

ISME,
17 Kildare Street,
Dublin 2.
25th January 2018

Michael D'Arcy TD,
Minister of State at the Department of Finance and the Department of Public Expenditure and Reform with special responsibility for Financial Services and Insurance.
Department of Finance,
Upper Merrion Street,
Dublin 2.

Dear Mr D'Arcy,

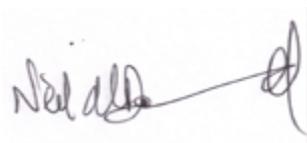
In addition to ISME's previous correspondence with the Department, regarding the cost of Insurance, we wish to note the following to reflect the state of play as of now:

1. We note the recent release of the State Claims Agency figures for personal injuries awards against the State, and consider these to bolster our position that the current claims environment is unsustainable for the State, for business, and for citizens.
2. The insurance settlement 'data deficit' so widely recognised by all parties ignores the fact that it is one of the issues that could be most readily addressed. As ISME understands, An Taoiseach has the power to direct the acquisition of this information by the CSO under Section 25 of the Statistics Act 1993, and we fail to understand why this has not already occurred.
3. We are most disappointed with the lukewarm response by the Department of Justice to our proposed Perjury Bill. We consider the Department's response to be politically incompatible with a Government that is committed to the maintenance of good order. It is our expectation that the Government will not merely accept our Perjury Bill, but will embrace and champion it.
4. We welcome the inclusion in your Working Group Report of our call for a Perjury Act, which describes its wider application in the context of white collar crime generally. We wish you to note, however, that:
 - a. We consider fraudulent and exaggerated insurance claims to be white collar crime of the type we wish to expunge.
 - b. While you may not have had sight of our Bill at this point, at Section 4 it includes a requirement for the swearing under affidavit of the statement of claim *at the point of submission of that claim to the Personal Injuries Assessment Board*. It is therefore much more important in function than is Sec 14 of the Civil Liability and Courts Act 2004.
5. We welcome the observations in the Working Group Report on Sections 25 and 26 of the Civil Liability and Courts Act 2004. However, these sections are of cold comfort to most defendants in that they only pertain to evidence adduced in Court. They are nugatory provisions for all defendants in all cases,

until they enter the court room; and at that point, the defendant is the party at greatest hazard from costs.

6. We make a general observation of the continued failure for the legislature to provide for the defendants in personal injuries actions an “equality of arms” i.e. the premise that “everyone who is a party to proceedings shall have a reasonable opportunity of presenting his case to the Court under conditions which do not place him at substantial disadvantage vis-à-vis his opponent” (Kaufman v. Belgium)¹. This is almost never the case for a defendant, especially a small business, defending a personal injuries action before the courts. Defendants almost invariably face the choice between settling for a medium amount of money, or running the real risk of paying out a substantial amount of money in a defended case. But the moral hazard of defending a personal injuries action is asymmetric. In reality there is little or no chance of the recovery of costs in a successfully defended civil action. And in the absence of any effective criminal sanction for the fraudulent claimant, there is effectively a state-sponsored inducement to the tender of false or exaggerated claims.
7. We note with concern that the Working Group Report is equivocal about the necessity to cap awards under the Book of Quantum, and the associated need to legislate for judicial discretion in the matter. Unless this is done, Book of Quantum assessment values will continue to serve as a *floor value*, rather than a *ceiling value*, in the striking of awards.
8. We welcome the launch on 24th January of the Alliance for Insurance Reform, and our membership is fully supportive of its aims.
9. We fully appreciate that the status quo is something being energetically and aggressively defended by some of the most influential people in Ireland, including some of our so-called ‘social partners.’ However, we ask the Minister to reflect on the fact that this debate has toxic implications for the health of the nation far beyond the merely fiscal. The current situation is stopping charities running events. It is discouraging active play by our children. It is instrumental in the introduction of ‘no-running’ and ‘no ball-game’ policies in our school playgrounds. It is shuttering play areas. It is encouraging morally and behaviourally dubious reaction to the most minor of accidents, since the awards of ‘pain and suffering’ damages can be highly significant even at the minor end of severity. It is encouraging organised criminal activity, domestic and foreign, in the formulation of compensation scams. It is bringing our legal system into disrepute. How much further must it deteriorate before the Government shouts ‘stop?’

Yours sincerely,



Neil McDonnell
Chief Executive
ISME, the *independent* business organisation

¹ Commission decision of 9th December 1986, D.R. 50, p. 98, at p. 115. 10938/84