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Ms Breda Power
Assistant Secretary
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 Personal Injuries Assessment Board Acts, 2003 and 2007

Dear Ms Power,

I refer to your letter dated the 19th June 2014 enclosing notice of a public consultation in relation to the Personal Injuries Assessment Board Acts.

I would like to thank the Minister for the invitation to contribute to the process and to you for facilitating AIG in being a contributor to the review.

As the operation of the Board is business critical I have taken the opportunity to obtain the views of my colleagues in particular from the Claims Department.

IMPLEMENTATION

AIG, welcomed the introduction of the Personal Injuries Assessment Board in 2004 now known as The Injuries Board or IB, as a more cost effective way to deliver compensation to claimants through its non adversarial approach compared to previous litigation process.

The need to reduce the transaction cost for personal injury claims was and is a fundamental driver in the establishment and maintenance of the Board.

That need was coupled by the legitimate desire of the Government not to impact on the rights of the individual to seek redress for injury to the person.

The solution was the introduction of the Board in 2004.

OPERATION

AIG a leader in the general insurance market continue to support the Board and this is reflected in the volume of cases where AIG consent to assessment by the Board.

As an insurer we have found and find the process effective and efficient as a means to resolving the majority of injury claims we have to deal with.

The Board has facilitated a culture of early settlement in the market, which is ultimately of benefit to claimants and insurers generally.

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The role of the legal profession in the process cannot be ignored.

In earlier years there were a significant number of legal challenges to the operation of the Board as the legal professions sought to define a role to secure their interests.

At the outset claimants were willing to submit their claims to the Board without the need for legal representation. The position has evolved over time with most applicants, c.95%, now being legally represented.

This is of import as the control management and outcome of the claim has inexorably been ceded to the legal profession. The inherent risk for the Board is the assessment process has and or is becoming an integral part of the litigation process.

The change will in time undermine the fundamental reason for establishing the Board as noted by the Minister in the explanatory memorandum inviting comment and submission the control of the cost of personal injury claims.

SUBMISSION

The Board has been in operation for 10 years and as with all commercial operations it is a good time for reflection.

In respect of the scope of the activity carried out by the Board AIG is at this juncture satisfied with the scope of the Board's activity namely dealing with motor, employers and public liability claims.

On review of the past years and in particular to take account of the current market the following submissions are made:

- The Board facilitates an imbalance between the claimant and the respondent. There is minimal risk associated for claimants with claims presented to the Board or subsequently to court. From the respondent perspective the overall cost of the claim during the Board's process and thereafter in the litigation process is significant. In this regard reference is made the Troika's requirement for a reduction in the transaction cost of legal services.

Comment

- *The Board was intended to have a pro-active role in the control and reduction of the cost of personal injury claims. The extent to which the process is managed by the legal profession for the claimant can be addressed for example in the forthcoming Legal Services Bill. The issue of the cost attributable to the entire Personal Injury Claims process can be addressed by the Legal Cost Regulator.*

- The enabling Act required the Board to schedule limited number of medicals being arranged by the Board

"Assessment of General Damages for pain and suffering will be based primarily on medical reports from the claimant's treating doctor but in some cases the claimant will be examined by a member of the Independent Medical Panel which is being established by PIAB."

Comment

- *This requirement has evolved into a position where the Board arranges medical examinations in every case at the expense of the respondent. That overhead can be eliminated with a reduction in costs with a simple requirement for all parties to submit all medical reports to the Board.*
- *Independent medical assessment should be required as a matter of last recourse and on specified grounds.*



- All **Reports**, expert and medical received by the Board and the parties to be shared at the first available opportunity as this will ensure the terms of reference for all parties are the same.

Comment

- *The use of the Board as a stepping stone to the litigation forum will be negated by the requirement for full disclosure. It is in the interest of all concerned to secure resolution of the claim at the first available opportunity. To achieve the objective a number of key principles should be set down:*

1. *All medicals should be shared with both claimant and respondent*
2. *All medical experts treating the claimant should submit reports to the Board rather than the report being held back for the courts process*
3. *Claimants are obliged to submit their entire claim to the Board and not allowed present a different case to the Courts.*
4. *Items of claim not included in the application to the Board are excluded from any subsequent Court proceedings*
5. *The claimant **must** attend medical assessments, if the claimant fails to attend on an on-going basis consideration should be given to a mechanism precluding the claimant from progressing the application and or litigating to include a complete prohibition in seeking compensation. There must be equity in the process.*
6. *The cost of all non-attendance fees should be met from the final assessment save where the default is on the part of the agent of the claimant, in which case the agent should be compelled to meet the cost.*

- **Quantum**, it is taken for granted that the valuation of a claim is not a science. That said, all parties to the claim seek and welcome certainty as to the potential value of the claim. The degree to which certainty can be introduced will enhance the speed at which the claim can be transacted and the overall cost of the transaction.

Comment

- *The Book of Quantum (BoQ) was first published in 2004 based on data collated in 2002 and 2003 from a limited number of 'court files'. The base data and the output are over TEN years old and needs review.*
- *The Book must achieve the level of acceptance of the Judicial Studies Board Guide, the UK equivalent. To achieve this objective the review and the publication and subsequent update of the work must be led by the Judiciary, in conjunction with the Courts Service with the fullest co-operation of such Government Departments as have input into the litigation process; the legal profession/s; and of course the insurance sector. It would be of benefit to all concerned to generate a database with a sufficient number of categories as are required to ensure clarity as to the potential value.*
- *Ireland continues to have extremely high damages in many categories in comparison to other jurisdictions, particularly whiplash.*



- **Time Lines** A key driver for indemnity spend as defined by the final cost of damages and the overall transaction cost is the life cycle of the claim. All or any steps the Board can take to control the life cycle will contribute to a reduction in indemnity spend.

Comment

- *It would be beneficial for the Board to make assessments based on all information received to date, for example taking into consideration the experts assessment of the long term outcome notwithstanding the final prognosis is yet to be confirmed.*
- *Assessments should be made rather than issuing of authorisation. as this will allow the parties to decide if the level of the award is inappropriate rather than automatically proceeding to litigation*
- *Following the issue of the "Authorisation" under Section 14 (a) impose restrictions on the time frame for proceedings to be issued as a delay will result in a reduction in the relevance of the available expert and factual evidence, it is suggested that post the award or release / authorisation by the Board the claimant should have not more than 12 weeks to initiate and serve the proceedings.*

With this proposition in mind AIG would make the following observations.

OBSERVATIONS

Consideration should as part of the consultation process be given to:

- Penalties to be imposed for inefficient case management,
- Penalties to be imposed for delays in prosecuting cases
- Legislate to prevent claims farming. Solicitors represent c. 95% of all claimants' applications to the Board.
- Prevent claims management companies advertising and chasing bodily injury claims
- Consider conducting survey of claimants where awards have been made to understand and potentially improve the process.
- There is a potential issue with multiple claims from single events. The Board should collectively assess a multiplicity of claims arising from a single accident rather than individually to ensure equity in the treatment of all concerned and reduce costs.
- Define a notice period for the notification of claims.
- The practice of claimant solicitors seeking payment of the assessment to be made to their offices based on an authorisation or letter from the claimant should be prohibited. The claimant must recover the monies intended to compensate for the injury to the person and thereafter deal with same in the normal course of his/her life.
- It is necessary to review the issue of insurers holding PPSN numbers under Data Protection legislation to enable the implementation of the Department of Social Welfares planned Recoverable Benefit Unit and the payment of monies to the Minister by the compensator.
- Following the introduction of Eircodes during 2015, the codes will have to be recorded and held by insurers to support identification of claimant addresses and ease of reference for Department of Social Protection.



- There should be no requirement under the Consumer Protection Code, to issue the Board's leaflet on notification of injury claim. This is an unwarranted expense with a direct impact on overall costs of motor insurance as it can encourage claims.
- A restriction should be imposed on the level of fee a solicitor can charge their client for presenting case on their behalf to the Board.
- The Legal Services Bill 2013 must address the cases which emerge from the Board's process and enter the litigation system. At present there is no control on the legal costs. Such cases continue to generate excessive litigation overhead which has not been addressed since initial Act in 2004. The cost of cases proceeding through the Board's process is c. 10% of the award. The litigation costs for cases post the Board's process add a further 60% of settlement

By way of closure on Submissions it is noted AIG operate an independent dedicated rehabilitation team AIG's Medical Management Services. The AIG team provide support to injured claimants to assist in their recovery and return to their pre-accident state as quickly as possible.

When the service is offered directly to claimants there is an acceptance and significant uptake of the service. Where claimants are represented, uptake is reduced. AIG would ask the Minister to encourage greater uptake of remedial services in support of claimants.

Pre-action Protocols

Pre-action protocols have been introduced in the UK to encourage early settlement and/or narrow the issues in dispute to facilitate a more efficient and cost-effective trial process. Similar protocols should be introduced in Ireland.

Pre-action protocols may include early disclosure of information or documents, early correspondence/meetings, alternative dispute resolution and conducting reasonable negotiations with a view to settling outside of court.

SUMMARY

In closing, I would again thank all concerned for the opportunity to address these matters which have a negative impact on the cost of insurance in this jurisdiction.

The ongoing and adverse impact of the claims culture must be addressed. In this regard a review of the operation of the Board as initiated is timely and welcome.

The Irish insurance market is very sophisticated and competitive. As a result, any savings in either indemnity or costs will quickly be passed on, which will make our economy more competitive and reduce the burden on Irish companies and consumers.

If the Minister requires additional information and/ or explanation, please contact Nigel Hill or myself.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Declan O'Rourke', with a long, sweeping horizontal line extending to the right.

Declan O'Rourke
General Manager - Ireland