

# Competition and Consumer Protection Commission

## The Irish Public Liability Insurance Market - Public Consultation

### Introduction

Aviva welcomes the opportunity to contribute to the Competition and Consumer Protection Commission's market study into the public liability insurance sector in Ireland.

Aviva has been represented in the Irish insurance market for over 240 years. During this time Ireland has experienced many crises and turbulent times, including Covid-19 and its wider economic impact. Aviva is one of the largest commercial lines insurers in the Irish market insuring one in five SMEs, and throughout these difficult times we have continued to be there for our customers.

Aviva is committed to operating in a competitive Irish insurance market that is stable and sustainable for our customers. We believe that the volatility in both employers and public liability premiums, over recent years, has acted as a deterrent for more reputable and financially strong EU providers, whose long-term participation in the market would offer Irish customers more sustainable choice. We have led the market in advocating for supporting insurance reform and continue to support the creation of a more sustainable and less volatile market, which we believe will assist both the cost and availability of insurance for all customers.

Aviva provides public liability insurance to approximately 27,000 commercial customers with a premium income of €36m. Most of these customers buy public liability insurance cover as part of a package of covers, that can include employer's liability and/or property insurance i.e. they do not usually buy public liability insurance on its own.

### Competition

Ireland operates an open insurance market for public liability insurance with insurers based here competing against each other and against insurers based in other EU countries and the UK.

In 2017 14 rival Insurance Ireland members wrote gross public liability insurance premium of €417m. It is not known what additional amount was written by insurers based outside the state (particularly by insurers in the UK) but it could be an extra 30% or €125m.

We will now respond to the questions raised in the Consultation Paper.

**(a) In your/the view of your organisation, how would you characterise the current level of competition between insurers in the public liability insurance market in Ireland?**

In our view the current level of competition between insurers in the public liability insurance market in Ireland is high for most businesses and sectors.

In contrast, in recent years, the number of insurers offering cover to what we consider higher risk businesses or occupations in the leisure sector has reduced resulting from continuing increases in the cost and frequency of claims. As a result, we believe many businesses in this sector will have experienced large increases in their public liability premiums and may in some cases have found it difficult to source affordable cover.

**(b) In your/the view of your organisation, how would you characterise the current level of competition between brokers in the public liability insurance market in Ireland?**

In our view the current level of competition between brokers in the commercial insurance market, which includes public liability insurance, is high. According to Brokers Ireland there are over 400 brokers transacting commercial insurance in Ireland today. Of this number we believe over 200 are actively seeking new commercial business including public liability insurance, which makes for an extremely competitive market.

With a very small number of exceptions, all our public liability customers insurances are placed with Aviva by a broker. If a customer isn't satisfied with our renewal offer, they will ask their broker to seek alternative quotations from other insurers or seek alternative quotations from another broker. Each year we lose many risks as a result of brokers/customers finding cheaper alternative prices on the market. The table below shows the number of commercial policies (approximately 65% will have public liability insurance cover included) insured by Aviva over the past 3 years. The number is declining, with competitive pressures being the key factor.

	Commercial Customers
2017	49,175
2018	45,341
2019	41,820

**(c) In your/the view of your organisation, how has the availability of insurance coverage for public liability risks changed in Ireland in the past five years?**

In our view the availability of public liability insurance coverage hasn't changed for most businesses and organisations in the past five years with the exception of what we regard as higher hazard risks operating in the leisure sector and other businesses such as: creches; playgroups and businesses with poor claims experiences.

- (d) In your/the view of your organisation, how has the exit of some insurers from the market affected the availability of insurance coverage for public liability risks in Ireland in the past five years?

In our view because there remains significant capacity in the market, the availability of public liability insurance coverage hasn't been materially impacted much by the withdrawal of some insurers from the market. We feel however the availability of public liability insurances for higher hazard businesses operating in the leisure sector such as: play centres; sports clubs; festivals; large events and other businesses like creches, have been negatively impacted by the withdrawal of capacity by insurers based in the UK, who have traditionally written these risks.

### Barriers to Entry and Exit

- (a) In your/the view of your organisation, are there barriers to entry in the public liability insurance market in Ireland? If so, what are those barriers?

In our view there is a very obvious existing barrier to entry into the public liability market in Ireland. Based on market data from Insurance Ireland, and our experience we believe it is challenging for insurers participating in this market to generate positive returns. This is due to the continuing increase in the cost of claims as evidenced by the Cost of Insurance working Group and Personal Injuries Commission reports.

The table below illustrates the net underwriting result made, by Insurance Ireland members, from underwriting public liability insurance for the years 2010 – 2017 (more recent years results are not yet available).

	Net Earned Premium €m	Net Incurred Claims cost €m	Net Underwriting Result €m
2010	241	149	22
2011	235	125	45
2012	204	268	-128
2013	241	209	-38
2014	238	152	14
2015	209	116	22
2016	270	217	-15
2017	286	227	-13

Source: Insurance Ireland Fact files

Net premium is the premium retained by the insurer after it pays for its reinsurance protection. Net claims costs take account of reinsurance claims recoveries due to the insurer from its reinsurers.

Insurers made an underwriting loss writing public liability insurance of €78m for the years 2010 – 2017 and an underwriting loss of €30m for the five years 2013 – 2017.

As mentioned earlier, public liability insurance is usually bought with employers liability insurance and in this regard, it is important to note that insurers made a net underwriting loss of €319m from employers' liability insurance over the five years 2013 to 2017.

The continuing rise in public liability claims cost is driven by the personal injury award levels which in Ireland are 4.4 times those in England and Wales. As noted in the Personal Injuries Commission reports of 2018, this has helped to increase the "compo claims culture". This encourages some claimants to exaggerate their injuries or, in some cases, to make fraudulent claims by staging accidents. Making a claim can be seen as a risk-free endeavour without any consequence if found out.

Last year, a High Court judge was highly critical of the legal and medical profession. In a case where he dismissed one case as fraudulent and another as exaggerated and misleading, Mr Justice Michael Twomey was critical of the role played by the solicitor, senior counsel and a consultant physician and highlighted the need for these professions "to be alive to the possibility of their services being used to facilitate the bringing of fraudulent claims".

Another factor impacting the volume of claims is the lack of personal responsibility when something goes wrong. Some Claimants are not willing to accept that they themselves may have been responsible for the accident causing their injury. Unfortunately, in the opinion of these claimants someone must pay for this and the real victims here are the businesses. They would like to see increased competition in the market and want insurers to reduce premiums and provide cover to those businesses in sectors most vulnerable to claims.

Insurance reform must be a key priority for our new government and the recommendations made by the Personal Injuries and the Law Reform commissions, to reduce compensation award levels, must be implemented. Both the new and previous governments have declared insurance reform a priority, but implementation needs to be accelerated. The Personal Injuries Guideline Committee has been established but we need to see progress and its work leading to a new updated book of quantum. We also need to see the judiciary bringing a more measured approach to bear on their assessment of what should amount to reasonable care. Businesses in turn need to improve their health and safety practices, in particular they need to provide proper training to all employees.

In terms of emerging barriers to entry for overseas insurers considering entry into the Irish market, the Consumer Insurance Contracts Act, which is due to commence this year, will significantly increase the obligations of insurers to retain and disclose additional customer data and details of historic premiums paid. Fulfilling the obligations of the Act will require insurers to invest significantly in updating systems and in amending processes.

**(b) In your/the view of your organisation, are there barriers to expansion in the public liability insurance market in Ireland? If so, what are those barriers?**

As noted in (a) above, Aviva believes Ireland's claims culture, our high compensation levels and the extreme duty of care claimants expect from business owners, remain as the main barriers for insurers to resolve in order to enable them to generate reasonable positive returns. The resolution of these issues will result in the market becoming more attractive for new entrants, thereby leading to expansion of the public liability insurance market in Ireland.

Existing market incumbents have publicly stated that premiums will be reduced in line with the level of reductions in award levels, subject to there being no increase in frequencies. Government, and businesses in those sectors most affected by the availability of affordable public liability insurance, can be assured that creating stable market conditions will remove barriers and will incentivise insurers back into the market as well as attracting new entrants. Increased competition on the right basis can result in more sustainable reductions in premiums and will enable insurers to expand their appetites into the sectors currently most vulnerable to claims.

**(c) In your/the view of your organisation, are there barriers to exit (e.g. sunk costs) in the public liability insurance market in Ireland? If so, what are those barriers?**

In our view the barriers to exit in the public liability market are no greater than those in other EU markets.

**(d) In your/the view of your organisation, to what degree has there been exit of insurers and/or brokers from the public liability insurance market in Ireland? Has exit been more prominent in particular sub-sectors?**

In January this year, Liberty Insurance announced they were exiting the commercial liability market in Ireland, with effect from April of this year. This announcement followed the withdrawal of capacity over the past few years by many UK based insurers writing Irish liability insurance under EU passporting rules.

While Liberty wrote across a broad range of sectors, many of the UK underwriters who have reduced capacity, specialised in writing higher hazard risks such as: creches; play centres; sports clubs; festivals and other large events.

**(e) In your/the view of your organisation, what have been the drivers for exit from the public liability insurance market in Ireland?**

In our view the continuing volatility in both employers and public liability claims environment over recent years has acted as a deterrent for more reputable and financially strong EU insurance providers. In particular, Aviva sees Ireland's claims culture, the high compensation levels and the extreme duty of care claimants expect from business owners as the main drivers of this unstable market and the reason for some insurers withdrawing capacity.

**(f) In your/the view of your organisation, are there any regulatory barriers to entry in the public liability insurance market in Ireland?**

We do not have a view on this.

**(g) In your/the view of your organisation, what, if any, measures are required to facilitate or incentivise entry into the public liability insurance market in Ireland?**

Cost of claims remains the largest influencing factor on the cost and availability of public liability insurance in Ireland. Aviva Ireland would be delighted to pass on reduced more sustainable premiums to our customers who are currently bearing the brunt of these excessive awards. As noted, reduction in levels of compensation awards handed down by the judiciary are essential if we are to deliver lower and more sustainable premiums to our customers and we would encourage government to prioritise the completion of this reform process. Aviva is committed to ensuring that our customers will benefit directly from any such reductions when claims costs come down. The creation of more stable market conditions will benefit both business customers and insurers and incentivise insurers back into the market as well as attracting new entrants.

In this context we remain concerned that some of the requirements of the new Consumer Insurance Contracts Act could militate against these market improvements and create new and unwelcome barriers to overseas insurers wishing to enter the Irish market.

## Brokers and Switching

- (a) In your/the view of your organisation, how do brokers facilitate competition between insurers in the public liability insurance market?**

In our view brokers carry out a key function in facilitating competition between insurers. As mentioned earlier almost all our policies, providing public liability cover, are placed with Aviva by a broker. The broker is required to seek alternative quotations from the market on a regular basis. They not only compare other prices available but also the scope and level of cover other insurers are prepared to provide to their client.

- (b) In your/the view of your organisation, do customers engage sufficiently with their broker when seeking appropriate coverage in the marketplace?**

Based on our market experience, brokers provide an excellent level of expertise and service to clients in assisting them in deciding where to place their cover. This is incumbent on the broker to do so, as if they do not, their client will move their business to another broker.

- (c) In your/the view of your organisation, are there ways in which customers could be facilitated to better engage with their broker and the marketplace?**

We very much support the Insurance Distribution Directive which aims to ensure a minimum harmonisation of insurance distribution regulation across the EU, creating a 'level playing field' for insurance intermediaries and insurance distribution, regardless of the channel customers use to purchase products. The aim is to ensure consistent prudential standards for intermediaries as well as significantly raising conduct standards, improving consumer protection and effective competition.

We feel that engagement between the customer and their broker might be improved by producing and explaining alternative options facilitated by Insurance Product Information Documents (IPIDs).

- (d) Switching can be facilitated by brokers or, in the case of organisations that insure directly, by engagement with the marketplace. In your/the view of your organisation, does the structure of the market allow for sufficient switching between insurers?**

In our view the market is extremely competitive for most businesses and sectors, other than those businesses previously mentioned. Most businesses will be able to obtain several quotations from different insurers. If the business obtains a more competitive quotation, there are no obstacles to switching to an alternative insurer.

**(e) Do you/your organisation have views in relation to the ease or otherwise of the switching process?**

In our view a customer can switch to a different insurer with little difficulty.

**The Insurance Cycle**

**(a) In your/the view of your organisation, how has the insurance cycle in the public liability insurance market in Ireland evolved since 2015?**

As mentioned earlier, because most public liability covers are sold as part of a package of covers, it's not possible to talk about 'the public liability insurance market in Ireland' without at least including employer's liability insurance.

Insurers made an underwriting loss writing public liability insurance of €78m for the years 2010 – 2017, and an underwriting loss of €30m for the five years 2013 – 2017. They made a net underwriting loss of €319m in employers liability insurance over the five years 2013 to 2017.

Consequently, rates for both employers and public liability insurance covers have increased since 2015. Many insurers have been remediating their liability accounts during this period which has seen sharp increases in rates for poor performing risks and businesses operating in sectors prone to a high number of claims from members of the public.

**(b) It has been suggested that the impact of the insurance cycle is more pronounced in Ireland than elsewhere. Do you/your organisation share this view? If so, can you/your organisation identify particular factors to explain this?**

Aviva provides liability and other connected commercial insurance covers in several territories throughout the world and while all markets will be cyclical in nature the Irish market's cycle does appear to be more pronounced than others.

From experience, the underwriting cycle results in the tendency of liability and other covers premiums, profits and availability of coverage to rise and fall with some regularity over time. A cycle begins when insurers tighten their underwriting standards and sharply raise premiums after a period of severe underwriting losses. Stricter standards and higher premium rates lead to an increase in profits and accumulation of capital. The increase in underwriting capacity increases competition, which in turn drives premium rates down and relaxes underwriting standards, thereby causing underwriting losses and setting the stage for the cycle to begin again.



Some possible explanation as to why Ireland's cycle is more pronounced than other markets might be:

1. Ireland operates an open insurance market for public liability insurance with insurers based here competing against each other and against insurers based in other EU countries and the UK. Cost and frequency of claims apart, entry and exit to the market is relatively easy with many overseas insurers writing business here on a freedom of services basis.
2. Our close proximity to London, one of the largest insurance markets in the world, with similar legal systems and no language barriers, makes Ireland an attractive place to write business in for many UK insurers.
3. Ireland's compensation awards are higher than most EU countries and consequently premiums too are higher. Higher premiums might appear more attractive to providers of capacity not established in Ireland particularly when market performance improves.
4. Insurers have tended to "buy into" positive developments too early. There have been instances in the past when legislative and other changes have suggested that the market would become more stable, for example:
  - a. Personal injury awards being taken out of the control of juries in 1988
  - b. The establishment of the Personal Injuries Assessment Board in 2004;
  - c. The Civil Liability and Courts Act 2004

It was hoped at the time these initiatives would reform Ireland's compensation culture, and while they did initially encourage capacity into the market, ultimately, they failed.

We hope the establishment of the Personal Injuries Guidelines committee will succeed in their aims and will help create a competitive Irish insurance market that is stable and more sustainable for policyholders.

## Cost Inflation

- (a) In your/the view of your organisation, has the price of public liability insurance risen, fallen or remained stable in the past five years?**

In our view the price of insurance (not taking inflation into account) has risen in the past 5 years. Most of our customers will have seen single digit rate/premium increases in each of the past 4 years. Risks with poor claims experience or in a sector with a poor loss record will have seen higher annual increases than average.

**(b) In your/the view of your organisation, have the costs of inputs (e.g. settlement awards, legal or investigatory costs) to the calculation of premiums increased, fallen or remained stable in the past five years?**

In our view settlement awards have increased in the past 5 years. In addition, the legal costs component in cases not dealt with within the Injuries Board process has also increased significantly. In recent years we have seen a significant increase in the cost of the 'loss of earning' and 'future medical care costs' as a proportion of claims costs on more serious injury claims.

**(c) In your/the view of your organisation, what, if any, factors have been the main drivers of cost inflation in the public liability insurance market in the past five years?**

In our view public liability insurance premiums have increased in the past 5 years for several reasons:

1. Public liability premiums are usually based on a company's wages or turnover. As the economy has been buoyant many customers have increased their payroll and turnover which in turn increased their public liability insurance premium proportionately.
2. Insurers in Ireland have made substantial underwriting losses from public and employers liability insurance since 2012.
3. Many underwriters in the UK market, who have traditionally written higher risk Irish leisure business, have been remediating their Irish liability portfolios since the beginning of 2019.
4. Reinsurance rates can also be a factor.

**(d) In your/the view of your organisation, has the frequency or volume of claims had an impact on the cost and/or availability of public liability insurance in the past five years?**

In our view the increase in frequency of claims has had an impact on the cost and availability of public liability insurance over the past 5 years.

It is difficult for any one insurer to be definitive about actual increases in claim frequencies because of changes in their: business volumes; the nature of risks insured; and the size and type of risks written from year to year. The Cost of Insurance Working Group's recommendation to expand the scope of the National Claims Information Database to include a report on Employer Liability and Public Liability insurance will provide a comprehensive analysis of cost trends on premiums, claims and settlement costs across these lines of insurance. Aviva is supporting the CBI in producing this database.

## Digitalisation

- (a) In your/the view of your organisation, what, if any, impact has digitalisation had on the provision of public liability insurance in Ireland?**

In our view advancements in technology have transformed the way in which business is done for motor, home and a section of smaller commercial customers, making it easier for them and/or their broker to transact business. While most commercial insurance business continues to be transacted by traditional methods, there is no doubt that this will change over the next few years.

- (b) In your/the view of your organisation, how could digitalisation further impact on the provision of public liability insurance in Ireland?**

The insurance sector is a data-driven industry. With the help of technologies like Artificial Intelligence and machine learning, this data can be utilised in ways that will bring about dramatic change in behavioural policy pricing, customisation of products and faster claims settlements. It will also allow for a more seamless interaction for customers.

- (c) In your/the view of your organisation, could digitalisation contribute to further entry into the market for public liability insurance in Ireland?**

In our view digitalisation and the resultant reduction in distribution costs, and efficiencies generated, will inevitably lead to further entry into the market by new insurers providing commercial insurance covers.

## Further Reforms

- (a) In your/the view of your organisation, what measures could be implemented to reduce or lessen the impact of fluctuations in the cycle?**

While there will always be a degree of fluctuation in a competitive market, Aviva believes the creation of a more sustainable and less volatile market is necessary to reduce volatility. We believe this will assist both the cost and availability of insurance for customers. Specifically, in relation to the liability insurance market, there needs to be:

1. A reduction in the level of personal injury awards. Irish award levels are believed to be among the most generous in the EU and 4.4 times the levels paid out in England and Wales.
2. A greater recognition in the courts of a plaintiff's personal responsibility for their own safety. We must get away from the culture of always blaming someone else for the accident.

3. An awareness by legal and medical professionals of the possibility of their services being used to facilitate the bringing of fraudulent and/or exaggerated claims.

**(b) In your/the view of your organisation, what, if any, improvements are possible in the use of technology to allow for more accurate pricing of risk in the public liability insurance market in Ireland?**

Insurance is a data-driven industry. With the help of new technologies data could be utilised to bring about improvements in segmented pricing and customisation of products to better suit customers' needs. Technology to capture and store additional information about risks from external sources at the point of sale could enhance the accuracy of the pricing calculations. The use of more sophisticated modelling techniques (and the technology that underlies them) could utilise this data to better describe the relative riskiness of individual customers. However, the heterogeneity of commercial risks will generally result in some limitations and output from models should be interpreted carefully.

Aviva will look to leverage the expertise being developed by the Aviva Group through their data science community Quantum and through Digital and Smart technology advancements across our business as well as externally, to create innovative product solutions that reflect customer and broker feedback, and emerging risks. However, such development will involve significant cost which will need a stable and sustainable market to justify such investment.

**(c) In your/the view of your organisation, what if any improvements could technology allow for in claims handling in the public liability insurance market in Ireland?**

In our view, technology will enable a more efficient claims service and faster claims settlements. It will allow customers to do business in a manner and at a time of their choosing through the automation of claims notification process, and enable straightforward claims to be settled quickly, allowing more time to be applied to investigate and settle the more complicated claims.

**(d) In your/the view of your organisation, what, if any, improvements are possible in the use of technology to allow for more efficient legal processes in relation to the settlement of public liability insurance claims in Ireland?**

In our view there are many improvements possible arising out of the use of technology. The current claims settling process has changed very little over the last decade. There are many ways where we interact with injured parties' representatives that can be improved using new technologies.

Increased use of technology to facilitate virtual settlement negotiations or witnesses giving evidence remotely would result in savings from both a time and financial perspective. The Covid-19 pandemic has compelled both insurers and the legal profession to utilise technology to facilitate the resolution of claims and these technologies have been shown to work.

Insurance fraud is a constantly evolving threat and insurers need to continue to work with stakeholders and develop technologies to ensure the availability of a robust systemic response.

**(e) In your/the view of your organisation, are there measures that buyers of insurance could take to improve their ability to avail of insurance at an affordable price?**

We believe the premiums we charge our customers reflect the risk exposure they transfer to us. We would encourage customers, however, to seek alternative quotations at renewal. Customers should also invest in improving their management of risk and the training of employees. Aviva's Risk Management team aids and advises customers in this regard. Investment in technologies such as cctv helps in preventing and defending fraudulent and exaggerated claims.

**(f) In your/the view of your organisation, are there measures that could be taken to pool risk more effectively in the public liability insurance market in Ireland?**

Traditionally public liability risks have not been pooled as generally there has always been capacity available in the market for public liability insurance to meet customers' needs. In our view if the reforms, we've outlined in this paper as being necessary, are made, there will be sufficient capacity in the market without the need to pool risk.