

SUBMISSION to the CCPC on the IRISH PUBLIC LIABILITY INSURANCE MARKET

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BROKERS
I R E L A N D

About Brokers Ireland

Brokers Ireland is Ireland's representative body for Insurance Brokers and Financial Brokers, with a combined strength of over 1,225 firms. Of Brokers Ireland's members, around 351 are either Insurance Brokers selling general insurance, including public liability insurance, or "composite Brokers", selling both general insurance and life and pensions products. Brokers Ireland believes we represent substantially all the Insurance Brokers and composite Brokers in Ireland. As the premier voice for Insurance Brokers and Financial Brokers, we advise members, regulators, government and other insurance industry stakeholders on key insurance issues, in order to raise and maintain industry standards. Brokers Ireland's mission is to promote, support and protect our members, both collectively and individually, in the areas of education, compliance, lobbying and business development, so that members are best positioned to offer expert, professional advice and services to their clients. We underpin this support by providing a forum for dialogue and debate, both within Brokers Ireland and with industry stakeholders.

Insurance Broker Market Share

A 2017 Chambers Ireland survey of its members, referred to in the Cost of Insurance Working Group 2018 Report on Employers' Liability and Public Liability Insurance found that 88% of respondents used an Insurance Broker. The CCPC Consultation Paper¹ refers to market research conducted in early 2020 for the CCPC having found that 72% of organisations surveyed arranging for insurance coverage through an Insurance Broker. For the purposes of this CCPC Consultation, customers are understood to include any organisations or sole traders that for the purposes of their activities have needed to avail of insurance coverage for public liability risks.

The CCPC Consultation Paper does not identify the organisations it surveyed to arrive at the figure of 72%, or what kinds of commercial insurance including public liability insurance were in issue. Consultation with Brokers Ireland members for this submission drew attention to the fact that farm insurance includes an element of public liability insurance and in Ireland, farm insurance, despite its complexities, is sold in very significant volume by direct providers / insurers, directly to farming customers. Even a standard home insurance policy (although outside the ambit of this market study), very often sold directly to consumers by insurers, will include an element of PL cover.

Brokers Ireland does not collate statistics on the business undertaken by our members. However, those members consulted for this Submission considered that particularly if farm insurance were to be excluded, then the Insurance Broker share of the public liability market is likely to be somewhat greater than the 72% suggested by the CCPC's recent survey.

The CCPC has acknowledged in its Consultation Paper the important role of Insurance Brokers in facilitating competition between insurers and notes that competition must be considered in the context of how insurance is distributed between insurers, intermediaries and the end customer. Brokers Ireland wish to highlight the work carried out by our Members - retail Insurance Brokers, wholesale Insurance Brokers and MGAs- in assisting businesses who require public liability insurance to access markets that will cover their risks, and in sourcing and introducing capacity in the market, particularly in challenged sectors, without which efforts very many businesses simply would not be able to obtain public liability insurance. Moreover,

¹ CCPC Consultation Paper for Public Liability Insurance Market Study– footnote page 4

the advice and expertise provided by Insurance Brokers are what differentiate insurance including public liability cover sold to a customer by an insurance company salesperson, or bought by the customer via an insurer's website, and an insurance product recommended to the customer by an Insurance Broker, following expert assessment by the Insurance Broker of the client's needs and a search by the Insurance Broker of the marketplace for available cover.

This Submission adopts the numbering of questions used in the CCPC Consultation Paper

Competition

2.1 (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?

The answer to this question depends on the type of commercial insurance of which the public liability cover may be part. As the CCPC Consultation Paper acknowledges, public liability cover is an element of many different commercial insurances. Businesses with very different risk profiles and different commercial needs require public liability insurance ², across the range of which the market varies significantly and the answer to this question depends upon these factors. If the sector is profitable then there will be competition but there will be no capacity in markets that are not profitable, and therefore no competition or reduced levels of competition. The difficult-to-place risks are not underwritten by the household names in Irish insurance. Brokers Ireland members consulted for the purpose of the submission reckoned that of the overall market for commercial risks including public liability insurance, perhaps 65-70% will be underwritten by the insurers with headquarters or branches in Ireland, the domestic insurers or household names with which we are all familiar. The "low hanging fruit", the risks that are easy to place with insurers, or the risks in sectors that may still be profitable (such as the straightforward manufacturing risks) are more likely to be placed with these insurers. These domestic insurers are reported by Insurance Brokers as "cherry picking" the risks they will underwrite and they will compete amongst themselves for this business.

This much is acknowledged in the Cost of Insurance Working Group Report³ from 2018 and that this practice continues is confirmed by Brokers Ireland members consulted for this Submission. The domestic insurance companies may have their areas of specialism where they do a higher volume of business than other such companies.

The remaining approximately 30-35% of risks that are difficult to place generally will be placed with insurers based in the London and Lloyd's markets and the domestic insurers are not competing in these sectors. Some difficult-to-place risks in challenged sectors may choose to operate without public liability insurance, as such cover is not compulsory in Ireland, notwithstanding the risk to businesses and public alike of operating without insurance. In some sectors that are very challenged at present, there is little

² It is not compulsory in Ireland for a business to take out PL insurance (or EL insurance) and a business may choose to operate without such cover, despite the risks to business and public, of doing so. In the UK, EL cover is compulsory.

³ Cost of Insurance Working Group 2018 Report on the EL and PL Market @ page 70-71: "Business representative groups indicated that their members' experience was that that some insurers are making decisions to exit certain sectors or subsectors of the market, which means there are less options for businesses to source cover. In particular, it was noted that for public liability purposes that a number of insurers are exiting the late-night leisure/bar sector. These views are supported by the comments of the insurers who spoke to the Working Group and acknowledged that they had exited areas such as large retail and high footfall leisure because of the number of claims arising. In summary therefore, it would appear that in respect of public liability cover, for any business where there is an element of social interaction or entertainment; e.g. pubs, nightclubs, hotels, leisure activity risks, it is becoming increasingly difficult to obtain cover from Irish authorised insurers.... While undoubtedly, it appears that domestically authorised insurers are moving away from the leisure sector, there does appear to be some scope to obtain such cover through the Lloyd's UK market. However, any such cover is priced to reflect the risk, and the premium may be higher than previous years."

competition between insurers simply because there are so few insurers writing Irish business of that kind, even in the UK markets. Some Brokers Ireland members consulted for this Submission noted that domestic insurers are not really doing their bit for Irish businesses in terms of the risks they choose to underwrite.

2.1 (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?

Brokers Ireland believe that the current level of competition between Insurance Brokers operating in the public liability market in Ireland is robust. Members consulted for the purpose of this Submission report that client retention is dependent on maintaining a very high level of service and advice to clients. Where that happens and where clients have no cause to complain, then Insurance Brokers may hope to have significant client retention rates in the commercial lines and will not lose clients to other Insurance Brokers. In general, offering superior levels of service is what will make the difference. If a client's renewal premium has increased, the Insurance Broker will assume that the client will check the position with another Insurance Broker. Ultimately, clients are likely to give their holding Insurance Broker a final shot at getting a better price. Insurance Brokers compete amongst themselves to get cover for difficult-to-place risks. No difficulties are reported as regards clients moving between Insurance Brokers, which is easy to facilitate. With some business clients, who are not long-standing clients of a particular Insurance Broker, it is not uncommon for customers to shop around amongst Insurance Brokers, ringing a handful of Insurance Brokers seeking prices for a particular product. With some difficult-to-place risks there may be Insurance Brokers with access to markets that other Insurance Brokers do not have access to, putting them at a competitive advantage. Competition between Insurance Brokers is reckoned by Brokers Ireland members to be fierce and margins are not substantial. It was pointed out that a sufficient number of Insurance Brokers is required in order for product providers to want to distribute their products in the Irish marketplace. New entrants from the EU into the Irish marketplace are likely not to want the expense of overheads and are more likely to want to distribute through Insurance Brokers, rather than directly to the public. Ensuring that an adequate number of Insurance Brokers remains in business is therefore essential to the distribution of insurance products and to ensure that customers can avail of the maximum level of choice in the marketplace.

2.1(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?

Brokers Ireland corresponded separately with the CCPC on this issue having engaged with members and identified a list of insurers which, to the best of our knowledge and belief, have exited the Irish public liability market in recent years. These insurers have not been replaced with equal numbers of new entrants and therefore risks in the more difficult-to-place sectors inevitably will find it more difficult to obtain cover, or will find that cover is more costly, or that it is not available. Members have also reported to us that the "domestic insurers", the household names, have conservative risk appetites, are selective about the kinds of risks they will underwrite and will "cherry pick" what they view as acceptable risks, which could be regarded as contrary to the principle of pooling of risk.

We consulted with some Brokers Ireland members with significant knowledge and experience of commercial insurance business including public liability insurance, with experience of accessing London and Lloyd's markets for Irish businesses. As mentioned, for the difficult-to-place Irish risks, cover will be sought by Insurance Brokers in the London and Lloyd's marketplaces. It has been noticed more recently that nominally, an insurer may be writing business in a particular area, but with large minimum premiums that may not be affordable for some businesses. It has been reported to us that whereas four years ago, there might have been six or seven different London or Lloyd's markets available for an Irish casualty risk with a large premium, now there might be two markets for that same risk. For a small premium, it is now almost

impossible to find a home for such risks as it would be very difficult for insurers to make money on them. The local insurance market is not interested in operating in the area of heavy casualty in particular, due to the loss ratios and this sector is very distressed with few options now for customers. With so few insurers another exit may leave the “last man standing” and the urgency of reform of the personal injuries claims environment, could not be over-emphasised. Some businesses will not be able to get insurance and as a result may have to consider closure, with knock-on loss of jobs and impact to the economy.

2.1(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?

As mentioned in 2.1(c) above, Brokers Ireland corresponded with the CCPC separately in relation to this issue. In some sectors (nightclubs, leisure, hospitality, heavy manufacturing risks being examples) exit of insurers from the Irish market has significantly reduced capacity and capacity has not been replaced by new entrants. This naturally impacts the availability of insurance coverage.

Barriers to Entry and Exit

2.3(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

There are a number of barriers to entry into the Irish insurance market. For regulated entities wishing to establish themselves in Ireland, anecdotally the Central Bank of Ireland (CBI) is reckoned to be a demanding Regulator when compared to other Regulators, such that entry to the Irish market is not facilitated on the non-life side. One UK MGA reported engaging in many rounds of questions with the CBI over months before being granted authorisation (required as a result of Brexit), despite its already doing business in Ireland. The funding of the CBI is moving along the path towards 100% industry funding⁴, with the levy on insurance undertakings to increase to 100% for levy year 2022. For intermediaries in particular, most of which are SME enterprises, the cost of compliance with all the regulation and legislation that impact on the financial services sector is a very significant consideration for Insurance Brokers wishing to set up or remain in business. Brokers Ireland surveyed our membership in June 2020 on the cost of regulation⁵ and the average direct cost of compliance with regulation per Insurance Broker is reckoned to be €12,000 (this being fees, levies, insurance and so on) whilst indirect costs of compliance are reckoned to be over €20,000 per Insurance Broker (this being compliance staff costs, training, IT and so on). Insurance Brokers have other costs, such as the software needed to transact business, such that the financial burden of setting up and remaining in business as an Insurance Broker is significant and very likely a barrier for some.

The small size of the Irish insurance market relative to some other international markets is a factor. Fewer insurers will wish to do business here, as the cost of doing business in Ireland has to be set against the likely return on the investment. Marketing costs in a new market would be a very significant outlay for insurers and the insurer would also have to decide how to distribute their products (whether directly to the customer, which would have very significant costs associated with it, or via the intermediary channel). The personal injuries claims environment has been identified as being a significant issue in the public liability market⁶. Lack of transparency in terms of data may also be cited as a factor, particularly as there are

⁴ See Funding the Cost of Financial Regulation, June 2019 and Funding Strategy and Guide to the 2018 Industry Funding Regulations, both CBI publications

⁵ Brokers Ireland Compliance Survey on the Costs of Regulation, June 2020

⁶ See the Cost of Insurance Working Group Reports or the Ireland’s Competitiveness Challenge Report 2018, which address this issue. The National Competitiveness Council’s Cost of Doing Business 2018 Report, also highlighted challenges in examining the insurance market and was restricted in its statistical analysis on commercial insurance prices in the Irish and European markets due to the limited availability of information

insufficient data available accurately to determine Irish market trends. The lack of available data has been highlighted in various Reports⁷. The Cost of Insurance Working Group 2018 Report noted the lack of data and the recommendations within that Report included a list of actions, intended to increase transparency of data across the insurance sector through improved data sharing and collection processes. The CBI May 2020 Report⁸ on collecting employers' liability and public liability data concluded that producing credible, publicly available data in relation to employers' liability and public liability insurance would be of benefit to all stakeholders in the insurance market, with the data produced to relate to premiums, claims and settlement costs.

It will take time to gather a body of data sufficient to indicate trends in the Irish public liability market. Moreover, the information that is available, from which we may deduce, would suggest that there clearly are factors associated with the Irish personal injuries claims environment that constitute a barrier to insurers entering the Irish market. The available data support what we have been told by Insurance Brokers who have assisted us with this Submission. The December 2019 CBI First Report on Private Motor Insurance from the National Claims Information Database⁹ includes data that may be instructive to the consideration of barriers to entry to the public liability market, insofar as these private motor claims (once the property damage element is excluded) are personal injuries claims against insured defendants, as are claims in the public liability sphere.

On cost of claims, the average cost of an injury claim increased by 54%, from €30,936 in 2009 to €47,674 in 2018. There was a shift towards higher claims costs from 2015 to 2018, with the number of claims costing less than €30,000 to settle decreasing over the period, and the number costing more than €30,000 to settle increasing. In 2015, 43% of claimants who settled through litigation had a total settlement cost less than €30,000. In 2018, only 32% of claimants who settled through litigation had a total settlement cost less than €30,000. This trend is also visible for direct and PIAB settlements¹⁰. Perhaps worryingly, this Report notes that the proportion of claimants who settled via litigation (meaning claimants who did not settle directly, or where the PIAB award was not accepted by one of the parties) actually increased from 29% in 2015 to 33% in 2018. This means that there is more litigation and litigated claims take longer to conclude. Lack of real progress on management of claims cost is a significant issue, with a reformed Book of Quantum being overdue.

This December 2019 Report also states that motor personal injuries claims that are litigated on average take over four years to be fully paid (which we take to mean concluded)¹¹, suggesting that the legal process is too slow. For an insurer defending a claim on behalf of an insured defendant, this means that it will be paying solicitors or claims handlers to keep a file open and to report (which reports are needed by insurers for reserving purposes) for the duration of that time. The longer the claim file remains open or unresolved, the more costly the claim will be. Consideration should be given, whilst ensuring that justice is not negatively impacted, to incentivising claimants to consider earlier settlement. It has been widely reported that (remarkably) an Irish claimant with a soft tissue (whiplash) injury apparently receives compensation on

⁷ Ibid

⁸ The CBI May 2020 Report on the Merits and Feasibility of including Employers' and Public Liability Data in the National Claims Information Database

⁹ The First Report of the National Claims Information Database on Private Motor Insurance December 2019

¹⁰ Ibid page 26

¹¹ PIAB claims take 2.5 years to be fully paid - Ibid page 22

average 4.4 times what a claimant in England and Wales would receive for the same injury¹². Irish claimants have to understand they “can either have high High Court awards or cheap insurance – [they] can’t have both”¹³.

Brokers Ireland members transacting business in the London and Lloyd’s markets advised that it is widely accepted now in the UK that the personal injuries claims environment in Ireland is broken and needs to be reformed. This is a narrative that affects Insurance Brokers trying to place insurance in the London and Lloyd’s markets, and therefore directly and significantly impacts Irish businesses. One Insurance Broker who assisted Brokers Ireland with this Submission told of having to approach 25-30 different UK markets to get a new entrant to the Irish marketplace for an Irish book of commercial business including public liability, because of what UK underwriters knew of Ireland and its personal injuries claims environment. This narrative means that even for a profitable book of business, it would be difficult to find a home for it because personal injuries in Ireland is simply not a good news story.

The availability of accurate, comprehensive data on public liability insurance would assist underwriters making a decision on whether to enter the Irish market, but it is also clear that the overall cost of claims must be reduced, steps taken to ensure that claims are resolved more quickly (which will assist in reducing cost of claims) and steps taken to tackle fraudulent and exaggerated claims, including the establishment of the Garda Fraud Bureau. The proposals for insurance reform in the new Government’s Programme for Government are to be welcomed. Ultimately, insurers (like any business) aim to make money, as they are accountable to shareholders. If insurers considered they were in a position to make money doing business in Ireland then they would place business here. The Irish market effectively is in competition with other insurance marketplaces internationally. Underwriters will take their business to marketplaces where they know they can make money. Whilst it is possible that rising premium levels in a hardening market (which we now have) may entice opportunistic providers into the Irish market in the short term, reform is required in order to ensure long-term provision. A further point raised was the fact that the Lloyd’s market has very onerous conduct of business rules, such that a Lloyd’s entity may opt for new Irish business to be underwritten by a subsidiary in another EU member state, rather than its Lloyd’s entity.

Barriers are being placed by the Irish Regulator, with the CBI in November 2019¹⁴ having advised intermediaries that it has expectations of the intermediary sector as regards assessing the financial soundness of the insurers with which they place business. This burden may well make Insurance Brokers who run schemes and do wholesale business, as well as MGAs, less likely to seek out new capacity providers for the Irish market, which is a key activity and very necessary given the challenges in the Irish liability market at present. Insurance Brokers consulted for this Submission considered that the Regulator itself (and other EU Regulators) ought to be doing much more in this area to ensure that the product providers are financially sound, particularly as truly accurate, comprehensive and up-to-date information is not readily available to Irish intermediaries from their Regulator. The CBI formerly published the “Blue Book”, which contained data from the insurance industry, including branches, and data were identifiable for individual firms; but this ceased, with the introduction of the Solvency II reporting regime, replacing Solvency I, being used as the excuse¹⁵. Summary tables with financial data from the 2017 and 2018

¹² See Second and Final Report of the Personal Injuries Commission 2018

¹³ FBD CEO Fiona Muldoon, quoted in The Irish Times, 17 August 2016

¹⁴ November 2019 Intermediary Roadshows

¹⁵ See CBI Publication “Retirement of the Blue Book”, May 2018. This states as follows: “The Central Bank will keep under active review opportunities to make Solvency II related reporting available, subject to data quality and confidentiality obligations. It is intended to augment the SFCR repository with the addition of a small number of

Solvency and Financial Condition Reports of insurers authorised by the CBI (but not for the entities that passport into Ireland on a FOS basis) have recently become available on the CBI website. These summary tables, however, could not honestly be described as seeking to inform, as they are barely intelligible to a lay-person and not comparable to the Blue Book. Many insurers file their SFCRs in May of each year and it is difficult to account for the time lag in their being made available by the CBI.

2.3(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?

Please see our response to question 2.3(a). Many of the same factors that operate as a barrier to entry operate as barriers to expansion. It is axiomatic that insurance companies are in business to make profits and if an insurer could make a profit writing public liability business in the Irish market, they would be here writing business and might be amenable to writing more business if same could be done profitably.

2.3(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?

There are no barriers to exit as such. If insurers are not making money they will not remain in Ireland. Ultimately, they are accountable to shareholders. Brokers Ireland members consulted for this Submission have reported that insurers can pull out of a market with only limited notice to Insurance Brokers who place business with them. One Insurance Broker reported losing capacity for a Scheme with 48 hours' notice.

2.3(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?

Brokers Ireland corresponded separately with the CCPC on this point. Exits of insurers have been more prominent in challenged sectors such as hospitality, leisure, heavy manufacturing, nightclubs, businesses with public access/footfall. Brokers Ireland is not aware, to the best of our knowledge, of Insurance Brokers having exited the public liability insurance market in Ireland. As public liability is an element of many kinds of commercial insurance policies, any Insurance Broker selling commercial insurance will sell public liability as part of that business.

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

See previous answers. In summary, if insurers could make money doing business in the Irish market then there would be fewer exits and no problem with capacity.

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

See answer to 2.3(a).

2.3(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?

summary tables once all year-end 2017 SFCRs have been received, and for the first time a year-on-year (i.e. 2017 vs. 2016) comparison will be possible. These tables will be available H2 2018".

See previous answers. Accelerating and completing all the reforms outlined and recommended in the Cost of Insurance Working Group Reports and the Reports of the Personal Injuries Commission and reducing, as a matter of urgency, the overall cost of claims. The setting up of the National Claims Information Database including employers' liability and public liability data will be a welcome step. These measures will enable those Insurance Brokers operating in the UK markets on behalf of Irish customers, as well as other stakeholders, to spread a different message to insurers about doing business in Ireland. The sooner this is enabled, the better for Irish businesses.

Brokers and Switching

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

Brokers Ireland believe that Insurance Brokers facilitate competition between insurers in the market to the maximum degree possible: it's what Insurance Brokers do. Only Insurance Brokers search the marketplace, comparing available products and making a recommendation to their customer. Brokers Ireland consider that once a customer is a direct customer of an insurance company (i.e. not an Insurance Broker customer), they are less likely to switch provider. Retention rates in the direct channel (i.e. insurers retaining the customer for a number of years without switching occurring) were reckoned by Brokers Ireland members to be higher than in the Insurance Broker channel. "Dual/ differential pricing"¹⁶, with new business and renewal business quotes for the same business likely to be significantly different, may be an issue with customers who remain with an insurer. "Customer lifetime value" is a key metric for insurance companies (i.e. getting the customer in the door and keeping them there¹⁷, and "price walking", increasing the premium each year but not by so much that the customer is motivated to look elsewhere). Competition – including switching between providers – is clearly enhanced by the Insurance Broker channel. An Insurance Broker will shop around amongst insurers and seek the best deal for the customer. An Insurance Broker will offer risk management advice to the customer, intended both to make the risk more attractive to insurers and to reduce price to the customer. It must be pointed out that in distressed sectors, where it is difficult to obtain cover, there may be a very limited number of insurers willing to accept a particular risk, so the option to switch to another provider may not exist. Insurance Brokers can only facilitate competition between available capacity providers, but they do this to the fullest extent possible. Moreover, an Insurance Broker will highlight differences between insurance policies; a more expensive policy may actually be more appropriate for a customer and turn out in fact to be better value. In all aspects, Insurance Brokers enhance competition amongst insurers. Brokers Ireland members reckoned that without Insurance Brokers to operate as a "check" on behalf of customers and to shop around seeking competitive deals, there would be few barriers to insurers charging even more for their products.

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

Brokers Ireland believe there to be significant and appropriate levels of engagement from customers seeking coverage in the marketplace. Engagement may be from long-standing customers of the Insurance Broker, returning to the same Insurance Broker for all their insurance needs and queries. In other cases, a customer needing insurance that includes a public liability element may ring a selection of Insurance

¹⁶ See FCA Thematic Review of Pricing in the General Insurance Industry – whilst a Report about household insurance it is interesting background reading, indicating that with general insurers cross-subsidisation of new business with higher margins on renewal business, resulting in harm to customers, is commonplace

¹⁷ See FCA Interim Report on General Insurance Pricing Practices – whilst a Report about home and motor insurance, chapter four provides useful background on pricing practices of general insurance companies

Brokers needing a price for a particular kind of insurance policy. Members noted that very often, engagement may depend upon the level of the customer's knowledge of their insurance needs. Some entities requiring commercial insurance may be wholly unaware of the complexities of their requirements. Often, as is common with insurance, the customer may be overly focused on price, as opposed to the appropriateness of the policy in question and the cover it offers. Insurance Brokers report that it is more difficult to get a customer to engage and focus on cover than on price, as insurance policies are complicated.

Depending on the kind of policy sought by the customer, it may be possible to purchase it online, directly from a product provider (e.g. commercial combined liability policies for shops and offices) or from an insurance company salesperson (e.g. farm insurance). However, Brokers Ireland members consider that insurance bought directly from a provider will be purchased primarily on price, whilst insurance bought via an Insurance Broker will be bought on the basis of advice from the Insurance Broker. Price will be a consideration, but the more important factor will be ensuring that the needs of the customer are identified and met. This engagement that takes place with the Insurance Broker is key to ensuring that the Insurance Broker is able to identify and recommend the policy that best meets the customer's coverage needs. The Insurance Broker evaluates the customer's risk, which the insurance policy is intended to mitigate and this separates a policy purchased via an Insurance Broker from a policy bought directly from an insurance company.

A further point that has to be raised on the issue of engagement between customer and Insurance Broker is the fact that engagement is impacted by the amount of paperwork associated with taking out an insurance policy. Insurance Brokers now have to explain to their customers about the significant volume of material that will accompany their insurance transaction, material that might have been intended to inform the customer, but which in fact obscures and renders less clear what is important. It is reckoned by many Insurance Brokers that most customers do not actually consult the volumes of paperwork that are obliged to be sent. This documentation is actually a barrier to meaningful communication and has probably also increased the cost of insurance to customers.

2.4(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?

Brokers Ireland believe that customers seeking public liability insurance cover engage well with Insurance Brokers and, through Insurance Brokers, with the marketplace. As stated elsewhere in this Submission, customers who do not use Insurance Brokers for advice on their insurance needs simply will not have access to the marketplace, as many product providers do not sell directly to the public, but distribute via MGAs or wholesale Insurance Brokers, who distribute to other Insurance Brokers and thence to customers.

Any customer who does not use an Insurance Broker when seeking public liability insurance will have difficulties: difficulties associated with access to the marketplace, which is only facilitated by Insurance Brokers, difficulties with correctly identifying and quantifying the risk in respect of which public liability insurance is required, difficulties in understanding the policy and the cover it will provide. It is our view that in order better to facilitate customers in engaging with the marketplace, customers should be encouraged to seek advice from an expert (an Insurance Broker) when they require insurance, particularly a product like a commercial liability policy which is a significant outlay and is intended to protect a business and members of the public. Financial products, including insurance policies, should not be purchased without the benefit of expert advice. Brokers Ireland believes that customers could be facilitated to better engage with the marketplace by being encouraged to use an Insurance Broker when they need insurance.

2.4(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?

A customer needing public liability insurance cannot itself engage directly with the whole insurance marketplace. A customer seeking public liability cover who does not use an Insurance Broker can only engage with the limited range of insurers who sell commercial insurance (with public liability) directly to the Irish public and then only in respect of certain kinds of policies that are sold directly by insurers to customers. Only customers who engage the services of an Insurance Broker can engage with the marketplace, including the MGAs and wholesale Insurance Brokers who run schemes accessed by other Insurance Brokers. This is particularly the case in those sectors that are challenged at present (leisure, hospitality, voluntary organisations, night clubs, processing plants – businesses with footfall/public access. In effect the entire casualty sector is very challenged at present).

Members with whom we have engaged for the purpose of this Submission have noted that the major domestic insurers “cherry pick” the risks that are acceptable to them and they are not quoting businesses in the more challenged sectors, even if a customer were to be interested in switching. Structurally, the marketplace has adapted to this, with MGAs sourcing product providers to sell in Ireland on a FOS basis and distributing these insurance products via the Insurance Broker channel, as well as Insurance Brokers accessing the London or Lloyd’s markets, via other Insurance Brokers, to seek cover there for their customers. Were it not for these steps taken by intermediaries- MGAs, wholesale Insurance Brokers and retail Insurance Brokers, which are all part of the chain- investing financial resources and time, to meet the needs of customers, then businesses, particularly those in the challenged sectors, would not have their insurance needs met and there would be even less opportunity for “switching” between providers. In challenged sectors, there may be very limited appetite for Irish risks, such that the ability to switch may be circumscribed in any event.

Brokers Ireland are cognisant of the potential benefits to customers, in some industries or sectors, from “switching” provider. For example, in respect of utilities such as gas or electricity, switching provider may result in a financial saving with absolutely no detriment to the customer. It is respectfully submitted that a commercial insurance policy including public liability cover cannot be compared to a utility such as gas or electricity, in respect of which the needs of each customer will be readily apparent to the customer, will be easily identifiable and indeed will be identical for each customer, namely to have a reliable supply of gas or electricity provided at the most cost-effective price.

Not all insurance policies are created equal and each customer seeking public liability insurance has completely different insurance needs. Moreover, the customer is not likely to know what their insurance needs are without advice from an Insurance Broker. Insurance policies are complicated, with many potential pitfalls for a customer, particularly a customer who is not educated in financial services and who does not know what they are buying. It is the view of Brokers Ireland that many, if not most, customers do not know enough about their insurance needs, nor are most of them able completely to understand what their policies cover¹⁸. Members reported that it is common for customers who have dealt with their own insurance and bought directly from an insurer to assume that their policy will have cover for a particular risk when it does not, or they may not have an adequate level of cover and be underinsured, with potentially serious consequences in the event of their having to make a claim.

¹⁸ For example, the CBI 2017 Report on gadget insurance (purchased without the aid of expert advice), less expensive, much less important and less complex than commercial insurance, found that the majority of consumers did not understand their cover and thought the policy covered more than it did

Only an Insurance Broker will give expert advice on such matters. Insurer personnel when selling public liability directly are salespeople, tasked with selling a product from the range offered by the insurer by which they are employed. This is a radically different proposition to consulting an Insurance Broker, who will take instructions and provide advice on all aspects of customers' insurance needs. As an example, one might cite a hardware store in a country/rural area seeking a liability policy including public liability cover, on the face of it an apparently straightforward commercial customer. Shops and offices cover is sold directly to customers by a number of domestic insurers. Only by undertaking a detailed "Fact Find" will the Insurance Broker identify the risks to which the store is exposed. Such a store might sell lawnmowers or chainsaws, or effect repairs to these articles, as well as selling gas cannisters for barbecues and have a forklift truck out the back in the storage area. In insurance terms, such activities expose the store owner to significant additional risks, which they may fail to appreciate unless instructions are taken and advice provided by an Insurance Broker. A convenience store might decide to install a coffee machine for customers to self-serve coffee, little thinking how this will expose the shop to significant additional exposure to claims from members of the public. Brokers Ireland members reported taking extra care when examining the policy schedule of those customers who purchased their previous year's cover directly from an insurer, as they considered there to be greater likelihood that such a customer's policy was less likely to be appropriate and more likely to have gaps in cover than a policy where the cover had been purchased with the aid of another Insurance Broker.

A direct channel salesperson has no obligation to search the market or offer best advice. Their aim is to sell the customer a product from their employer's own range. If a particular cover is not available, the direct channel salesperson may not and will not look elsewhere for another insurer's product to meet the customer's needs.

If purchased on-line, via a website portal, the customer will be relying on their own knowledge, which may very well be insufficient for the task in hand. Even for low-value policies, commercial insurances are complex products and there is no such thing as a risk that does not merit expert advice. An Insurance Broker will know which insurer may specialise in an area, or which insurer performs better when a claim is made, or where there may be a market for a particular kind of business, whereas a customer cannot know such things. Moreover, as the Insurance Broker's job is to present the risk to underwriters in the best possible way, then the customer's premium for public liability cover is very likely positively to be impacted by using an Insurance Broker. Insurance Brokers have a moderating effect on premiums in the sense that Insurance Brokers, not customers, will have a better idea of what market rates are or should be. It has to be acknowledged that price is important and value for money is important, but there is significantly more to public liability insurance than this. Switching insurance product provider purely for price ought not to be encouraged or facilitated. The price differential between one product and another may be small, but the cover offered by one may differ significantly for the customer. Customers ought to be encouraged to avail of expert advice before purchasing an insurance policy. This is particularly the case for a policy that is a large overhead for many businesses, is intended both to protect the business from significant exposure and also to ensure that in the event of the business being responsible for serious injury to a member of the public, that this member of the public will be compensated because the business is adequately insured in respect of the risks to which the public are exposed.

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

Brokers Ireland considers that only an Insurance Broker truly facilitates the switching process for customers and – this is key – this is done once the professional opinion of the Insurance Broker is that "switching" is in

the customer's interest. Barriers to switching have been identified by the CCPC in its work¹⁹ as factors such as switching being too much hassle; there being difficulty in comparing products; there being distrust of the price offered; there being a belief that there is no difference between providers; the customer being too busy or not bothering to check. An Insurance Broker addresses or removes these barriers to switching and takes away any hassle associated with switching provider; the process will be seamless for the customer. The Insurance Broker will compare products and advise in relation to price and they will do this for each and every customer.

Only an Insurance Broker identifies all the needs and assesses the risks to which the customer's business is exposed. Only an Insurance Broker searches the marketplace for suitable and available insurance. Brokers Ireland considers that "switching" as a concept may be overly focused on price, which is appropriate for some services but not for insurance. Price is only one consideration when an insurance policy is required. More important is coverage and the advice as to what policy is most appropriate for the customer. Insurers selling directly to customers do not give the advice on cover that an Insurance Broker will give and the salesperson's aim will be to sell the customer a policy from the range the product provider has available, with whatever cover forms part of that offering, and not all public liability policies are the same. A direct channel salesperson has no obligation to tell a customer of more suitable products that another product provider has available that better meet the customer's needs.

Brokers Ireland members consulted for this Submission noted that it is common practice for an Insurance Broker to refer a client on to another Insurance Broker if the first Insurance Broker cannot meet the client's needs from the markets available to them, which may operate as an aid to switching and ensuring that customers' needs are met.

Brokers Ireland cautions against focusing on switching between insurers motivated primarily by price. There is too much focus on the price of insurance, as opposed to what the policy offers. Customers who use an Insurance Broker will, at renewal, already have the Insurance Broker searching the market for the best policy to meet their needs. The Insurance Broker ultimately may recommend that the customer remain with their existing insurer, but not before searching the market for available cover to allow the recommendation to be made. Those customers who use an Insurance Broker will be guided through the entire process such that they will not be burdened if at the end of the renewal process they are insured with a different product provider. The Insurance Broker will have identified and explained to their customer any differences that there may be as regards the cover purchased. In some sectors (heavy casualty, leisure, hospitality, businesses with footfall/access to the public) there will be few insurers wishing to quote. Ability to switch may be circumscribed, based on the fact that no other insurer is in that market willing to quote for Irish risks. This may well be a significant barrier to switching to a different insurer, albeit distinct from the ease or otherwise of the switching process.

Those customers who purchase their insurance directly from an insurer will at renewal time have to search themselves from amongst the offerings available to them – which, as outlined in this Submission, will not be the whole marketplace. The customer may not be sufficiently aware of their own risk and insurance needs to know the difference between policies and will have no-one to advise them. The customer will have to engage directly with product providers to ensure that if they decide – based on price or some other factor – to switch to a different provider that there are no gaps in cover, that they are adequately protected and that they remain on cover for the duration. This process may be fraught, depending on the customer's level of knowledge and may well serve to discourage switching between insurers. The reality is, however, that once a customer is signed up on direct debit with a product provider then they are simply less likely, without the advice of an Insurance Broker, to switch to a different insurer. An Insurance Broker

¹⁹ CCPC Consumer Switching Survey 2017

will advise a customer to “switch” if it is in the customer’s best interest, but not otherwise. It may be the case that remaining with the current insurer would be in the best interest of the client, for coverage reasons, even if another insurer were to be offering a similar but not identical policy at a slightly cheaper price.

The Insurance Cycle

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

In 2015-2016 the market was reckoned to be a bit softer as there was more capacity. We are currently in a hard market, with capacity reduced, exits from the market and increased cost of insurance and this is all part of the cycle; there are peaks and troughs. The UK market is also hardening and as a result the Irish market will get harder still. What may happen then is that some UK providers may see an opportunity in the Irish market and write some business here and this is all part of the cycle.

2.5(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?

Brokers Ireland consider it is probably correct that the impact of the insurance cycle is more pronounced in Ireland than in some other marketplaces. This may be down to the small size of the Irish insurance market relative to some others and that we do not currently have adequate control over the cost of claims, with no incentive for early settlement by claimants, which has an impact.

Cost Inflation

2.8(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?

A May 2020 Report by the CBI²⁰ concluded, following investigation in this area, that in recent years, the significant increase in the cost of liability insurance for businesses (as well as the lack of availability of insurance cover in certain sectors) has become an issue for business owners in terms of sustainability and competitiveness. Brokers Ireland members consulted for this Submission reported that whether cost has risen, fallen or remained stable may depends on the sector of the market. There were no reports from Brokers Ireland members of cost having fallen and in general across the entire commercial market it was considered that costs had increased and that premium increases are being looked for by insurers. Construction risk was felt by some Insurance Brokers to have some stability about it, helped by construction being a very safety-conscious industry. Events insurance would have had rates increases over the last three years. Claims are a big issue. Premiums will have increased particularly in the challenged sectors and particularly where health and safety is not to the forefront, including in the voluntary sector, where groups may not think like businesspeople and where there is less regulation. If sectors want lower premiums, then they have to cooperate in respect of such issues and take advice to reduce their risk. Farming was identified as a sector where improvements in health and safety have been made, which may have the potential to aid premium reductions in future. It was felt by Brokers Ireland members that businesses would be more likely to get a reduction in premium by taking advice from an Insurance Broker to assist with risk management and better presentation of the risk to the insurer. COVID 19 may also

²⁰ Report on the Merits and Feasibility of Collecting Employers’ and Public Liability Data on the National Claims Information Database May 2020

impact on premiums as insurers will have difficulty in quantifying the number and severity of any claims that may arise as a result.

2.8(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?

The May 2020 CBI Report ²¹ stated that ,“It is clear that there is a lack of publicly available data in relation to the claims costs and trends for EL and PL insurance....evidence provided by stakeholders to the Cost of Insurance Working Group meetings noted that one of the main reasons cited by insurers for the increases in employers’ liability and public liability premiums was the increase in the cost of claims; however, this assertion could not be validated without data. Credible, publicly available data in relation to employers’ liability and public liability insurance therefore would be of benefit to all stakeholders in the insurance market”. As stated elsewhere in this Submission, it may be possible to draw some conclusions using some of the data in the First Report of the National Claims Information Database on private motor claims, as these are also personal injuries actions brought by claimants against insured defendants, which have similar inputs (settlements, court awards, legal fees, experts’ fees, investigation costs). That report suggested that costs of claims have increased in recent years.

2.8(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?

See previous answers. The personal injuries claims environment and issues associated with it have significant impact.

2.8(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?

Frequency as well as severity of claims have been cited by Brokers Ireland members as factors they believe have negatively impacted both availability and cost of public liability insurance in the past five years.

Digitalisation

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

Digitalisation has had some impact on the provision of public liability insurance in Ireland. As outlined in this Submission, only certain types of commercial insurance are distributed directly to the customer by some insurers and such insurances may be purchased on-line by the customer. Most commercial insurances are dealt with by the intermediary channel. 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.

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

²¹ Ibid

It is possible for digitalisation to further impact the provision of public liability insurance in Ireland²². Brokers Ireland members noted that in general, digitalisation may lead to improved access to the marketplace where insurers and wholesale Insurance Brokers are digitalised. Digitalisation tends to reduce the costs of distribution, creating efficiencies and ensuring that the product provider will be more likely to increase the number of agencies it has with Insurance Brokers, positively impacting distribution. Where distribution costs are reduced between Insurer and Insurance Broker, or between wholesale Insurance Broker and retail Insurance Broker this is positive, as it should operate to reduce costs overall, which is likely to benefit customers by making insurance cheaper. If a wholesale Insurance Broker has digital capabilities, they may find it easier to attract new capacity to the Irish market as they have a means of distribution which may be attractive to a new market entrant, reducing costs to that entrant. Technological developments have the capacity to facilitate a move away from the traditional processes that would have been the norm in the industry, which may be in line with customer expectations.

However, there is a risk associated with digitalisation in that it may make distribution directly to the customer more commonplace and ensure that commercial insurances with public liability cover are commoditised. As outlined elsewhere in this Submission, purchasing an insurance policy without the benefit of advice comes with a significant health warning attached and is generally not in the interest of the customer. Increasing distribution to customers without the benefit of advice may lead to customers purchasing with price the only or primary consideration.

Currently, following legislative and regulatory interventions, even a simple renewal of an insurance policy will be associated with a significant volume of paperwork, which can be overwhelming for customers. Where policy documentation may be distributed digitally then this has positive impacts in terms of speed, efficiency and environmental soundness. The need to simplify the process of buying and renewing insurance and reducing paperwork was emphasised.

Other positive digital impacts include the use of on-line content, such as Facebook and Instagram, which have been observed to be useful tools in attacking and reducing the level of injury awards to some less-meritorious claimants.

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

Yes. Please see answer to 2.9(b). However, as outlined in this Submission there are other significant issues to address before entries to the Irish market are likely to appear in numbers. Cost of distribution is only one factor of entry to the market.

Further Reforms

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

Please see answer to question 2.3(a) and 2.5(b).

2.11(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?

²² It is widely recognised that digitalisation potentially will impact the insurance value chain and create new business models – see for example the EIOPA April 2020 Consultation Paper on this topic.

New technology, in tandem with appropriate use of quality data, potentially will have a significant impact on insurer pricing models. Insurers will have increased scope in future to design new pricing models, using more accurate, more plentiful, data. These data should enable insurers more accurately to price insurance, as they will be better able to estimate a customer's risk. For example, technology that enabled a business more accurately to quantify its footfall, would enable that business' insurer more accurately to price its public liability insurance.

2.11(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?

Potentially, technology may lead to improvements and refinements in claims handling, which may lead to information being provided more quickly, which should ensure that more accurate records are retained. Once a claim has settled, it should be marked as closed as soon as possible and technology that enabled this would be an improvement. As the Irish insurance marketplace is not large, it is questionable whether insurers will be willing to invest significantly in their IT systems. Investment and integration of new technologies would be required. Insurance companies and claims handlers often record claims data on bordereaux, which may differ between insurers. If these were to be standardised, or integrated via use of technology, this would assist the claims handling process and make it easier and less time consuming.

2.11(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?

Any measure that serves to decrease the length of time it takes to resolve claims should be encouraged. Enhanced use of email and electronic filing in the courts may assist with this. Much legal work is still process-driven and not efficient, being largely paper based. The COVID 19 crisis has seen use of videoconferencing for case management hearings²³, which may be a positive development if such steps can be taken without justice being negatively impacted.

2.11(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?

Customers seeking commercial insurance of which public liability is an element should ensure that they take risk management advice and do all they can to reduce their exposure to claims. Buyers should demonstrate that their business and any staff have an awareness of all their legal obligations, including health and safety obligations and retain excellent records to ensure that they are in the best position to defend themselves if sued. Demonstrating that measures such as these were in place would make it easier for Insurance Brokers to present the risk to underwriters as one they should accept, or assist with ensuring the premium is affordable to the business. Ability to avail of the whole insurance marketplace and therefore ability to avail of insurance at an affordable price, will be greatly enhanced by using an Insurance Broker.

2.11(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?

The public liability market is non-homogeneous; the range of businesses requiring insurance is broad, as is the range of commercial insurance products. The scope therefore for pooling of risk across the entire public liability market may be limited. Moreover, public liability insurance generally is sold to businesses as part of a package alongside other insurance cover. Many businesses will obtain insurance including their public liability cover from a scheme run by an Insurance Broker to insure a particular kind of business (e.g. a

²³ Irish Times editorial, Monday 20 April 2020

scheme for pubs) which will have the same kinds of exposures. The scope for pooling of risk beyond this may be limited.

Other Views – please provide other evidence-based views your organisation may have on the public liability market in Ireland

In 2005, the Competition Authority (now the CCPC) reported on competition issues in the non-life insurance market, one of the focuses of which was the public liability market. In the executive summary to the report, published in March 2005, the Competition Authority made 47 recommendations to market participants, regulators and government, intended to increase competition and ensure that the non-life markets worked well for consumers.

The 15 years since this Report was published have seen very significant regulatory and legislative changes, impacting the intermediary sector and the distribution of insurance, including distribution of public liability insurance by intermediaries. Legislation and regulation introduced, which include implementation of some of the recommendations made in the 2005 Report, include: the Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007, the Consumer Protection Code 2012, S.I. 229/2018 - European Union (Insurance Distribution) Regulations 2018, the Non-Life Insurance (Provision of Information)(Renewal of Policy of Insurance)(Amendment) Regulations 2018 and the new Consumer Insurance Contracts Act 2019, which has been passed into law and is expected shortly to be implemented.

Brokers Ireland absolutely believe that consumers deserve and need to be protected and aided when purchasing insurance and provided with relevant information in a transparent fashion. The cost of complying with regulation has been identified by intermediaries to be very a significant burden and is reckoned to be one of the factors that is contributing to a reduction in the number of intermediaries now operating in the general insurance area. Further reduction in Insurance Broker numbers would definitely not be in the interest of consumers. The amended Renewal Regulations of 2018 and the amendments made to the Consumer Protection Code 2012 to provide for the display of commission by Insurance Brokers on their websites and in their offices²⁴ have not been in place for very long (November 2019 in the case of the former and March 2020 in the case of the latter). The Consumer Insurance Contracts Act 2019 with further significant changes to how insurance is sold is expected shortly to be implemented. It is respectfully submitted that no further regulatory or legislative intervention impacting distribution is warranted to ensure that consumers are able to access a competitive public liability market and, with the aid of an Insurance Broker, make an informed decision on the public liability policy that best meets the customer's needs.

Brokers Ireland

July 2020

²⁴ Section 4.56A of the Consumer Protection Code 2012