



Action Plan for Insurance Reform

Implementation Report
March 2022



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Foreword by An Tánaiste, Leo Varadkar T.D.



Insurance reform is a priority for Government. This Action Plan set out 66 actions across Government to make Ireland’s insurance sector more competitive and consumer-friendly, supporting enterprise and job creation. Principal actions delivered to date include the establishment of the Office to Promote Competition in the Insurance Market and the Insurance Fraud Coordination Office. Legislation to strengthen the laws on perjury has been enacted. The commencement of the Personal Injury Guidelines is a milestone reform. Our plan is making a difference.

The actions in the Plan are mutually supportive and as each action is delivered and takes effect, the impact of the plan on reducing insurance costs and increasing availability will be felt. Already there are some green shoots emerging. Data from the Central Bank shows the average cost of claim for motor insurance policies in 2020 decreased by 20%. In 2021, under the Guidelines award levels have reduced across nearly all ranges with the level of reduction ranging from 31% to 69% depending on the severity of injury. PIAB data shows a significant downward shift in award values which will reduce the cost of claims.

Approximately 80% of actions in the Plan have been finalised and delivered with the remaining initiated. While most actions were due to be completed in 2021, there are 3 principal actions that need to be delivered in 2022. These are legislative reforms of occupier’s liability; competition enforcement and PIAB. The Insurance (Miscellaneous Provisions) Bill will also be progressed. In addition, we will continue to pursue actions to increase price transparency through the National Claims Information Database. Businesses, particularly SME’s and their representative bodies, have also been working together to develop risk mitigation strategies and using group schemes to avail of insurance cover. Sector led group schemes have been effective in sectors such as childcare and tourism and Government is supportive of this approach.

The success of this Plan will not be measured by the number of completed actions. The overarching priority in 2022 and over the lifetime of this Government is that reforms result in reduced premiums and increased availability of insurance. The Cabinet Committee Sub-Group which I chair has proved to be effective for cross-Government delivery and engagement with stakeholders. While we have made good progress, I have decided that the Group will continue to meet in 2022 on a quarterly basis to ensure that the Action Plan is implemented and momentum on reform is maintained. This will ensure the commitments we made in the Programme for Government, to deliver an affordable insurance market, are delivered.

Leo Varadkar, T.D.

Tánaiste and Minister for Enterprise, Trade and Employment

Joint opening remarks by Minister for Finance, Paschal Donohoe T.D. and Minister of State, Seán Fleming T.D.



This second Implementation Report of the *Action Plan for Insurance Reform* shows that there has been tangible progress made on delivering on the Government's ambitious insurance reform agenda and numerous commitments contained in the Programme for Government – *Our Shared Future*. This pro-consumer strategy, coordinating the work

of several Departments, is anchored to our policy objective to have a strong, vibrant insurance market playing a key role in supporting economic, social and community activity. Following the Central Bank's extensive review of insurance pricing practices, the proposal to ban price walking from July is very significant. This is an important enhancement to the consumer protection framework as it will end the "loyalty penalty" applied to personal consumers in the motor and home insurance markets. Underpinning this, the *Insurance (Miscellaneous Provisions) Bill* will require the Central Bank to report to the Minister for Finance on the efficacy of the implementation of this measure. The Bill will enhance transparency in this and other key areas in order to protect policyholders.

Furthermore, the National Claims Information Database (NCID) now provides a framework that is unique in the EU and further afield in terms of the information it provides on developments in motor, public and employer liability markets. This provides a strong evidence base to help target policy interventions. A further new departure has been the establishment of the *Office to Promote Competition in the Insurance Market*. The Office has had extensive engagements with a range of stakeholders in an effort to encourage new market entrants and expand the risk appetite of incumbents. Part of this exercise involves working with IDA Ireland to provide greater clarity on the needs of the Irish market. In this context, we welcome the recent launch by the Central Bank of information resources for potential new market entrants.

While more needs to be done, there are signs of successes in aspects of the market. According to the CSO Consumer Price Index, motor insurance prices are down around 10% since the formation of this Government. As 2022 progresses, we are confident that the combined impact of this reform plan will deliver tangible results for consumers and businesses across the short to medium term. Finally, our resolve remains to maintain a focus on areas of concern, including certain "pinch points" and aspects where real insurance fragility exists, and to take action to address these as we go through this year.

Paschal Donohoe, T.D.
Minister for Finance

Seán Fleming, T.D.
Minister of State with special responsibility for
Financial Services, Credit Unions and Insurance

Section 1 – Principal Actions for 2022

The Action Plan for Insurance Reform was launched on December 8, 2020. It set out 66 actions to deliver on commitments made in the Programme for Government to bring down the cost of insurance for consumers and business. This report is the second six-monthly progress report on implementation of the Action Plan. The Action Plan set out 13 principal actions of which 10 are now considered complete: the Consumer Insurance Contracts Act has been commenced; the Office to Promote Competition in the Insurance Market has been established; the Central Bank proposes to ban price walking from July next; the Perjury and Related Offences Act has commenced; measures to improve the reporting of insurance fraud have been introduced; and the Personal Injuries Guidelines have been delivered.

Progress on the remaining 3 principal actions along with further actions expected for completion in 2022 is set out below.

1. Enhance and reform the role of the Personal Injuries Assessment Board including through legislative proposals.

The General Scheme of a Bill to enhance and reform PIAB was published on 9 February 2022 by the Minister for Trade Promotion, Digital & Company Regulation. The policy objective of the General Scheme is to facilitate an increase in the number of personal injury claims that may be resolved through the Board's process and without recourse to litigation. Encouraging more claimants and respondents to avail of the Board's model through mediation and/or assessment should lead to cost savings in the claims environment and contribute to reductions in insurance premiums. Amendments to the discretionary powers provided to the Board as set out in section 17 of the Personal Injuries Assessment Board Act 2003-2019 and amendments to section 51A of the Act are intended to increase the number of personal injury claims which can be resolved through the Board.

As the General Scheme proposes to place an increased emphasis on the resolution of claims through an amended personal injuries framework which facilitates mediation and assessment as means of resolving personal injury claims, it is proposed to rename the Board as the Personal Injuries Resolution Board. The General Scheme also contains several amendments to the Act to enhance the advocacy and outreach of the Board; to provide for additional data analysis and reporting; and to facilitate the prevention of fraud.

2. Examine changes to the Occupiers' Liability Act 1995 to strengthen waivers and notices to increase protections for consumers and businesses. Taking account of the Programme for Government commitment, make proposals to Government to implement any changes deemed necessary.

The Department of Justice has undertaken a review of current legislation in Ireland and other common law jurisdictions as well as an examination of "duty of care" provisions in those

jurisdictions. The Minister for Justice reported to Government in April 2021. The preferred options are (1) to give effect to recent court rulings regarding occupiers liability which sought to rebalance responsibility between occupier and visitor, and (2) consider providing in law for a voluntary assumption of risk. Draft Heads for these options have been prepared and the advices of the Attorney General's Office have been requested and are awaited.

3. Legislate to provide for the reform of competition enforcement including the transposition of the ECN+ Directive which makes national competition authorities more effective enforcers.

The Competition Amendment Bill 2021 was introduced to the Dáil on 31st January 2022. The Bill provides for the reform of competition enforcement including the transposition of the ECN+ Directive. This legislation will break new ground in Irish law introducing giving more powers to the Competition and Consumer Protection Commission to protect consumers and challenge anti-competitive practices by business. For the first time in Irish law, breaches of competition law can be enforced through administrative sanctions with maximum fines of up to €10 million or 10% of total worldwide turnover, whichever is the greater.

4. Insurance Miscellaneous Provisions Bill

This Bill will complement the overall insurance reform agenda by addressing a number of issues that have arisen since the Action Plan was published. It will require the Central Bank to report to the Minister for Finance on the implementation of its proposed ban on price walking, or any other measures to address this practice. To enhance insurance market transparency, it will require insurers to inform consumers of any deductions of State supports from claim settlements and will enable the Central Bank to collect data on this through the National Claims Information Database. Finally, in the interests of consumer protection, the Bill will also provide for important technical amendments to the Consumer Insurance Contracts Act 2019 and the legislation underpinning the Insurance Temporary Run-off Regime. The Department of Finance is currently advancing the Bill, as part of the Spring legislative programme.

5. Discount Rate

The setting of the Discount Rate has been examined and proposals are under consideration by the Minister for Justice.

6. Actions on Fraud

The Garda National Economic Crime Bureau (GNECB) plays an important role in the fight against insurance fraud. With the benefit of increased resourcing provided to GNECB in 2021 (from 95 personnel at the end of 2020 to a total of 127 at the end of 2021), an Insurance Fraud Coordination Office was opened in July 2021. The establishment of this office will improve cooperation and coordination with the Insurance Industry, bring consistency to the handling

and investigation of insurance fraud referrals and should facilitate more cases being referred to the DPP for prosecution. To facilitate a greater understanding of insurance fraud within the service, the GNECB has been proactively sharing guidelines on investigating insurance fraud with all divisions across An Garda Síochána. Furthermore, it is also providing training and support to all Garda Divisions in how to investigate fraud.

The Department of Justice also examined deterrents to insurance fraud, including penalties for insurance fraud, in consultation with relevant agencies. An important milestone was achieved in 2021 with the enactment and commencement of the Perjury and Related Offences Act 2021, increasing the range of options for investigation, prosecution and penalties on conviction which can be considered for those making false and misleading claims. Together with the existing provisions and penalties available under the Civil Liability and Courts Act 2004 Act, in respect of the making of false or exaggerated claims or lying under oath, the Department is of the opinion that the legislation necessary for effective detection and prosecution is now in place. It is anticipated that the establishment of the Insurance Fraud Coordination Office and improved cooperation and coordination with the Insurance Industry will improve reporting of insurance fraud cases to An Garda Síochána (AGS). The enforcement of existing provisions will be kept under review.

The Department of Justice also completed a review of the feasibility of extending the existing Insurance Link database in order to establish a fully integrated insurance fraud database. Due to a number of concerns, including data protection matters, that review has concluded that it is not feasible to establish a fully integrated insurance fraud database as proposed.

In 2022, further progress is expected to be delivered in respect of more cooperation between the Insurance Industry and AGS through the roll out of Memorandums of Understanding, and in respect of the publication of insurance fraud data.

Section 2 – Delivering Reform- Programme for Government Commitments

The following table lists the Programme for Government (PFG) commitments relating to insurance reform and reports on the status of actions set out in the Action Plan for Insurance Reform.

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
Establish a ‘whole-of-Government’ approach to oversee the implementation of the insurance reform agenda.	1. Establish a Sub-Group of the Cabinet Committee on Economic Recovery and Investment.	Department of An Taoiseach	Done	Completed. Established in September 2020. The Sub-Group has met 4 times since establishment.
	2. Sub-Group of the Cabinet Committee on Economic Recovery and Investment to agree and publish an Action Plan.	Departments of An Taoiseach; Finance; Enterprise, Trade and Employment; Justice	December 2020	Completed. Action Plan on Insurance Reform published 8 December 2020.
	3. Sub-Group of the Cabinet Committee on Economic Recovery and Investment to make a report to Government on progress by end of 2020.	Department of Enterprise, Trade & Employment	December 2020	Completed. The Sub-Group has updated Government on progress on a regular basis.
	4. Sub-Group of the Cabinet Committee on Economic Recovery and Investment to meet regularly, engage with stakeholders and publish progress of actions every six months.	Departments of An Taoiseach; Finance; Enterprise, Trade and Employment; Justice	Ongoing	Ongoing. Regular engagement by Ministers with stakeholders. 2nd six-monthly progress report published February 2022.
Work to protect customers during and after the COVID-19 crisis, with particular emphasis on business disruption insurance, travel insurance and rebates for	5. Commence Consumer Insurance Contracts Act 2019 with most provisions coming into effect from 1 Sept 2020 and remaining ones to come into effect and be overseen from 1 Sept 2021.	Department of Finance	Done	Completed. The Consumer Insurance Contracts Act 2019 consolidates and reforms law on insurance contracts for individual consumers and SMEs and was commenced in September 2020.
	6. Publish Oireachtas Post-Enactment Scrutiny Report in relation to the Consumer Insurance Contracts Act 2019.	Department of Finance	December 2020	Completed. Post enactment report published 17 December 2020.

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
motor insurance customers.	7. Engage with industry and consumer stakeholders to ensure issues arising from implementation of the Act are examined.	Department of Finance / Central Bank of Ireland	Ongoing	Ongoing. The Department of Finance continues to monitor developments in this area and to engage with stakeholders. Separately, the Insurance (Miscellaneous Provisions) Bill contains a number of technical amendments to the Act and is being prioritised by Government for passage through the Oireachtas in the Spring legislative cycle.
Support the Central Bank's direction on compensating businesses with disruption cover for infectious diseases.	8. Continue to engage with the insurance industry in relation to how it responds to the needs of its customers during the pandemic, particularly with regard to the handling of business interruption claims and forbearance measures to consumers. 9. Support the Central Bank's COVID-19 and Business Interruption Insurance Supervisory Framework. 10. Monitor developments, including relevant legal cases, and respond accordingly.	Department of Finance / Central Bank of Ireland	Ongoing Ongoing Ongoing	Ongoing. Regarding actions (8 – 10), the Department of Finance engages continuously with Insurance Ireland, individual firms, and the Central Bank of Ireland. The Minister of State last met with the CEOs of the main insurers in November 2021 and this issue was raised. In addition, in the interests of transparency and consumer protection, the Insurance (Miscellaneous Provisions) Bill contains amendments to allow the Central Bank collect information, through the National Claims Information Database, on any State supports deducted from final claim settlements, as well as to require insurers to inform policyholders if a settlement has had the value of any State supports deducted.
Recognising the work of the Personal Injuries Guidelines Committee, under the Judicial Council, in providing guidance on personal injury claims.	11. Make relevant legislative amendments to the Judicial Council Act 2019 to have the Personal Injuries Guidelines adopted by 31 July 2021. 12. Report to the Cabinet Committee Sub-Group on the progress made on preparing the new Personal Injuries Guidelines by the Judicial Council.	Department of Justice Department of Justice	Done November-December 2020	Completed. In October 2020, the Government amended the Judicial Council Act 2019, to ensure the Personal Injuries Guidelines would be adopted and published by, at the latest, 31 July 2021, three months earlier than originally required under the Act. Completed. On 9 March 2021, Government approved amendments to the Judicial Council Act 2019 and the Personal Injuries Assessment Board Act 2003 to bring the Guidelines into effect.

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
	<p>13. The Judicial Council to adopt and publish Personal Injuries Guidelines to replace the Book of Quantum.</p> <p>14. Commence Sections 98 and 99 of the Judicial Council Act 2019. These provide that: (a) PIAB will no longer be responsible for preparing a Book of Quantum, and (b) the court shall, in assessing damages in a personal injuries action, have regard to the Personal Injuries Guidelines.</p> <p>15. Report on the implementation and early impact of the Personal Injury Guidelines and examine relevant policy response.</p>	<p>Department of Justice</p> <p>Department of Justice</p> <p>Department of Justice</p>	<p>July 2021</p> <p>July 2021</p> <p>December 2021</p>	<p>Completed. Personal Injury Guidelines were adopted by the Judicial Council on 6 March 2021.</p> <p>Completed. Under legislation commenced by the Minister for Justice the Personal Injuries Guidelines came into effect on 24 April 2021.</p> <p>Completed. Draft report submitted to the Minister and included in Appendix 1.</p>
<p>Enhancing and reforming the role of the Personal Injuries Assessment Board.</p>	<p>16. Report on future role of the Personal Injuries Assessment Board (PIAB).</p> <p>17. Develop proposals for reform and enhancement of the PIAB.</p> <p>18. Commence Public Consultation.</p> <p>19. Enhanced role in place and legislative proposals developed.</p>	<p>Department of Enterprise, Trade and Employment / PIAB</p>	<p>Done</p> <p>December 2020</p> <p>March 2021</p> <p>June 2021</p>	<p>Completed. PIAB submitted report to the Department of Enterprise, Trade and Employment on 4 September 2020.</p> <p>Completed. Proposals on PIAB reform submitted to Minister Troy on 23 December 2020.</p> <p>Completed. Minister Troy launched a public consultation on PIAB reform on 22 March 2021. The Department has considered the 240 responses received and drafted a Report on same.</p> <p>Completed. The Minister for Trade Promotion, Digital & Company Regulation has published a General Scheme of a Bill to reform PIAB. Legislative amendments to the PIAB Acts 2003-2019 and the Judicial Council Act 2019 have been</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
				enacted to provide for PIAB assessments under the Personal Injury Guidelines. In addition, the Minister for Justice is progressing legislation to bring Garda compensation claims within PIAB.
Regulating claims management companies and claims harvesters.	20. Set out proposed methods to regulate claims harvesters / claims management companies.	Department of Finance / Department of Justice	June 2021	Completed. The Sub-group notes that claims management companies are already regulated by the Central Bank of Ireland for certain activities. A scoping exercise has been undertaken with regard to the regulation of claims harvesters in Ireland and other jurisdictions. On the basis of this exercise, it is considered that further legislative measures are not required.
Regulating claims management companies and claims harvesters.	21. Introduce legislation if required.	Department of Finance / Department of Justice	January 2022	Completed. Further legislation is not required with regard to creating a regulatory regime for claims harvesters.
Considering changes to the Occupiers' Liability Act and the Civil Liability Act (duty of care) to strengthen waivers and notices to increase protections for consumers, businesses, sporting clubs and community groups.	22. Examine changes to the Occupiers' Liability Act 1995 to strengthen waivers and notices to increase protections for consumers; businesses.	Department of Justice	December 2020	Completed. Review undertaken of current legislation in Ireland and other common law jurisdictions as well as an examination of "duty of care" provisions in those jurisdictions.
	23. Indicate Preferred Policy Proposals to Government.		February 2021	Completed. Minister for Justice reported to Government 27 April 2021.
	24. Taking account of the PFG commitment, make proposals to Government to implement any changes deemed necessary.		June 2021	Ongoing. Draft Heads to give effect to the preferred options - (1) to give effect to recent court rulings regarding occupiers liability which sought to rebalance responsibility between occupier and visitor, and (2) consider providing in law for a voluntary assumption of risk – have been prepared and the advices of the Attorney General's Office have been requested and are awaited.

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
<p>Strengthening the Solicitors Advertising Regulations 2019.</p>	<p>25. Reinforce the existing ban on solicitors advertising 'no win, no fee' cases in the Solicitors Advertising Regulations 2019.</p> <p>26. The Legal Services Regulatory Authority (LSRA) to introduce new regulations in this area.</p>	<p>Department of Justice</p> <p>LSRA</p>	<p>Ongoing</p> <p>December 2020</p>	<p>Completed. LSRA Regulations came into operation December 2020</p> <p>Completed. Advertisements by solicitors and barristers of their legal services are regulated by the LSRA under the Legal Services Regulation Act 2015 (Advertising) Regulations 2020 which came into operation on 18 December 2020.</p>
<p>Considering the need for constitutional amendment to enable the Oireachtas establish guidelines on award levels.</p>	<p>27. Law Reform Commission Report on Capping Award Levels published.</p> <p>28. Report to Cabinet Committee Sub-Group on matters arising from the Law Reform Commission's report and proposals on how to implement them.</p> <p><i>See also Action 15</i></p>	<p>Department of Justice</p> <p>Department of Justice</p>	<p>Done</p> <p>November / December 2020</p>	<p>Completed. The LRC published its Report on Capping Damages in Personal Injuries Actions on 30 September 2020.</p> <p>Completed. Minister reported to Sub-Group on matter in March 2021. Progress on this issue is dependent on an assessment of the impact of the introduction of the Personal Injury Guidelines.</p>
<p>Seek to increase coordination and cooperation between An Garda Síochána and the insurance industry. We will seek to expand the Garda Economic Crime Bureau, which deals with fraud.</p>	<p>29. Further increase coordination and cooperation between An Garda Síochána (AGS) and the insurance industry.</p> <p>30. Examine the role and requirements of the Garda National Economic Crime Bureau (GNECB). Under new structures, it will train and support Gardaí in every division, to ensure that expertise and skills are disseminated across the State.</p>	<p>Department of Justice / AGS</p> <p>AGS</p>	<p>Ongoing</p> <p>Ongoing</p>	<p>Ongoing. AGS has put in place reporting mechanisms between GNECB and the Insurance Industry. AGS have drafted MOUs in association with Insurance Ireland and the Alliance for Insurance Reform, which are awaiting formal sign off and once approved they will be rolled out thereafter.</p> <p>Completed. In respect of insurance, the significant increased resourcing provided to GNECB in 2021 of approximately one third, up from 95 at the end of 2020 to a total now of 127 at the end of 2021, allowed for the Insurance Fraud Coordination Office to be opened in July. This will bring consistency to the handling and investigation of insurance</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
				fraud referrals and improve on subsequent referrals to the DPP for prosecution. The GNECB is also providing training and support to all Garda Divisions in how to investigate fraud.
<p>Reviewing and increasing the penalties for fraudulent claims.</p>	<p>31. Provide recommendations regarding changes to be made to reduce insurance fraud. This will include examination of penalties for insurance fraud.</p> <p>32. Implement recommendations including through the introduction of legislation if required.</p>	<p>Department of Justice</p> <p>Department of Justice</p>	<p>June 2021</p> <p>December 2021</p>	<p>Completed. The Department of Justice has examined changes to reduce insurance fraud (Actions 31-32), including penalties for insurance fraud, in consultation with relevant agencies. While concluding that no further legislative penalties are required at this time, it is anticipated that the measures referred to under Action items 29 & 30 will improve reporting of insurance fraud cases to An Garda Síochána's Insurance Fraud Coordination Office.</p> <p>The enactment and commencement of the Perjury and Related Offences Act 2021 has increased the range of options for investigation, prosecution and penalties on conviction which can be considered of those making False and misleading claims. Current penalties available under both the Civil Liability and Courts Act 2004 Act and the Perjury and Related Offences Act 2021 are sufficient and that greater penalties in the area of insurance fraud in respect of false or exaggerated claims or lying under oath are not required at this time.</p> <p>Completed. Review recommended no legislative changes.</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
<p>Placing perjury on a statutory footing, making the offence easier to prosecute. We will broaden the scope of the Perjury and Related Offences Bill, ensuring that the maximum penalty for indictment should be harmonised with the equivalent maximum penalties for largely similar offences in the Civil Liability and Courts Act 2004.</p>	<p>33. Publish Committee Stage amendments to the Perjury and Related Offences Bill 2018. Ensure that the maximum penalty for perjury is harmonised with the equivalent maximum penalties for similar offences in the Civil Liability and Courts Act 2004.</p> <p>34. Enact and commence the Perjury and Related Offences Bill 2018.</p> <p>35. Once enacted, the Department to communicate changes to relevant stakeholders within relevant sectors.</p>	<p>Department of Justice</p> <p>Department of Justice</p> <p>Department of Justice</p>	<p>January 2021</p> <p>March 2021</p> <p>March 2021</p>	<p>Completed. The amendments were published and the Committee stage in the Dáil was completed on 11 May 2021. The Bill provides clear penalties to be applied, depending on the nature of the offence in line with the Civil Liability and Courts Act 2004 regarding false evidence and fraudulent claims.</p> <p>Completed. The Act was commenced in June 2021 and provides a statutory definition of perjury and should enable the offence and related offences to be more easily prosecuted in the courts. The penalties are in line with that of the Civil Liability and Courts Act 2004 regarding false evidence and fraudulent claims.</p> <p>Completed. Criminal justice agencies including the Office of the DPP, the Courts Service and An Garda Síochána have all been advised of commencement of the Act</p>
<p>Ensuring that fraudulent claims are forwarded to the Director of Public Prosecutions (DPP).</p>	<p>36. Examine and provide recommendations regarding changes to ensuring that fraudulent claims are forwarded to the Director of Public Prosecutions.</p> <p>37. Implement recommendations including through the introduction of legislation where required.</p>	<p>Department of Justice</p>	<p>June 2021</p> <p>December 2021</p>	<p>Completed. A review has been undertaken which concluded that, as the DPP is not an investigative body, it would not be the appropriate channel for investigation of alleged insurance fraud. Measures under action items 29 & 30 should result in increased referrals for investigation to AGS & subsequent referrals to the DPP for prosecution.</p> <p>Completed. As set out above the review found that DPP is not an investigative channel and thus referral would be inappropriate accordingly legislation is not required.</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
<p>Publishing insurance fraud data.</p>	<p>38. Examine and provide recommendations regarding changes to ensuring insurance fraud data is published.</p> <p>39. Implement recommendations including through the introduction of legislation where required.</p>	<p>Department of Justice</p>	<p>June 2021</p> <p>December 2021</p>	<p>Ongoing. Actions 29 & 30 address measures which will improve the accurate recording of insurance fraud figures. The establishment of the Insurance Fraud Coordination office in GNECB is an important step in bringing a level of consistency to the coordination, recording and collation of insurance fraud data to allow for publication of data. Given that Insurance fraud data is now being captured by AGS and should be included in overall Fraud statistics going forward, further engagement is required to identify what if any additional statistical requirements are needed to facilitate publication of insurance fraud data.</p> <p>Ongoing. No legislative change is anticipated.</p>
<p>Exploring the feasibility of obliging fraudulent claimants to pay the legal expenses for defendants.</p>	<p>40. Examine and report on the feasibility of obliging fraudulent claimants to pay the legal expenses for defendants.</p> <p>41. Implement recommendations including through the introduction of legislation where required.</p>	<p>Department of Justice</p>	<p>June 2021</p> <p>December 2021</p>	<p>Completed. DOJ examined the existing principle that “costs follow the event”, current Irish legislation regarding payment of costs, payment of costs in other jurisdictions, recent Irish case law, and considered options for change.</p> <p>Completed. Recommendation is to let s.169 of Legal Services Regulation Act – which provides that “a party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties” – take effect. Thus, it has been determined that no further legislation is required at this time.</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
<p>Giving the Competition and Consumer Protection Commission more effective enforcement powers to punish and deter anti-competitive conduct.</p>	<p>42. Provide legislative recommendations in relation to strengthening Competition and Consumer Protection Commission (CCPC) enforcement powers.</p> <p>43. Legislate to provide for the reform of competition enforcement including the transposition of the ECN+ Directive. Included in the provisions are a new civil enforcement regime for the CCPC (as well as ComReg) with the power to levy significant administrative sanctions, arrange for statutory immunity and leniency and other measures.</p>	<p>Department of Enterprise, Trade and Employment</p>	<p>December 2020</p> <p>February 2021</p>	<p>Completed. The General Scheme of the Competition (Amendment) Bill 2021 was published on 22 December 2020. The Bill will transpose Directive (EU) 2019/1 (ECN+) and includes amendments to existing legislation to strengthen the enforcement powers of the CCPC.</p> <p>Ongoing. The Competition (Amendment) Bill 2022 is before the Oireachtas. The Bill represents a step change in competition enforcement for Ireland. It will provide for a new civil enforcement regime for the CCPC and ComReg with the power to levy significant administrative sanctions. The Bill will be progressed through all Stages in the Houses as soon as is practicable.</p>
<p>Requesting the industry and stakeholders to give an assessment of the expected impact on premium levels of the key reforms being fully introduced.</p>	<p>44. Industry and stakeholders requested to give an assessment of the expected impact on premium levels arising from key Action Plan reforms being fully introduced.</p>	<p>Department of Finance</p>	<p>December 2020</p>	<p>Completed. Minister of State Fleming wrote to individual insurers and relevant stakeholders to request this assessment and followed up with two series of meetings with individual insurers, as well as engagements with relevant stakeholders, to discuss same.</p>
<p>Expanding, with urgency, the National Claims Information Database to employer liability and public liability to track the level of claims.</p>	<p>45. Central Bank of Ireland to expand the scope of the National Claims Information Database (NCID) to allow it to begin gathering data on both Employer and Public Liability insurance.</p> <p>46. Central Bank of Ireland to publish the second Private Motor Report by the NCID, and where necessary the Department of Finance to make recommendations to the Cabinet Committee Sub-Group on foot of key findings.</p>	<p>Department of Finance / Central Bank of Ireland</p> <p>Department of Finance / Central Bank of Ireland</p>	<p>Done</p> <p>Done</p>	<p>Completed. Data collection commenced in the first half of 2020 on Employer Liability and Public Liability insurance.</p> <p>Completed. The Central Bank of Ireland published the second annual Private Motor Insurance Report of the National Claims Information Database (NCID) on 3 November 2020.</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
	<p>47. Publish the first Report by the NCID on Employer and Public Liability Insurance Claims.</p> <p>48. Central Bank of Ireland to engage with relevant stakeholders on reviewing the NCID with a view to developing the NCID going forward.</p> <p>49. Central Bank of Ireland to publish the third Private Motor Report of the NCID.</p>	<p>Central Bank of Ireland</p> <p>Central Bank of Ireland (Departments of Finance, Enterprise, Trade and Employment PIAB, State Claims Agency, CSO)</p> <p>Central Bank of Ireland</p>	<p>June 2021</p> <p>Ongoing</p> <p>October 2021</p>	<p>Completed. The Central Bank of Ireland published the first annual Employers' Liability, Public Liability and Commercial Property Insurance Report of the NCID on 14 July 2021.</p> <p>Ongoing. The Insurance (Miscellaneous Provisions) Bill contains provisions to allow the NCID to collect data in relation to the deduction of State supports from final claim settlements. In addition, the Central Bank of Ireland has examined collecting Premium Data on Private Motor Insurance on a biannual basis.</p> <p>Completed. The Central Bank of Ireland published the third Private Motor Report of the NCID in November 2021.</p>
<p>Establishing a databank within the Central Bank for new entrants.</p>	<p>50. Explore and develop options on establishing an insurance databank for new entrants within the Central Bank of Ireland, including what information it should hold.</p> <p>51. Determine next steps on establishing such a databank based on the options analysed.</p> <p>52. Taking account of the NCID reports and stakeholder's consultations, highlight the costs that insurers incur, including claims costs, brokers fees/commissions, reinsurance costs, MIBI costs, legal costs, and other costs, etc., and other factors that are currently influencing the cost of motor and public liability insurance premiums.</p>	<p>Department of Finance / Central Bank of Ireland</p> <p>Department of Finance / Central Bank of Ireland</p> <p>Department of Finance (Central Bank of Ireland, PIAB, State Claims Agency)</p>	<p>June 2021</p> <p>December 2021</p> <p>December 2021</p>	<p>Completed. The Department of Finance with the Central Bank of Ireland developed a proposal outlining options for an insurance databank.</p> <p>Completed. The Central Bank of Ireland has created a databank consisting of a Key Insurance Overview, detailing the regulatory/supervisory environment, and links to both the NCID and SFCR (Solvency and Financial Condition Reports) data. It is published on the website of the Central Bank and on www.gov.ie.</p> <p>Completed. The Department of Finance, with support from the Central Bank, has used NCID data to complete a paper examining the costs that insurers incur and how these impact on premium prices</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
<p>Prioritising the establishment of a fully functioning European-wide single insurance market.</p>	<p>53. Support the establishment of a fully functioning European-wide single insurance market by actively participating in the review of the Solvency II Directive.</p>	<p>Department of Finance / Central Bank of Ireland</p>	<p>Ongoing</p>	<p>Ongoing. In September 2021, the European Commission published its proposals for amendments to the Solvency II Directive, as well as a new Insurance Recovery and Resolution Directive. Council level negotiations on both are ongoing. The Department of Finance continues to actively participate in the Review with assistance from the Central Bank of Ireland. Advancing the Review is a priority for the French Presidency of the Council of the European Union in the first half of 2022.</p>
<p>Working to remove dual pricing from the market.</p>	<p>54. Review of Differential Pricing in the Motor and Home Insurance Markets – Central Bank of Ireland to complete its first phase of the review.</p> <p>55. Central Bank of Ireland to complete its Review of Differential Pricing in the Motor and Home Insurance Markets and publish final report.</p> <p>56. Examine the Central Bank’s Review of Differential Pricing in the Motor and Home Insurance Markets and take any appropriate actions as deemed necessary in light of the findings of the Central Bank of Ireland in their final report.</p>	<p>Central Bank of Ireland</p> <p>Central Bank of Ireland</p> <p>Department of Finance</p>	<p>Done</p> <p>September 2021</p> <p>December 2021</p>	<p>Completed. Central Bank of Ireland published the first phase of its research on 9 September 2020 and its interim report on Differential Pricing in the Motor and Home Insurance Markets on 14 December 2020.</p> <p>Completed. The Central Bank of Ireland published its Final Report and Public Consultation on 21 July 2021, including a series of proposed measures to strengthen the consumer protection framework.</p> <p>Completed. The Department of Finance has examined the Central Bank’s Final Report and proposals. The consultation on these proposals concluded in October 2021. As part of that consultation, the Central Bank has announced its intention to ban the practice of price walking with effect from 1 July 2022. Departmental officials are currently advancing the Insurance (Miscellaneous Provisions) Bill which will require the Bank to report to the Minister for Finance within 18 months on the implementation of its “ban” or any other measures related to price walking.</p>

PFG Commitment	Actions to facilitate delivery	Responsible Body	Timeline	Status
<p>Creating an office within Government tasked with encouraging greater competition in the Irish insurance market.</p>	<p>57. Make proposals to the Cabinet Committee Sub-Group in relation to creating an office within Government tasked with encouraging competition in the Irish insurance market, on the basis of a joint-Department of Finance/Department of Enterprise, Trade and Employment paper.</p>	<p>Department of Finance; Department of Enterprise, Trade and Employment</p>	<p>Done</p>	<p>Completed. Proposals made to the Cabinet Committee Sub-Group.</p>
	<p>58. Establish Office within Government to encourage greater insurance market competition.</p>	<p>Department of Finance</p>	<p>December 2020</p>	<p>Completed. The Office to Promote Competition in the Insurance Market was established in December 2020 under the responsibility of the Minister of State at the Department of Finance. As part of its work, the Office to Promote Competition is engaging with relevant Government Departments, agencies, and other external stakeholders, in relation to understanding and addressing gaps including professional insurance cover, etc. The Office held over 60 meetings in 2021.</p>
	<p>59. Competition and Consumer Protection Commission (CCPC) to publish its Market Study on public liability insurance.</p>	<p>CCPC</p>	<p>December 2020</p>	<p>Completed. The CCPC published its market study on the public liability insurance market on 23 December 2020.</p>

Section 3 – Update on actions arising from the Cost of Insurance Working Group

The eleventh and final Cost of Insurance Working Group Progress Update Report was published in October 2020. The status of the remaining actions arising from the work of the Group is set out below.

Steps Necessary for Delivery	Lead Policy Department and Relevant Bodies	Timeline	Status
60. Publish <i>Eleventh and Final Progress Update Report of the Cost of Insurance Working Group</i> .	Department of Finance	Done	Completed. The eleventh and final Cost of Insurance Working Group Progress Update Report was published in October 2020
61. Ascertain and set out the measures necessary to implement Pre-Action Protocols for personal injury cases.	Department of Justice	September 2021	Ongoing. Progress of this action will be informed by proposals on PAPs for clinical negligence, which are being discussed with AGO.
62. Examine the impact of legal and other fees on personal injury awards, using both the National Claims Information Database reports and Office of the Legal Costs Adjudicators data.	Department of Justice	June 2022	Ongoing. Scoping work underway on exploring the feasibility of completing this work within the timeframe, in particular in the context of the PI guidelines and awards and the availability of relevant applicable data from NCID and OLCA
63. Examine the setting of the discount rate (in personal injury lump sum awards), without prejudice to the outcome of relevant proceedings, review it at regular intervals thereafter.	Department of Justice	June 2021 (ongoing)	Completed. The setting of the Discount Rate has been examined and proposals for setting discount rate are under consideration by Minister.
64. Explore the feasibility of establishing a fully functioning integrated insurance fraud database for industry to detect patterns of fraud.	Department of Justice	June 2021	Completed. The Department of Justice completed a review of the feasibility of extending the existing Insurance Link database in order to establish a fully integrated insurance fraud database. That review has deemed that it is not feasible to establish a fully integrated insurance fraud database as proposed. Data protection concerns raised with the industry around the proposed expanded insurance link database remain. Notwithstanding the GDPR constraints involved, a business case to establish an insurance fraud database on a wider statutory basis has not been established, given the small number of referrals from the Insurance Industry to AGS.

Steps Necessary for Delivery	Lead Policy Department and Relevant Bodies	Timeline	Status
65. Oversee and monitor the implementation of the remaining Personal Injury Commission's recommendations.	Department of Enterprise, Trade and Employment	Ongoing	Completed. Detail provided in July 2021 Implementation Report.
66. Monitor developments in relation to updating relevant civil justice legislation and procedures and examine any potential impacts they may have on the insurance reform agenda.	Department of Justice	Ongoing	Ongoing. The Department of Justice continues to engage with other departments and stakeholders regarding the insurance reform agenda, with a view to identifying and assessing issues relating to it.

Appendix 1- Department of Justice report on the early impact of the Personal Injury Guidelines

Section 1: Introduction

The cost of personal injury claims is recognised as a key contributor to the cost and availability of insurance in Ireland affecting individuals, communities, and businesses.

One of the measures to reform the insurance sector and bring down costs for individuals and businesses was the development of a set of personal injuries guidelines by the Personal Injuries Guidelines Committee (PIGC) of the Judicial Council. The Guidelines were adopted by the Judicial Council on 6 March 2021 and brought into law with effect from 24 April. The Guidelines set out the level of General Damages that may be awarded in respect of varying types of personal injuries.

Prior to the introduction of the Guidelines, the Book of Quantum was used to determine the value of awards. The intent behind the Guidelines was to achieve greater consistency in awards, notwithstanding those cases will invariably have their own unique features.

The valuations provided within the new Guidelines for minor and moderate injury were reduced from the amounts allowed for under the old Book of Quantum. In these Guidelines the most devastating and catastrophic of injuries will attract an award of general damages of in or about €550,000. In addition, new categories of injury were included such as psychiatric injury and pain disorders.

The Action Plan for Insurance Reform contains a commitment that the Minister for Justice will report on the early impact of the Guidelines by the end of 2021. This Report fulfils that commitment. It draws on engagement by the Department of Justice with a range of stakeholders in seeking and – where available - accessing data relating to award levels resulting from the application of the Guidelines.

Section 2 outlines the background to the development of the Guidelines, their primary characteristics and current status. Section 3 outlines the approach taken to examining the impact of the Guidelines, including engagement by the Department with stakeholders and data made available to it. This section also contains contextual information on regular settlement patterns and channels for insurance claims. Section 4 presents the available data on the early impact of the Guidelines on award levels. Section 5 details the conclusions of the report.

Section 2: The Personal Injury Guidelines: development, primary characteristics and status

Development

The Judicial Council Act 2019 was enacted on 23 July 2019. The provisions of the Act provide, inter alia, for the establishment of a Personal Injuries Guidelines Committee (PIGC).

The PIGC was required to be established no later than 3 months following the first meeting of Council and to submit a first draft of personal injuries guidelines no later than 6 months after that establishment.

The Judicial Council, at its first formal meeting on 7 February 2020, nominated 28 April 2020 as the date of the establishment of the PIGC.

The PIGC met officially for the first time on 7 May 2020. Under the provisions of the Act, the PIGC has six months from its establishment date within which to prepare a draft of the guidelines. The draft guidelines were, therefore, to be submitted to the Board of the Council by 28 October 2020. Following legislative amendment, this was subsequently changed to 9 December 2020, with the latest date for adoption of the guidelines by the Judicial Council brought forward to 31 July 2021, three months earlier than originally required under the Judicial Council Act.

In preparing the Guidelines the PIGC had regard to the following –

- (a) the level of damages awarded for personal injuries by—
 - (i) courts in the State, and
 - (ii) courts in such places outside the State as the Committee or the Board, as the case may be, considers relevant.
- (b) principles for the assessment and award of damages for personal injuries determined by the High Court, the Court of Appeal and the Supreme Court.
- (c) guidelines relating to the classification of personal injuries; and
- (d) the need to promote consistency in the level of damages awarded for personal injuries.

Following their consideration, the Personal Injuries Guidelines were adopted by the Judicial Council on 6 March 2021 and brought into law with effect from the 24 April.

Characteristics and application

The Guidelines set out the level of General Damages that may be awarded in respect of varying types of personal injuries. Since the introduction of the Guidelines, both the Personal Injuries Assessment Board (PIAB) and the Courts must have regard to the new Guidelines in

determining awards, and where the Guidelines are not used to determine an award, they will need to give the reasons for doing so.

The Guidelines, when they came into effect in April, applied to personal injuries cases where proceedings had not been commenced or where the PIAB had not assessed damages. The Guidelines adopted by the Judicial Council contain general guidance as to the level of damages that may be awarded or assessed in respect of personal injuries, including in relation to:

- (a) the level of damages for personal injuries generally;
- (b) the level of damages for a particular injury or a particular category of injury;
- (c) the range of damages to be considered for a particular injury or a particular category of injuries;
- (d) where multiple injuries have been suffered by a person, the consideration to be given to the effect of those multiple injuries on the level of damages to be awarded in respect of that person.

Status

As noted above, the Guidelines are to be applied by PIAB and the Courts when making personal injury awards. While PIAB has started to apply the Guidelines in line with the legislation, a number of court challenges to the Guidelines have been initiated in the High Court and are currently awaiting hearing.

Section 3: Approach taken to examining the early impact of the Guidelines

Settlement channels: potential sources of information

Operated by the Central Bank, the National Claims Insurance Database (NCID) aggregates data sought and received from insurers. This allows the Central Bank to publish reports relating to different categories of insurance, containing analysis on the cost of premiums, the cost of claims, the aggregated financial performance of firms providing this insurance, and – significantly - key settlement channel information.

To date, the Central Bank has published four reports based on material from the NCID: three in relation to private motor insurance and one on employers' liability and public liability (E&PL) insurance. These reports identify a number of settlement channels for claims:

- Direct before PIAB: claims settled directly between claimant and insurer before PIAB involvement and before the initiation of legal proceedings.

- PIAB: claims settled through the Personal Injuries Assessment Board (PIAB).
- Direct after PIAB: claims settled directly between claimant and insurer after PIAB involvement but before the initiation of legal proceedings.
- Litigated before Court Award: claims settled following the initiation of legal proceedings, but which did not proceed to an award set by a judge.
- Litigated with Court Award: claims settled following the initiation of legal proceedings, for which the compensation award is set by a judge.

Table 1 outlines the percentage of injury claimants who settled claims by different type channel for 2019 in employers' and public liability insurance (EL/PL), and in motor insurance for 2019 and 2020, by type of settlement channel.

Table 1: settlement channels by percentage of claimants, and percentage of costs

Settlement channel	% claimants		% costs	
	EL/PL	Motor	EL/PL	Motor
Directly pre-PIAB	14%	36%	4%	12%
PIAB	12%	15%	6%	10%
Directly post-PIAB	10%	13%	5%	10%
Litigated and settled before a court award	60%	34%	79%	65%
Litigated and settled with a court award	4%	2%	5%	4%

Sources: NCID 3rd Motor Insurance report; 1st E&PL report.

As can be seen in the table and as the analysis of the Central Bank has noted, a significant number of injury claims are being settled outside of PIAB and the courts. Of particular note here is the percentage of settlements (claimants and costs) which occur in private litigation without a court award – ranging between 34%-60% of claimants and 65%-79% of costs. This information is notable in itself, but also provides important potential sources of data for analysing the impact of the Guidelines. Based on what is known, it is clear that data from (a) the Central Bank/NCID (b) PIAB (c) the insurance sector and (d) the courts are important in supporting any assessment of the impact of the Guidelines.

Accessing data regarding the application of the Guidelines

In preparation of this report, the Department of Justice has engaged with a number of stakeholders to ascertain the early effects of the operation of the guidelines including the Central Bank, the PIAB, the Insurance Sector and the Courts Service. In all cases, respondents have stressed that any information - where provided - is preliminary since the guidelines had only come into operation in late April 2021.

(a) Central Bank of Ireland

As outlined above, the Central Bank has undertaken to publish information on insurance issues – including information on premiums, claims, claim settlements and the income and expenditure of insurance providers – on an annual basis through the NCID. While it has published four reports in total, three on private motor insurance and one on employers and public liability insurance, none of these contain any information regarding the application of the PI Guidelines to settlements.

The Central Bank has highlighted the need to undertake an investigation regarding the collection of further claim settlement data following the introduction of Personal Injury Guidelines by the Judicial Council. They note that this investigation is currently in progress with the intention to collect this claim settlement data for all classes of business within the remit of the NCID.

(b) Personal Injuries Assessment Board

The most comprehensive, but still preliminary, results concerning the operation of the Guidelines comes from the PIAB. PIAB published a report in October detailing the effects of the new Guidelines in the period April to September 2021. Helpfully, PIAB has provided the Department of Justice with updated figures to the end of November 2021. These figures are presented in section 5.

(c) The Insurance Sector

The Department of Justice has engaged with Insurance Ireland in relation to the reporting process. It requested Insurance Ireland to provide the Department with any information it might have as to whether the introduction of the Guidelines has had a material impact on the level of settlements entered into by its members both in terms of the value of damages and legal costs. For comparative purposes, a number of specific items were submitted:

- Are the guidelines being implemented?
- If they are, to what extent (e.g., are the bands of settlements in the Guidelines being adhered to explicitly per category of injury)?
- The number of settlements, the total value of settlements, and the value of the average settlements per type of injury and category of claim (i.e., motor, PL, EL) since 24 April 2021 (in itself, and as a % value of awards in 2019 and/or 2020)
- The impact of the Guidelines on associated costs, such as legal costs, compared to 2019 and/or 2020.

In response, Insurance Ireland provided some general observations – rather than statistical data – drawn from their members about the implementation of the Guidelines within the sector. These observations are presented in section 5.

(d) Courts Service

The Courts Service has reported that the numbers of cases commenced since the end of April after the introduction of the Guidelines that are the subject of final orders is a relatively small sample size and as such, it may not be possible to derive definitive conclusions on the impact of the changes.

The absence of data from this settlement channel needs to be seen in the context of (a) the timing of this report and (b) the overall pattern of settlement and the relatively low numbers of claims being settled by a court award. Regarding the former, given that the Guidelines are to be applied to cases *commenced* after 24 April, the need to report by the end of 2021 provides a very short window for cases to proceed to conclusion of for data to be available. Regarding the latter, as seen earlier in this section it is known that the number of cases being determined before a judge is low, so the impact of data from this channel would be relatively minimal on any overall assessment of the Guidelines on award levels.

The Courts Service has informed the Department that development of data in this area will be on the Service's work programme for 2022 and as the sample size increases, the Courts Service will share data on this issue following the conduct of validation and verification procedures.

Limitations

Notwithstanding the commitment in the Action Plan to report on the early impact of the Guidelines, there are a number of limitations in fulfilling this action. Firstly, the period of seven months of operation of the Guidelines is extremely short in seeking to determine whether the desired effect of reducing award levels is being achieved. As noted above, data is only beginning to emerge in relation to the application of the Guidelines and only from certain sources.

A second complication in assessing the utility of the Guidelines relates to the filing of a number of constitutional challenges to the guidelines. These challenges centre on the arguments that the application of the guidelines breaches the doctrine of separation of powers and that the application of the guidelines breach the claimants' constitutional rights to bodily integrity, property and equality. It is likely that some claimants are awaiting the judgment in these cases before accepting PIAB assessments. Therefore, any assessment of the impact of the Guidelines must be cautious and any conclusions characterised as preliminary at best

Section 4: What is the impact of the Guidelines on award levels?

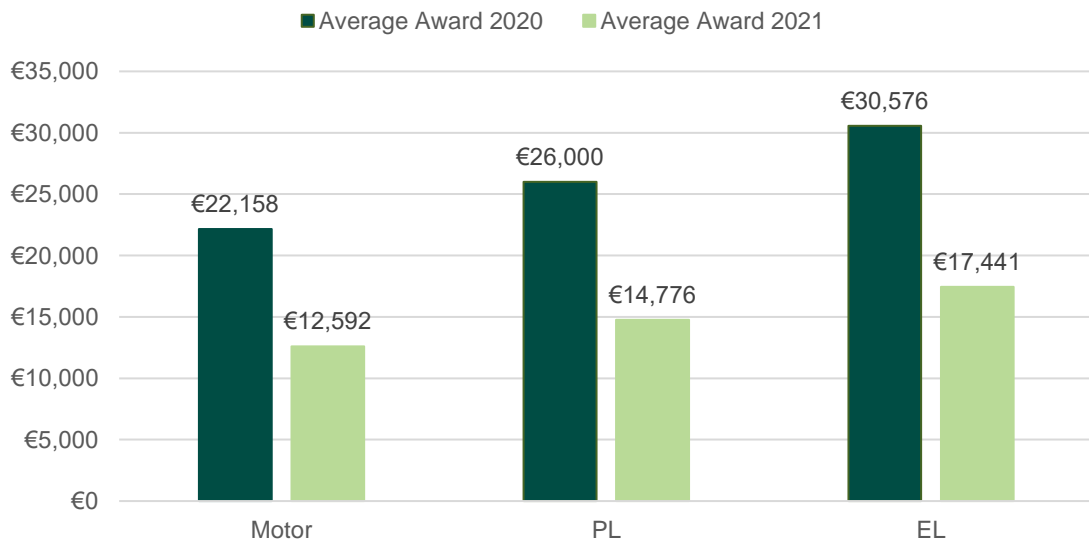
PIAB data

The number of PIAB cases to which the new Guidelines were applied between 24 April and end November was 4,135 – 2,803 of which were motor cases, 782 were public liability and 550 were employer liability cases.

Average Awards

Average awards by PIAB reduced from a figure of €23,877 in 2020 to a figure of €13,650 following the introduction of the new Guidelines. This equates to an average reduction of €10,227 per award – a reduction of some 43%. Figures relating to types of insurance case, are outlined in figure 1 below:

Figure 1: Average PIAB awards in 2020 and 2021 by type of insurance claim



Source: PIAB

Average awards for motor insurance dropped from €22,158 in 2020 to €12,592 – a drop of 43%. Public Liability awards fell from €26,000 in 2020 to €14,776 at the end of October – again a drop of 43%. A similar reduction of 43% was experienced in the employer liability category – from €30,576 to €17,441.

One notable feature of the report published by the PIAB in October is that almost half – 48% – of all awards made in the period since the commencement of the Guidelines were for under €10,000, compared to 12% in 2020 (i.e., under the previous Book of Quantum), with 18% of awards under €5,000 and 30% between €5,000 and €10,000. In addition, 71% of the awards

made over the period were under €15,000 (compared to 30% in 2020). This is a particularly significant reference point as €15,000 represents the current jurisdiction of the District Court. By reference to the overall volume of claims and the percentage breakdown across the three categories, this is likely to be most reflected in a significant increase of Motor Claims litigated in the District Court.

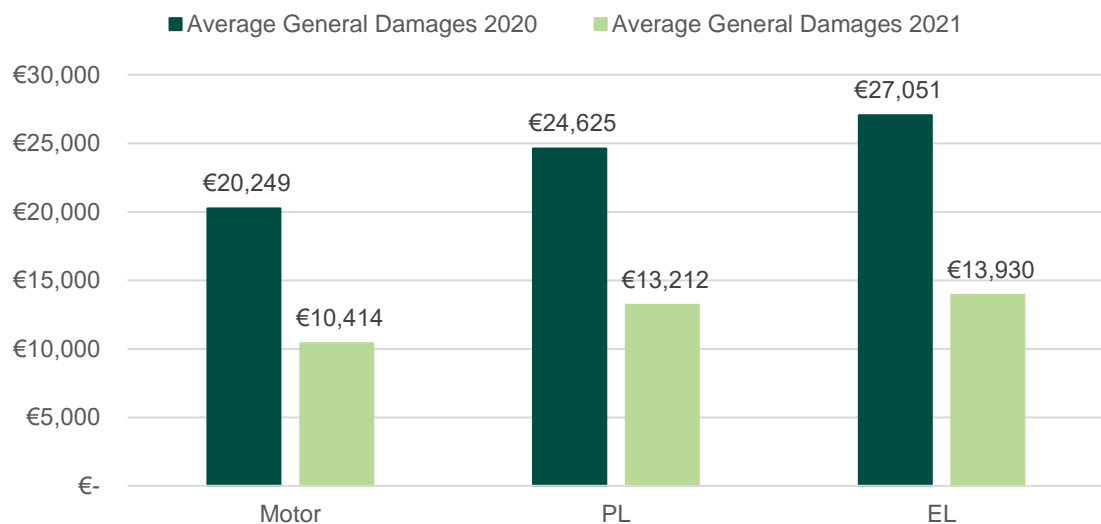
Average General Damages

The PIAB report in October also details the difference between general damages, which is the award for pain and suffering, and special damages which are unaffected by the Guidelines and are assessed by vouched expenses and reflect direct costs to the claimants such as loss of earnings, and therefore vary according to personal circumstances.

The latest figures available for this report show that the average award for General Damages has decreased by 48% overall from €21,850 in 2020 to €11,411 in November 2021, following the introduction of the Guidelines.

Figure 2 highlights the drop in average general damages awards by each category of insurance claim.

Figure 2: Average general damages award by type of insurance claim, 2020 and 2021



Source: PIAB

In motor insurance, the drop was in the region of 49%, in public liability the drop was 46% while in employer liability the drop was 49%.

Acceptance Rates

The October report does also show that there has been a drop in the rate of acceptance of PIAB awards by claimants with the rate during the period being at 41%. For motor insurance claims, the claimant acceptance rates have dropped to 37% while the equivalent figures for public liability and employer liability are 55% and 43% respectively. The overall acceptance rate (claimant and respondent across types of insurance claim) was 37%.

Information received from PIAB in relation to the acceptance rates up to end September indicates a broadly similar picture: acceptance rates overall remaining at approximately 37%.

Definitive reasons for this drop in acceptance rates are unclear. However, given the previous pattern of acceptance rates, it is possible that claimants are awaiting the resolution of legal challenges to the guidelines or the outcome of similar cases in the courts before committing to accepting PIAB assessments. Notwithstanding the reduction, it is notable that almost 40% of claimants continue to accept assessment despite the lower levels of damages mandated by the Guidelines.

It is noted that PIAB is considering publishing updated statistics to the end of 2021, which might be expected to be published in early 2022.

Insurance Ireland

Insurance Ireland has indicated that from a very small but undefined sample, its members have reported that where a settlement is agreed and finalised with the claimant, the reduction in awards is generally in line with the values in the PIAB Report i.e., a reduction of around 40%.

However, Insurance Ireland also states that its members have noted a material decrease in claimant acceptance rates since April 2021. In effect, this means that higher numbers of claimants are declining both direct or PIAB settlement offers and progressing through litigation than would have been seen prior to the implementation of the Guidelines. A number of Insurance Ireland's members have also noted uncertainty on the part of claimant lawyers, which seems to be resulting in a "wait and see" approach, resulting in non-responses to settlement offers.

In evidence of this, Insurance Ireland estimates that its members have settled approximately 1,100 claims at this point following the introduction of the guidelines, which equates to approximately 10% of what would normally be settled in a six-month period. This significant reduction in settlement activity means that the full impact of the implementation of the Guidelines is still unknown.

Insurance Ireland also notes that a number of challenges to the provisions of the Guidelines in the High Court are ongoing, which appears to be causing further uncertainty. It notes that insurers will not see the true impact of the Guidelines until cases begin to be heard in the Courts. Insurance Ireland considers that it is only then that all stakeholders will have certainty

that the Guidelines are operating as intended and leading to reduced costs as a result of earlier settlements. Insurance Ireland notes that it is aware that the Central Bank plans to collate data on this issue as part of the annual NCID and expect this to be included in their 2022 report. It considers that the Central Bank is best placed to collate this information on the personal injury claims environment.

Section 5: Conclusions

The Personal Injuries Guidelines came into effect at the end of April 2021. Even if complete data sets from all settlement channels were available, it is still a narrow window to examine the impact of the Guidelines on award levels. However, the amount of data currently available is limited – and indeed in most areas is completely absent.

Figures for 2021 are not available via the National Claims Information Database. In addition, no courts data set is available, and it is unlikely that personal injury proceedings, begun after the coming into operation of the Guidelines, will come before the courts before late 2022 in any significant numbers. PIAB has helpfully provided data for the seven months to the end of November 2021. Insurance Ireland provided some observations on the operation of the Guidelines from its members.

The most comprehensive but early data from PIAB are encouraging in that it shows that overall award levels within that settlement channel have dropped by around 43% and that general damages (which are paid for pain and suffering caused by the accident) have dropped by around 48%. In addition, the figures from PIAB show that around 70% of all assessments made in that period were under €15,000 meaning that, if such cases go to court, they will come within the jurisdiction of the District Court which may reduce legal costs. While claimant acceptance rates have dropped somewhat since the introduction of the guidelines, it is encouraging that 40% of claimants are accepting assessments despite the lower levels mandated by the Guidelines.

It is noted also that Insurance Ireland, from a very small sample and without providing any statistical data, has indicated that its members have reported that where a settlement is agreed and finalised with the claimant, the reduction in awards is generally in line with the values in the PIAB Report i.e., a reduction of around 40%. Insurance Ireland also noted a drop off in acceptance rates compared to what might be expected. The role of the NCID in systematically capturing data on this into the future will be important, given the number of claims settled directly.

As indicated above a number of court challenges to the Guidelines are currently in train. It would be of benefit if those challenges were heard as early as possible to provide clarity and certainty on the Guidelines. A positive resolution may also lead to better uptake in assessments by claimants.

It is clearly too early to make a definitive empirical judgment as to whether the introduction of the Personal Injuries Guidelines has had the overall effect of reducing award levels. The Personal Injuries Guidelines only came into effect at the end of April 2021 so the amount of data available is very limited. Indeed, in most areas, there is a complete lack of data on which to determine with any degree of certainty the effects of the guidelines on award levels.

From the preliminary, indicative evidence that is available, there appears to a drop in award levels but also a degree of uncertainty created by the court challenges.

Any conclusive examination of the operation of the Guidelines will require more time and further data. In particular, further information will be required from the NCID in respect of claims in 2021. To a lesser extent (given that only 2 to 4% of cases are determined by a judge), data will be required from the Courts Service on judicial determinations of personal injury cases.

The outcome of legal challenges to the introduction of the Guidelines will be crucial to a proper determination of the Guidelines.

Annex to Guidelines Report: Judicial Council advice on use of the Guidelines

The Judicial Council have given advice as to the manner in which the Guidelines should be employed. Details on this advice are set out below.

A. General principles

Every trial judge when making an award of general damages should have regard to the principles that underlie the Court's jurisdiction. Those principles require that:

- awards of damages to be fair and reasonable to both claimant and defendant;
- awards must be proportionate to the injuries sustained; and
- awards must be proportionate when viewed in the context of awards of damages commonly made in cases involving injuries of a greater or lesser magnitude.

B. Practical application of Guidelines by Judges

1. At the conclusion of every case the trial judge should ask each party to identify, by reference to the dominant injury sustained, the relevant damages bracket in the Guidelines which most closely matches that supported by the evidence.
2. Brief submissions should also be made as to where, within the relevant bracket of damages, the claimant's injuries should be located in terms of severity i.e., top, middle, or bottom, having regard to the evidence, the presence or absence of other lesser injuries and all relevant considerations.
3. Having considered the evidence in a careful and sensitive manner the trial judge should reach his or her findings of fact concerning the claimant's injury and should then proceed to consider how, in light of those findings and the submissions made, the Guidelines should impact on the Court's award.
4. The obligation on the part of the trial judge to have regard to the Guidelines is mandatory as is his or her obligation, should he or she consider that the justice of the case warrants an award above the level of damages proposed for that or a similar injury in the Guidelines, to state his or her reasons for so departing.

C. Other Issues

The Judicial Council has also provided guidance for judges in relation to other issues such as cases involving multiple injuries and cases that involve pre-existing conditions. In relation to multiple injuries, the Guidelines direct that the appropriate approach is for the trial judge to identify, where possible, the bracket of damages which best reflects the plaintiff's dominant injury, select a value for that injury and then uplift that value so that the plaintiff is fairly and justly compensated. In the case of pre-existing conditions, the trial judge when assessing damages is only to have regard to the extent and duration to which the injury or condition was made worse.



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