1 Does your organisation have a commercial insurance policy that includes coverage for public liability that is a policy that covers a claim for injury or damage suffered by a member of the public against your organisation?
Q.2 Has your organisation ever held a commercial insurance policy that includes coverage for public liability insurance?
Base: All Respondents: 508

MOST ORGANISATIONS (72%) ARRANGE THEIR INSURANCE THROUGH A BROKER.

Public Liability Insurance Arranged Through



Q.8 Does your organisation arrange public liability insurance through a broker or directly with an insurer
Base: All organisation have a commercial insurance policy that includes coverage for public liability that is a policy that covers a claim for injury or damage suffered by a member of the public against your organisation: 491

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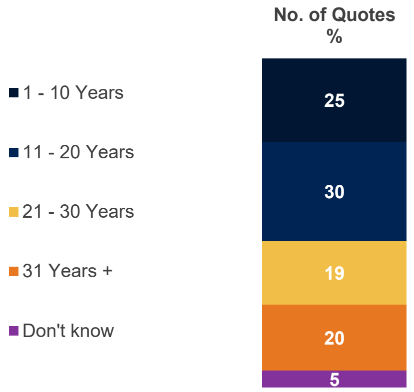
MOST RECENT ARRANGEMENTS

55% OF BUSINESSES HAVE HAD PLI COVERAGE FOR 20 YEARS OR LESS.

Most Recent Arrangements

21.6 yrs

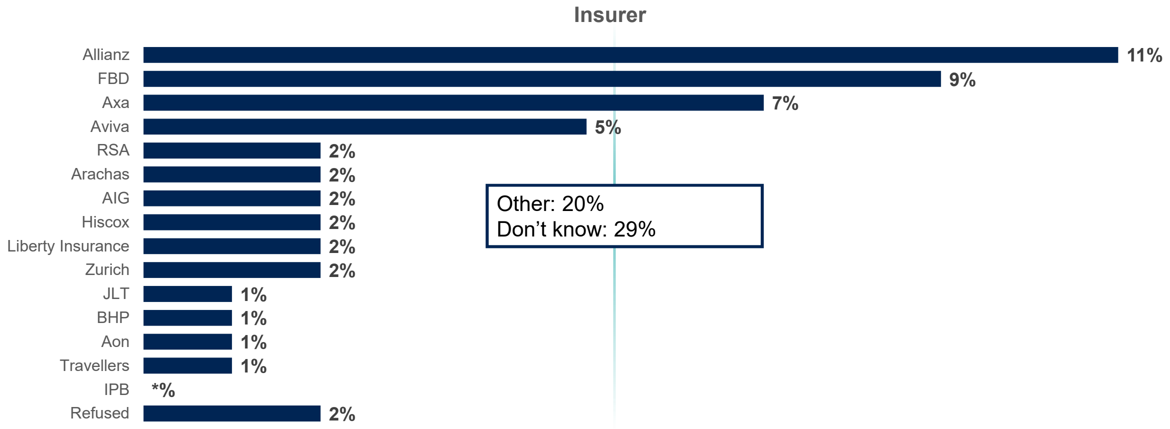
Average length of time organisations have held public liability insurance for



Q.9 For how many years has your organisation held public liability insurance?
Base: All who have/had commercial insurance policy for public liability: 491

AWARENESS AMONG BUYERS OF WHICH INSURER PROVIDED THEIR INSURANCE VARIED CONSIDERABLY. 29% OF RESPONDENTS WERE NOT AWARE OF WHO THEIR INSURANCE PROVIDER WAS.

Most Recent Arrangements

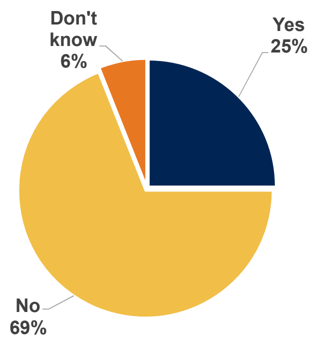


Q.10 Which insurer currently provides your organisation's public liability insurance coverage?
Base: All who have/had commercial insurance policy for public liability: 491

A QUARTER OF ORGANISATIONS HAVE SWITCHED THEIR PUBLIC LIABILITY INSURANCE PROVIDER IN THE LAST FIVE YEARS.

Switching Public Liability Insurance Provider

Switched Public Liability Insurance Provider



By Broker/Insurer (Q.8.)

	Broker (348)	Insurer (114)
	%	%
Yes	31	15
No	62	82
Don't know	6	4

By Sector

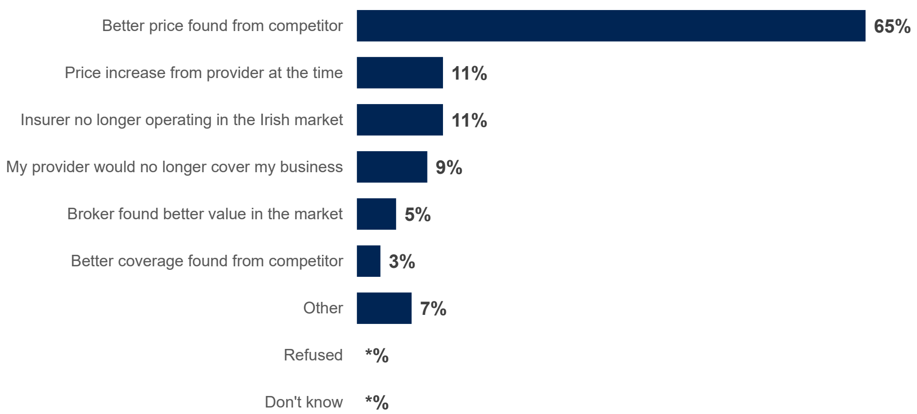
	Manufacturing (25)	Retail (130)	Services (210)	Sports (100)	Other (23)*
	%	%	%	%	%
Yes	27	26	20	28	46
No	73	72	74	62	42
Don't know	-	2	6	9	12

Q.11 In the past five years has your organisation switched public liability insurance provider?
Base: All who said a provider: 334

Ipsos MRBI GAME CHANGERS

FINDING A BETTER PRICE FROM A COMPETING PROVIDER WAS THE MAIN REASON BEHIND SWITCHING FOR THOSE THAT DID SO IN THE LAST FIVE YEARS.

Reason Behind Switching Public Liability Insurance Provider



Q.12 What was the reason for your most recent switch in public liability insurance provider?
Base: All who have switched in past five years 93 (*Caution: Small sample size)*

Ipsos MRBI GAME CHANGERS

ON AVERAGE (MEAN), ORGANISATIONS SOUGHT QUOTES FROM UNDER THREE INSURANCE PROVIDERS WHEN THEY LAST SWITCHED.

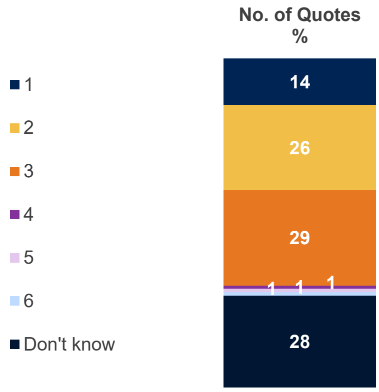
Switching Public Liability Insurance Provider

2.8

Average number of of public liability insurance providers Organisations got a quote from prior to switching (excluding their current provider)

2.9

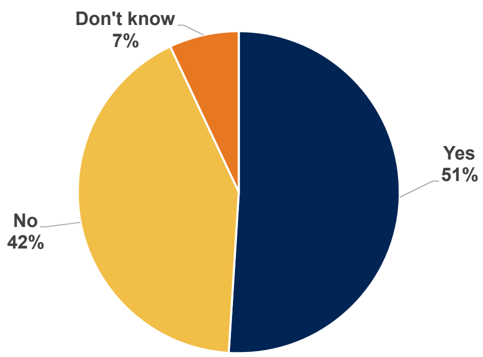
Average time in weeks that the process of switching public liability insurance took



Q.15 Thinking of the most recent time your organisation switched your provider for public liability insurance from how many public liability insurance providers did you get a quote from prior to switching (excluding your current provider)?
Q.16 Including researching discussion of options and communication with your organisation's provider or broker how many weeks did the process of switching public liability insurance take
Base: All who have switched in past five years: Small sample (93)

OF THOSE WHO HAVE NOT SWITCHED PUBLIC LIABILITY INSURANCE PROVIDER IN THE LAST FIVE YEARS HALF (51%) HAVE SHOPPED AROUND FOR AN ALTERNATIVE PROVIDER IN THE SAME TIME PERIOD.

Shopping Around for Alternative Public Liability Insurance Provider (Didn't Switch)



2.3

Average number of public liability insurance providers Organisations got a quote from while shopping around

Q.17 In the last five years has your organisation or your broker shopped around for an alternative public liability insurance provider?
Base: All who have not switched in past five years: 222
Q.18 Thinking of the most recent occasion that you shopped around for an alternative provider how many insurance providers did you see quoted?
Base: All who shopped around for an alternative public liability insurance provider: 119

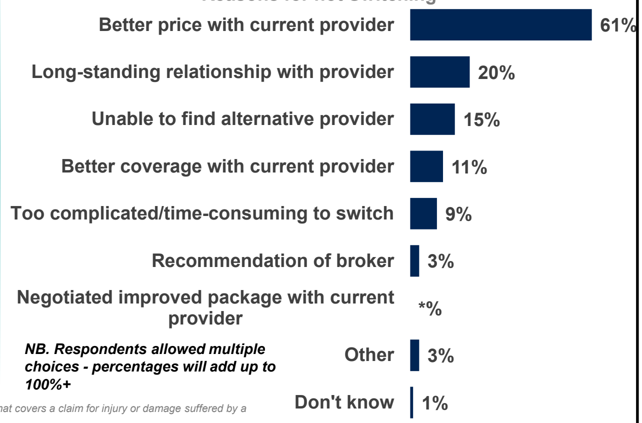
BETTER PRICE WITH CURRENT PROVIDER (61%) WAS THE MOST PROMINENT REASON CITED BY ORGANISATIONS FOR STAYING WITH THEIR CURRENT PROVIDER (AMONGST THOSE THAT SHOPPED AROUND). THOSE WITH A BROKER ARE MORE LIKELY TO SHOP AROUND THAN THOSE WHO ARRANGE THEIR COVERAGE DIRECTLY WITH AN INSURER.

Shopping Around for Alternative Public Liability Insurance Provider (Didn't Switch)

Shopping Around: With Broker vs. Insurer

	Through a broker (348)	Directly with an insurer (114)
	%	%
Yes	64	35
No	29	63
Don't know	7	2

Reasons for not Switching

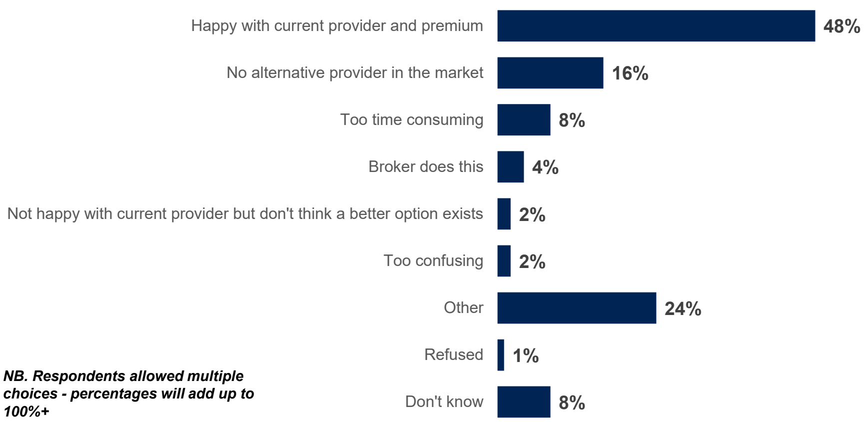


Q.8 Does your organisation arrange public liability insurance through a broker or directly with an insurer
Base: All organisation have a commercial insurance policy that includes coverage for public liability that is a policy that covers a claim for injury or damage suffered by a member of the public against your organisation: 491
Q.19 For what reasons did your organisation choose to stay with your existing public liability insurance provider?
Base: All who shopped around for an alternative public liability insurance provider: 119

Ipsos MRBI GAME CHANGERS

OF THOSE WHO DID NOT SHOP AROUND, 48% CITED THAT THEY WERE HAPPY WITH THEIR CURRENT PROVIDER AND PREMIUM AS THE REASON BEHIND THIS.

Reason for Staying with Current Provider (Amongst those that had not Shopped Around)



Q.20 For what reasons has your organisation not shopped around for an alternative provider?
Base: All who did not have broker shop around for an alternative public liability insurance provider: 87

Ipsos MRBI GAME CHANGERS

PREMIUM DETAILS

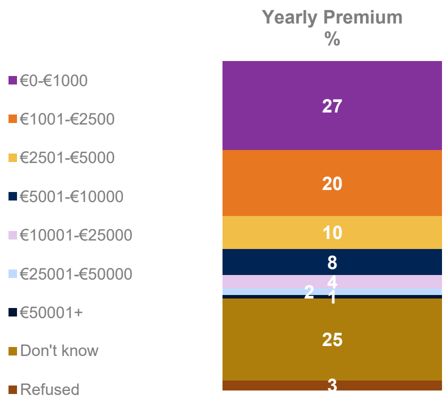
Ipsos MRBI
GAME CHANGERS

FOR 47% OF ORGANISATIONS, THEIR YEARLY PREMIUM COSTS €2500 OR LESS.

Range Of Premium Values

€7,226

Average (mean) Public Liability Insurance premium



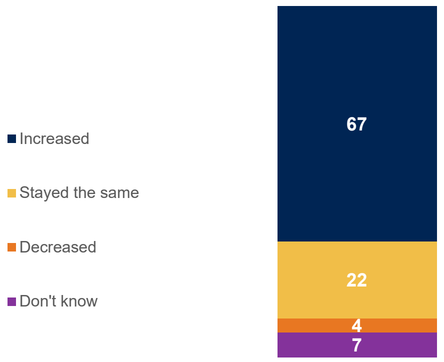
Q.21. Thinking about your organisation's current public liability insurance policy how much is the yearly premium?
Base: All who have/had commercial insurance policy for public liability: 491

Ipsos MRBI
GAME CHANGERS

TWO THIRDS OF ORGANISATIONS HAVE EXPERIENCED AN INCREASE IN THEIR PUBLIC LIABILITY INSURANCE PREMIUM IN THE LAST 10 YEARS. PUBLIC LIABILITY INSURANCE PREMIUMS HAVE INCREASED OVER THE PAST 10 YEARS FOR 82% OF SPORTS CLUBS AND COMMUNITY GROUPS.

Premium Details

Yearly Public Liability Insurance Premium
%



By Broker/Insurer (Q.8)

	Broker	Insurer
	%	%
Increased	65	75
Stayed the same	24	16
Decreased	4	4
Don't know	7	5

By Sector

	Manufacturing	Retail	Services	Sports	Other
	%	%	%	%	%
Increased	39	63	61	82	88
Stayed the same	45	21	28	12	0
Decreased	-	7	5	1	3
Don't know	16	8	6	5	9

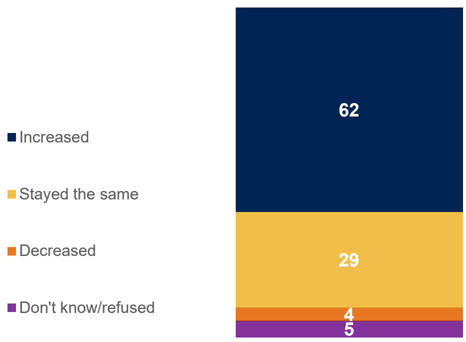
Q.22 Over the last ten years did your organisation's public liability insurance premium increase decrease or stay the same?
Base: All who answered an amount (at Q.21): 346

Ipsos MRBI GAME CHANGERS

LIKEWISE, 62% OF ORGANISATIONS HAVE EXPERIENCED AN INCREASE IN THEIR COMMERCIAL POLICY PREMIUM OVER THE PAST THREE YEARS.

Premium Details

Commercial Policy Premium
%



Q.23 Overall over the past three years has your organisation's overall commercial policy premium increased, decreased or stayed the same?
Base: All who answered an amount (at Q.21): 346

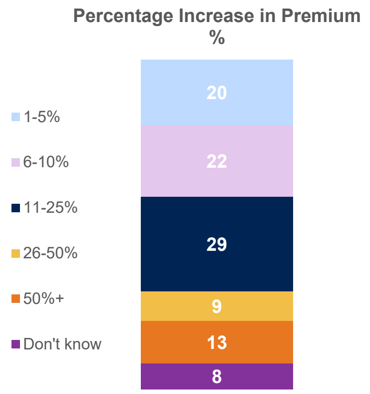
Ipsos MRBI GAME CHANGERS

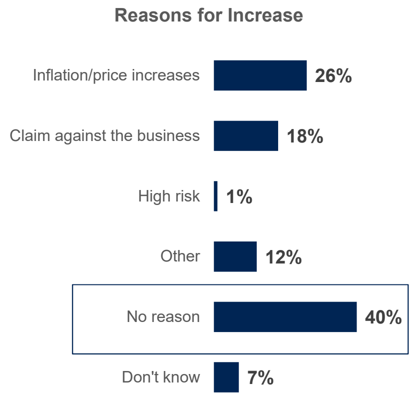
AMONGST THOSE THAT HAVE SEEN INCREASES IN THEIR PLI PREMIUM IN THE LAST TEN YEARS, PREMIUMS HAVE INCREASED, ON AVERAGE, BY 28% IN THE LAST THREE YEARS. 40% OF THIS GROUP WERE NOT GIVEN A REASON FOR THE INCREASE.

Public Liability Insurance Premium Increases

28%

Average amount (%) Public Liability Insurance premium has increased by in the last three years

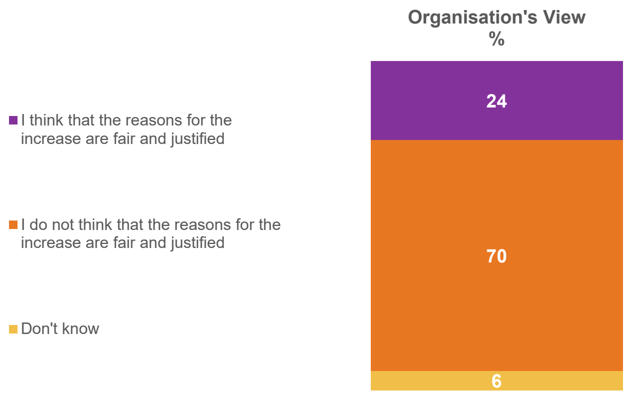




Q.24 Can you provide or estimate by what percentage has your organisation's public liability insurance premium increased by in the last three years?
Q.25 For what reasons has your organisation's provider/broker provided for the increase?
Base: All who's public liability insurance premium increased in last ten years: 250

7 IN EVERY 10 RESPONDENTS FEEL THAT THE REASON FOR THEIR PLI PREMIUM INCREASE WAS NOT FAIR AND JUSTIFIED.

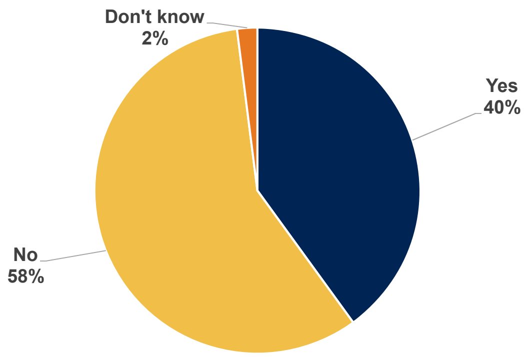
Public Liability Insurance Premium Increases



Q.26 Which of the following comes closest to your organisation's view?
Base: All who's public liability insurance premium increased in last ten years: 250

AMONGST THOSE WHO CITED CLAIMS AGAINST THE BUSINESS FOR THEIR PLI PREMIUM INCREASE, 40% HAD BEEN NOTIFIED SEPARATELY IN RELATION TO AN INCIDENT IN WHICH LIABILITY TO A MEMBER OF THE PUBLIC WAS AT ISSUE.

Public Liability Insurance Premium Increases



Q.27 Was your organisation notified separately of any claims against it in relation to an incident in which liability to a member of the public was at issue?
*Base: All Claim against the business: 30 (*Caution: small sample size)*

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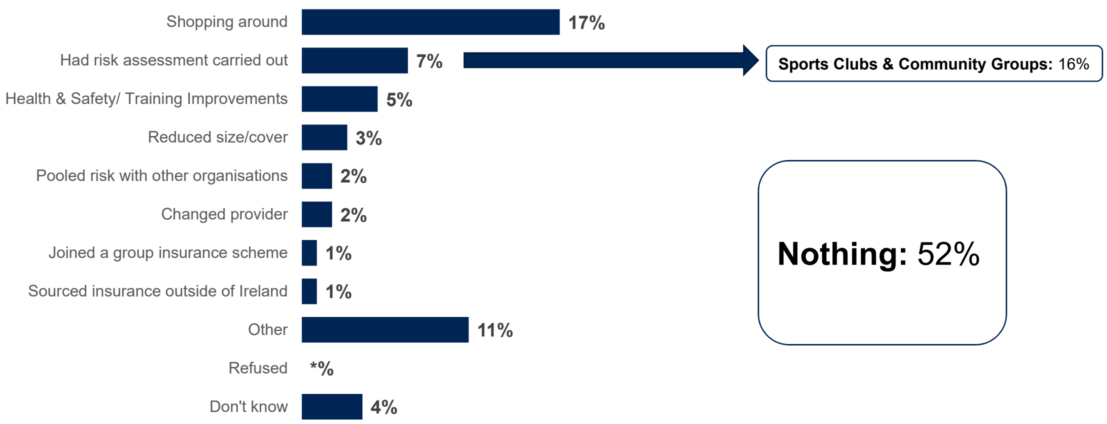
Ipsos MRBI GAME CHANGERS

44% OF ORGANISATIONS HAVE TAKEN SOME ACTION TO REDUCE OR TO TRY TO REDUCE THEIR PLI PREMIUM.

Reducing Public Liability Insurance Premium



Q.28 What if anything has your organisation done to reduce or try to reduce your public liability insurance premium?
Base: All who have/had commercial insurance policy for public liability: 491

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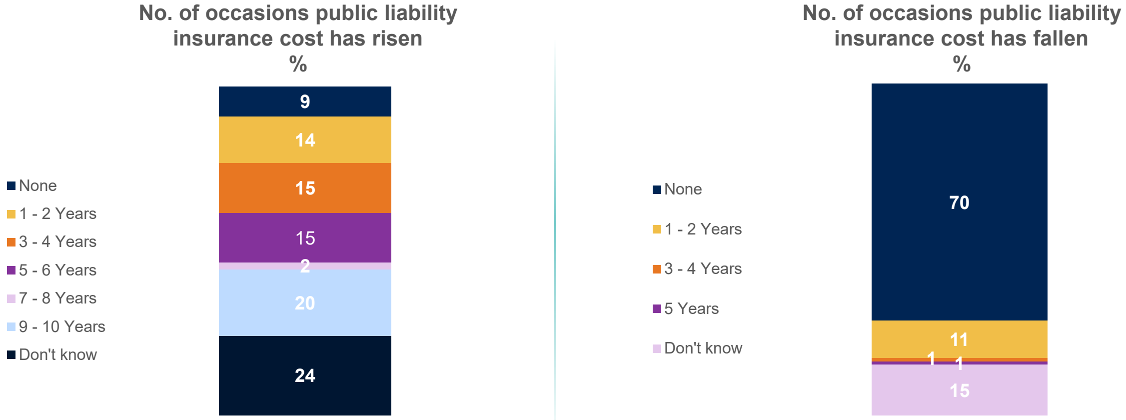
Ipsos MRBI GAME CHANGERS

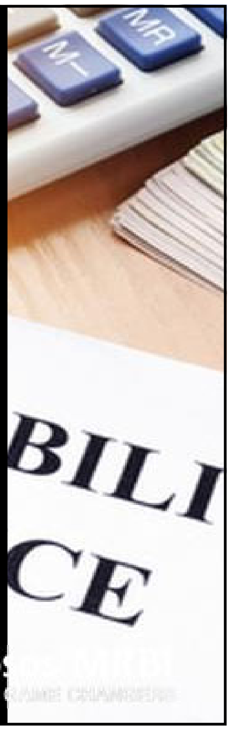
JUST 9% OF BUSINESSES HAVEN'T EXPERIENCED A RISE IN THE COST OF THEIR PLI PREMIUM IN THE LAST 10 YEARS.

Public Liability Insurance Premium: Costs Risen vs. Fallen



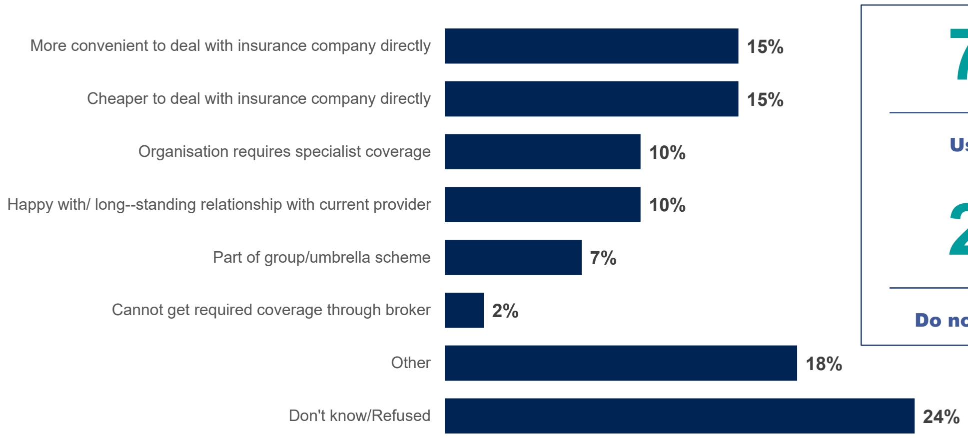
Q.29 Thinking of the last [How many years organisation held PLI] years, on how many occasions has your organisation's public liability insurance premium cost risen?
Base: All who have/had commercial insurance policy for public liability: 491
Q.30 Thinking of the last [How many years organisation held PLI] years, on how many occasions has your organisation's public liability insurance premium cost fallen?
Base: All who have/had commercial insurance policy for public liability: 491

BROKERS



CONVENIENCE AND A CHEAPER PRICE WERE THE TWO MAIN REASONS CITED FOR NOT USING THE SERVICES OF A BROKER.

Reasons for not Using Services of a Broker



72%

Use a broker

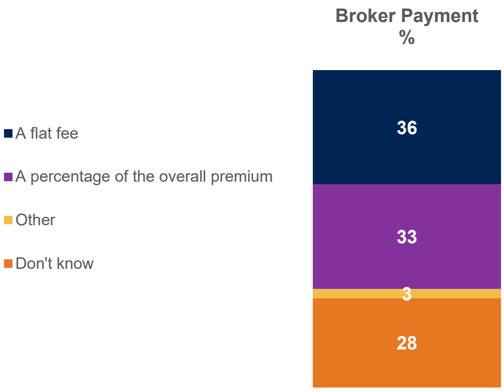
28%

Do not use a broker

Q.31 For what reason does your organisation not use the services of a broker?
Base: All those who don't use a broker: 130

OF THOSE THAT USE THE SERVICES OF A BROKER, SIMILAR AMOUNTS OF ORGANISATIONS PAY WITH A FLAT FEE (36%) AS WITH A PERCENTAGE OF THE OVERALL PREMIUM (33%).

Broker Payment



€1,119

Flat fee paid to Broker per year

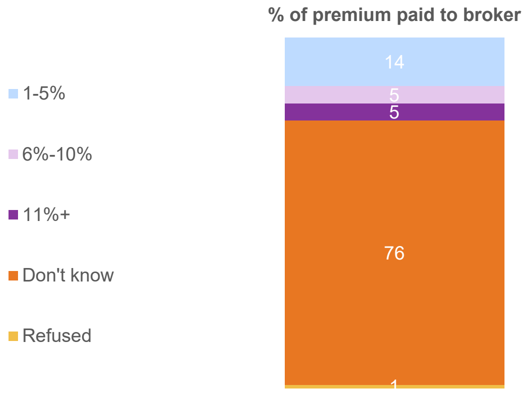
6%

Average % of premium paid to Broker per year

Q.32 Thinking of how your organisation's broker is paid for their services which of the following best applies?
Base: All those who use a broker: 361
Q.33 How much does your organisation pay your broker per year as a flat fee?
Base: 128 (NB. 62 respondents gave a figure)
Q.34 How much does your organisation pay your broker per year as a percentage of the overall fee?
Base: All those who answered 'A percentage of the overall premium' at Q.32: 126 (NB. 28 respondents gave a figure)

3 IN 4 RESPONDENTS COULD NOT RECALL THE % OF THEIR PREMIUM THEY PAY TO THEIR BROKER.

Range % Of Premiums Paid to Broker



Q.34 How much does your organisation pay your broker per year as a percentage of the overall fee?
Base: All who pay a percentage of the overall premium: 126 (NB. 28 respondents gave a figure)

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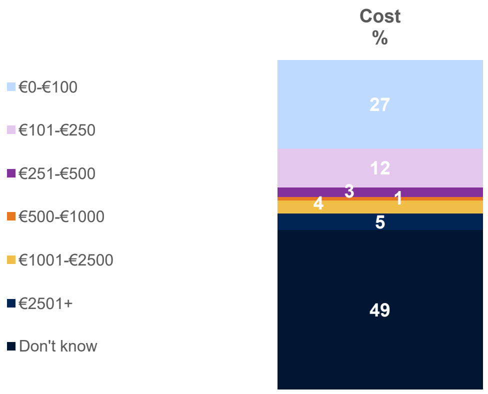
GAME CHANGERS

SIMILARLY, JUST UNDER HALF (49%) OF RESPONDENTS DON'T KNOW HOW MUCH THEY PAY THEIR BROKER IN TERMS OF A FLAT FEE.

Range Of Broker Fees Paid (Flat fee in €)



€1,119

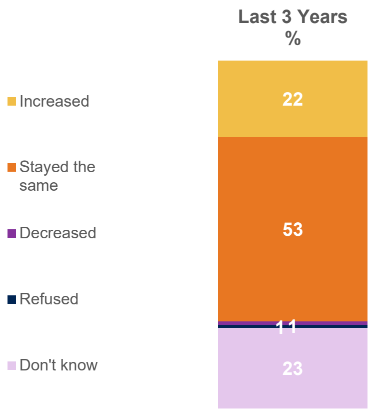
Flat fee paid to Broker per year

Q.29. Thinking of the last [up to 10] years, on how many occasions has your organisation's public liability insurance premium cost risen?
Base: All who pay a flat fee: 128

Ipsos MRBI
GAME CHANGERS

22% OF BROKER PAYMENTS HAVE INCREASED IN THE PAST THREE YEARS.

Broker Payment



By Sector

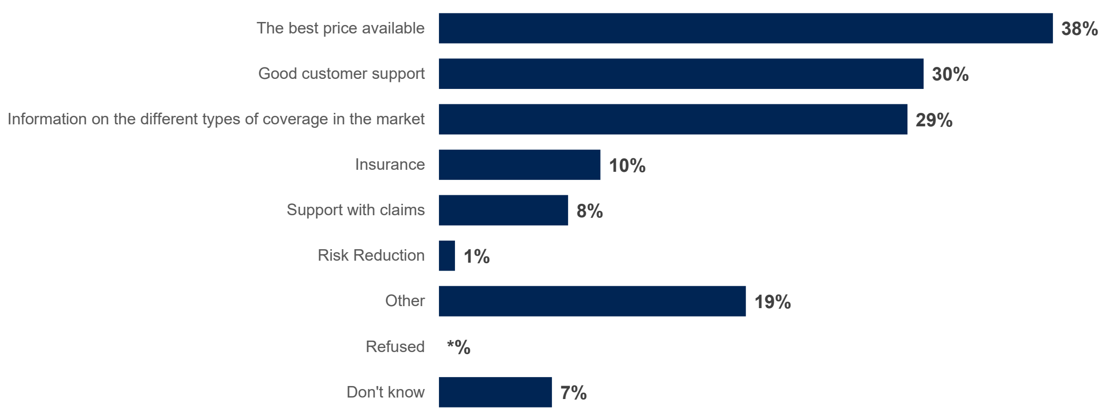
	Manu-Facturing (25)	Retail (130)	Services (210)	Sports Clubs & Community Groups (100)
	%	%	%	%
Increased	33	22	18	25
Stayed the same	43	48	58	54
Decreased	9	-	1	-
Refused	-	2	0	0
Don't know	3	1	2	5

Q.35 Has this increased, decreased or stayed the same in the last three years?
Base: All who pay a flat fee/percentage of the overall premium: 254

Ipsos MRBI GAME CHANGERS

PRICE, GOOD CUSTOMER SUPPORT, AND INFORMATION ON THE DIFFERENT TYPES OF COVERAGE IN THE MARKET WERE THE THREE MOST CITED SERVICES RESPONDENTS FELT THEIR BROKER OFFERED.

Services Provided by Brokers

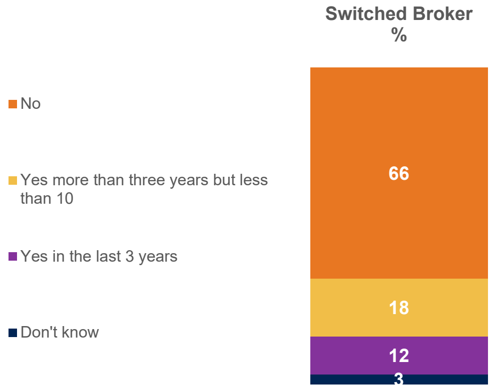


Q.37 What service does your organisation feel the broker provides to your organisation?
Base: All those who use a broker: 361

Ipsos MRBI GAME CHANGERS

TWO THIRDS (66%) OF ORGANISATIONS THAT USE THE SERVICES OF A BROKER HAVE NOT SWITCHED BROKER IN THE LAST TEN YEARS.

Switching Brokers

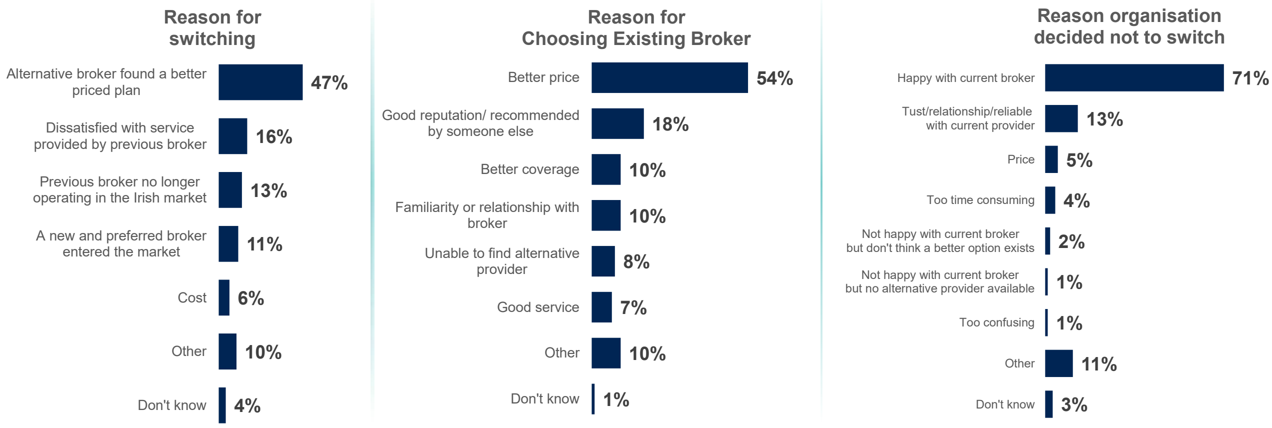


Q.38 In the past ten years has your organisation switched broker?
Base: All those who use a broker: 361

Ipsos MRBI
GAME CHANGERS

FINDING AN ALTERNATIVE BROKER WITH A BETTER PRICED PLAN (47%) WAS THE MOST CITED REASON FOR ORGANISATIONS SWITCHING BROKERS.

Reasons for Switching Brokers



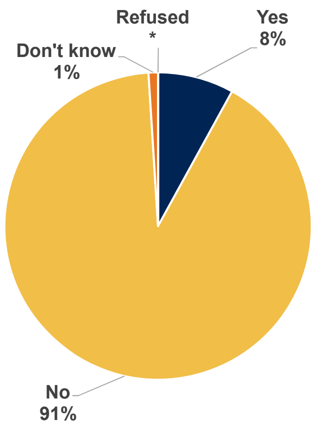
Q.39 What was the reason for switching?
Q.41 Why did your organisation choose your existing broker?
Base: All who switched in past 10 years: 112
Q.42 For what reasons did your organisation decide not to switch broker?
Base: All who did not switch (236)

Ipsos MRBI
GAME CHANGERS

CLAIMS

8% OF ORGANISATIONS HAD EXPERIENCED A CLAIM AGAINST THEM IN THE LAST FIVE YEARS.

Claims Against Organisations in Last Five Years



By Sector

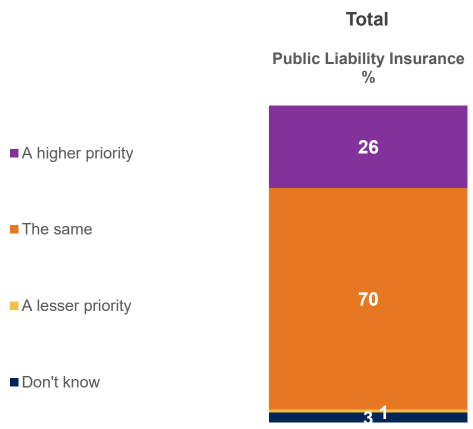
	Manu-Facturing (25)	Retail (130)	Services (210)	Sports Clubs & Commun-ty Groups (100)	Other (35)
	%	%	%	%	%
Yes	5	5	5	19	2
No	95	93	94	79	98
Refused	-	-	-	1	-
Don't know	-	2	2	1	-

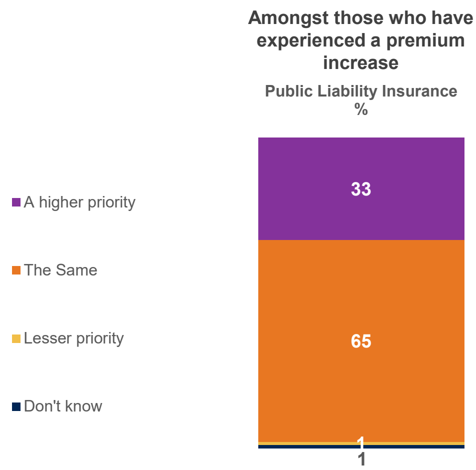
Q.43 In the past five years has your organisation experienced a claim against your business' public liability insurance?
Base: All who have/had commercial insurance policy for public liability: 491

ATTITUDINAL STATEMENTS

JUST OVER A QUARTER OF ORGANISATIONS (26%) SAY PUBLIC LIABILITY INSURANCE COSTS OR AVAILABILITY ARE A HIGHER PRIORITY NOW THAN 3 YEARS AGO.

Attitudinal Statements

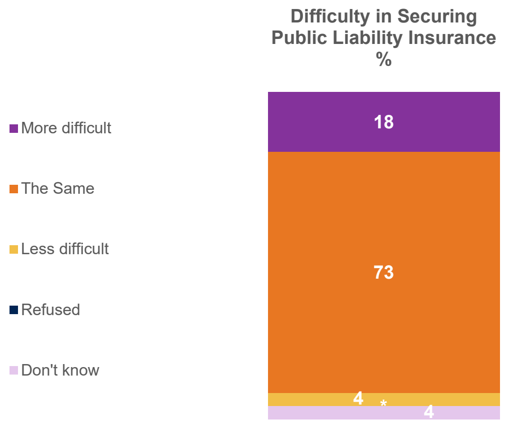




Q.44 Are public liability insurance costs or availability a higher or lesser priority for your organisation now than they were 3 years ago or is it the same now as it was 3 years ago?
Base: All who have/had commercial insurance policy for public liability: 491

18% OF ORGANISATIONS HAVE FOUND IT MORE DIFFICULT IN SECURING PUBLIC LIABILITY INSURANCE TO THE DEGREE THEY REQUIRE.

Attitudinal Statements

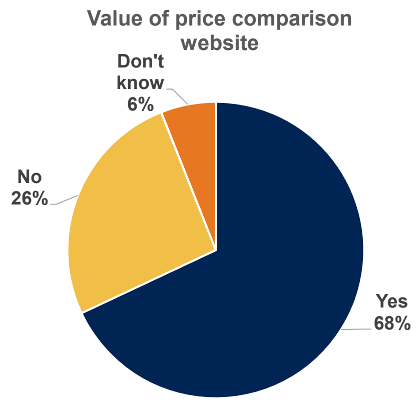


Q.45 In the past five years has your organisation found it more difficult or less difficult to secure public liability insurance to the degree that it requires?
Base: All who have/had commercial insurance policy for public liability: 491

Ipsos MRBI GAME CHANGERS

JUST OVER TWO THIRDS (68%) OF ORGANISATIONS SAY THAT THE ABILITY TO COMPARE A RANGE OF QUOTES FROM PUBLIC LIABILITY INSURANCE PROVIDERS ON A COMMERCIAL PRICE COMPARISON WEBSITE WOULD BE OF VALUE TO THEIR ORGANISATION.

Attitudinal Statements



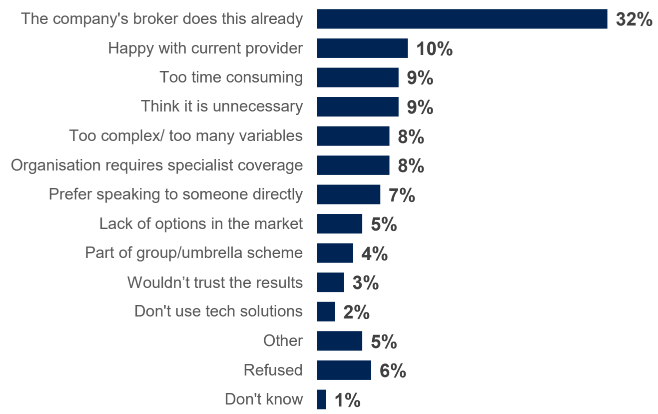
	Manufactur-ing (25)	Retail (130)	Services (210)	Sports Clubs & Commu-nity Groups (100)
	%	%	%	%
Yes	90	60	67	71
No	10	29	28	22
D.K.	-	10	5	7

Q.46 Would the ability to compare a range of quotes from public liability insurance providers on a commercial price comparison website be of value to your organisation?
Base: All who have/had commercial insurance policy for public liability: 491

Ipsos MRBI GAME CHANGERS

HAVING A BROKER THAT COMPARES QUOTES ALREADY WAS THE MOST CITED REASON FOR NOT NEEDING A QUOTE COMPARISON WEBSITE.

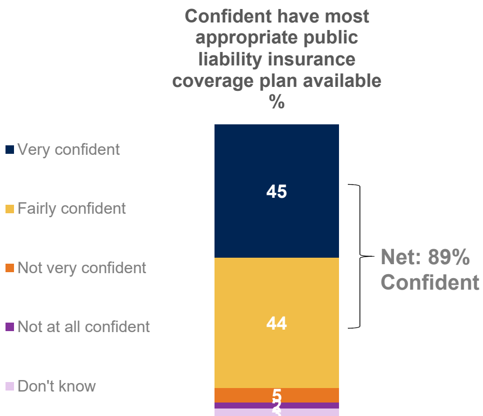
Attitudinal Statements – Reasons Behind Answer that Ability to Compare Quotes on Website Would not be of Value



Q.47. For what reasons would the ability to compare a range of quotes from public liability insurance providers on a price comparison website NOT be of value to your organisation)?"
Base: All who answered not of value to organisation: 134

89% OF RESPONDENTS WERE EITHER VERY OR FAIRLY CONFIDENT THAT THEY HAD THE MOST APPROPRIATE PUBLIC LIABILITY INSURANCE COVERAGE PLAN AVAILABLE TO THEM.

Attitudinal Statements



By Sector

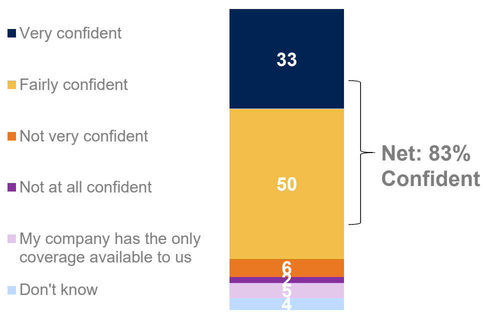
	Manufacturing (25)	Retail (130)	Services (210)	Sports (100)	Premium Increase (219)
	%	%	%	%	%
Very Confident	41	43	50	40	38
Fairly Confident	48	44	40	50	53
Not very confident	11	5	5	4	8
Not at all confident	-	3	2	4	4
Don't know	-	4	3	2	2

Q.48 How confident or not are you that your organisation has the most appropriate public liability insurance coverage plan available to it?
Base: All who have/had commercial insurance policy for public liability: 491

83% OF ORGANISATIONS ARE CONFIDENT THEY HAVE FOUND THE BEST BALANCE BETWEEN COST AND COVERAGE OF THE PLI AVAILABLE TO THEM.

Attitudinal Statements

Confident found best balance between cost and coverage of public liability insurance
%



By Sector

	Manufacturing (25)	Retail (130)	Services (210)	Sports (100)	Premium Increase (219)
	%	%	%	%	%
Very Confident	26	32	38	27	28
Fairly Confident	61	54	45	52	54
Not very confident	13	3	7	4	6
Not at all confident	-	3	3	3	3
Don't know	-	3	4	10	7

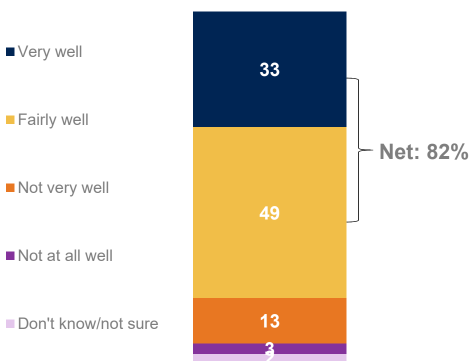
Q.48 How confident or not are you that your organisation has the most appropriate public liability insurance coverage plan available to it?
Base: All who have/had commercial insurance policy for public liability: 491

Ipsos MRBI GAME CHANGERS

82% OF RESPONDENTS FEEL THEIR ORGANISATION UNDERSTANDS THE TERMS OF THEIR PLI PLAN EITHER VERY WELL, OR FAIRLY WELL.

Attitudinal Statements

Understands terms of Public Liability Insurance
%



By Sector

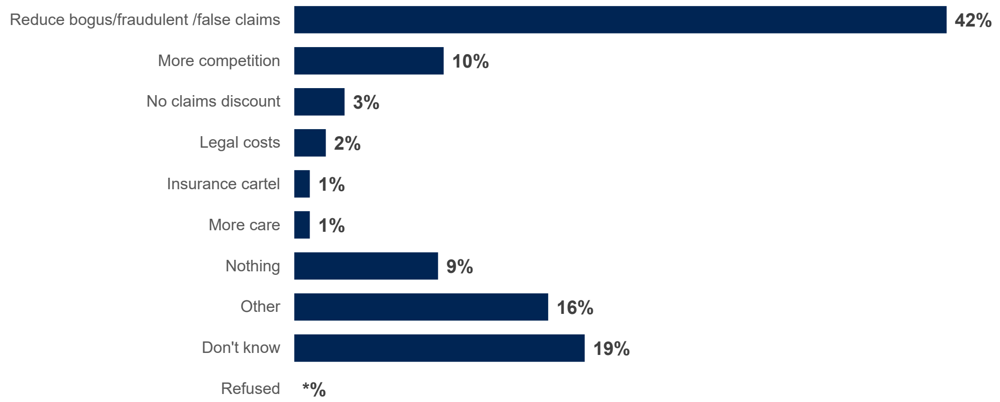
	Manufacturing (25)	Retail (130)	Services (210)	Sports (100)	Premium Increase (219)
	%	%	%	%	%
Very well	23	32	38	26	29
Fairly well	64	44	44	61	52
Not very well	6	18	14	13	15
Not at all well	7	4	3	-	3
Don't know	-	2	1	-	2

Q.50 How well if at all do you feel your organisation understands the terms of your public liability insurance plan?
Base: All who have/had commercial insurance policy for public liability: 491

Ipsos MRBI GAME CHANGERS

REDUCING FRAUDULENT CLAIMS (42%) WAS THE MOST CITED ASPECT OF PLI PREMIUMS THAT COULD REDUCE PRICE VOLATILITY.

Opinions on things that can be Done to Reduce Price Volatility



Q.51 In your opinion what can be done if anything to reduce price volatility in public liability insurance premiums?
Base: All who have/had commercial insurance policy for public liability: 491

Ipsos MRBI
GAME CHANGERS

DO NOT HOLD PLI POLICY CURRENTLY, BUT HAVE IN THE PAST.

Mini-Questionnaire (Q.2-Q.7)

- These results relate to a smaller questionnaire for those that do not currently have PLI coverage, but did in the past – as such the base size is very low (n=16 where applicable) and as such should be treated with caution and as indicative.
- 71% said they no longer held coverage because it became too expensive, while 43% said they could no longer secure coverage for their type of organisation.
- Of those who's policy became too expensive, 46% cited the costs rising for 8-10 years in succession
- 72% of those without PLI coverage, but did in the past, said that price/affordability would help them secure public liability insurance in the future.

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C Stakeholder Engagement

As part of the Study interviews were carried out with the following key stakeholders:

Government Departments and Public Sector Bodies

- Central Bank of Ireland (CBI)
- Department of Enterprise, Trade and Employment
- Department of Finance
- Personal Injuries Assessment Board (PIAB)

Insurance Companies

- AIG Europe S.A.
- Allianz plc
- FBD Insurance plc
- Liberty Insurance

Representative Bodies

- Brokers Ireland (BI)
- Early Childhood Ireland
- Insurance Ireland (II)
- The Law Society of Ireland
- Vintners' Federation of Ireland

Business Management Consultancy

- Verisk Insurance Solutions Limited

D Public Consultation Report

Background and Context

The CCPC completed a public consultation as part of the Study of the public liability insurance market in order to obtain the views of a range of stakeholders.

Before issuing the consultation, the CCPC conducted a series of interviews and meetings with stakeholders in the public liability insurance market including representative bodies, industry representatives, brokers and insurers, as well Government Departments and public agencies. During these meetings a number of relevant issues and themes emerged. The CCPC examined these and other issues in the consultation and the views of stakeholders were reflected in the final Study.

The consultation themes covered competition in the market, barriers to entry, expansion and exit, brokers and switching, cost inflation, the insurance cycle, digitalisation and the scope for further reforms.

Responses Received

The CCPC received six responses to the public consultation paper. The respondent organisations are listed below in alphabetical order. The full responses are available on the CCPC website.

- Alliance for Insurance Reform
- Aviva
- Brokers Ireland (BI)
- Irish Hotels Federation
- Insurance Ireland (II)
- Personal Injuries Assessment Board (PIAB)

Competition in the Market

The CCPC received divergent views in regard to competition in the public liability insurance market. Reponses received from the supply side of the market contended that the market is competitive both between insurers and between brokers. These responses did recognise that there are segments of the market which have become, or are becoming, less attractive to write business in for insurers that have a head office or branch in Ireland (domestic insurers). Respondents state that this has led to more business in these segments being covered by insurers that operate in Ireland in a FOS basis. There was divergence in turn between these respondents as to the degree to which the public liability insurance requirements of organisations are being covered by FOS insurers. Brokers appear to hold the view that certain segments of the economy can only secure insurance from FOS providers and that the number of such providers willing to provide such cover has reduced in recent years. One insurer (Aviva) expressed the view that the availability of insurance hasn't changed for most organisations, but that segments that they described as having 'higher hazard risks' or 'poor claims experience' may have seen a reduction in the availability of insurers, in part due to exit by FOS insurers.

Respondents on the demand side expressed the view that competition in the market has been decreasing with a number of segments of the economy becoming less attractive for domestic insurers. In addition, these respondents expressed the view that factors such as increasing claims costs and frequency of claims were impacting on competition in the market by making it less attractive. These issues are returned to below.

Barriers to Entry, Expansion and Exit

Most respondents expressed the view that barriers to entry and expansion exist in this market. These barriers include:

- Lack of transparency, including in relation to market trends;
- Uncertainty regarding claims costs;
- Low profitability, and;
- The small size of the market and likely return on investment.

Respondents on the supply side suggested that a more stable operating environment was required to encourage entry and expansion. This would necessitate a more predictable cost environment, particularly in relation to the cost of claims. BI suggested that the approach of the CBI to the authorisation of potential entrants may be dissuading entry. The respondent suggested that this arose from a 'more demanding' approach being taken by the Irish regulator in comparison to its EU peers. A further concern expressed in relation to regulatory changes related to the *Consumer Insurance Contracts Act 2019*. Aviva expressed the view that the legislation will increase the regulatory requirements, and related costs of compliance, on insurers and in addition may dissuade new entry. In addition, Aviva suggested that potential claimants expect an 'extreme duty of care' from the occupiers of premises as contributing to instability in the market.

PIAB noted that the extent to which actual claims costs are a factor in pricing is still not known, and in this regard welcomed the establishment of the NCID. PIAB further noted that the NCID has been extended to cover liability insurance which they believe will provide an opportunity for greater transparency in the market. In addition, PIAB suggested that the lack of transparency in relation to the wider liability insurance market is not just an issue in terms of understanding pricing, but also may act as a barrier to entry to the market.

Respondents stated that there are low barriers to exit in the market. In support of this assertion they highlighted the withdrawal of insurers based in Ireland as well as FOS providers from this market. It was noted that when exiting the market an insurer has to enter into a 'run-off' process in which the claims arising from when that insurer was active in the market are administered and resolved.

Brokers and Switching

Respondents on the supply side expressed the view that brokers play a key role in facilitating competition. This included assisting buyers by comparing the price, scope and level of cover available from insurers, and using their negotiating power and product knowledge when securing coverage for their clients. Respondents on the supply side did not regard there to be any barriers to switching and suggested that brokers will, where possible, facilitate switching by buyers. BI suggested that buyers that insure directly are less likely to switch than those that insure through a broker. Brokers believe that retention rates for direct customers are greater than those among buyers that use a broker. BI suggested that 'customer lifetime value' is a key metric for insurers and that as it placed a value on retaining customers it may have led to 'price walking' in the market[132]. On the other hand, BI contended that buyers that use a broker are assisted in searching the market and are provided with other services such as advice on risk management. It was noted that brokers can only play this role where there is a sufficient degree of availability and choice of insurer in a market segment.

132 Brokers Ireland described this as a process of increasing a direct customer's premium every year but not by so much that they are motivated to look elsewhere for cover.

BI further expressed the view that the volume and content of correspondence that has to be provided to buyers as part of regulatory requirements is excessive. It was suggested that many customers do not consult this correspondence and that this is a barrier to what was described as 'meaningful communication'. BI also suggested that many buyers focus too much on the price of an insurance policy to the detriment of any consideration of other factors such as the cover provided under a policy. It was suggested that switching in a market such as public liability insurance is further constrained by the complex type of transaction that it entails. BI expressed the view that many buyers do not have the financial knowledge required to fully understand the product which constrains their ability to engage with the market.

Cost Inflation

Respondents on the supply side suggested there has been cost inflation in the public liability insurance market with a number of contributory factors. These factors include:

- Increased settlement awards for claims;
- Increased legal costs for settling claims;
- Growth in the economy as premiums are in part set according to turnover/payroll;
- Remediation of business as insurers sought to recover past losses, and;
- Reinsurance rates.

It was suggested that the frequency of claims may have increased in the past five years but that without a greater degree of transparency - and a reliable source of data to that end - it was not possible to be certain about this. It was noted that the extension of the NCID to cover liability insurance from 2021 onwards will assist in regard to this. II noted that one of the main rating factors in public liability insurance is turnover. It was noted that the Irish economy grew strongly between 2014 and 2018, and that, as businesses expanded and new businesses opened, turnover and risk exposure increased. II suggested that this expansion in activity in turn contributed to an increase in market aggregate premium

In regard to the claims environment, PIAB noted that the number of public liability claims submitted to it has been relatively steady in terms of both numbers and proportionality of overall claims over the last number of years. Average awards made by PIAB have been fairly consistent ranging from an average €26,000-€28,000. PIAB assess compensation in respect of personal injuries suffered by people in motor accidents, work place accidents and public liability accidents. The consent rate for public liability claims is the lowest across these three areas at 42% of the claims where consent is sought. The acceptance rate, that is the rate of awards that are actually accepted by both parties once assessed, has also decreased from 63% in 2013 to 54% in 2018, although recovering to 56% in 2019. This means that many claims have been either settled post PIAB or are decided on in the courts. PIAB further noted the cost differential as highlighted by the first NCID report on Private Motor Insurance.

The Alliance for Insurance Reform stated that based on discussions with some of its member organisations it could report that there were increases in premiums but little evidence of increases in claims being notified or paid out on.

The Insurance Cycle

Respondents on the supply side stated their belief that the public liability insurance market – and by extension the wider commercial insurance market – is in a 'hard market' at the time of writing. There were a number of explanations provided for this, including reduced capacity in the market, the remediation of business by insurers on foot of a number of years of writing loss-making business with resultant price increases for customers, and a hardening market in the UK. Respondents were asked for their views on whether the insurance cycle is more pronounced in Ireland than elsewhere and if they could identify factors to explain this. Respondents agreed that the cycle is more pronounced in Ireland. It was suggested that the small size of the market, proximity to the UK market and uncertainty in the claims environment may all play a role in exacerbating the cycle in Ireland. It was suggested that higher claims costs in Ireland have entailed higher premiums than elsewhere in the EU. New entrants may be attracted to Ireland by the prospect of charging higher premiums but could be unprepared for losses. Coupled with what was described as a tendency to '"buy into" positive developments too early' – in regard to Government reform measures – some capacity may leave the market when conditions prove to be unstable[133].

Digitalisation

Respondents on the supply side of the market recognised the impact that digitalisation has had on the motor and home insurance markets in Ireland. However, it was noted that most commercial insurance, including public liability, continues to be transacted by what were described as 'traditional' or 'manual' methods. BI contrasted this with the practice in the UK where the entire commercial insurance transaction is dealt with via EDI[134]. II noted that digitalisation may become more widespread, particularly in relation to bundled or packaged cover for SMEs. II also suggested that digitalisation may lead to more entry to the market in the future.

Supply side respondents recognised the potential for digitalisation to have an increased impact on the provision of public liability insurance. The following factors were identified as having the potential to improve operations in the market:

- Reduced cost of distribution facilitating greater access to the market by insurers and wholesale brokers;
- More efficient processes, including claims management and digital provision of policy documentation, which meet customer expectations;
- Changes to the pricing and customisation of insurance products;
- Further entry into the commercial insurance market, and;
- Detection of fraud.

One respondent (Aviva) anticipated that the degree of digitalisation in this market will increase in the next few years. BI suggested that where distribution costs are reduced between insurer and broker, or between wholesale broker and the retail broker, that this should reduce costs overall, which is likely to benefit customers by making insurance cheaper. BI suggested that if a wholesale insurance broker has digital capabilities, they may also find it easier to attract new capacity to the market as they would in turn have a means of distribution which may be attractive to a new market entrant, reducing costs to that entrant. BI also struck a note of caution in respect of digitalisation, suggesting that any 'commoditisation' of commercial insurance should be avoided and highlighted the continued need for buyers to avail of professional advice when considering a choice of insurance policies.

133 A number of the examples given of buying into reform measures took place in the early 2000s (e.g. establishment of PIAB).

134 EDI facilitates the exchange of all relevant policy information to an insurer using third party provided software.

Additional Views

Respondents were asked to provide additional views on a number of issues which included suggestions for further reform, whether there was a need to further pool risk in the market and the use of technology to improve the efficiency of processes.

Further Reforms

Respondents did not propose further reforms to those already under way arising from the work of the CIWG. Respondents were asked for their views on whether there were measures that buyers of insurance could take to improve their ability to avail of insurance at a more affordable price. Respondents on the supply side suggested that organisations should avail of and apply advice on risk management. It was also suggested that buyers train their staff appropriately to reduce the potential for risk, and that they invest in technologies such as CCTV to assist in the prevention and defending claims.

Pooling Risk

Respondents on the supply side stated that due to the heterogeneous nature of the risk, as well as the tendency to sell public liability a part of a product bundle with other insurances, there is limited potential for pooling risk[135]. It was also suggested that there was ordinarily sufficient capacity in the market to meet customer needs. It was suggested that the conclusion of reforms in the sector should weigh against any greater use of risk pooling.

Use of Technology

Respondents were asked to provide views on whether technology could lead to improvements in pricing risk, claims handling, and legal processes[136].

Pricing Risk

Respondents noted the potential for technology to allow for a wider variety of data sources to be employed in pricing risk, alongside more sophisticated modelling techniques, which would result in more accurate risk pricing. It was also noted that the heterogeneous nature of the risks to be insured in commercial insurance would result in some limitations to the application of technology.

Claims Handling

Respondents noted the potential for technology to improve and refine the claims handling process, which included the automation of the notification of claims and settling claims more quickly. BI suggested that standardising or integrating the means of recording claims between insurers could lead to efficiencies in the process. II stated that technology has enabled insurers to streamline claims handling in personal insurance lines, and that the response to Covid-19 may accelerate these developments.

Legal Processes

Respondents suggested that there are technologies that could increase the efficiency of legal processes when settling claims, such as increased use of email, videoconferencing and electronic filing of cases with the Courts. II stated that most public liability claims do not become the subject of litigation and that, due to the streamlined processes it provides, it would be preferable to strengthen the role of PIAB. However, where claims do proceed to litigation it would, in their view, be desirable to introduce pre-action protocols to ensure efficient case management which could in turn be enhanced by technology.

135 It was recognised that a number of group schemes run by brokers provide for a degree of risk pooling for some categories of organisations.

136 Respondents linked the potential for investment in technology to a more stable cost environment (in particular in relation to the cost of claims).

E Public Liability Insurance Reform Recommendations

This appendix provides details on the recommendations and their status in relation to the reports issued by the CIWG and TCA.

Figure 26: CIWG (2018) Eleventh and Final Progress Update

Area		Recommendation	Status
Objective 1: Increasing Transparency	1	Central Statistics Office (CSO) to consider feasibility of collecting price information on the cost of insurance to business	Completed CSO is drafting paper on the conclusions of the pilot study
	2	CBI to examine merits and feasibility of collecting employers and public liability insurance claims data in the NCID	Completed The CBI intends to publish NCID Report on employers and public liability insurance in early 2021
	3	The Courts Service to publish the results of personal injury cases in a more granular way in its annual reports	Completed The Courts Service will publish more granular information in the 2020 Annual Report
	4	Department of Finance to publish a key information report on employer and pubic liability insurance claims	Completed Not possible to publish the report due to difficulties in obtaining the information from the industry - has been superseded by recommendation 2
Objective 2: Reviewing the Level of Damages in Personal Injury Cases	5	Law Reform Commission to be requested to undertake a detailed analysis of the possibility of developing constitutionally sounds legislation to delimit or cap damages	Completed The report was published in September 2020 and outlined two models that may be constitutionally permissible

Area		Recommendation	Status
Objective 3: Improving the Personal Injuries Litigation Framework	6	Amend the wording of Section 8 of the Civil Liability and Courts Act 2004 to ensure defendants are notified of claims being lodged against their policy	Completed Amended in January 2019
	7	Relevant Court Rules Committees to consider amendment of the rules of court in respect of Section 8 of the Civil Liability and Courts Act 2004	Completed Court rules amended with effect from August 2019
	8	Ensure greater awareness of notification obligations under Section 8 of the Civil Liability and Courts Act 2004	Completed Information note issued by Department of Finance as final reminder in July 2019
	9	Review of the operation of the six-month standstill period provided for under Section 50 of the Personal Injuries Assessment Board Act 2003	Completed PIAB found that the majority of claimants proceeded to litigation within four months of receipt of an authorisation, so no significant delays
	10	II and business organisation to agree a set of guidelines in respect of notifying and engaging with policyholders regarding claims submitted against them	Completed Completed through the Consumer Insurance Contacts Act 2019 - section 16 on the notification and engagement duties of insurers and consumers for claims came into effect in September 2020
	11	An Garda Siochana (AGS) to commence producing statistics on complaints and investigations relating to fraud within the personal injuries area	Completed Some statistics provided to CIWG but not possible at this time to provide up to date information on 'insurance fraud' in the manner that is being considered by CIWG
	12	The Courts Service to commence producing statistics on prosecutions and convictions relating to fraud within the personal injuries area	Completed Agreed that should be covered by AGS (for recommendation 11)
	13	II, AGS and the Director of Public Prosecutions to agree a set of guidelines in respect of the reporting of suspected fraudulent insurance claims	Completed Guidelines published in October 2018
	14	Amendment of Section 14 of the Civil Liability and Courts Act 2004 to improve the use and effectiveness of the provision	Completed Amended in January 2019
	15	Department of Justice and Equality to consider proposing an amendment to the Judicial Council Bill to facilitate training and information support	Completed Provided for in the Judicial Council Act 2019

Figure 27: TCA (2005) Competition Issues in the Non-Life Insurance Market: Volume I - Recommendations related to the Irish Public Liability Insurance Sector

Area		Recommendation	Status
Reducing Barriers to Entry	1	Issue guidelines to potential entrants on the standards they will have to meet	Accepted
	2	Solvency requirements above the EU requirements should be justified	Accepted
	3	Publish the Blue Book earlier in the year – June	Accepted
	4	Require insurers to submit data for the Blue Book in electronic form by March	Accepted
	5	Require insurers to submit their annual statutory returns in electronic form by March	Accepted
	6	Collect and publish "raw" policy data for liability insurance	Overtaken by developments
	7	Modify coverage of the Insurance Compensation Fund	Overtaken by developments
	8	Issue a policy statement on preceding recommendation (i.e. Modified coverage of the Insurance Compensation Fund)	Overtaken by developments
	9	Require policies and quotes to indicate their coverage by the Insurance Compensation Fund	Overtaken by developments
	10	Alter funding of Ombudsman Scheme so that an insurer pays a levy when there is an adverse ruling against it	Overtaken by developments
	11	Collect and publish retrospective data on retained reserves and the cost of accidents paid out for motor and liability insurance	Not accepted - too expensive
Reducing Uncertainty of Claims	12	Generate and publish information regarding court decisions and levels of awards	Under consideration - Overtaken by CIWG developments

Area		Recommendation	Status
Reducing Switching Costs	13	Renewal notices for liability insurance should be sent to arrive at least 8 weeks before renewal	Accepted
	14	Renewal notices for motor and liability insurance should include the claims history of the buyer	Accepted
	15	Motor and liability insurers should provide a certified claims history to any customer on request 8	Accepted
	16	Develop a standardised format for motor and liability claims histories	Accepted
	17	Publish annual cost surveys of liability insurance 10	Accepted
	18	If liability insurance renewal notices arrive late, the customer should be able to extend cover under the existing policy, at the minimum of the old rate or the new rate, while they shop around	Overtaken by developments
	19	Publish a buyer's guide to illustrating claims experience	Not accepted – outside the remit of the Financial Regulator
Improving Intermediaries Process	20	Require intermediaries to inform customers of any other payments they receive from insurers	Accepted
	21	Require intermediary notifications of insurer appointments to specify the type of insurance	Accepted
	22	Require intermediaries to disclose all forms of compensation they receive from insurers when offering insurance products	Accepted
	23	Modify the classification system for intermediaries to make it easier for buyers	Accepted
	24	Require intermediaries to include statement of their approved functions in all correspondence	Accepted
	25	Publish a consumer notice on the different types of intermediaries	Accepted
	26	Require renewal notices to be sent to customers as well as their intermediary	Accepted
	27	Create appropriate timescales for switching intermediaries	Accepted
	28	Require intermediaries to provide a copy of their risk assessment to their client	Accepted
	29	Require intermediaries to indicate the price of their risk assessment in the contract with the client	Accepted
	30	Forms of compensation that intermediaries can receive should not be limited	No action required

Area		Recommendation	Status
Improving Intermediaries Process ctd.	31	Require intermediaries to inform customers of the commission they receive from insurers for placing the business with them	Overtaken by developments
	32	Require intermediaries to publish annually the total amount of commission overrides they receive from each insurer	Overtaken by developments
	33	Commissions paid to intermediaries should be deducted from any negotiated fee arrangement between the intermediary and the buyer	Overtaken by developments
	34	Require intermediaries to forward details of all quotations received to their customers	Overtaken by developments
	35	Require insurers to publish statements on how they handle buyers of public liability, employer liability and commercial motor insurance policies who are presented to them separately by different intermediaries	Overtaken by developments
	36	Publish a table summarising the information called for in the preceding recommendation (i.e. publish statements on how insurers handle buyers of public liability, employer liability and commercial motor insurance policies who are presented to them separately by different intermediaries)	Overtaken by developments

F List of Acronyms

Acronym	Definition
Action Plan	Action Plan for Insurance Reform
AGS	An Garda Síochana
BI	Brokers Ireland
Blue Book	Central Bank of Ireland Insurance Statistics
CBI	Central Bank of Ireland
CCPC	Competition and Consumer Protection Commission
ComReg	Commission for Communications Regulation
CIWG	Cost of Insurance Working Group
CSO	Central Statistics Office
CRT	Civil Resolution Tribunal
CUE	Claims and Underwriting Exchange
EBA	European Banking Authority
ECI	Early Childhood Ireland
EDI	Electronic Data Interchange
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ESAs	European Supervisory Authorities
ESMA	European Securities Markets Authority
EU	European Union
Financial Regulator	Irish Financial Services Regulatory Authority
FOE	Freedom of Establishment
FOS	Freedom of Services
Frontier	Frontier Economics
FSPO	Financial Services and Pensions Ombudsman
HHI	Herfindahl-Hirschman Index
IDD	Insurance Distribution Directive
II	Insurance Ireland
MGAs	Managing General Agents
MSMEs	Micro Enterprises
NCID	National Claims Information Database
PIAB	Personal Injuries Assessment Board
PfG	Programme for Government
RTB	Residential Tenancies Board
SEAR	Senior Executive Accountability Regime
SMEs	Small and Medium Sized Enterprises
TCA	Competition Authority
TFEU	Treaty on the Functioning of the European Union
TOR	Terms of Reference
VBER	Vertical Block Exemption Regulation
WRC	Workplace Relations Commission
2002 Act	Competition Act 2002 as amended

Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission