

PIAB Policy and Liaison Unit
Department of Jobs, Enterprise and Innovation
Earlsfort Centre
Lower Hatch Street
Dublin 2.

29 July 2014

Re: Public consultation on the operation and implementation of the PIAB Acts 2003 & 2007

Dear Minister,

1. I refer to your letter dated 19 June 2014 in relation to the above subject and would like to make the following comments and submissions on behalf Zurich Insurance.
Zurich supports the work of the Injuries Board and acknowledges the success achieved in reducing the volume of litigation (and consequent legal expense) conducted in the personal injury arena and the speed with which claimants are compensated in respect of injury claims.
2. Zurich welcomes the opportunity to contribute to this consultation relating to the scope, powers or operation of the 2003 Act. In broad terms our comments fall under the three categories (listed below) intended to be constructive observations on how the injuries board might improve operational performance and tackle some of the current prevailing issues.
 - i) Management Information and key performance indicators that might illustrate the productivity and performance improvements since inception of the scheme,
 - ii) Quantum and quality of medical evidence in soft tissue injuries (whiplash), and
 - iii) Litigation management.
3. Injuries Board data for 2012 reports 10,136 awards made to the value of €218m-the data indicates an upward trend of awards from 2007 when awards were 8208, they continued at around that figure until 2011 when 9833 awards were made and in 2012, awards were 10,136. This represents an increase of over 20% in awards made from 2007. A similar increase in the value of awards is apparent from 2007 to 2012 at 20%. It is not clear from the published data if the volume of applications increased over this period or if the reason relates to greater acceptance by compensators and claimants of valuations. Greater transparency around the published data would be beneficial to those within the insurance industry to help understand trends and developments in the personal injury and compensation environment. If the Minister would consider integrating the Injuries Board data into an overall "data set" that identifies and includes awards made outwith the injuries board and through the litigation process.

The Courts Service Annual Report of 2013-indicates increasing litigation numbers in respect of personal injury suits filed- a 9% increase between 2013 & 2012 in the High Court and 5% increase in the Circuit Court. This would suggest that there is still a desire to run claims to the "steps of the court" to maximise both legal costs and damages. This prolongs the lifecycle of personal injury claims and often subverts genuine attempts to compensate the plaintiff quickly and fairly by compensators.

Greater transparency around the data would bring clarity and objectivity to the impact on the compensation landscape of the Injuries Board. For example does an easy to access Injuries Board, one that advertises prominently compensation values lead to an increased frequency of claims given the efficiency of the process involved.

It might be advantageous for the Injuries Board to publish greater data that illustrates their operational metrics and key performance indicators that drive productivity and performance within the organisation.

4. The Injuries Board's own data confirms that of 7,622 awards made in respect of Motor Liability in 2012, 5215 awards were made in the value band of less than €20k. This represents 68% of cases and most of these are likely to be soft tissue (whiplash) type injuries. The Book of Quantum starts with a "substantially recovered within 12 months" figure of €14,000 and progresses upward depending upon the severity of the injury. The Minister will be aware that other jurisdictions are looking at and reviewing both the quality of medical evidence and values awarded for soft tissue injuries which are notoriously difficult to diagnose. Zurich fully supports that those victims of RTA's where injury is sustained should be adequately compensated-however the Minister may feel that it is time to reconsider the quality of that medical evidence used in such cases and the level of damages awarded-which are significantly higher than most other European jurisdictions.
5. The use of litigation as a means of determining the resolution of a compensation claim should be a last resort. The data from the Courts Service would indicate an increase in litigated cases-implying a failure of the process by one or other of the parties. It seems to us that alternative dispute resolution may be a potential solution to litigation. The use of mediation (or other alternative dispute resolution means) as a mandatory mechanism in the Injuries Board process may help reduce or eliminate the number of cases that exit the Injuries Board and proceed into litigation in the hope of a higher award of damages. A compulsory mediation step prior to litigation may prevent those cases becoming protracted.
6. In summary, the Zurich submission reflects a concern about the potential increase in frequency and value of personal injury claims in the lower value band awards, particularly in relation to motor insurance and liability claims. It also attempts to suggest a potential solution to prevent cases being taken out of the Injuries Board process without a form of ADR as a mandatory step and finally looks to see greater disclosure in relation to management information that might benefit all participants and consumers in the injuries compensation environment.

Yours sincerely

Alan Hunter
CCO