

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

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To whom it concerns,

On behalf of the Personal Injuries Assessment Board (PIAB), I welcome the opportunity to submit our views to the Competition & Consumer Protection Commission (CCPC) in relation to the public consultation on the Irish Public Liability Insurance Market. This submission primarily outlines our views in relation to potential measures to reduce costs that arise from the personal injury environment and how those factors relate to this market more generally.

PIAB fully supports any proposals that will contribute to a better functioning and lower costs regime in the Personal Injuries environment, which build on the success of our model and which will facilitate more cases being finalised through our low cost model. Cases that are resolved through the PIAB model have considerably lower add-on costs than through litigation or other channels as evidenced in last year's First Report of the National Claims Information Database (NCID) by the Central Bank of Ireland (CBI).

PIAB are aware of the impact of claims costs on society and particularly on insurance premiums and the burden of same on business and consumers. We also understand that it will be even more important to address these impacts, as business, society and the economy tries to recover from the current crisis arising from Covid-19.

PIAB received over 8,000 public liability claims in 2019, and for the past number of years, 18% of all personal injury claims submitted to us relate to public liability accidents. The table below provides a summary of the average public liability award over the last 4 years.

Table: Average PIAB Public Liability Awards 2016 - 2019

Year	Average Award
2016	€26,592
2017	€27,638
2018	€28,373
2019	€26,189

The number of public liability claims submitted to us has been relatively steady in terms of both numbers and proportionality of overall claims over the last number of years, and average awards have been fairly consistent ranging from an average €26,000-€28,000.

With regard to the range of awards the table below gives a summary of these.

Award range	2018 % Distribution	2019 % Distribution
< €20,000	43%	46%
€20,000 - €30,000	34%	36%
€30,000 - €100,000	20%	18%
> €100,000	1%	<1%

As can be seen from the above most awards are for under €30,000. However, a significant proportion of personal injuries claims do not come to PIAB, or are not consented to for assessment by PIAB. PIAB assesses 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 over the last number of years, from 63% in 2013 to 54% in 2018, although recovering to 56% in 2019. This means this many claims are either settled post PIAB or are decided on in the courts.

There are a number of factors which may contribute to issues in pricing, competition and access to public liability insurance which then impact on businesses and on society. These include:

- The cost of claims in terms of personal injury award levels
- The add-on costs associated with processing or settling claims
- The time taken to resolve a claim if it is not resolved through the PIAB process or in private settlements, and the opportunity cost resulting from time delays

#### Level of Awards

The level of awards in Ireland is known to be high relative to our nearest jurisdiction, especially in relation to soft tissue injuries. The Personal Injuries Commission (PIC) Second and Final Report indicated that similar soft tissue injury claim costs were approximately 4.4 times that of the UK cost (including psychological injury). How much actual claims costs are a factor in pricing is still not known, and in this regard we welcome the National Claims Information Database which is being extended to cover liability insurance and believe this provides an opportunity for greater transparency in the market. 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.

In respect of the cost of awards having regard to their levels vis a vis other jurisdictions, another factor, to consider is the possibility of limiting the cost of awards. The Personal Injuries Commission (PIC) recommended that the Law Reform Commission should examine whether it would be constitutionally permissible to provide for a statutory regime that would place a cap or tariff on some or all categories of damages in personal injuries cases. The Law Reform Commission are currently examining whether it is appropriate to legislate for a cap to be placed on the levels of damages which may be awarded in respect of some or all categories of personal injury claims, and have come up with 4 potential models which they were to consider further following further consultation. While the work of the Judicial Council in setting guidelines for awards is still on-going, and we do not yet know the potential outcomes of this, it is our view that we may still need to consider the position of capping.

Costs associated with Claims

The Central Bank of Ireland, found in its National Claims Information Database Report (December 2019) for motor insurance that average injury settlement costs were far higher if resolved via litigation. As the table below sets out, for cases resolved outside of PIAB legal costs are significantly higher, averaging at 63% of the compensation amount and the time taken to resolve the claim is also significantly longer.

Average settlement Costs	Compensation received by claimant (€)	Legal costs (€)	Legal costs as % of compensation	Other (€)	Total costs (€)	Time taken to settle claims (2015-2018)
<b>PIAB</b>	€22,660	€885	<b>4%</b>	€1,139	€24,684	2.5 years
<b>Litigated</b>	€24,208	€15,139	<b>63%</b>	€1,033	€40,380	4.2 years

The impact for business and for the provision of key services in society such as the childcare, community services or leisure sectors, from insurance costs is significant. At an individual/business level an outstanding claim can significantly increase costs of insurance for companies seeking cover until the claim is resolved and in some cases thereafter. It can also in some cases lead to difficulties accessing any insurance, or to a choice of only one provider. In the current environment where all businesses (and SME's in particular) are under very significant pressure, this can have overall impact on viability of businesses. The time taken to resolve a claim can therefore have a very significant impact. In terms of broader impact the costs associated with defending claims can also lead to decisions to settle cases even where parties may not fully accept liability, as in overall terms it might be cheaper to settle the claim. This can exasperate the issue of fraudulent or over exaggerated claims.

There can also be an anticipation of higher awards via the court process or post PIAB which can lead to cases costing more and lasting for longer. While the Central Bank data shows there is in actual fact not significant differences in the level of awards, greater levels of consistency and certainty in this area will lead to more informed decisions. The work of the Judicial Council will be important in this regard. The guidelines to be introduced by the Council have the potential to bring greater certainty and consistency in terms of court awards, thereby reducing the number of PIAB awards which are rejected and ensuring more claims are addressed quickly and with lower processing costs. The current level of uncertainty in relation to court awards may also act as a barrier to entry to the market.

In relation to the broader area of how to contribute to reducing costs further and supporting a better functioning insurance market, one potential area that has more recently been suggested is to look at introducing alternative dispute resolution mechanisms to the courts in respect of cases that are not resolved through PIAB. This would be for cases where liability is an issue, where PIAB awards are not accepted, or where there is no consent to the assessment of a claim by PIAB. This may address the broader issues of time and cost in pursuing claims, and there is potential in this regard to explore PIAB having a wider remit, similar to the Workplace Relations Commission (WRC) and the Residential Tenancies Board (RTB). This type of change would require legislation, but there is merit in a wider debate and analysis of such a potential move, as an alternative dispute resolution mechanism could potentially have a significant impact on the public liability sector due to the speed of claims resolution as against litigation. This could lessen the impact on business in terms of both access to and the cost of insurance. It could also drive further the objective of achieving greater transparency in this area, as there would be more data available on the various channels to settling claims.

In conclusion, insurance reform is still very necessary in the public liability area, there are a number of factors which drive cost and accessibility and it is important to address all of the individual components to achieve reform. PIAB has a strong history of positively contributing to discussion around the wider personal injury claims environment including its active role in the Personal Injury Commission which examined many international personal injury resolution models.

We are happy to promote and engage in such dialogue in the future and to assist the work of the Competition & Consumer Protection Commission in this area in any way we can.

Yours sincerely,



Rosalind Carroll  
Chief Executive