



Submission of Insurance Ireland to the Competition and Consumer Protection Commission's Public Consultation on the Irish Public Liability Insurance Market

Competition

(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?

Our view is that there is strong competition between insurers. A large number of insurers underwrite public liability ("PL") insurance. Some are established in Ireland; others write into Ireland on a freedom of services basis. Lloyd's and the London Market are also active players in servicing the PL insurance market in Ireland.

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

Our sense is that brokers compete heavily against each other for PL insurance business, thus presenting clients with advice and a choice of insurers and products. Different types of brokers such as retail and wholesale brokers along with Managing General Agents (MGAs) assist businesses and organisations who require PL insurance to access insurers. Brokers also source capacity for bespoke risks.

(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.

There is still widespread availability of insurance coverage for PL risks. However, it has been well-documented that over the past number of years there has been less capacity in certain sectors, particularly in those sectors with high "footfall" where the risk of personal injury claims is greater.

(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?

The exit of some insurers from the market has reduced capacity and therefore availability of PL insurance in some sectors with high "footfall".

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?

Insurance Ireland's view is that there are low barriers to entry in the provision of PL insurance in the State.

The Solvency II Directive(2009/138/EC) is the basis of the European regulatory regime for insurers. One of the aims of Solvency II was to make it easier for insurance companies to do

business across the EU. Solvency II was implemented in Ireland through S.I. No. 485/2015 – European Union (Insurance and Reinsurance) Regulations 2015.

There is in effect a single insurance market across the EU. An insurer can write PL insurance by establishing a Head Office company in Ireland, which would be authorised by the CBI. A second option is that an insurer authorised in another EU/EEA State could establish a branch operation to conduct business in Ireland on a freedom of establishment basis. A third option is for an insurer authorised in one EU/EEA Member State to write business from their Home State of authorisation into Ireland on a freedom of services basis. When an insurance undertaking is notified to the CBI by an equivalent EU/EEA body, the CBI adds the undertaking to their register of service providers or branch establishments.

According to the CBI Register of Non-Life Undertakings of 5 June 2020, there are 125 non-life insurance undertakings established in Ireland, which are authorised to write non-life business in Ireland. Of these, 94 have their Head Offices in Ireland and 31 are branches with their Head Offices in other EU Member States. Over 90 of the 125 undertakings are authorised to write Class 13 business (general liability), of which PL is a subset.

The CBI Register of Non-Life Undertakings of 5 June 2020 shows that a further 833 non-life insurance undertakings are authorised to write non-life business in Ireland on a freedom of services basis and most of these undertakings are authorised to write Class 13 business.

In short, when one adds freedom of establishment and freedom of services undertakings together, one arrives at a figure of 958 insurers authorised to write non-life business in the State, most of which are authorised to write PL insurance as part of their Class 13 (general liability) authorisation.

(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?

Insurance Ireland's view is that there are low barriers to expansion in the provision of PL insurance in the State. As long as they meet their regulatory obligations, insurers with Class 13 authorisation can commence writing PL insurance. Equally, it is open to insurers already writing PL insurance to increase the amount of business they write.

(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?

Insurance Ireland's view is that there are low barriers to exit in the provision of PL insurance in the State. However, when exiting the market, arrangements would have to be made by the insurer for dealing with run-off claims, i.e. claims arising from business written when the insurer was active in the provision of PL insurance in the State.

(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?

We are aware that insurers have exited the market and that this withdrawal of capacity has particularly affected sectors with high "footfall".

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

By way of preliminary comment, Insurance Ireland is a trade association and is not active in the provision of PL insurance. However, claims costs account for the majority of premiums earned by insurers and the underlying personal injuries claims environment has been

volatile. The Central Bank of Ireland's 2015 Bodily Injury Thematic Review commented as follows:

"The non-life insurance industry has been gradually recognising growing claims costs, stemming from legislative and judicial changes, and changing macroeconomic conditions. Increasing court awards, increasing economic activity, and increasing miles travelled are some of the main factors behind growing non-life insurance claims in Ireland. These issues predominately affect bodily injury claims in the private motor, employer liability and public liability lines of business which comprise a significant majority of overall reserves. It is a challenging exercise in normal times to forecast correctly the ultimate cost associated with these claims, which can take a very long time to settle. This uncertainty has been further increased owing to recent developments such as court award and other legislative changes and the proposed introduction of Periodic Payment Orders (PPOs). However, the upward trends in frequency and average cost of claims are clear".

This Thematic Review observed increases in the average cost of claim of approximately 8% in public liability from year end 2012 to year end 2014.

One of the judicial changes which occurred around that time was the increase in the monetary limits of the courts in February 2014 (when the Circuit Court limit went from approximately €38,000 to €60,000 for personal injuries). This may have led to heightened expectations on the part of claimants.

A feature of many of the changes made by successive governments and the courts in recent years was that they were retrospective in effect. In other words, the changes affected claims that had already been made but had not been concluded. The change in the monetary limits of the courts was one example, the introduction of the Recovery of Benefits and Assistance Scheme in 2014 was another, i.e. the scheme which enables the Department of Social Protection(DSP) to recover from insurers certain benefits paid by the DSP to personal injury claimants. A third example was the alteration in the method of calculating the cost of the most serious claims, also in 2014, i.e. the Russell v HSE judgement, which marked a step change increase in the cost of care awarded in catastrophic injury cases.

In addition, the Personal Injuries Commission Report of July 2018 found that the level of general damages for soft-tissue ("whiplash") in this jurisdiction runs at a multiple of 4.4 times that of England and Wales. While the focus of the Personal Injuries Commission report was on motor bodily injury claims, the Commission's findings are indicative of a relatively generous system of personal injury compensation in Ireland.

To what extent these various factors may have acted as drivers for exit from the PL insurance market is difficult to say. However, it is fair to say that the PL insurance market has been and remains a challenging market for insurers with the volatility and unpredictability of the personal injuries claims environment being a constant over the years. The CBI's comments above are a good summary of the challenges faced by insurers dealing with the personal injuries claims environment in Ireland.

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

Please see our answer to (a) in the "Barriers to Entry and Exit" section above.

(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.

Our view is that uncertainty in the underlying claims environment may have driven defensive behaviour on the part of insurers such as the reduction and/or withdrawal of capacity in certain sectors of the PL insurance market.

In our view it would be helpful if some of this uncertainty could be addressed through the forthcoming judicial guidelines on personal injury awards.

Brokers and Switching

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

Brokers can facilitate competition between insurers by using their negotiating power and product knowledge to drive better deals for their clients.

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

As a trade association for insurers, we are not close enough to the broker/customer relationship to answer this question. However, the Non-Life Insurance(Provision of Information)(Renewal of Policy of Insurance)(Amendment) Regulations 2018 require that renewal notices are issued to policyholders not less than 20 working days before renewal, which gives customers time to engage with their broker and shop around if necessary.

(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?

Our advice to customers generally is to shop around and this is equally true whether one buys insurance directly or through a broker.

(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?

Non-life insurance products are annual contracts, which means that there is an annual opportunity to switch between insurers. The structure of the market allows for sufficient switching between insurers – one can trawl the market directly or use a broker to do so.

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

See answer to question(b) above.

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?

Our view is that the market has hardened over the past number of years with the withdrawal of capacity in some niche sectors being a by-product of this.

(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?

Our view is that there is uncertainty and volatility in the underlying personal injuries claims environment, which is challenging for insurers and customers.

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?

Market aggregate PL premium income has risen over the past five years. This is partly explained by an increase in economic activity over the period. The CSO publication “Measuring Ireland’s Progress 2018”¹ shows that Ireland’s Gross Domestic Product and Modified Gross National Income increased by 66% and 33% respectively over the five years 2014-2018. One of the main rating factors in PL insurance is turnover. We would argue that, as businesses expanded and new businesses opened, turnover and risk exposure increased. This in turn contributed to an increase in market aggregate premium.

That said, we accept that the cost and availability of public liability insurance has been a problem for businesses in some sub-sectors with high “footfall” in recent years.

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

Market PL claims ratios have risen in recent years, which suggests that the cost of inputs has risen. The majority of PL claims costs are driven by personal injury claims, so it is suggested that personal injury claim awards are the main issue as legal costs are often linked to the size of the award.

(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?

Our view is that the cost of personal injury claims is the main driver. High awards mean higher expectations on the part of claims. Higher awards also lead to a temptation to make fraudulent or exaggerated claims.

(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?

Our view is that the cost of claims, which is a function of frequency and average cost, has had an impact on the cost and availability of PL insurance in the past five years as claims costs account for the majority of premium earned by insurers.

¹ <https://www.cso.ie/en/releasesandpublications/ep/p-mip/measuringirelandsprogress2018/economy/>

Table 2.1 shows that GDP increased from €194.8m to €324m and Modified GNI from €148.7m to €197.5m over the 2014-2018 period.

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?

On-line provision of PL insurance is in its infancy. Our view is that digitalisation is more widespread in personal lines business but may become more widespread in commercial lines, e.g. small business package policies.

Where commercial insurance is purchased directly by customers from insurers such insurance may in some cases be purchased on-line. However most commercial insurance products are distributed through brokers unlike personal lines products such as home, motor, travel insurance etc where the entire transaction can often be undertaken online with the insurer.

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

InsurTech is a growing area. Digitalisation may become more widespread, particularly where package policies for SMEs are concerned. Digitalisation could also assist in cross-border selling of PL insurance into Ireland on a freedom of services basis.

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

Digitalisation could contribute to further entry into the market and we also believe that digitalisation could contribute to cross-border selling of PL insurance into Ireland.

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?

In our view, a reduction in the cost of personal injury claims would help to reduce or lessen the impact of fluctuations in the cycle. More consistency in personal injury awards, lower awards for injuries and lower legal costs would contribute to a more consistent and sustainable level of claims costs over time. The Judicial Council's Personal Injuries Guidelines Committee is currently working on new guidelines for personal injury awards and it is to be hoped that the outcome will be a recalibration of personal injury awards and a reduction in the cost of injury 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?

The National Claims Information Database will shortly include PL data, which will provide all stakeholders, including insurers, with an additional source of data against which to track PL claims costs over time.

(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?

Technology has enabled insurers to streamline claims handling processes, particularly in the area of “fastflow” personal lines claims, e.g. on-line payment by health insurers of everyday medical expenses claims, remote inspections of crashed cars by motor insurers. Covid-19 may accelerate these developments, e.g. it is now possible to have medical assessments carried out remotely in some cases.

(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?

Most personal injury claims are not the subject of litigation and it would be preferable to strengthen the Personal Injuries Assessment Board, which already has streamlined processes for dealing with claims.

Where personal injury claims are litigated, it would be desirable to introduce pre-action protocols to ensure the efficient management of cases. Technology could then assist in the implementation of the pre-action protocols in question.

(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 would say that policyholders should shop around directly and/or through their broker for the best deal.

(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

Our view is that claims reform is the key issue. Claims costs need to be at a consistent and sustainable level. If this can be achieved one would then expect less volatility in the underwriting cycle.

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