

# FÁILTE IRELAND

## The Impact of Insurance on the Tourism Sector

November 2019



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# Executive Summary

## Introduction & Background

- Rising insurance costs and difficulties securing affordable (liability) insurance are having a significant impact on businesses throughout many sectors of Ireland's economy, including the tourism sector.
- This issue is particularly evident within the **adventure tourism, festivals and events sectors** where difficulties in the insurance market pose a real threat to the viability of these businesses/ activities.
- Not only does this have implications in terms of the negative economic impacts (employment and revenue), it also has the potential to seriously undermine some of Fáilte Ireland's tourism development objectives and poses serious challenges to Ireland's overall tourism offering.
- In light of the current challenges, Fáilte Ireland commissioned BDO to conduct a review of the insurance market and Irish tourism, with the objective of providing a greater level of understanding of the difficulties faced by the wide range of tourism providers/operators in obtaining insurance and how the cost of insurance is impacting their businesses.

## Overview of Irish Insurance Market & Claims Data

- It is not compulsory for businesses in Ireland to have insurance. In reality however, insurance is a pre-requisite for the operation of any business, especially those who interact with the general public. If a business is unable to obtain insurance or to do so at an affordable rate that business is in effect not in a position to operate in Ireland.
- The cost and availability of insurance is influenced by a range of internal and external factors. While a business owner has some power and influence over internal factors, it is the external factors, in particular, the **quantum of awards and cost associated with these awards** that have been identified by the research as primary factors influencing insurance costs and availability.
- According to Personal Injuries Assessment Board (PIAB) data, the total volume of claims processed has remained relatively static over the past 5 years, 2014 to 2018, with 33.5k per annum. However, data from the Courts Service, demonstrates that the number of personal injury claims filed with the courts has increased 24%, from 17,763 to 22,049, per annum over the same period.
- PIAB was established with the objective of attempting to reduce the number of personal injury claims being pursued through the courts, through the provision of a more efficient and cost-effective mechanism. Current claims data would suggest that PIAB is not working as effectively as originally envisaged.
- The research and analysis also demonstrates that the level of awards, particularly for soft tissue injuries, are high in Ireland when benchmarked against other countries. The Personal Injuries Commission found that the **level of general damages for soft-tissue injuries in Ireland is 4.4 times that of England and Wales.**

# Executive Summary

## Tourism Sector Perspective

- The report considers the main impacts current difficulties within the insurance market are having on businesses across all sub-sectors of the tourism economy and presents details of key reforms and other measures to address these challenges.
- While each stakeholder consulted with presents their own unique views on what needs to happen, there is broad consensus across all stakeholders that the starting point must be a **recalibration of the Book Of Quantum** which provides guidance to the legal profession on compensation levels for personal injuries.
- The current level of awards has been cited throughout the research as one of the key barriers to entry for insurers looking to enter the Irish market and as influencing the decision of existing providers to leave the Irish market.
- The report examines the direct and indirect costs to businesses of current challenges within the insurance market. Incidences of businesses having to close due to the unavailability of (affordable) insurance cover have been documented in the media. **Implementing new and improved health and safety management systems and process, CCTV, and risk management processes are just some of the hidden costs associated with insurance.**
- The research has also found that difficulties securing insurance are **also stifling innovation in the sector**. This has implications in terms of Ireland's tourism offering and addressing issues of seasonality and regionality.

## Benchmarking

- Measures implemented and actions taken internationally in response to the challenges faced by businesses/ sectors related to insurance are also considered. The **Equine Activity Liability Acts** is an example of how intervention was required by multiple States in the USA to provide legislative protections across an activity which by its very nature carries inherent risks while also providing clear protections to the public who participate in these activities.
- In New Zealand the government introduced regulations in 2011 to ensure operators have sound **safety management systems** in place and to ensure that New Zealand's reputation as an attractive, high-quality tourism destination is maintained and adventure activity participants are protected.
- The benchmarking has also considered the experiences in other sectors (retail and construction), the impact insurance has had on these sectors, and examined measures that have been introduced in response. The research demonstrates that the experiences in the retail sector in Ireland mirror those of the tourism sector, while it also examines how the development of the **"Safe-T-Cert" certification scheme**, by the Construction Industry Federation, has contributed to improving the approach to health and safety management within this sector. This initiative has led to reductions in insurance premiums for contractors whose safety management systems have been assessed and are operating in compliance with the scheme.

# Executive Summary

## Conclusions & Recommendations

- It is clear from the research that **no one measure will resolve all the issues and challenges inherent in the Irish insurance market** and that it will require a combination of measures. There is some consensus however, that as an immediate priority, work will need to be undertaken to **recalibrate the "Book of Quantum"** so that the level of personal injury awards in Ireland are brought into line with the level of awards in other jurisdictions.
- With limited insurance options open to some businesses in the tourism sector and real concerns regarding the on-going availability of insurance for some, consideration should be given to what options may exist for businesses across the tourism sector to secure insurance in the form of a **mutual or group scheme arrangement**.
- For those activities where there is an inherent risk for the participant, consideration should be given to indemnifying (through legislation) the operators/ promoters from personal injury claims where they can demonstrate **that they have taken reasonable and proportionate steps to protect and ensure the well-being of their customers**.
- In parallel with this, and notwithstanding existing health and safety standards, there could be some merit in considering the development of a **national regulation/ certification scheme for tourism businesses** which focuses on ensuring a professional approach to safety management within the sector.
- **A significant information gap exists in relation to insurance claims, costs and awards data**. These factors provide a convenient argument on the part of the insurance industry to justify increases in the cost of insurance and the decisions by some operators to not provide cover to certain businesses or activities.
- While there is some uncertainty as to what information will be available from the National Claims Insurance Database and how it is to be applied, there may be some merit in the **conduct of some market research with the objective of gathering, analysing and reporting on insurance claims and cost data for all sub-sectors of the tourism sector**.
- The research has pointed to some weaknesses and deficiencies in how some businesses manage their insurance costs and their general approach to risk, health and safety management. Fáilte Ireland in conjunction with the sector's various representative bodies should explore the potential to **provide some training support and guidance on the issue**.
- Finally, while recognising that the tourism sector is subject to significant health and safety legislation and regulation, this can often be viewed, by the sector, as an additional administrative and financial burden. Tourism businesses and operators need to recognise for their customers, guests and staff that health and safety is a very important consideration, and must place it at the core of everything they do. Operating a safe business also offers a number of benefits. There may be some merit in Fáilte Ireland taking a leading role of **promoting a culture of health and safety management within the tourism sector**.

## **SECTION 1**

# **INTRODUCTION & BACKGROUND**

# Introduction & Background

## Introduction

As Ireland's National Tourism Development Authority, Fáilte Ireland has a key role to play in supporting the tourism industry and working to sustain Ireland as a high-quality and competitive tourism destination.

Fáilte Ireland provides a range of practical business supports to help tourism businesses better manage and market their products and services. Fáilte Ireland also works with other state agencies and representative bodies, at local and national level, to implement and champion positive and practical strategies that will benefit Irish tourism and the Irish economy.

Tourism is a key component of and major contributor to the Irish economy. According to the Department of Transport, Tourism & Sport, tourism supports an estimated 300,000 jobs in communities throughout Ireland; generating earnings of €6bn.

Notwithstanding this positive performance, the sector continues to face several challenges. Concerns and uncertainty created by Brexit are having an impact on Irish tourism. This is evident in CSO statistics for Q2 2019, which show that 3,000 less trips were made to Ireland from Britain compared to the same quarter in 2018.

At the same time, rising costs are creating several pressure points, which heighten existing concerns regarding competitiveness and the survival of many tourism and hospitality businesses.

*"... The uncertainty around Brexit is an ongoing challenge, giving rise to consumer concern in Britain and some mainland European markets. The fall in the value of sterling has made holidays here more expensive for British visitors - and has made Britain more affordable for visitors from many of our top source markets."*  
*Tourism Ireland*

Maintaining competitiveness in a global travel and tourism market is integral to sustaining growth in overseas tourism expenditure, jobs growth and ensuring the long-term viability of many businesses in the sector.

The increasing cost of insurance and the factors influencing these increases, are a significant issue for the tourism sector, and are currently very much in the public forum.

Several representative bodies and individual tourism operators across the Irish tourism sector have highlighted difficulties obtaining affordable insurance and a growing compensation culture as impacting detrimentally on the sector and overall cost competitiveness.

In some sub-sectors, businesses are unable to obtain insurance from their previous insurance providers as they have withdrawn from the market for certain types of risks.

# Introduction & Background

The Irish Government, in recognition of the significant impact insurance has on both consumers and businesses, established the Cost of Insurance Working Group (CIWG) in mid-2016. The Working Group investigated the impact of rising insurance costs, the causes for these increases and made a series of recommendations to address the issue.

As evidence of the importance of the issue for the sector, a number of key sector representative bodies such as the Irish Hotels Federation (IHF), Licenced Vintners Association (LVA), Restaurants' Association of Ireland (RAI) and the Vintners' Federation of Ireland (VFI) have actively participated in and contributed to the work of the CIWG.

In addition, many of these representative bodies are active members of the Alliance for Insurance Reform; a representative group formed with the sole objective of reducing insurance costs in Ireland to sustainable levels.

Of particular relevance to tourism, the CIWG has found that public liability claims are a major concern for the sector, and that it is becoming increasingly difficult for many businesses that include an element of social interaction or entertainment (features of the hospitality and leisure industry) to obtain affordable cover from Irish authorised insurers.

Businesses in the sector are reporting increases in insurance costs of between 5% to five times their prior year costs. These increases have been cumulative year on year over the past number of years.

As with any business, increasing costs will impact on individual tourism and hospitality businesses to varying degrees. Some businesses will be better placed to absorb these increases depending on turnover, profitability levels and the percentage insurance costs make up of overall expenditure. Smaller businesses, community-led not-for-profits, start-ups and independent operators will by their nature be more exposed to insurance cost increases which can threaten their viability.

While there is little doubt that insurance costs have increased and are impacting negatively on the tourism sector it must be recognised, and as we discuss in more detail, the pricing of public and employer liability is complex with many factors giving rise to these price increases.

In light of the challenges posed by the current insurance market, Fáilte Ireland engaged BDO to conduct a review of the insurance market and Irish tourism, with the objective of providing a greater level of understanding of the difficulties faced by the wide range of tourism providers/operators in obtaining insurance and how the cost of insurance is impacting their businesses.

It is anticipated that this review can provide Fáilte Ireland with important insights, which in turn can help inform Fáilte Ireland and the wider tourism sector as to the suitability of potential policy options to resolve the insurance cost and related challenges in the Irish market.



# Introduction & Background

## Methodology and Approach

The methodology and approach adopted by BDO in the conduct of this research has consisted of extensive stakeholder consultation, which included 32 face-to-face and telephone interviews. These included the main representative groups operating within Ireland's tourism sector, UK and in Europe. We also consulted with a selection of tourism and hospitality businesses to gain the perspective at an individual operator level. Details of all those who participated in the research are included as an appendix to this report.

In addition, we met with, and sought the input and contributions of, a sample of insurance companies and brokers providing insurance cover to many businesses operating across the tourism sector. We were supported in the conduct of this element of the research by Crotty Insurance, one of Ireland's leading commercial insurance brokers.

This primary research was supplemented by a programme of extensive secondary research, international benchmarking, review and analysis of other data sources and reports on the insurance market and related issues. This included, but is not limited to, an examination of information from:

- Representative bodies member surveys
- Cost of Insurance Working Group Reports
- Personal Injuries Commission
- Personal Injuries Assessment Board
- The Courts Service



Figure 1: Methodology & Approach

# Introduction & Background

## Limitations of the Research

One of the key challenges in conducting a review of the Irish insurance market is the absence of publicly available data and statistics on the sector.

The gap in information has been identified by the CIWG, Personal Injuries Commission and several of the stakeholders consulted with as part of this study as a key issue.

*"...one of the main constraints within the Working Group's consideration of insurance costs to businesses has been a lack of data, including official statistical data....In simple terms, the absence of price data specifically makes it very difficult to assess market conditions, price competitiveness and the rationale for price increases across various categories of commercial non-life insurance." (CIWG)*

While various bodies and organisations produce insurance data, much of that publicly available is high level and does not allow for detailed examination.

The information that is available does not provide a complete picture of the total level of claims, awards and settlement values. The absence of this data, in particular accident year data, makes it very hard to draw any firm conclusions about what the underlying trends in the market are and what are their causes.

For example while the PIAB and Courts Service produce statistics on the claims awards through their respective systems, there is no clear data on claims settled outside the PIAB or Courts.

This is significant given the 33,500 claims filed with the PIAB in a given year, approximately 7,000 are settled through the PIAB framework with approximately 1,800 settled by the courts.

The lack of data within an Irish context can be summarised in the following points:

- the absence of any detailed data on legal and other costs in the employer and public liability cases
- Courts Service data on personal injury claims is limited to headline figures which combines medical negligence cases as well as motor and liability cases
- lack of consistency in the recording and coding of injury related data within the insurance industry
- insurance industry data not based on accident year, therefore it can be distorted by insurance reserves and claims
- data collected by central bank more concerned with reporting regulations than consumer cost or claims trends
- information not available on a sectoral basis

In addition, international analysis and benchmarking is also problematic on a number of fronts due to the lack of consistency in recording and coding personal injury data, different legal and medical systems and the lack of comparable information.

We did contact several UK and international tourism organisations in relation to insurance data. However as a result of the topic not garnering similar levels of attention or analysis internationally, no meaningful comparable data was available.



# Tourism Performance, Policy And Context

## Current Tourism Performance

2018 was a record year for the tourism sector, with the latest tourism statistics and data pointing to 2019 as a relatively positive year.

Fáilte Ireland statistics show that the Irish tourism sector has, between 2014 and 2018, enjoyed a period of growth both in terms of overseas visitor numbers and revenue.

Total out of state visitors have grown by 24% from 8.813m to 10.947m, while total tourism revenue (excluding carrier receipts) has grown by 35% from €5,685.2m to €7,664.9m.

Central Statistics Office (CSO) data does point to a slowdown in growth. Data for Q1 2019 shows a decline (3.2%) in the number of nights spent in Ireland by overseas travelers, while the average duration of overseas trips to Ireland also fell from 6.5 nights to 6 nights, compared with the same period in 2018.

As a result total tourism earning from overseas travelers to Ireland (excluding air fares) decreased by 4.0% to €763m.

Q2 data for 2019 shows that the number of overseas trips to Ireland, by non-residents increased in the quarter by 2.4%, while Q2 has also seen an increase in the number of nights spent in Ireland by overseas travelers by 5.8% in the period. Consequently total tourism and travel earnings increased by 2.6% in the Quarter to €1,513m.

Despite the upturn in performance in Q2 relative to Q1, the sector continues to be faced by a number of challenges (rising costs, increase in VAT rate, Brexit etc.), which is giving it real cause for concern.

	2014	2015	2016	2017	2018	Change 18 v 14
Out of State Visitors (000s)	8,813	9,528	10,100	10,338	10,947	24%
Domestic Trips (000s)	8,991	9,125	9,359	9,626	10,919	21%
Tourism Revenue (Exc. fares) €m	5,685.2	6,366.8	6,850.6	7,227.3	7,664.9	35%

Table1: Visitor Numbers & Tourism Revenue extracted from Fáilte Ireland - Key Tourism Facts 2018

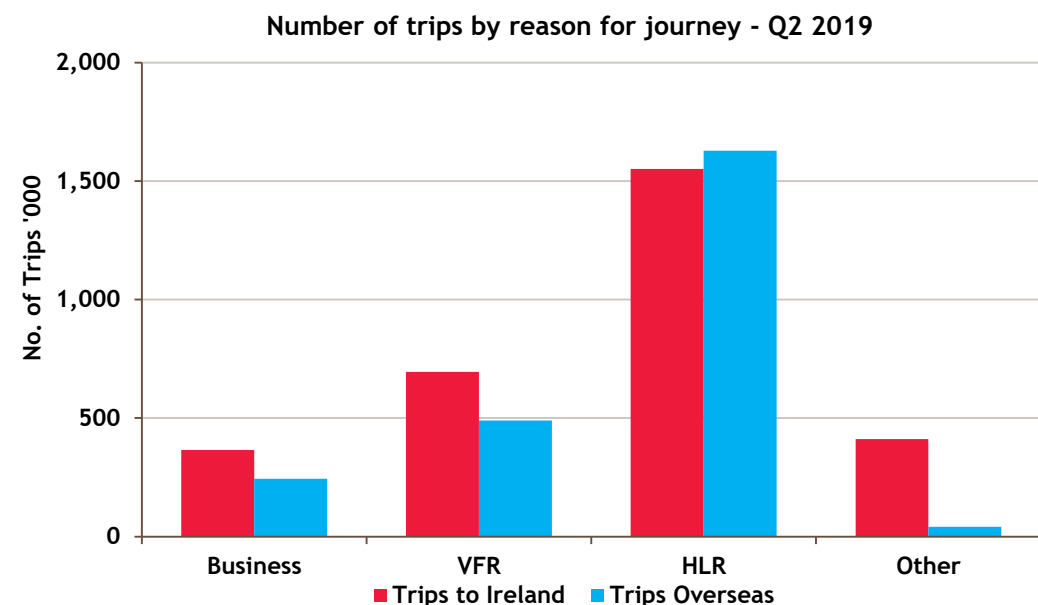


Figure2: No. of trips to Ireland and Overseas - CSO Tourism & Travel Data Quarter2 2019

# Tourism Performance, Policy And Context

## Current Tourism Policy

*People, Place and Policy- Growing Tourism to 2025* is the Government's Policy document, which sets out its targets for the development of Irish tourism. The document recognises the vital contribution that capital investment in tourism can make to increasing visitor numbers and to sustainable economic recovery.

In September 2015, the Department for Public Expenditure and Reform (DPER) launched the Government's Capital Plan for investment *Building on Recovery: Infrastructure and Capital Plan Investment 2016-2022*. The plan proposes an investment of €125,705,000 in tourism over this six-year period.

On foot of this plan, Fáilte Ireland prepared *Tourism Development & Innovation - A Strategy For Investment*, which sets out the framework and mechanisms for delivery of investment to cities, towns, villages, communities and businesses across Ireland.

The strategy sets out four key strategic objectives and identifies priorities **to support innovation in the sector to retain and grow Ireland's competitiveness in the marketplace**. Its ultimate aim is to strengthen the appeal of Ireland for international visitors.

A key pillar of the strategy is **to stimulate and foster innovation, through the development of new concepts or by taking an existing tourism product or experience and adding a new twist**.

FI has identified four strategic outcomes which will be targeted across each of its four brand propositions.

## Strategic Objectives

- To successfully and consistently deliver a world class visitor experience;
- To support a tourism sector that is profitable and achieves sustainable levels of growth and delivers jobs;
- To facilitate communities to play an enhanced role in developing tourism in their locality, thereby strengthening and enriching local communities; and
- To recognise, value and enhance Ireland's natural environment as the cornerstone of Irish tourism.

## Strategic Outcomes

- Increasing the number of overnights spent by overseas visitors, and increasing their spend;
- Creating employment opportunities;
- Leveraging public or private sector investment into the tourism experience;
- Stimulating international awareness and demand



# Tourism Performance, Policy And Context

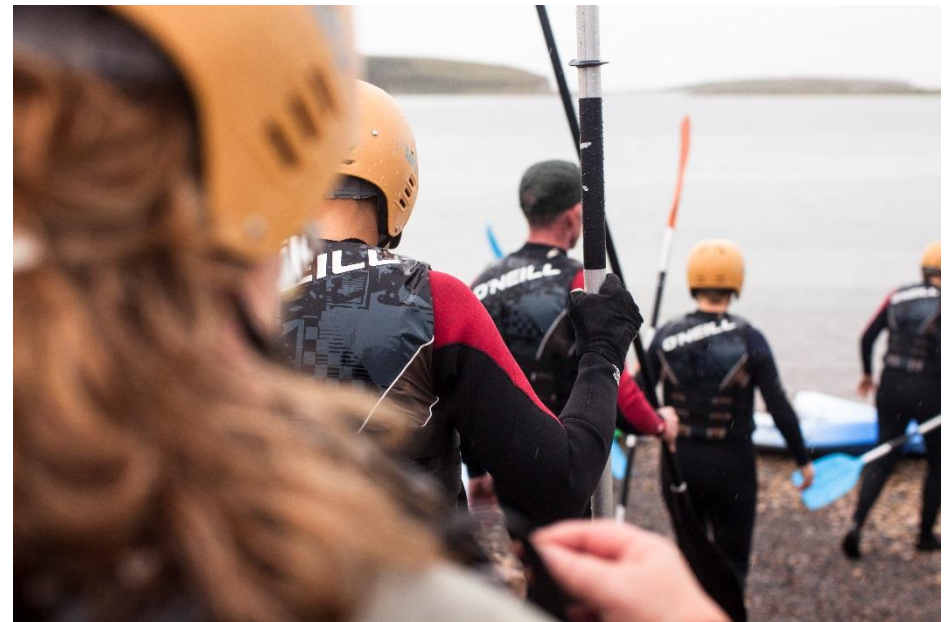
## Impact of Insurance

As will be demonstrated in later sections of this report, current trends in the insurance market have the potential to have a significant adverse impact on the realisation of the strategic objectives and outcomes set out in the Tourism Development & Innovation Strategy.

Some of the key impacts can be summarised as follows and are described in detail over the coming pages:

- Evidence where visitor attractions, who try to introduce seasonal “themed events” with the objective of increasing visitor numbers and addressing issues of seasonality, are prohibited from doing so due to the absence of affordable insurance cover.
- Certain tourism businesses, in particularly those in the adventure sector closing or facing closure due to the absence of any insurance cover.
- The operators and providers of tourism related festivals and events having to cancel such events due to the absence of affordable insurance cover.
- The ability of tourism businesses to offer truly experiential tourism are being curtailed as insurers are increasingly restricting the types of activities that can be offered and actively discouraging audience participation.

- With Fáilte Ireland research showing that more than one-third of all overseas visitors to Ireland took part in leisure or adventure tourism activities, including watersports, equestrian pursuits, cycling, hiking and fishing, **difficulties securing (affordable) insurance cover could undermine this element of Ireland’s tourism offering.**
- Furthermore, in the absence of affordable insurance cover, this may **negatively impact on Fáilte Ireland’s ability to deliver on its Strategic Pillar of “Building Brilliant Visitor Experiences”** coupled with its ambition to become **internationally renowned as a world class activity destination.**



## **SECTION 2**

# Overview of Irish Insurance Market & Claims Data



# Insurance

## Introduction

Insurance is an important financial service providing the policyholder with protection against financial losses due to unforeseen events.

There are many types of insurance for businesses including cover for property damage, public liability, professional liability and employee-related risks.

The terms 'commercial insurance' and 'business insurance' are often used to describe employers' liability and public liability insurance. These two types of insurance are the focus of this research and are common across various tourism sector businesses.

While it is not compulsory for businesses to have insurance, in reality, appropriate insurance is a pre-requisite for the operation of any business, especially those who interact with the general public.

**If a business is unable to obtain insurance or to do so at an affordable rate that business is, in effect, not in a position to operate in Ireland.**

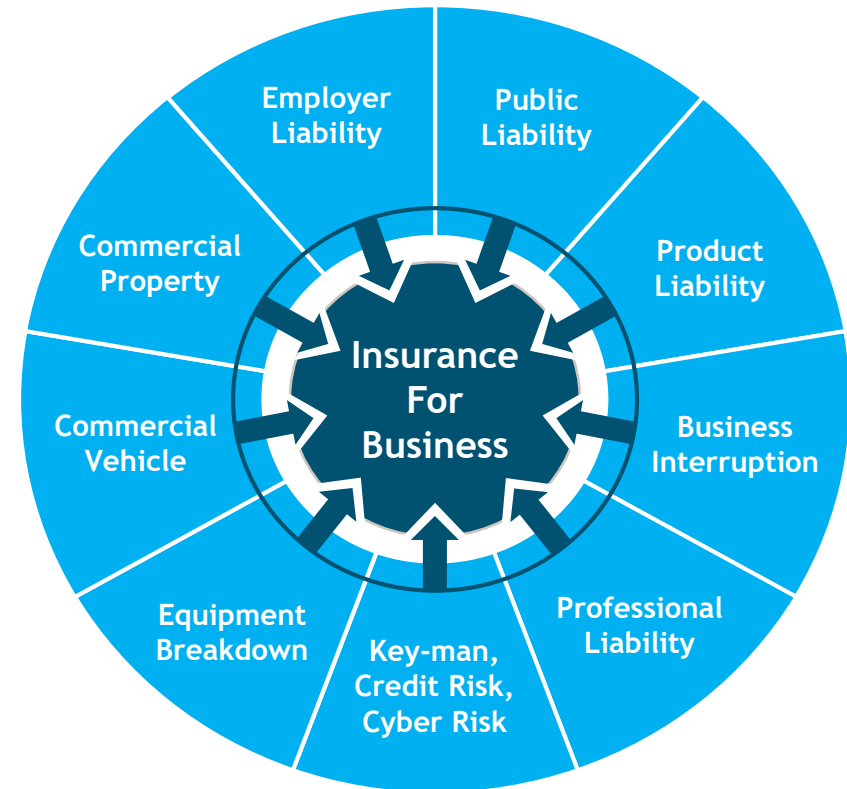


Figure 3: Types of Insurances for businesses

### Public Liability Insurance

- Insurance to protect business owners or landlords against loss due to legal liability for injury or damage to the persons or property of the public.
- Businesses like restaurants, hotels, visitor attractions that grant access to their facilities to the public have a duty of care that includes maintaining the safety of the space.

### Employer Liability Insurance

- Employers liability insurance protects your business against your legal liability for injury, illness, disease or death of any employee under a contract of service with your business.
- Employers have a common law duty of care to their employees to provide a safe place of work, safe systems of work, adequate training and supervision.

# The Insurance Industry's Cycle

All industries experience cycles of expansion and contraction and this is particularly true of the insurance industry.

Although no two cycles are exactly the same, insurance cycles can last between two to ten years and incorporate a hard market and soft market phase.

The key features of an insurance cycle are illustrated opposite, with the key features set out below, setting out where in the cycle Ireland's insurance market is.

The key features can be summarised as follows:

- Market capacity eroded with a number of key players exiting the market.
- Risk selection rejects some activities and industries i.e. adventure and activity tourism.
- Rates rise strongly.

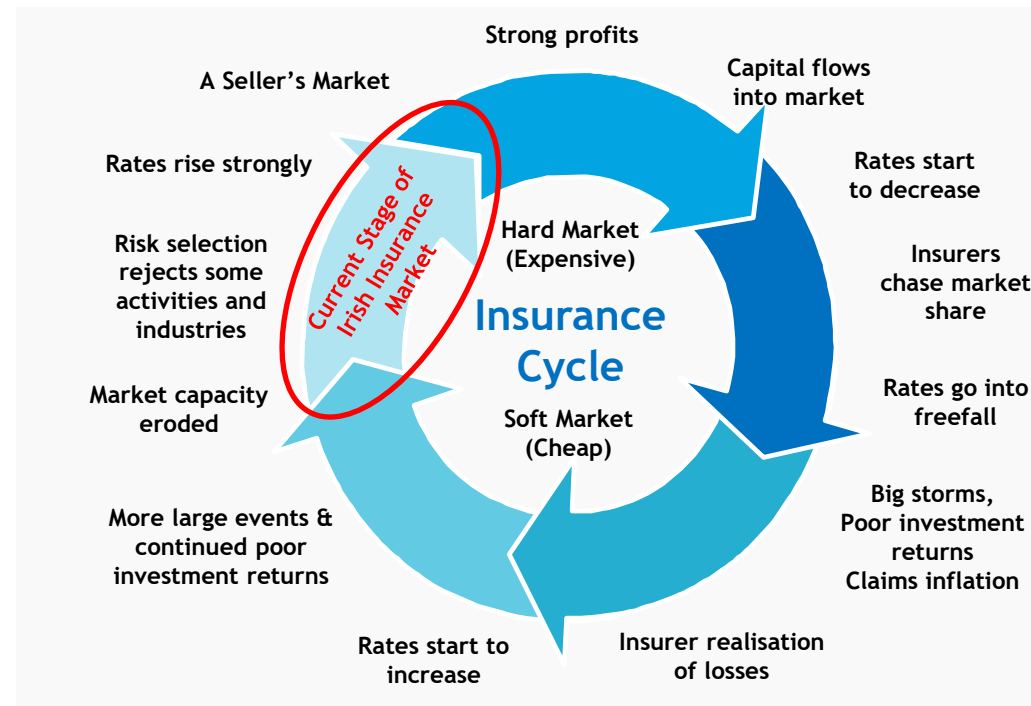


Figure 4: The Insurance Cycle - Hard Market Vs Soft Market

## Features of a Hard Insurance Market

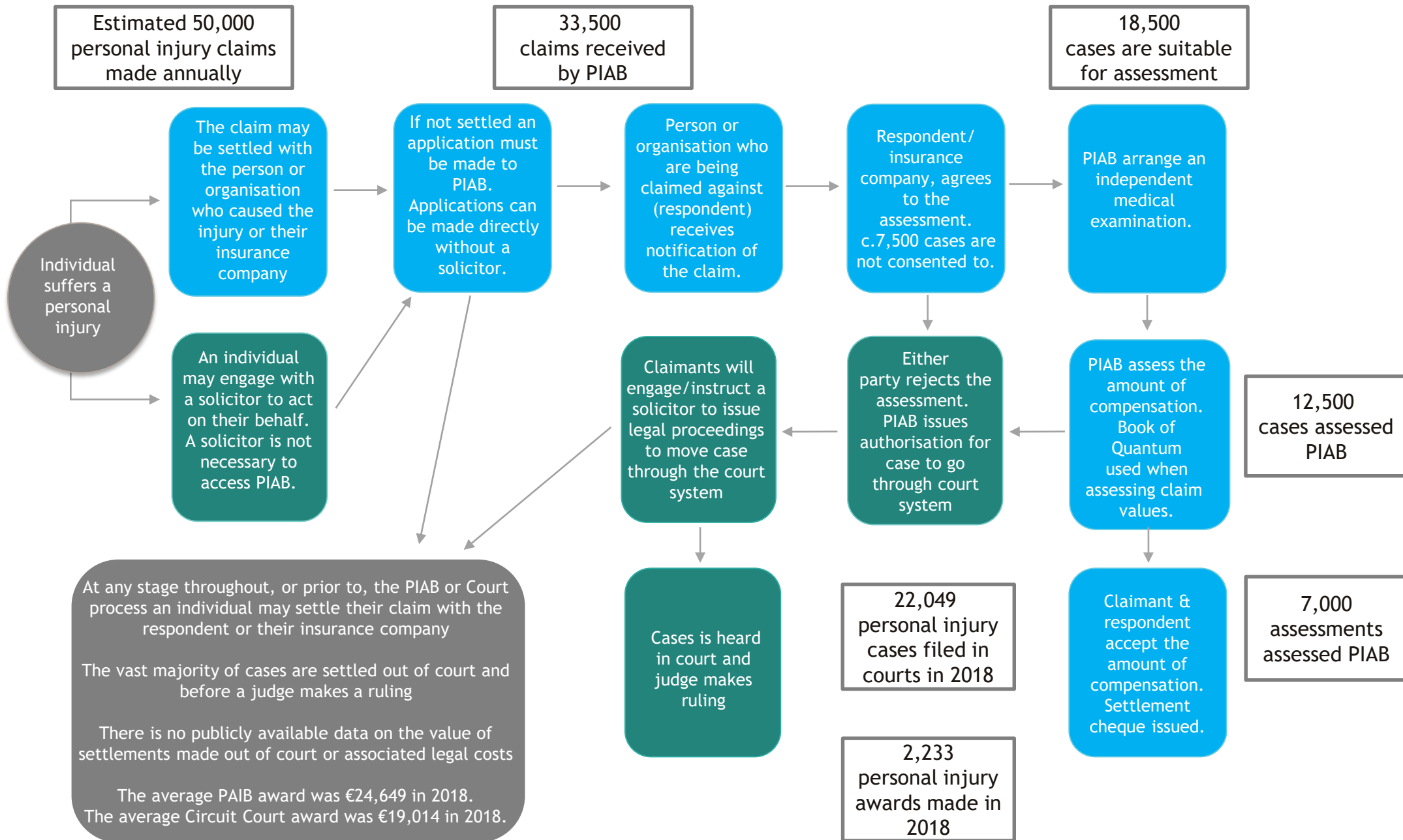
- Higher insurance premiums
- More stringent underwriting criteria, which means underwriting is more difficult
- Reduced capacity, which means insurance carriers write less insurance policies
- Less competition among insurance carriers.

## Features of a Soft Insurance Market

- Lower insurance premiums
- Broader coverage
- Relaxed underwriting criteria, making underwriting easier
- Increased capacity in the sector, which results in more insurance carriers, writing more policies and higher limits
- Greater competition among insurance companies



# Personal Injury Claims Process



# Insurance Market In Ireland

## Overview of the Irish Insurance Market

The Insurance Industry currently employs 28,000 people in Ireland. Statistics from Insurance Ireland, reporting on the information received from their members show, that in the most recent year for which figures are available (2017) **written premiums for life and non-life combined was €15,064.4m an increase of 16.7% on the previous year.** Premium income as a percentage of GDP was 5.1%.

Insurance Ireland Members wrote gross liability premium of €622.4m in 2017 up 7.9% on the previous year. Liability Insurers made a net underwriting loss in 2017 of €46.9m down from a loss of €112m the previous year.

**Over the five-year period from 2013 to 2017 Insurance Ireland Members reported losses on Employers liability and Public Liability Underwriting.**

As outlined in later sections of the report, the CIWG, do raise some questions in relation to the figures presented by Insurance Ireland in relation to employer and public liability losses.

It is also important to note that not included in the figures from Insurance Ireland are the results of Lloyds Syndicates and MGAs who tend to write business in the more risky classes such as Construction, Entertainment and Tourism type risks.

The Central Bank Of Ireland ceased publication of full market Statistics (The Blue Book) in 2018.

## Insurance Providers for the Tourism Market

There is a lack of insurers providing underwriting solutions to risks within the hospitality / leisure sector and this has been the case for the past number of years.

Currently Chubb, Blackrock Insurance (MGA), AIG (though have reduced risks significantly in past 2-3 years) and FBD are the principal providers of cover to this sector. Aviva, AXA, RSA & Zurich advise that Leisure-related risk is outside of their appetite.

Mitsui, major Global Insurer, opened an office in 2014 but closed in 2017. They had taken on a significant Leisure book, made the decision to exit the market with claims costs purported to have been instrumental in their decision.

UK-based Leisure Insure have provided insurance for sport, leisure and entertainment. A number of activities such as paintball, bouncy castles and other inflatables, airsoft sites, outdoor adventure centres and many others have traditionally relied on insurance cover provided through Leisure Insure (with AXA XL typically being the underwriter). In July of this year, Leisure Insure announced that they were exiting the market.

ARGO (Malta) were offering Liability solutions to Hospitality Clients in 2017/18 but withdrew after 12 Months. One can only assume that Claim Costs in year 1 were high & a reason for their exit.

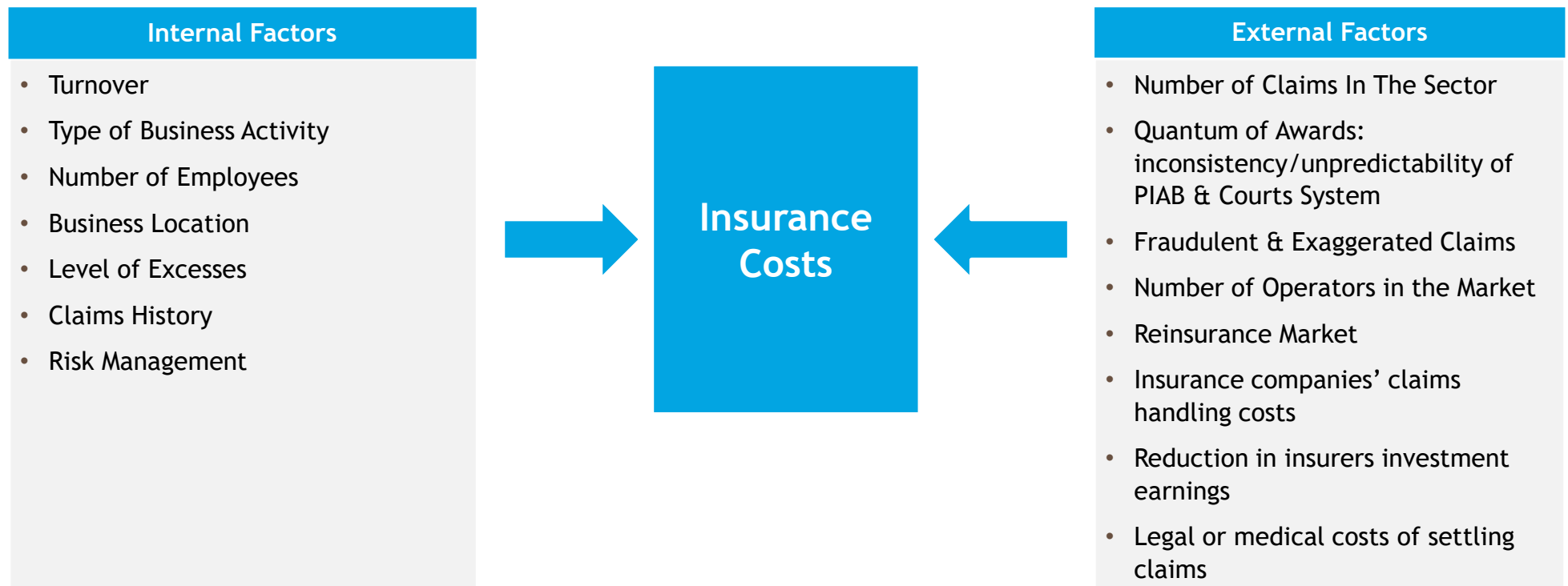
CV Starr (US) were writing Leisure-related business here through their UK offices, but ceased in 2018.

Accelerant (HDI Gerling, Germany) is a new entrant into the Market in 2019. They are writing Pubs, Hotels, Restaurants and other hospitality sector risks. Premiums are reported to be aggressive and competitive, however the longevity of this Insurer is yet to be tested.

# Factors Impacting On The Cost Of Insurance

There are a number of internal and external factors that will impact on the cost of and ability of a business owner to secure appropriate insurance cover. The key factors are illustrated below. In general terms, a business owner should have the ability to influence or affect internal factors, which in turn should then impact on both the cost and availability of insurance for their business.

External factors will be outside the control of the business owner. A recurring theme arising from the research and as demonstrated throughout this report is that despite the best efforts of business owners to positively affect internal factors (e.g. implement a robust approach to risk management for example or other health and safety initiatives), they are having little to no impact on the cost and availability of insurance for many of these businesses, with external factors, in particular, the quantum of awards being cited, as the primary factor influencing insurance costs and availability.





# Internal Cost Factors

## Risk Management

If you as a business owner can demonstrate good risk management practices it can influence an insurer to accept your business at a competitive premium over a similar business which doesn't employ the same good risk management procedures. However investment in risk management and health and safety may not in itself result in reduced insurance costs.

## Business Location

Your geographic location can affect your insurance costs, but not very often. If your business is located in an area that is prone to flooding for example or experiences high crime rates you may be charged an extra premium - but this generally is more applicable to property insurance. However, geographical location can have a bearing if for example you have a business located abroad as the premium, will reflect, apart from the above, the general claims culture and settlement process in the territory you have the business.

## Type of Business Activity

If you are in the tourism and leisure sector, like a pub, hotel or adventure centre; alcohol, dancing and perceived high risk activities have a significant bearing on an insurer's acceptance of your risk. This tends to be reflected in higher insurance premium costs.

## Turnover

If you are in the retail business, or other sectors of the economy which have high levels of interaction with the public, your level of turnover can affect the rating on and cost of your insurance policy. Often there is a direct correlation between turnover and footfall.

## Level of Excesses

In many policies and occupations, taking an increased deductible or excess may lower the premium you pay. Generally, this tends to apply to the more hazardous occupations and to larger businesses. High excesses and indemnities are a feature of the tourism sector. In general leisure businesses have little say in their excess. The excess is often written as an additional underwriting factor. An existing excess could rise for each and every claim occurring on a policy, with €10,000 increase common in leisure risk.

## Number of Employees

The number of employees will have a bearing on your employer's liability insurance, in addition to the type and nature of work they undertake. Insurers arrive at an employer's liability quotation by charging premiums generally on the wage roll of a company and they then apply a percentage rate to the wage roll attributable to the various categories of employees. The more employees the likelihood of higher insurance costs.

## Claims History

A history of previous claims is likely to have a significant impact on your insurance costs. Some insurers will evaluate claim histories on a case by case basis and a once off claim may not necessarily impact on your ability to get an insurance quote in the future. In certain cases it can be demonstrated that a business will take a more precautionary approach if they have had a claim. If you can prove that you have taken further care to mitigate losses following a claim, an insurer might consider you a better risk.

# External Cost Factors

## Quantum of Awards

Throughout this research, a commonly held view is that the level of awards made in Ireland is the primary factor impacting on the availability and cost of insurance. Compounding matters is the level of inconsistency and unpredictability on injury award levels in the PIAB and Court systems.

## Fraudulent & Exaggerated Claims

Fraudulent claims and the cost of investigating suspected fraudulent or exaggerated claims leads to higher premiums in the market. It is estimated by Insurance Europe that detected and undetected fraud represents up to 10% of all claims expenditure in Europe. Insurance Ireland estimated in 2016 that the total annual cost of fraud to the Irish insurance industry is approximately €200m. Around 50% of this is associated with motor claims. There has been much debate recently in relation to the actual value of fraudulent claims in Ireland.

## Insurers Investment Earnings

Investment income is a key component of non-life insurers' profitability. This income historically would be used to compensate part for underwriting losses. Over the past number of years, a number of factors, including low interest rates has led to a persistent decline in insurance companies' investment income.

## The Volume of Claims In A Sector

Regardless of the scope of the accident or where the fault lies, the number of insurance claims will have a direct impact on the cost of insurance within a particular sector of the economy.

## Claims Handling Costs

Claims handling costs are the administration and operational costs incurred by insurance companies relating directly to processing claims. Increased claims handling costs will impact the insurance companies loss/profit ratio and these costs ultimately effect the pricing on insurance premiums.

## Number of Operators in the Market

As with any market, a greater number of operators/suppliers in the insurance market tends to lead to great competition and thus has downward pressure on prices. As insurance companies exit a market, as has been the case in Ireland, competition and thus prices tend to increase.



## Legal or Medical Costs

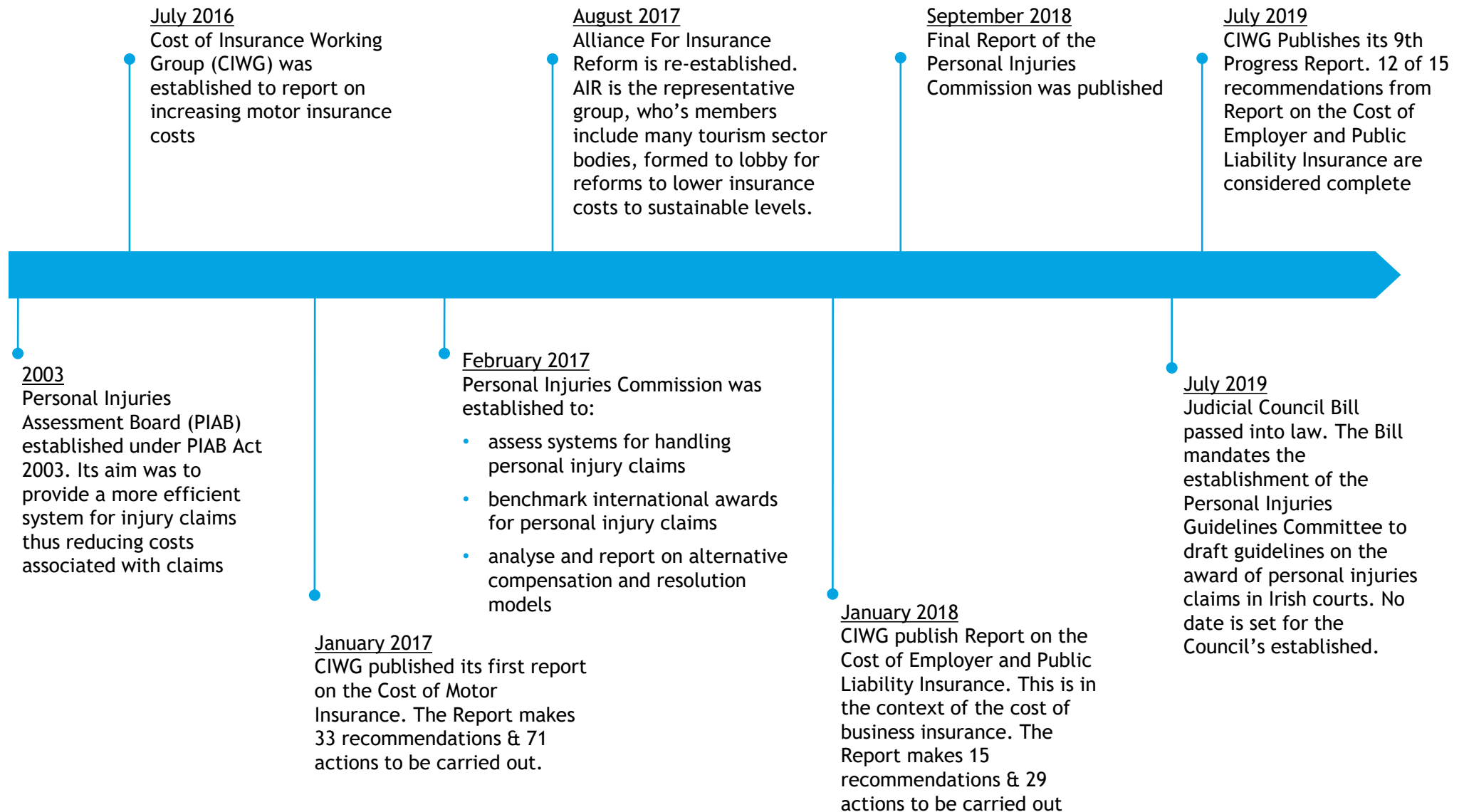
In general, liability insurance covers the cost of legal and medical fees incurred during the course of a claims process. These fees can form a significant portion of claims settlement/ awards (upwards of 40%). Insurance companies will also incur legal and medical costs when handling or defending claims.

## Reinsurance Market

Reinsurance is insurance that is purchased by an insurance company, in which its own insurance liabilities, or part thereof is passed on to another insurance company or re-insurer. Therefore increases in the cost of re-insurance may result in increased premiums for consumers and businesses.

# Insurance Sector Reforms

This research is being undertaken at time when the government and other stakeholders are examining the reasons behind increasing insurance costs in Ireland and are pursuing potential initiatives or reforms that may address the issues and challenges inherent in the Irish insurance market.





# Insurance Cost & Claims Data

While various bodies have produced reports and data on insurance costs in Ireland, **a key issue emerging from the Report of the CIWG is the lack of publicly available good quality data in relation to employer liability and public liability insurance.**

In addition, international analysis and benchmarking is also problematic on a number of fronts, as there is no rule of thumb in respect of accident compensation levels.

Research undertaken on behalf of the European Commission\* found that lawyers in the same jurisdiction will often seek different amounts of compensation given the same set of facts.

The report goes on to demonstrate that there are differences in compensation practices from one region to another in the same country, from one court to the next and even between various levels of individual EU Member states' court and legal systems. Furthermore, where particular injuries are concerned, the same injury may have very different consequences for the victim of the accident. This is why, in most countries, judges often have great discretion in determining the amount of the award. Each case is unique and requires specific attention. Although judges may take into account precedents, guidelines (e.g. Book of Quantum) or expert advice so as to avoid the appearance of an arbitrary decision, attempts to generalise awards may create the risk of injustice for the claimant.

Notwithstanding the challenges set out above, a recurring theme arising from the research is that the high level of awards made in Ireland are significantly out of kilter with the level of awards made in other jurisdictions, while the cost of insurance (employer and public liability) in Ireland is for many businesses, substantially higher than the comparable cost for businesses in other countries.

The following section of the report, examines key trends in both insurance cost and claims data.



\* Compensation of Victims of Cross-Border Road Traffic Accidents in the EU: Comparison of National Practices, Analysis of Problems and Evaluation of Options for Improving the Position of Cross-Border Victims, Jean Albert

# Insurance Cost & Claims Data

## Personal Injuries Assessment Board (PIAB)

- According to PIAB figures, and as illustrated in the table opposite, the total volume of claims processed has remained relatively static over the past 5 years, 2014 to 2018, with 33.5k claims per annum.
- There has been a decrease in motor and an increase in employer liability claims, while public liability claims have remained relatively static. Claims per category are split as follows: Motor 55%, public liability 25%, employer liability 20%.
- Annually between 2014 and 2018, approximately 12.5k cases, or 37% of claims filed, are assessed by the PIAB. Only c.7k of these claims' assessments are accepted or c.21% of claims filed.
- Overall average award value for all claims in 2018 was €24,649. However the average Public & Employer Liability award is above this:
  - Motor €22,682
  - Public Liability €28,372
  - Employer Liability €30,839

Average Award Value				
2014	2015	2016	2017	2018
€22,642	€22,878	€24,305	€24,879	€24,649

- Between 2014 and 2018 the average award value increased by, c.€2k or 8.9%.
- 9% of workplace accidents (EL) resulting in claims to the PIAB occur in Café, hotel, restaurant settings.
- 17% of public place accidents (PL) resulting in claims to the PIAB occur in Café, hotel, restaurant settings.

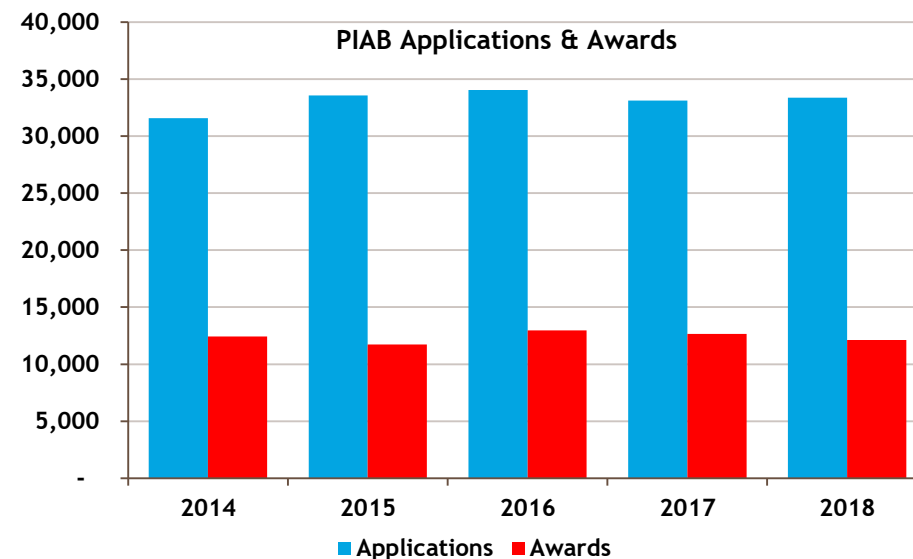


Figure 5: No of Applications & Awards - Personal Injuries Assessment Board

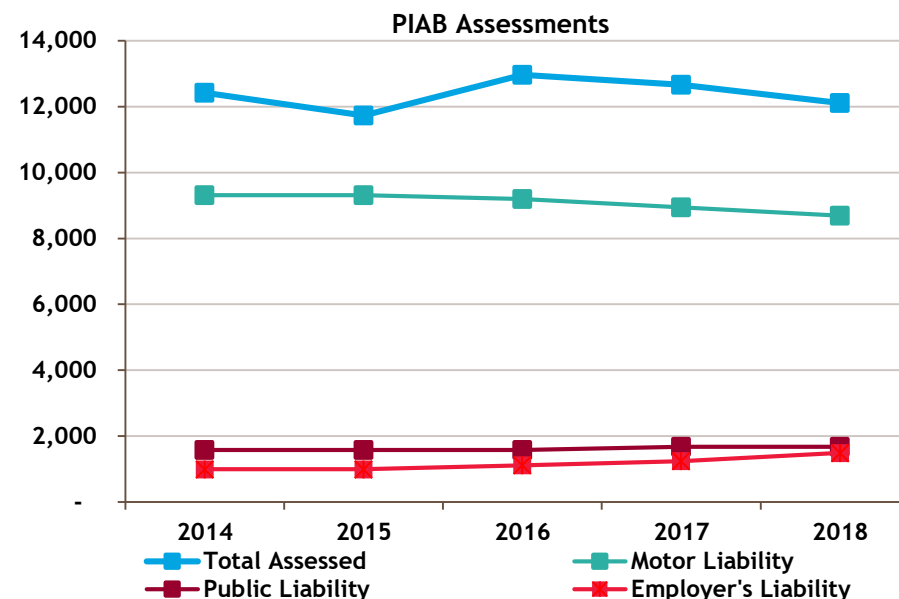


Figure 6: Assessments completed by type - Personal Injuries Assessment Board

# Insurance Cost & Claims Data

## Courts Service

- According to figures from the Courts Service, the number of personal injury claims filed with the courts has increased 24%, from 17,763 to 22,049, between 2014 and 2018.
- While there has been a small decrease in the number of cases filed between 2017 and 2018, overall there has been an upward trend.
- In actual terms the number of cases filed in the Circuit Court has increased by c.2,340 cases over the period, with an additional c.1,840 cases filed in the High Court. The number of cases going through the District Court has remained relatively constant.
- When considering these figures it is worth noting the following;
  - The Courts and Civil Law (Miscellaneous Provisions) Act 2013 raised the jurisdiction of the Circuit Court, so that court could deal with some higher-value claims. As a result, from February 2014, there was an increase in the value of personal injuries awards that both the Circuit & District could award. The limit of the District Court was increased from €6,384 to €15,000 and the limit of the Circuit Court increased from €38,092 to €75,000.
  - The High Court has unlimited power to award damages.
  - It was hoped that the 2014 changes would lead to a reduction in the number of personal injury cases heard by the High Court, with more cases being dealt with in the District and Circuit Courts.
- On average 56% of personal injury cases were filed with the Circuit Court, 39% in the High Court and 5% in the District court between 2014 to 2016.
- In recent case law the Court of Appeal acknowledged that the notional “cap” for General Damages was c.€450,000 and that consideration should be given to where a Plaintiff’s injuries were on the scale of minor to catastrophic injury. The balance of the award in catastrophic cases is made up of specials such as loss of income, future care and medical costs.

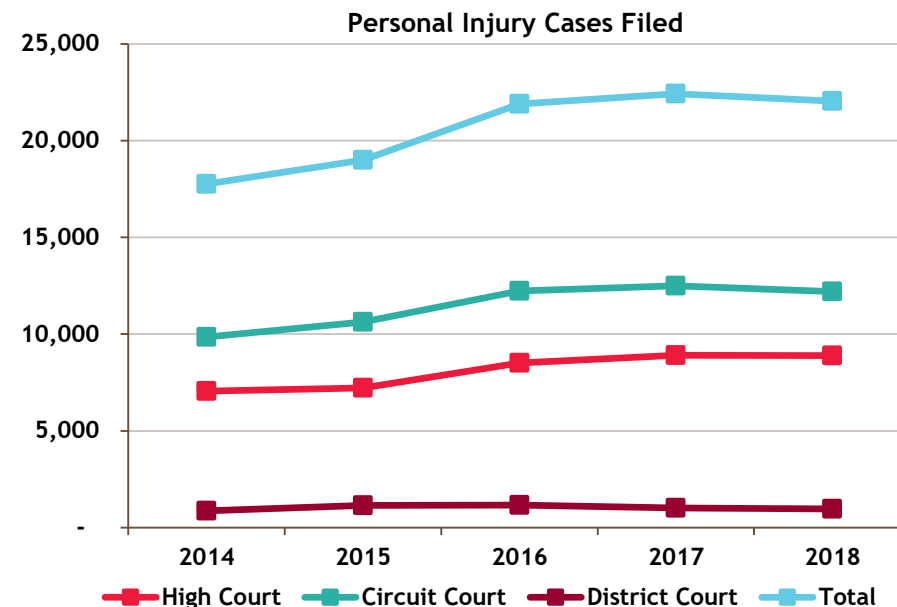


Figure 7: Personal injury cases filed in Irish Courts - The Courts Service Annual Reports

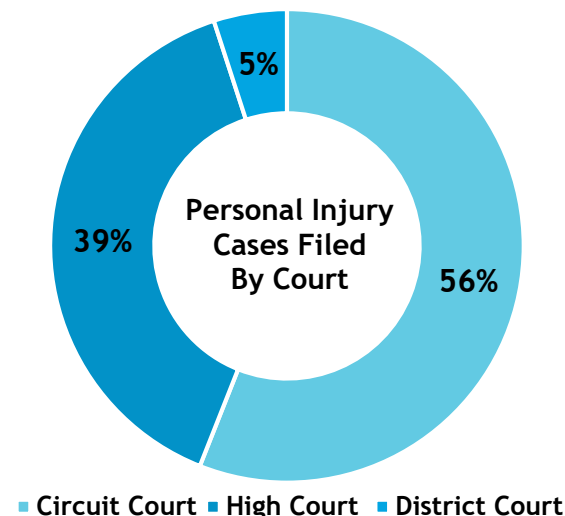


Figure 8: The average percentage of cases filed by Court 2014 - 2016 - The Courts Service Annual Reports



# Insurance Cost & Claims Data

## Courts Service

- While most personal injuries cases taken every year are at Circuit Court level, the bulk of the value, or money paid out, is accounted for by cases taken at High Court level.
- Award figures are dominated by awards by the High Court, which account for c.88% of the value of awards annually with the highest award being €15.5m in 2018.
- While the number of cases being filed has seen a steady increase, the total value of awards made by the Courts has fluctuated from €188.3m in 2015 to €206.5m in 2017 and decreasing back to €177.1m in 2018. It is important to note that these figures include medical negligence awards which tend to account for the highest individual award levels. Prior to 2016, medical negligence figures were not reported by the Courts Service.
- Excluding medical negligence figures the total value of personal injury awards decreased by c.20% from €106.4m & €107.7m to €85.7m in 2018.
- Total awards, excluding medical negligence, made in the High Court in 2018 were €57.5 million, down from €85.3 million the previous year. The average award made dropped to €171,201, from €243,288 the previous year.
- Analysis of the data points to a reduction in level of awards at High Court level, but at Circuit and District Court level there has been a steady increase in the value of awards from €20.2m in 2015 to €28.1m in 2018.
- The data does not identify why the level of average High Court awards has fallen. However, the chairman of the Personal Injuries Commission, Mr. Justice Nicholas Kearns, has suggested that decisions made in the Court of Appeal in recent years, where some awards have been substantially reduced, may have had the effect of “recalibrating” downwards the level of award being made in the High Court.

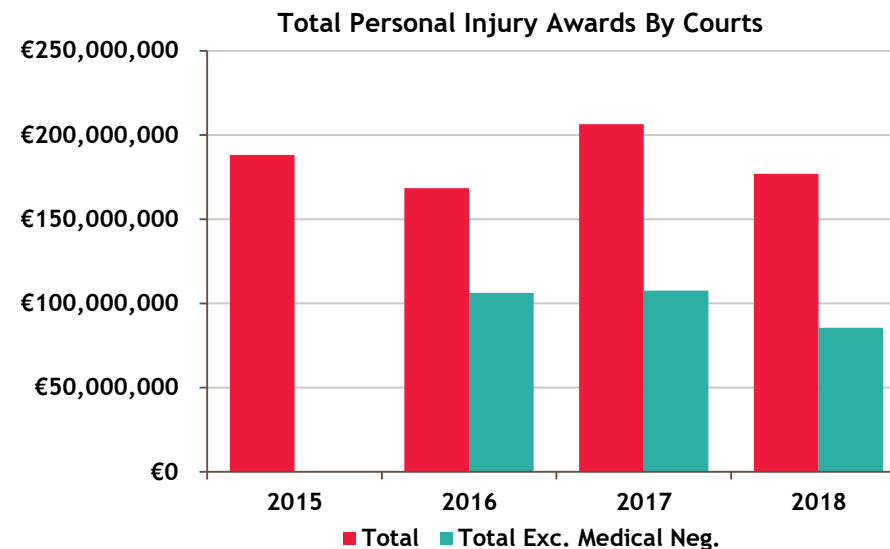


Figure 9: Total amount of personal injury awards by the Courts 2015 to 2016 - The Courts Service Annual Reports

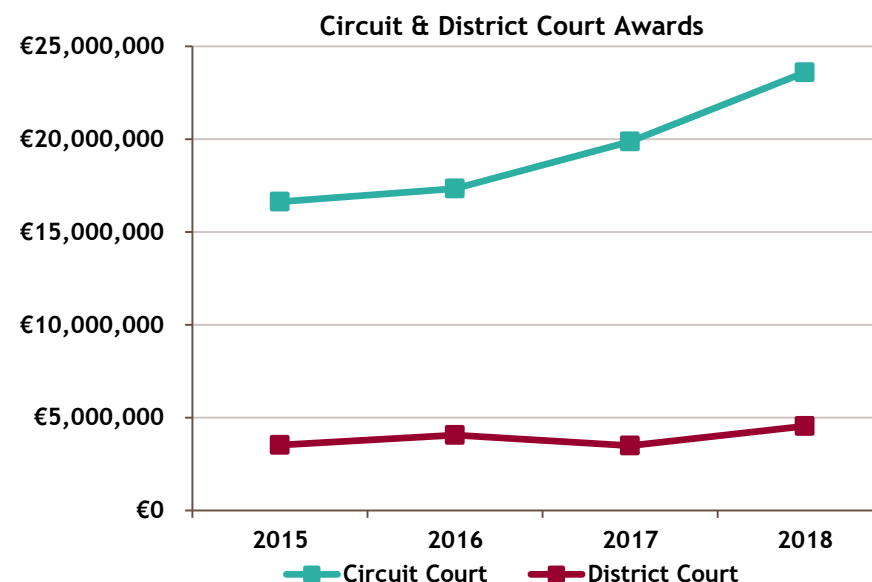


Figure 10: Total amount of personal injury awards by Circuit & District Courts 2014 to 2016 - The Courts Service Annual Reports

# Insurance Ireland Data

Illustrated below is some key data provided by Insurance Ireland to the CIWG and reported in their most recent Fact File 2017 on trends and data within the insurance market.

## Insurance Ireland Data Supplied to CIWG

- The number of overall liability claims reported in each calendar year has remained relatively stable between 2011-16. **There was a slight decrease in employer liability claims, and a sharp decline in public liability claims between 2011 and 2012, with a small level of increase since then.**
- For employer liability insurance Gross Incurred Claims Costs increased by 161% from €92.9m in 2011 to €243m in 2016. Profit/loss data suggests that employer liability insurance became loss-making for Insurance Ireland members from 2014 members following a number of years of relatively stable financial performance.
- For public liability insurance Gross Incurred Claims Costs fluctuated between 2011 and 2016. A spike from €143.65m in 2011 to €315.39m in 2012 was followed by three consecutive annual decreases before another very significant rise in 2016 which has nearly doubled the 2015 figure.
- As the figures are on a financial year basis, it is difficult to ascertain whether there has been a recent significant change in the claims environment or losses are due to reserve releases. **The incurred claims costs data does not appear to be consistent with the number of reported claims for employer liability insurance which have remained reasonably steady during this period.**

## Insurance Ireland - Fact file 2017

- Insurance Ireland's 17 domestic non-life insurance members wrote gross premium of €3,511m in 2017 (up 36% on 2013). Gross incurred claims costs were €2,069m in 2017 (up 14% on 2013). Liability insurance accounts for 17.7% of non-life business and is the third largest class with gross written premium of €622.4m.
- The net combined or operating ratio (claims, commissions and management expenses ratios) for the non-life market was 95.9% in 2017 i.e. 4.1 cent profit for every €1 of premium in 2017.
- The net combined ratio for Liability insurance was 111.8% in 2017 i.e. 11.8 cent loss for every €1 of premium in 2017.
- The operating results for Non-Life Insurance Market, shows a loss of (€81m) over the five-year period 2013 to 2017, although 2017 operating profit of €227m. It is interesting to note over a 7-year period 2011 to 2017, operating profit €514m.
- The operating results for employer liability market, shows a loss of (€319m) over the five-year period 2013 to 2017, with (€34m) loss in 2017 . Over a 7-year period 2011 to 2017, operating result were (€316m).
- The operating results for public liability market, shows a loss of (€30m) over the five-year period 2013 to 2017, with (€13m) loss in 2017 . Over a 7-year period 2011 to 2017, operating result were (€113m).

# Insurers Perspective of the Irish Market

The following pages summarise the key views and perspectives of the insurance companies, brokers and claims adjustors on the key issues and challenges inherent in the Irish insurance market. These views were captured during our consultations, led by Crotty Insurance, and have been supplemented by our own additional secondary research. Details of all parties consulted as part of this aspect of the research are included within the stakeholder appendix.

## Claim and Legal Costs

**The perception is that Claims / Legal Costs to defend a claim all the way to court is exceptionally expensive in Ireland. Where a plaintiff could be awarded an average Public Liability amount of €28,000, legal costs if these cases were to be defended could match & sometimes even supersede the level of award.**

Faced with this reality, Insurers will often weigh up the chances of success in defending a claim and decide at an early stage in the process if it's a case to open discussions with the Third party on and aim for an early settlement, thereby minimising the legal costs.

## Contributory Negligence

Insurers feel that even in situations where the Plaintiff may be, to a large degree, the author of their own misfortune, **the burden of cost will still be awarded against the defendant and the insurer will still have to pay out.**

In the UK this is not the case. If there is a large degree of contributory negligence, a claim will generally not succeed or will be significantly reduced in the UK, US and other markets.

Furthermore there would appear to be different approaches adopted by the judiciary when considering the extent to which a plaintiff's own negligence contributed to their injury.

In the case of PAIB, liability is not a consideration as the claim is deemed to be uncontested and again contributory negligence not a factor in the determination of an award.

## High Footfall

**Insurers perceive businesses with high footfall as particularly high-risk.** This is of particular relevance to a number of businesses operating in the tourism, hospitality and leisure sectors.

These present significant challenges for a Public Liability Underwriter.

Examples cited by brokers where businesses have understated business activity (visitors/guests/revenue). However when the level of activity becomes apparent this can result in large increases in insurance costs.



# Insurers Perspective of the Irish Market

## Fraud/ Exaggerated claims

There's a feeling that the instance of opportunistic fraud in Irish Claims is quite prevalent.

When an incident occurs, and a claim follows particularly for "soft tissue" injuries, the symptoms can often be exaggerated to inflate claim awards.

Insurers spend a significant amount of resources on private investigators to try and curb this cost.

**The incidence of Fraudulent Claims being tackled by the courts is a rare occurrence.** When a case goes all the way to hearing, the Insurers involved in defending such a case need to commit significant resources in legal costs. They know this cost in 99.9% of cases will be foregone and not recovered however in an attempt to "send a message" they will occasionally run a case as far as possible.

## Number of Incidents and Propensity to Claim

It's felt that the propensity of the Irish person to claim is high. A commonly shared belief across all stakeholders is that if an accident occurs in Ireland someone has to shoulder the blame and someone has to pay compensation

This mentality does not appear to exist to the same extent in other jurisdictions. Claims do not arise in similar circumstances in the UK.

Where a claim does arise in the UK, the award seems to be a fraction of that awarded in Ireland (generally 20% in Comparison). **Costs associated with most claims are also lower, for example claims of less than £25k can be settled through an online claims portal where a Plaintiff's solicitors fees are pre-agreed at approximately £500.**

## Employers Liability

There is a perception that the risk associated with Employers Liability is not as much of a concern as the area of Public Liability. However when it comes to hospitality risks, issues such as pressured kitchen environments, crossover of languages with staff from different backgrounds etc. issues can arise leading to accident / injury.

Insurers with exposures to the UK market have reported that **you do not tend to see the same number of claims from employees for slips/trips resulting in Soft Tissue Injuries as experienced in Ireland.**

According to PIAB the average value of an Employer Liability claim is €30,839, 26% and 9% higher than the average motor claim and Public Liability claim. Between 2014 and 2016 there was a 50% increase in Employer Liability awards through PIAB.

Discussions with stakeholders across Ireland's festivals and events sector would suggest that approximately **60% of injury claims are taken by volunteers working at these events.**





## SECTION 3

# Tourism Sector Perspective

# Insurance Statistics - Tourism Industry

## FESTIVALS & EVENTS

**€6.5m**

the level of public indemnity insurance a typical public street performance now requires

**60%\***

of injury claims taken by volunteers rather than members of the public attending events  
\*Approximately

Every **€1m** in indemnity leads to a **€600-€900** increase in the insurance premium cost

## BARS

**77%**

of VFI members surveyed had no insurance claims in *past 5 years*

The average increase for these 77% was **42%** over the same period.

Average insurance cost increases for all VFI pubs was **50%** over the last three years.



Average insurance premium for a **Dublin** pubs is now **€25,000** a year.

**> 50%**

of Dublin pubs suspect they have been the victims of a fraudulent claim within the last five years.

Impact of Insurance on the Tourism Sector

## ITIC

**7 out of 9**

sectoral tourism associations polled ranked insurance in the **TOP 3** threats to competitiveness

Increases in insurance costs ranging from

**+10% to +30%**

**2/3**

of those polled by ITIC reported an increase in insurance costs way above the rate of inflation over the past two years

ISME reported that

**84%**

of firms report an increase in insurance costs, with **2/3** experiencing annual increases of **16% to 25%**

## HOTELS

**90%**

of hotels & guesthouses are concerned about insurance costs

According to IHF survey the average increases was **28%** for the period (average cost at **€1,150 per hotel**)

**57%**

believe that a fraudulent claim has been made against their property in the past 36 months (2017)

**62%**

of hoteliers have seen increases in insurance cost in past 12 months

75% say insurance costs having a significant negative impact on their business ('18 - 83%, '17 - 71%)

# Tourism Stakeholder Feedback

The following pages summarise the key views and perspectives of the various tourism sector stakeholders on the impact current trends in the insurance market are having on their businesses.

## Cost of Insurance Increases

- Insurance premiums have increased year on year for a number of businesses across the tourism sector.
- Businesses are reporting that these increases are occurring at a rate greater than turnover and other business costs. **Many individual businesses are seeing these increases despite no claims over the period.**

## Stifles Innovation in the Sector

- Securing affordable insurance cover can act as a disincentive to innovation or new entrants to the market.
- Businesses looking to add new elements to their offering are curtailed by insurers who appear to be risk adverse to deviations from the traditional business model.

## Hidden Costs of Insurance

- Risk mitigation measures (risk audits, H&S training, CCTV, incident logs and adhering to good practice guidelines) are not resulting in significant cost savings of premiums.
- **Additional and increasingly onerous risk mitigation measures are the “hidden cost” to business of Ireland’s claim culture.**

## Lack of Capacity in the Market

- There is a reducing pool of insurers willing to underwrite leisure businesses.
- The majority can get insurance cover, even if at an increased cost, however **some are uncertain if they will obtain cover in the future.**

## Impact on Competitiveness

- As outlined previously insurance costs have been identified, by a number of key sector groups, as one of the top three threats to maintaining competitiveness

## Reluctance on the part of insurance companies to fight claims

- Insurance companies are settling cases too quickly and do not defend against what policyholders would view as fraudulent or exaggerated claims.
- **Policyholders appear to have little to no say in whether a claim is defended.**
- Policyholders are often not informed of a claim until renewing a policy

## Restricts Experiential Tourism

- It is becoming increasingly difficult for tourism operators to offer truly experiential tourism as **insurers are increasingly restricting the types of activities that can be offered and are actively discouraging audience participation.**

# Tourism & Insurance Industry Perspective

Issues Within The Tourism Sector	Insurance Industry Perspective	Observations
<p>Insurance premiums are increasing at a rate in excess of inflation, revenue growth and other business costs.</p>	<p>The pricing of insurance risk, while taking account of turnover, is determined by a number of factors such as type and level of business activity, claims history, sectoral claims level, claims handling costs, legal and medical costs. Many of these factors are independent of turnover and inflation.</p>	<p>According to CSO figures the cost of insurance overall showed an increase of 57% from January 2011 to July 2016.</p> <p>In the NCC's Costs of Doing Business in Ireland 2017 report, it stated that <i>"Irish insurance price inflation as measured by the HICP (the Harmonised Index of Consumer Prices) has been volatile and significantly above the UK rate and Euro area average from early 2014"</i>.</p>
<p>Insurance premiums are increasing in cases where there have been no claims against the business in the last 3-5 years.</p>	<p>Insurance companies consider a number of rating factors when pricing risk including their claims experience with that policyholder and with the sector in which they operate. However, <b>ultimately pricing is done on a pooled risk basis rather than on the actual specific risks of the policyholder in question.</b></p>	<p>When rating / pricing risks in a particular sector, Insurers will be guided by the performance of all risks that they insure in that sector. If they feel a need to increase premium volume over a portfolio of risks within a given sector, rates on policies will be raised on all policyholders operating in that sector.</p>
<p>Health &amp; Safety standards in Ireland are recognised as being some of the best globally and businesses are investing in risk mitigation measures. However this investment in health and safety measures is not being reflected in reduced insurance premiums, or in mitigating against high levels of awards being made.</p>	<p>There are areas where management controls within a business including such as the following will positively influence the Underwriters decision whether to write a risk or not, and if they decide to do so, at what Premium:</p> <ul style="list-style-type: none"> <li>• Health &amp; Safety Management,</li> <li>• Training of New Staff,</li> <li>• Refresher training for existing staff,</li> <li>• Manual handling training,</li> <li>• Provision of Personal Protective Equipment</li> <li>• Risk Assessment &amp; Method Statements for various tasks</li> <li>• Employee retention / loyalty</li> <li>• CCTV footage</li> </ul> <p>Exceptional health and safety standards could bring an activity which might otherwise be outside an insurers risk appetite within the scope of what they would consider insuring.</p>	<p>It was noted in the CIWG report, that the Health and Safety Authority identified the establishment of a connection between good health and safety practices and cost of insurance an area the insurance industry could do more to support businesses to improve safety.</p> <p><b>In the UK, for example, the Health Service Executive has prepared a Guidance Document for the operators of fair grounds and amusement parks (HSG 175).</b> Similar guidance documents exist for a range of other businesses and sectors. According to BALPAA (the trade association representing operators in this sector), in the event of a claim being taken against the operator, and <b>they can demonstrate to be adhering to these guidance notes and are adopting a sensible and proportionate approach to health and safety, the chances of being prosecuted or having a large award against them are very low.</b></p>



# Tourism & Insurance Industry Perspective

Issues Within The Tourism Sector	Insurance Industry Perspective	Observations
<p>Claims being settled without policyholder's knowledge</p>	<p>When purchasing insurance, the insurer agrees to indemnify a policyholder therefore transferring the risk and potential loss of the claim to the insurer. As the insurer is now assuming the risk, they ultimately decide whether a case should be settled or challenged.</p> <p>The perception is that Claims/Legal Costs to defend a claim in Ireland all the way to court is exceptionally expensive.</p>	<p>There is evidence to suggest that insurers in the UK adopt a similar approach, but this tends to be in situations where the level of claim is very low, and significantly below what it would cost to contest such a claim.</p> <p>The CIWG recommended that a protocol, similar to the IBEC "Communication Guidelines for Insurers &amp; Policyholders", be put into place by <b>which policyholders are informed of a claim as soon as possible and policyholders views taken into consideration.</b></p> <p>No agreement could be reached with Insurance Ireland on such a protocol; thus the legislation route is being adopted. An amendment, to mandate insurers to inform policyholders of claims, is being made to the Consumer Insurance Contracts Private Members' Bill and has passed Committee Stage in July 2019.</p>
<p>Insurance companies are not sufficiently defending against claims that's are viewed as fraudulent or exaggerated by the policyholder.</p>	<p>While it can be argued that tackling fraudulent claims is indeed a rare fete, its discernible over the past 6-12 months that Insurers are highlighting cases where fraudulent claims are successfully defended &amp; the media seem to champion these cases. <b>When a case goes all the way to hearing, the Insurers involved in defending such a case need to commit significant resource in legal cost.</b> Insurers have traditionally been reluctant to commit resources to defend against fraud, however there has been a noticeable change recently in the attitude in the courts and more fraud cases are being thrown out of court with insurers using internal resources to tackle these issues.</p>	<p>Based on the figures from the PIAB and courts, it would appear that the majority of personal injury cases are settled out of court.</p> <p>Insurance companies settle cases out of courts for a number of reasons: <b>it is more cost effective than incurring additional legal fees, sufficient evidence is not available to defend the case and the burden of evidence high on the defendant, unpredictable outcomes and award levels for cases heard by the courts.</b></p>
<p>Policyholders are carrying the cost of unsettled claims (funding claims reserves)</p>	<p><b>Insurers must hold technical reserves, effectively the estimated cost of future payment of claims.</b> There is government supervisory control and regulations for the proper estimation of outstanding claims and the nature and spread of assets which can be used to cover technical reserves. The Cost of Claims includes Reserves that Insurers are putting aside to pay for Claims that have been notified &amp; which may develop over time. A Claims assessor will review the circumstances of the incident &amp; set a reserve on the claim to include all costs. Insurers will factor in the cost of these reserves to their pricing model.</p>	<p>There are specific regulations and Central Bank guidelines in relation to minimum requirements for technical(claims) reserves to be held by insurance companies. Insurance companies must be and tend to be prudent when calculating the level of reserves to be held.</p> <p>In 2018, RSA Insurance was fined €3.5m by the Central Bank for under-reserving of multiple large loss claims</p>

# What The Tourism Sector Needs To Do? - An Insurance Industry Perspective

<p><b>Ensure you have the right cover</b></p>	<p>When looking to save money on your insurance costs, you need to ensure that you have the right cover in place for your needs. Whilst all public liability insurance policies are very similar in their coverage, the costs can vary greatly depending on the information you provided when the policy was established.</p> <p>Check the business/ activity description on your policy to ensure you are not being charged additional premiums for services/ activities which you aren't actually providing. For example, a hotel may have previously operated a night-club which is no longer the case, and if the policy hasn't been reviewed, they may be paying extra for something they no longer offer.</p>
<p><b>Shop around and in good time</b></p>	<p>Don't leave it until the last minute to renew your insurance cover.</p> <p>Each insurance company charges different premiums for their insurance policies, and the difference in premium can add up to hundreds or even thousands of euros. When shopping around it is important to compare the policies correctly to ensure the cover is appropriate for your needs. There is no point saving a few hundred euros on a new policy if it's not going to help you at claim time.</p>
<p><b>Insure for the right amount</b></p>	<p>Insurers generally issue PL Limits at €2.6m or €6.5m. If a business wants higher Limits, they can purchase Excess layers of cover. Each business will have different wants and needs when it comes to choosing a PL Limit. That said, a business with footfall (pub / hotel/ restaurant/ play centres) would usually arrange Limits starting at €6.5m. An industry standard Limit of €13m is issued for Employers Liability risks but again, higher limits can be purchased through Excess Layers.</p>
<p><b>Adopt a proactive approach to health and safety and risk management</b></p>	<p>The most obvious way to reduce the cost of public liability insurance is to prevent injury. Higher costs arising from injury claims are a guaranteed way to increase the cost of insurance. Regular safety audits, performing risk assessments on work activities and reviewing training and instruction provided to workers can significantly reduce injuries and claims.</p>
<p><b>Strategic Accident and Claims Management</b></p>	<p>Effective management and investigation following an accident can have impact on the amount of any pay out that is ultimately made under a policy.</p> <p>Investigation should commence immediately after an incident causing injury, and a potential claim on the policy, occurs. All evidence should be safely secured. If possible, photographs of the scene should be obtained. Care must be taken to save evidence carefully so it can be provided to the insurer as required.</p> <p>Regardless of whether your business is big or small, you should be undertaking regular reviews of trends in claims and areas of risk in the business. Auditing existing claims can help to reveal blind spots such as documented work procedures not being followed, or lack of supervision in a particular area of operation.</p>

# Insurance Adjuster Perspective

As part of our consultation we spoke with Independent Insurance Adjusters and claims defenders from the legal profession. They made a number of interesting observations on the evidence required to provide adequate defense to a claim.

While some businesses have invested heavily in health & safety and risk mitigation this may not be the case throughout the sector. One Senior Adjuster pointed out that the level and quality of information furnished to investigators is often incomplete and too vague. In contrast to the construction sector where the system of information retrieval is taken very seriously with clear systems in place. Claims are often not a priority for management until after the fact.

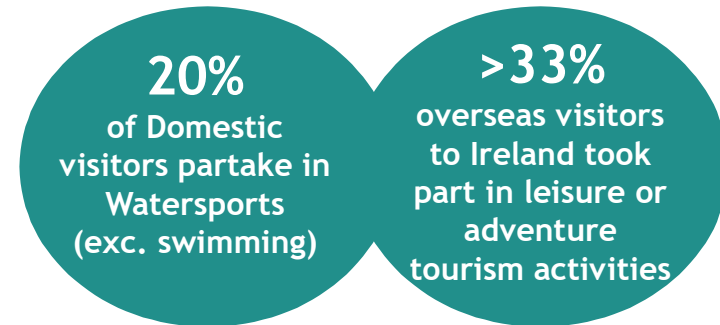
✓ Checklist for a good defence against claims	Common Pitfalls
<p><b>CTTV footage should show the person entering and exiting a business premises as well as the incident.</b></p>	<p>Common pitfalls CCTV footage not retained, taped over, clip lost or inadequate i.e. only showing the incident. Data protection legislation has made this more difficult because <b>Business owners are not allowed to retain CCTV footage for more than 3 Months</b>. Often, claims are only made three months after the date in which the incident occurred.</p>
<p><b>Take Photographs immediately after the incident is reported to document the scene. Document the date, time and the photographer.</b></p>	<p>Photographs go missing or no digital copy saved.</p>
<p><b>Get full details of witnesses; names, e-mail, phone details and document exactly what they saw.</b></p>	<p>Some risks will not have properly documented details of their own staff and cannot locate them when they are needed. This can be a function of the part-time/seasonal nature of employment in some leisure and hospitality businesses. Its always good to get a forwarding address when an employee who may be a witness moves on.</p>
<p><b>Ensure that health &amp; safety and risk mitigation procedures are properly documented. Regularly check that procedures are being complied with.</b></p>	<p>Businesses do not have adequate procedures, document them properly or comply with their own procedures. An example would be cleaning logs for bathrooms not completed and relying on statements “we usually clean the bathroom every hour” or “we always clean the floors three times a day”</p>
<p><b>Ensure that evidence is retained of employee health and safety training i.e. document date of training, trainer, expertise of the trainers and have employees sign attendance sheets.</b></p>	<p>No sign off evidence that employee has reviewed safety statement, inadequate time allocated i.e. “he reviewed it on his lunch break”, non-English speakers not given statements in native language, trainer had inadequate experience.</p>
<p><b>Where safety equipment is required for employees or customers a register of the equipment and its condition should be maintained in a professional manner.</b></p>	<p>Equipment logs are not maintained and no evidence is recorded proving that the equipment is in good order.</p>
<p><b>Ensure that a contract exists with any security operatives or independent security company and that are fully aware of their duties and responsibilities.</b></p>	<p>Too often security personnel are employed with little instruction on what their duties are. Independent firms often don’t have a contract making it difficult to join them to legal proceedings.</p>

# Activities & Adventure Tourism



## Key Industry Concerns

- The present application of negligence law has effectively transferred the cost of personal insurance from individuals to businesses and event organisers
- What would be a vexatious, if not fraudulent, claim in other jurisdictions will be accepted as genuine in Ireland. The balance now disproportionately favours the claimant
- A number of adventure sport and related activities are now red-flagged by insurers. It is now virtually impossible to secure appropriate cover for these activities e.g. coasteering, off road mountain biking
- Little evidence that insurers proactively work with policy holders to reduce risk and manage insurance costs within their businesses
- A number of operators haven't been able to get cover or identify viable insurance solutions for 2020
- “If you are being quoted at a 100% increase in your insurance premium, then this is possibly a good news story!”



## Key Figures

- Adventure tourists spend 45% more than other tourists on a typical stay in Ireland
- Global Adventure Tourism Market to grow at 46% during the period 2018-2022.

## Solutions

- Move towards the contact sports model, in which participants and attendees take personal responsibility for their actions and the principals behind these ventures are only considered liable if demonstrating a reckless disregard for customer safety
- Average claims costs need to be reduced significantly

## International Experience

- Regulation has been introduced and legislation passed in other jurisdictions with the objective of ensuring higher levels of health and safety standards are employed by operators in the adventure tourism sector (The Health and Safety in Employment (Adventure Activities) Regulations 2016, New Zealand). In the USA the Equine Activity Liability Act (EALA) Legislation aims to limit the financial liability of operators across the Equine sector.
- In the UK the Activities Industry Mutual was set-up to provide insurance to the adventure activities and outdoor learning industry.



# Festivals & Events

“The belief that putting in an insurance claim doesn’t hurt anyone except the insurance company is incorrect, consequently great fun events like ours find it hard to go ahead when suspect insurance claims from a small minority of people can ruin it for everybody”  
(Organisers of Oktoberfest Dublin)



## Key Industry Concerns

- Number of festivals have ceased in recent years, with the organisers/ operators of these festivals citing insurance issues as being central to the decision.
- Festivals with larger budgets and who’s insurance costs account for a small percentage of overall costs are able to absorb insurance cost increases, even in cases where it has increased 25-50% per annum. Smaller community-led and not-for-profit festivals impacted more by insurance cost increases.
- Insurance cost increases are impacting individual performers and third party operators with some not able to feature in festival programmes due to insurance issues. An example would be street performers, reporting insurance cost increases of over 5 times previous years insurance costs.
- Additional management time being dedicated to assessing insurance cover with venue owners and third party operators. In some cases this has resulted in venue changes and restriction of certain performances.
- Insurers are increasingly restricting the types of activities that can be offered and actively discouraging audience participation.
- Increases in the indemnity cover required by some local authorities causing operators to purchase high levels of insurance at an increased cost.

## Key Figures

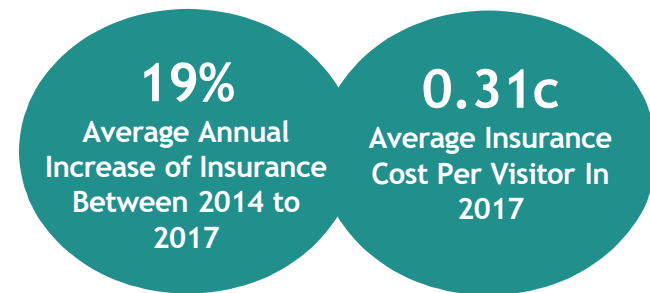
- Festivals and events are critical for tourism growth as they specifically attract more than 200,000 overseas visitors to Ireland and contribute €108million to the economy every year.

## International Experience

- The issue of insurance is not on the agenda for festival and events representative bodies internationally.
- International street artists indicate that the level of insurance cover required and excesses sought to perform at Irish events is significantly in excess of that required in other countries.

# Visitor Attractions & Experiences Sector

“If tourism attractions and experiences in the UK had to pay the same level of insurance as Irish operators currently do, many of these businesses would be financially unviable”  
(Paul Kelly, BALLPA)



## Key Figures

- In a sample of 20 visitor attractions and experiences, we found that insurance costs increased by 19% on average annually between 2014 and 2017.
- The average insurance cost per visitor in 2017 was 0.31c. This is up on the 0.28c and 0.27c reported in 2015 and 2016 respectively.

## Key Industry Concerns

- Rising insurance costs act as an inhibitor to investing in new attractions and events. Investment in off-season events is a common strategy to increase activity and improve commercial sustainability for many attractions.
- It is proving increasingly difficult to secure affordable insurance cover for seasonal type events or those which deviate from the traditional business model/offering.
- Many insurance companies require significant excesses on policies, while this may be affordable for large businesses it is not for smaller family run/ owner managed visitor attractions and experiences.
- Investment in and adherence to robust risk management and health and safety systems and procedures is not being recognised when it comes to the cost of insurance or in some cases fighting insurance claims in the court, where too many judges are seen to be “pro-claimant”
- Insurance premiums continue to increase even in businesses with no recent claims history

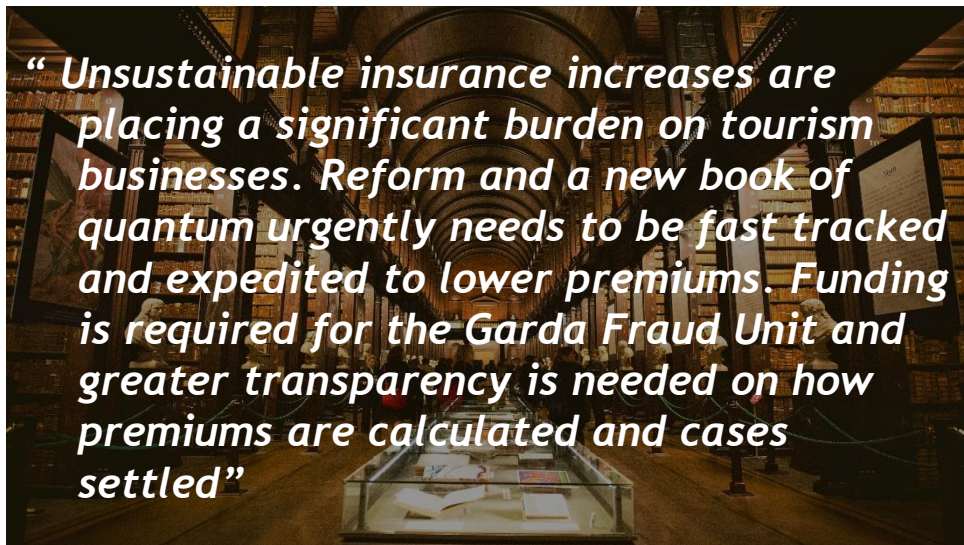
## Solutions

- Insurers need to recognise robust and proactive risk management and health and safety systems and procedures in reducing premium costs. Such practice needs to also be taken into account when assessing and determining the value of insurance awards (if any) when before the PIAB/ Courts
- There needs to be a re-balancing of the “duty of care” towards the individual. Recognition that accidents do happen, although it is not always the fault of the business owner/ proprietor.

## International Experience

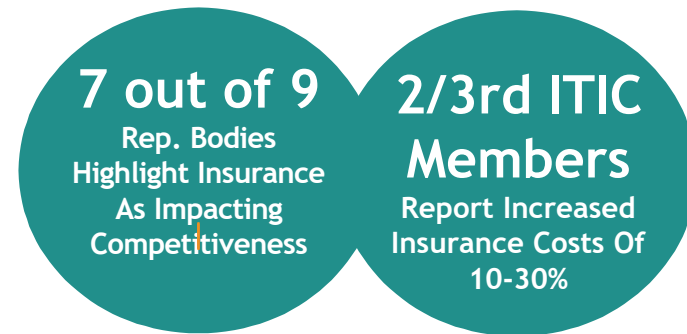
- High levels of awards are only made in the cases of catastrophic injuries and where the business owner/ operator has been shown to be clearly negligent
- A “claims culture” does not appear to exist outside Ireland and seems to be somewhat of an Irish phenomena
- Insurers understand and recognise best risk management and health and safety practice and work closely with tourism business to implement good practice

# ITIC (Irish Tourism Industry Confederation)



## Key Industry Concerns

- Insurance costs for many businesses in the tourism sector are rising at an alarming rate.
- Insurance costs continue to increase at a time when there is evidence of a slowdown in growth in the tourism numbers and revenue
- The current insurance market regime acts as a barrier to innovation and efforts to address the seasonality and regionality. For example a number of cases have been cited where, for example, some attractions have attempted to develop themed events at certain times of the year but have encountered difficulties getting affordable insurance cover for these events.



## Key Figures

- Two thirds of ITIC members polled in their member’s survey (May 2019) reported an increase in insurance costs above the rate of inflation over the past two years ranging from 10-30%
- ITIC estimate that the future of up to 200 festivals, could be at risk due to a combination of increasing insurance premiums and regulatory changes.
- Local authorities demanding event organisers provide up to €9.6m in indemnity from their insurers.

## Solutions

- Fully support the approach of the Alliance for Insurance Reform
- Recalibrate the book of quantum
- Greater transparency on the number and cost of claims
- Establishment of a Risk Management Quality System which can provide guidance and support for tourism businesses to implement best practice in the area with the objective of reducing premium costs
- More insurance companies need to be encouraged to come into the Irish market

## International Experience

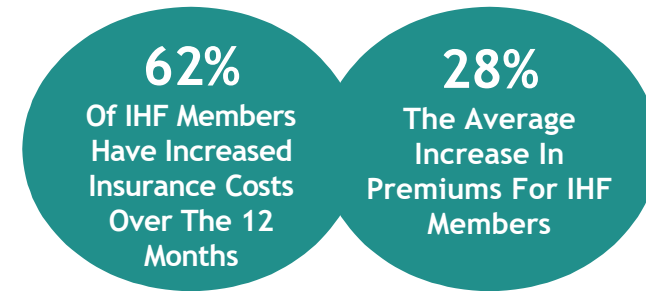
- Experiences of ITIC members would suggest that the level of insurance award payouts are completely out of kilter with what is the case internationally

# IHF (Irish Hotels Federation)

*“Levels of fraudulent and exaggerated injury claims are another major concern for our sector and one where there’s been an inexcusable lack of progress. We’re calling for a ‘zero-tolerance’ approach to fraud and for urgent priority to be given to establishing a dedicated resource for insurance fraud investigation within the Garda Síochána”*

## Key Industry Concerns

- The increases in insurance costs currently being experienced by the Irish Hotel sector, are in the IHF’s view unsustainable.
- The IHF believe that “exorbitant insurance costs” are curtailing the ability of hotels and guesthouses to re-invest in their businesses
- The current “claims culture” is making it difficult for insurance companies to make money and acts as a disincentive for new entrants to the market
- The concept of an individuals own duty of care seems to have disappeared and it would appear that in the eyes of the court, the expectation that an individual will take some responsibility for their own actions is low.
- Insurance companies settling claims without the knowledge of the policy holder



## Key Figures

- 62% of IHF Members have seen increases in their insurance costs over the last 12 months (YTD June 19)
- The average increase in premiums was 28% year on year
- 90% of the IHF Members who had experienced an increase insurance costs are concerned about the impact of these increases on their business
- €1,150 - the average per bedroom insurance cost for Irish hotels

## Solutions

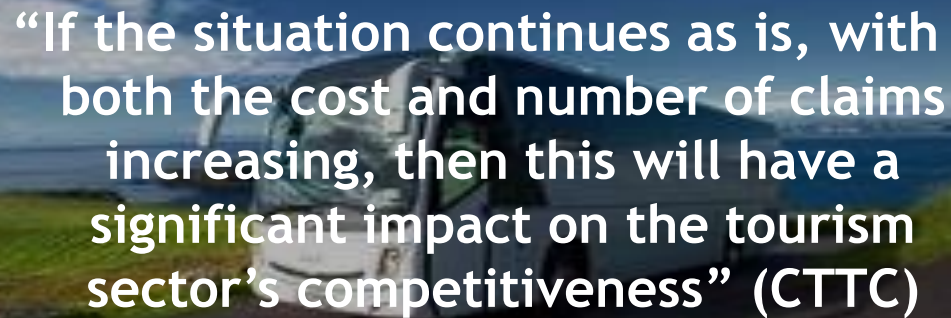
- Establishment of the judicial council to review the levels of awards for personal injuries as a priority
- Awards for soft tissue injuries to be brought down significantly in line with international norms
- Zero approach to fraud is required to create an effective deterrent against exaggerated or misleading claims. Dedicated Garda resource to be created to investigate and prosecute fraudulent
- Public awareness campaign to highlight that insurance fraud is not a victimless crime

## International Experience

- Insurance costs typically account for 1% of a hotel’s total revenue in the UK.
- The experience of an Irish hotel chain with UK operations supports the findings of the PIAB with regards to the profile of claims being 2:1 public versus employee liability claims and the level of awards being approximately four-times greater in Ireland than the UK.



# Coach Tourism & Transport



“If the situation continues as is, with both the cost and number of claims increasing, then this will have a significant impact on the tourism sector’s competitiveness” (CTTC)

## Key Industry Concerns

- There are very limited insurance options for businesses operating within the Coach Tourism sector.
- The insurance costs for operators are high as the industry is perceived to be a significant liability risk
- Many operators, provide a range of other services- school transport, coach tourism and scheduled services which all influence the cost of insurance
- Proactive risk management, health and safety initiatives and other measures employed by operators do not typically result in reducing the cost of insurance, but rather to avoid cost increases
- Implementing and adhering to these measures have their own additional and often costs
- Insurance companies settling claims without the knowledge of the policy holder
- Policy holders exposed to higher insurance costs where a claim has been made but not been settled or award made
- Public liability insurance acts as an inhibitor to innovation

**c.360,000**  
visitors to Ireland  
take escorted coach  
touring holidays

**20-40%**  
Average Increase In  
Insurance Costs For  
CTTC Members

## Key Figures

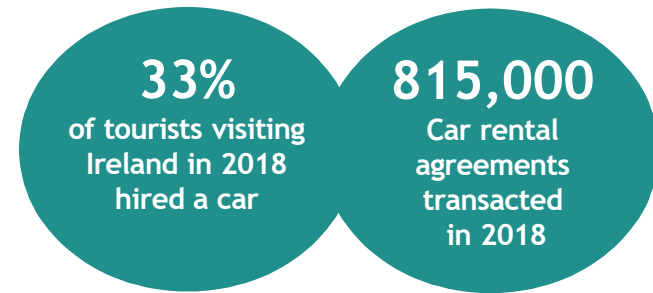
- Very little data on Coach Tourism and insurance costs, although anecdotal evidence from the CTTC would suggest that members have seen increases in insurance costs of 20-40% over the last three years.

## Solutions

- Independent body, rather than judicial led body, should be established to review and drive reform across the entire insurance industry
- Separate Garda unit should be established to investigate and prosecute insurance fraud

# Car Rental Council of Ireland

"The car rental industry in Ireland is significantly dependent on the level of overseas tourists. Seasonality is a key issue for the industry with significantly higher levels of business in July/August compared to January"



## Key Figures

- Car rental is significantly dependent on tourism numbers with over 644,000 rental agreements transacted at Dublin Airport alone in 2018.

## Key Industry Concerns

- The majority of operators within the car rental industry effectively "self-insure" with typical excesses of c.€500,000 required to operate in the market. The lack of affordable insurance options is a major disincentive for new entrants into the market and there are very few smaller independent operators.
- Many of the main operators are investing significant resources in dealing with and defending against personal injury claims. The prevailing view is that the size of awards for personal injury claims, especially soft-tissue injuries, is the main issue in driving insurance costs in the car rental industry.
- There is a concern that Ireland will be seen as expensive for tourists and become uncompetitive with increasing insurance costs contributing to price increases.
- An example cited was that of a Camper Van rental business that ceased trading in 2019 due in part to a 130% increase in insurance cost in one year. A similar business in Northern Ireland had an insurance premium of 50% less than the operator in the Republic.

## Solutions

- The Judicial Council and the establishment of the Personal Injuries Guideline Committee provides a roadmap to reduce personal injury awards and in turn reduced insurance costs. However there is concern that this reform and its effect may take too long.
- Establish a national claims database
- Make medical examinations obligatory for PIAB claims
- Establish an Insurance Fraud Garda Unit and introduce effective sanctions for making fraudulent personal injury claims

## International Experience

- The issue of insurance is not as large an issue for car rental businesses internationally.

# RAI (Restaurants Association of Ireland)



## Key Industry Concerns

- In some cases, restaurants are finding that if they have had a claim in the past five years, their current insurance provider will not renew their insurance policy.
- Claims are being settled unbeknownst to the policy holder. There are significant costs involved in preparing a defence, including the time of the restaurant owner and management, in seeking legal advice, talking to staff and getting witness statements. It does not seem to matter if the business feels they have done no wrong, claims will be settled regardless to avoid high legal fees.
- Insurance companies are using unsettled claims against the business. Some claims could take two plus years to settle and the premium increases even though the claim is unsettled and it may eventually lead to no award being given.
- Costs are rising, margins are reducing, price rises are inevitable. This is going to impact on Ireland's competitiveness as a tourism destination.

## Key Figures

- On average premiums for restaurants have increases by 30% (since when)
- Those who have had no claims in the past five years have seen their premiums increase by 20%-50%

## Solutions

- Develop a National Claims register to provide transparency on awards, claims and costs.
- Review the book of quantum and benchmark internationally
- Enhance the role of the PIAB
- Cases should only be settled once the policy holder has been informed by the insurance company
- Work with members to advise them to shop around and not to leave it to the last minute to renew

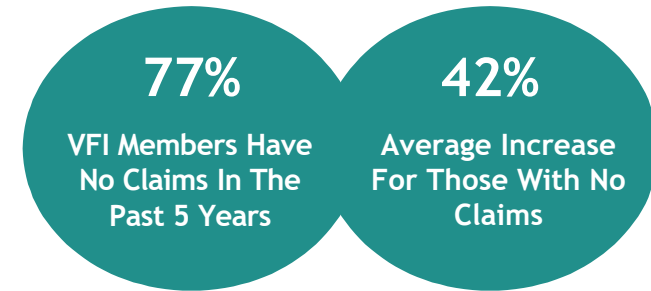
# VFI (Vintners Federation of Ireland)



“Any place that tourists are interested in visiting, are now or will have an issue obtaining affordable insurance.”

## Key Industry Concerns

- Insurance premiums are increasing even in cases where there are no claims and little to no increase in revenue or business activity.
- VFI members/publican are vulnerable to increasing insurance costs due to the very nature of their business. Many members are owner managers of small pubs which are struggling to meet increasing insurance costs.
- A prevailing issue for publicans in relation to insurance is claims for defamation of character coming as a result of publicans refusing entry or service.
- The establishment of a group insurance scheme was time consuming as multiple types of cover had to be sourced with public & employer liability, property and motor insurance required.
- At the heart of the issue is the high level of awards and settlements within the current system. Insurance companies pass on these costs to policyholders. This is coupled with a system where fraudulent and exaggerated claims are not investigated or punished.



## Key Figures

- 77% of VFI members surveyed had no insurance claims in past 5 years
- The average increase for these 77% was 42% over the same period
- VFI members survey showed insurance was the most cited issue affecting their business
- 37% of members had experienced difficulty in obtaining insurance.

## Solutions

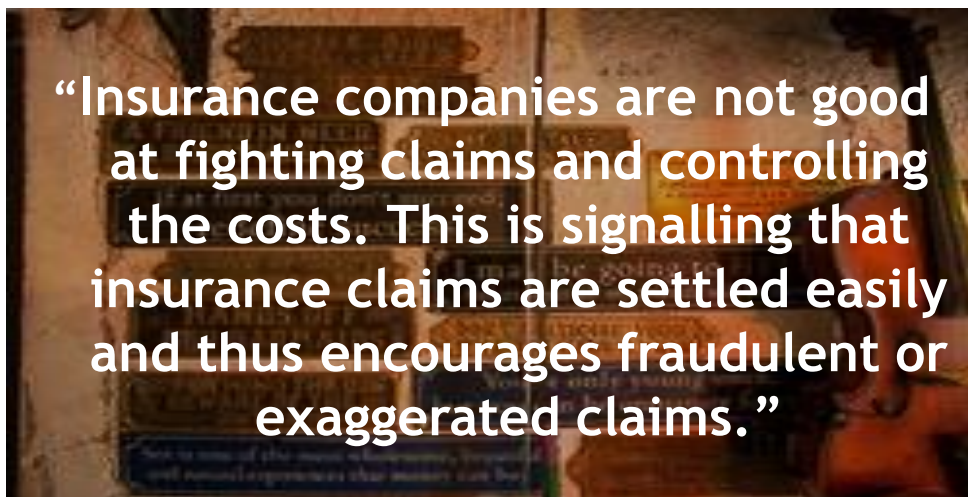
- Engaging a broker to source insurance for VFI members so at the least members have an option of obtaining insurance even if it at a high cost.
- Engaged a company in the UK to establish the feasibility of forming a Mutual Insurance company
- VFI are members of the Alliance For Insurance Reform and subscribe to there recommendations

## International Perspective

- There are approximately 48,000 pubs in operation throughout the UK. Securing affordable insurance does not appear to be an issue for these pubs.
- According to Brigid Simmonds (Chief Executive of the British Beer and Pub Association (BBPA)), “although accidents do happen in pubs in the UK, when claims do arise they tend to be settled before they go to court, and based on my knowledge of the Irish market, the level of awards is significantly below what are made in Ireland”.

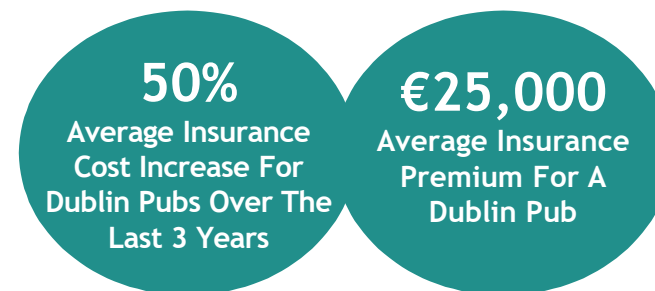


# LVA (Licensed Vintners Association)



## Key Industry Concerns

- Insurance premium costs are increasing for all pubs, including those with no claims history and which could be perceived to be low risk.
- Need for a fair balance between the rights of the claimant and the business. The onus is on business to prove they are not liable with little burden of proof falling on the claimant.
- Responsibility for one’s own action or personal duty of care seems to have been forgotten about
- Too many claims are bypassing the Personal Injuries Assessment Board process
- Insurance companies are not good at defending against claims and controlling costs.
- The current dynamic is that insurance companies push costs on to the client. Dublin publicans have a lack of choice with regard insurance cover with only 4-5 companies currently in the market.



## Key Figures

- Dublin pubs are now paying an average of €25,000 per annum on insurance.
- This represents a 50% increase on insurance costs over the last three years.
- Insurance costs for Dublin pubs equate to approximately 1% of turnover.

## Solutions

- Engaged a company in the UK to establish the feasibility of forming a Mutual Insurance company
- LVA are members of the Alliance For Insurance Reform and subscribe to and support the policy measures and other recommendations being sought

## International Experience

- Based on the British Beer and Pub Association the Cost of Running a Pub Reports there appears to be little to no increases in the cost of insurance for British pubs.
- For example the average insurance cost for a Town Centre pub, with weekly turnover of £10,000, was £61 per week or 0.4% of turnover in 2017, which was the same average figure in 2015.

## SECTION 4

# Benchmarking

# Benchmarking

Within this section of the report, we consider the level of awards for soft tissue injuries in other jurisdictions benchmarking these against the average level of awards made in Ireland. The information presented is based on research undertaken by the Personal Injuries Commission (PIC).

We also examine policy measures and other initiatives that have been employed internationally with the objective of promoting sound and effective safety management approaches and mitigating businesses against insurance claims.

As part of the research we did contact several UK and international tourism organisations in relation to insurance and associated issues which are central to this report. **However the international research would suggest that insurance (cost & availability) is not an issue of concern in these markets. As a consequence little to no comparable research or analysis is available.**

The focus of our research therefore has been on markets where historically there have been insurance related issues which have been resolved through a combination of legislative and regulatory measures.

Specifically the research has focused on increased regulation for the adventure tourism sector in New Zealand through the enactment of *Health and Safety in Employment (Adventure Activities) Regulations* and the *Equine Activity Liability Act* which was introduced in the USA.

In addition, the research also examines experiences in other sectors (construction and retail) of the economy in Ireland and the steps/ measures that have been introduced to help mitigate against the rising cost of and availability of insurance for businesses in these sectors.



# Benchmarking - Claims & Awards

## Key Findings of Personal Injuries Commission

- In July 2018 the PIC issued its final report which benchmarked Irish personal injury award levels and examined alternative compensation and resolution models in other countries.
- **The PIC found that comparison of insurance and claims data across jurisdictions is complex in nature.** This is due to lack of consistency in recording and coding personal injury data, different legal and medical systems and the lack of available data. Therefore the PIC's detailed comparison was restricted to that of general damages of soft tissue injuries between Ireland and England and Wales.
- The data used was supplied by eight Insurance Ireland members and the UK Ministry of Justice.
- The headline finding is that **the level of general damages for soft-tissue injuries in Ireland was 4.4 times that of England and Wales, when examining claims between €1k to €50k.** This figure increased to 5 times when comparing claims between €1k to €100k.
- It is interesting to note that **between 2015 and 2017 the average general damage claim increased, by €1,853 or 9.8%.**
- Depending on the company, between 92% and 98% of all claims settle for less than €50k. Between 72% and 83% of all claims settle for less than €25k.
- Figures from the UK appear to suggest that the vast majority of soft injury claims are settled for less than €10k.
- The PIC concluded, based on their analysis of 10 other countries, that soft-tissue injury claims settle for significantly less in these other countries when compared to Ireland.

## Average Value of Soft-tissue Injury Claims - Ireland v UK

Year	Between €1k-25k	Between €1k-50k	Between €1k-100k
2015	12,917	16,679	18,973
2016	13,438	17,452	19,904
2017	13,716	17,965	20,826
<b>Overall Average (Ireland)</b>	<b>13,336</b>	<b>17,338</b>	<b>19,862</b>
UK (with psych) (adj for inflation)	3,984	3,984	3,984
UK (without psych) (adj for inflation)	3,612	3,612	3,612
<b>Overall Average (UK)</b>	<b>3,798</b>	<b>3,798</b>	<b>3,798</b>
<b>Ireland: UK (with psych)</b>	<b>3.35</b>	<b>4.35</b>	<b>4.99</b>

Table 2: Average value of claims in Ireland compared to the UK - Personal Injuries Commission - Second & Final Report July 18

## Illustrative Example - Soft-tissue Injury Claims in Other Countries

Country	Description	
Ireland	Minor soft tissue "whiplash" injuries	Up to €15,700
Canada	Minor Injuries such as sprains and soft-tissue injuries ('whiplash')	\$CAD 3,500 (€2,327)
South Australia	A minor cervical spine injury has an Injury Scale Value (ISV) of 0-4 points	ISV > 11 starts at AUSD\$3,210 (€2,106)
Germany	Cervical spine (soft-tissue injury ("whiplash"))	"Light" €313 - 1,125 "Middle" €5,384 -13,687
Netherlands	"Whiplash"/soft tissue type injury	"Minor" €1,250- 5,000 "Moderate" €5,000-12,500

Table 3: Examples of the level of awards for soft-tissue injuries in other countries - Personal Injuries Commission - Second & Final Report July 18

# Benchmarking

## The Health & Safety in Employment (Adventure Activities) Regulations 2016, New Zealand

To ensure that New Zealand's reputation as an attractive, high-quality tourism destination is maintained and adventure activity participants are protected, the government introduced regulations in 2011 to ensure operators have sound safety management systems in place - the Health and Safety in Employment (Adventure Activities) Regulations 2011. These regulations have been updated, most recently in 2016.

The regulations require commercial operators who provide adventure activities, as defined by the regulations, **to pass safety audits and become registered by WorkSafe New Zealand (WorkSafe)**. Passing a safety audit is required for registration.

WorkSafe must develop and continue to review safety audit standards specifying the requirements that adventure activity operators must comply with to reduce risks when providing adventure activities. Safety audit standards must include requirements to manage the risks of drug and alcohol use by operators and their staff. WorkSafe may publish a safety audit standard, or a change to a safety audit standard, by notice in the New Zealand Gazette.

Safety audits are performed by safety auditors recognised by WorkSafe. Safety auditors are engaged directly by operators. A safety auditor must audit an operator for compliance with

the safety audit standard that applies to the adventure activities provided by the operator. If the operator passes the safety audit, the auditor must issue a safety audit certificate to the operator that specifies the adventure activities that were audited. Safety audit certificates are valid for a period specified by the auditor up to a maximum of three years. Renewal is required on or before the expiry date. An auditor may issue a certificate subject to any conditions the auditor considers are required to maintain the safety of the activities, as consistent with the safety audit standard.

Having passed an audit, it is the operator's responsibility to continue to comply with this standard. They must ensure their safety culture remains positive, the approved SMS is followed, and good practice is maintained. Additionally, they must review their SMS in response to new information or as their business changes

High standards of health and safety, governed by a legislative framework, can contribute to and support a destination's reputation, while affording greater levels of protection to visitors who may engage in perceived high risk activities, while at the same time help mitigate against accidents and associated insurance claims.



# Benchmarking

## Equine Activity Liability Statutes

Historically, under the common law in the USA, liability for harm to persons participating in equine activities were determined based upon traditional tort law concepts, which included "assumption of the risk" and what is known in Ireland as Contributory negligence. However, forty-seven states have made modifications to the common law by adopting the Equine Activity Liability Act as an effort to limit the amount of liability equine owners, sponsors, and professionals would be at risk for the injury or death of a participant in Equine activities.

The Equine Activity Liability Act (EALA) is an umbrella term referring to the various statutes that have been adopted by most states in order to facilitate the occurrence of equine activities. The EALA accomplishes this task by limiting the amount of financial liability associated with such activities. While each state has its own variation on the terms and stipulations of the act, the underlying intention of the EALA is to encourage equine activities by limiting the civil (tort) ability of those individuals harmed at equine events and activities to sue the individuals who organize or sponsor the events. The reasoning supporting this law is that equine activities provide a variety of benefits to the states in which they occur; however, many risks of injury are involved with such activities due to the unpredictability of any equine's behaviour.



# International Benchmarking

Over the past couple of decades, Legislators saw a need for the enactment of Acts which provided a level of protection to providers of Equine Activities and the economic benefits to local economies that those activities bring. On the other hand the Acts provide protections to participants in these activities while limiting any cause of action arising from an inherent risk of a horse related activity. Some laws define this inherent risk as the propensity of an equine to behave in ways that may result in injury, death or damage to people on or around them.

Prior to the enactment of these laws the tort of negligence was seen as too wide a concept which in the context of inherently risky Equine activities was leading to a level of litigation which would ultimately affect the viability of said activities.

Therefore, in order to preserve equine-affiliated areas of the economy and to facilitate equine activities, protection was needed from increased liability imposed on equine sponsors and professionals. This need for protection led to the adoption of the EALA throughout the 1990's. For example, New Mexico's EALA statute, which is representative of most statements of legislative intent, states that:

***“ The legislature recognises that persons who participate in or observe equine activities may incur injuries as a result of the numerous inherent risks involved in such activities. The legislature also finds that the state and its citizens derive numerous personal and economic benefits from such activities. It is the purpose of the legislature to encourage owners, trainers, operators and promoters to sponsor or engage in equine activities by providing that no person shall recover for injuries resulting from the risks related to the behaviour of equine animals while engaged in any equine activities.”***



# International Benchmarking

There are certain exceptions to the liability immunity of the EALA. Many states hold that an equine sponsor or professional, corporation, partnership or any other person will be held liable for injuries of an equine activity participant if he or she displays a willful and wanton or intentional disregard for the safety of the participant and if he or she fails to make reasonable and prudent efforts in ensuring the safety of the participant - for example, by providing a participant with a horse, which the sponsor does not properly determine would fit the capability of that particular participant.

In addition, one will be held liable for the injury of an equine activity participant if the participant is injured on the land or at a facility due to a dangerous latent condition of which was known to the equine sponsor, professional or other person. Furthermore, liability may be attributed to the equine sponsor or professional, corporation or other person engaged in an equine activity if he or she provides equipment or tack, which he or she knew or should have known, was faulty and which proximately caused injury, damage or death to the equine activity participant.

Essentially the Acts vary from State to State and contain various different components. It is important to note that the acts provide protections to private individuals as well as Professional Organisations. Many States in their version of the Acts decree that Professionals and Equine Organisations who wish to rely on the acts must post appropriate signs and if contracting with their customer the EALA language must be included in the contract wording.

In conclusion these Acts are an example of how Intervention was required by multiple States to provide legislative protections across an activity which by its very nature carries inherent risks while also providing clear protections to the public who participate in these activities.



# Benchmarking - Other Sectors

## Retail Sector

From an operational perspective, the retail sector in Ireland, shares a number of similar characteristics with Ireland's tourism, leisure and hospitality sector. For the majority of retailers their biggest input costs are labour, rent, rates and insurance. In its submission to the CIWG, Retail Ireland states that there is growing concern amongst retailers that the level of personal injury claims is making it difficult for the sector to remain competitive as they add an unnecessary cost burden as well as limiting the sector's ability to grow, create jobs and deliver value and choice to Irish consumers.

Reference was made within their submission of a survey carried out by RGDATA of its members in 2016 on the cost of insurance which found that retailers are facing increasing premiums and have limited options to shop around to obtain more affordable cover. This finding is in line with the comments of some of the insurers which attend the Working Group who stated that they had exited high footfall areas like retail due to their poor claims experience.

A key concern for RGDATA's is the propensity of insurers to settle claims easily, which in turn adversely impacts on retailers' claims history, precluding them from sourcing alternative cover. Directly related to this was their concern about what they see as the prevalence of fraudulent claims and the general claims culture in Ireland. On the overall cost of insurance, RGDATA noted that insurance costs are not limited to the initial premium outlay. **Excess payments on claims are also a real burden as for many businesses, an excess on a retailer can range from €5,000 to €10,000 per claim.**

What this means is that while the bulk of the claim may be covered by the insurer, **the retailer has to find up to €10,000 to pay toward each claim directly.** The impact of this is multiplied for a retailer facing multiple claims. For example, a retailer facing four claims of €25,000 each could have to fund excess payments of between €20,000 and €40,000 depending on the level of excess.

Both RGDATA and Chambers Ireland pointed out that the increase in insurance prices was posing viability issues for some businesses due to their inability to sometimes be able to absorb these costs. Chambers Ireland also outlined their concerns around the claims culture.

In response to the issues and challenges facing the independent retail sector in Ireland, RGDATA has called on the Government to impose a Supertax on the profits of insurance companies, if the levels of premiums do not start to come down sharply.

The organisation has also called for solicitors to be compelled to put clients on proof of claims made and damages alleged. Where a Court throws out a case for being exaggerated or fraudulent, there should be a mandatory referral of the prosecuting solicitors to the Legal Services Regulatory Authority to determine if they breached their professional duties or were actively complicit in misleading a Court and the business defending the claim.

Linked to this point, Rossa Fanning Senior Council has gone as far to suggest that there should be some financial penalty for solicitors who have supported claimants who are subsequently found to have taken fraudulent or exaggerated claims.



# Benchmarking - Other Sectors

## Construction Sector

Similar to the tourism sector, the construction sector has experienced increased insurance premium costs.

Discussions with the Construction Industry Federation (CIF) pointed to challenges for a number of its members in securing affordable insurance cover approximately 12 to 13 years ago that led to the creation of a self-insured insurance scheme for many CIF members. While the scheme was in existence for a number of years, it is no longer in operation.

More recently, in its submission to the CIWG, the CIF noted that over a 12-month period during 2017, Employer Liability/Public Liability (EL/PL) premiums had risen by up to 50pc for some firms operating in the sector.

The CIF described these increases as “unsustainable and unjust”, with it been reported that rising claims settlements been responsible for the increasing premium costs and resulted in insurance becoming a key topic of conversation and agenda item for the CIF and its members.

While there is a sense that businesses in the construction sector are currently paying excess amounts for insurance cover, insurance is not featuring as a cause for concern. It is felt by the CIF that as the construction sector is particularly buoyant at present that firms operating in the sector have been able to absorb insurance price increases within their businesses.

Notwithstanding this, the CIF continues to adopt a very proactive approach to supporting its members to manage and mitigate against excessive insurance costs.

A key driver of this has been the Safe-T-Cert certification scheme designed for certifying the Safety Management Systems of contractors working in the construction industry. The Scheme’s objective is to improve health and safety management by providing objective standards and certifying those contractors whose safety management systems have been assessed, and can demonstrate that they:

- Are in line with the ILO guidelines for Safety Management Systems
- Meet the basic requirements for training and competence
- Implement an occupational health and safety management system which meets the requirements of the organisation - incorporating continual improvement.
- Address relevant national legislation
- Demonstrates commitment at all levels within the organisation

The Safe-T-Cert scheme is not a mandatory scheme, but its take up amongst CIF members is particularly high as it bestows on certified companies a number of benefits, including ISO 9001 quality accreditation, its satisfies public procurement health and safety requirements, provides peace of mind for clients, and can lead to **discounts of up to 20% for certified companies for public and employer liability insurance.**

Even voluntary codes for health and safety management, if adhered to can contribute to reduced incidents of accidents and claims, which for the construction sector has resulted in insurance cost savings for contractors working in the sector.



## **SECTION 5**

# Conclusions & Recommendations



# Conclusions and Recommendations

The issue of cost and availability of insurance has reached a crisis point for many businesses, including a number of those operating across Ireland's tourism, hospitality and leisure sectors. **The key challenge for many operators is securing appropriate liability insurance and on a cost effective basis.**

The research has pointed to a number of factors that have given rise to the challenges now inherent in the insurance market, with **the high level of public liability awards, fraudulent and exaggerated claims, and a general "claims culture"** being cited as key contributory factors.

Within the tourism sector, some business closures and the cancellation of some festivals and events have been directly attributed to rising insurance costs, which for many businesses are now at an unsustainable level. Some overseas contributors to this research have also expressed the view that if comparable businesses in the UK were exposed to the same level of insurance costs as Irish businesses, the viability of some of these businesses would be called into question.

At the same time, it is important to acknowledge that since 2014 Irish tourism has been in recovery mode, which has been characterised by increased volumes of tourists, increased levels of employment within the sector and increased levels of turnover within many tourism businesses.

Each of these factors will be considered by an underwriter when reviewing risk and pricing insurance for a client and could in their own right have led to natural price increases.

While all sub-sectors of the tourism industry have been impacted upon, to varying degrees, by current trends in the insurance market, **our research would suggest that activity and adventure tourism operators, in addition to the organisers of smaller festivals and events throughout the country have been particularly affected.**

A key consequence of this is that **it is becoming increasingly difficult for tourism operators to offer truly experiential tourism as insurers are increasingly restricting the types of activities that can be offered and are actively discouraging audience participation.**

This has direct consequences for Fáilte Ireland and other state agencies, such as the Arts Council, who are actively supporting the development and promotion of these types of activities and events.

In the face of rising insurance costs, initially within the motor sector and more recently increasing costs and difficulties in securing insurance for some businesses, the Government has initiated reviews of the insurance sector with the objective of identifying policy and judicial responses which can contribute to addressing these issues.

In this regard, the CIWG and PIC have conducted extensive research on the topic and have made a number of recommendations some of which have been implemented. Furthermore, the passing of the Judicial Council Bill, in July 2019, will see the **creation of the Judicial Council which in addition to promoting a range of issues including standards of conduct, sentencing guidelines and other matters, will with the establishment of the Personal Injuries Guidelines Committee (PIGC) look to reform and redraw guidelines on the levels of personal injury payouts.**

# Conclusions and Recommendations

While judicial council reform is welcomed by all, the pace of reform may not come soon enough for some. Based on our consultations, real concerns exist within the adventure tourism and festivals sector with regards to securing insurance cover for many operators/organisers for 2020.

It is evident from our analysis that no one silver bullet exists to resolve the current situation, and the general consensus is that it will take a number of measures to restore some normality to the Irish insurance market and by doing so address the issue of cover and cost.

This is a view shared by Minister for State Michael Darcy who has responsibility for bringing down the cost of insurance, when he stated:

***“ There is no single policy or legislative initiative which the government can take to persuade insurers to provide cover to the leisure sector as it would appear that insurers have not had a positive experience with the sector over the last number of years.”***

There is much consensus amongst the tourism, insurance and legal sectors on some of the key measures or initiatives which need to be implemented to address the current challenges within the market. In a number of cases, these have been flagged by other independent research or organisations in the sector. Many of these measures were considered by the CIWG and ongoing actions are being taken to address these.

## Key Actions/Recommendations For Insurance Sector Reform

- **Recalibrate the book of quantum** (with a particular focus on soft tissue injuries) and place a cap on legal costs and fees
- **Adopt a standardised objective approach to assessing ‘whiplash’ and ‘soft tissue’ injuries**, such as the Whiplash Associated Disorder (WAD) grading system used in Quebec, to determine the level of awards when settling claims
- **Greater alignment of the level of awards available particularly in the lower courts to those PIAB can make** to encourage the majority of claims to be settled through the PIAB framework
- **Meaningful disincentives and fair and equitable consequences** should exist for all parties where claimants do not cooperate, in a meaningful way, with the PIAB or where parties are found to have lodged fraudulent or exaggerated claims
- **Greater effort must be made to tackle insurance fraud and the incidence of exaggerated claims**
- **Insurance companies must become more transparent** in terms of their information regarding premium levels, claims and costs
- **Re-define and re-balance the “common duty of care”**. When it comes to personal injury claims, business owners need to be afforded some protection where they are seen to have taken sensible and proportionate steps to health and safety and risk management within their businesses.

# Conclusions and Recommendations

In addition to the broad insurance reform measures outlined in the previous page, the international benchmarking undertaken as part of this research has also identified some measures taken in other jurisdictions which could be explored within the context of overall reform of the Irish insurance market and which could be particularly relevant to the Irish tourism sector. These measures and other tourism sector specific recommendations are outlined in the following table

## Recommendation

### Establishment of Mutual Insurance Solution

- A mutual insurance scheme is an insurance scheme owned entirely by its policyholders. Any profits earned by a mutual insurance company are either retained within the company or rebated to policyholders in the form of dividend distributions or reduced future premiums.
- Mutuality is a growing sector within the insurance world and is particularly appealing to industries that have suffered in the past from the cyclical nature of the standard insurance market. The adventure activities industry is a perfect example of this.
- Within the UK, Activities Industry Mutual (AIM) was established to provide cover for activities ranging from water sports and cycling to climbing and coasteering, and offers long-term benefits to individuals and organisations operating in all areas of the adventure activities and outdoor education sector.
- AIM work closely with some of the UK's leading industry bodies such as IOL and AHOEC to promote best practice in the sector, and aim to be the leading information resource on risk management and enhanced professional practice in the industry.
- While a number of the representative bodies we spoke to have identified previous/ on-going efforts to develop a mutual insurance scheme, it would appear that as stand alone bodies, **many lack the scale and resources to put such a structure in place.**
- There may be some merit in exploring with IPB Insurance, Ireland's only indigenous mutual insurer, the opportunity for the creation of a dedicated scheme for tourism businesses. Such an initiative could be considered in the context of the development of a new national tourism regulation scheme.



# Conclusions and Recommendations

## Recommendation

### Development of New National Regulation/ Certification Scheme for Tourism Businesses

- Health and Safety Accreditation Schemes have been successfully developed in other jurisdictions as a means of protecting the health, safety and well-being of staff and participants of these activities.
- All adventure tourism operators throughout New Zealand, for example, require safety certification under the Adventure Activities Certification Scheme, demonstrating that they have sound Safety Management Systems in place.
- Within Ireland, the Safe-T-Cert scheme was developed by the CIF as a means of certifying the Safety Management Systems of contractors working in the construction industry.
- Some consideration should be given to the development of similar accreditation for operators within Ireland's tourism sector. This could initially be developed for the adventure/ activities tourism sector, which in turn could be rolled out to other sub-sectors of the tourism industry.

### Legislate for high risk activities/ events

- Similar to the Equine Activity Liability Act (EALA) in the USA, legislative steps could be taken to limiting the amount of financial liability for operators of businesses in the adventure tourism and other activities sectors where there are inherent risks in partaking in such activities.
- This would not attempt to make business owners immune from liability where there was a willful or intentional disregard for the safety of the participant or where they failed to make reasonable and prudent efforts in ensuring the safety of the participant.
- However, it should aim to afford some **protection from claims where such operators could demonstrate that sensible and proportionate steps have been taken to protect all participants from harm or injury.**

# Conclusions and Recommendations

Recommendation	
<b>Tourism Sector Insurance Data Base</b>	<ul style="list-style-type: none"><li>• As outlined throughout this report, there is a significant information gap in relation to insurance claims, costs and awards data.</li><li>• At the same time, it is these factors that are being used to justify increases in the cost of insurance and the decisions by some operators to not provide cover to certain businesses or activities.</li><li>• There is still some uncertainty as to what information will be available from the National Claims Insurance Database and how it is to be applied.</li><li>• In this regard, there may be some merit in the conduct of some market research with the objective of gathering, analysing and reporting on insurance claims and cost data for all components of the tourism sector.</li><li>• Fáilte Ireland could take the lead role in the conduct of such research, but it would be imperative on all the representative groups across the sector to encourage their members to participate.</li></ul>
<b>Training &amp; Development</b>	<ul style="list-style-type: none"><li>• The research has pointed to some weaknesses and deficiencies in how some businesses manage their insurance costs and their general approach to risk, health and safety management.</li><li>• Fáilte Ireland in conjunction with the sector's various representative bodies should explore the potential to provide some training support and guidance on the issue.</li></ul>

# Conclusions and Recommendations

## Recommendation

### Promoting a culture of health and safety management within the tourism sector

- The tourism sector, like a number of other business sectors is subject to significant health and safety legislation and regulation. However, this can often be viewed as an additional administrative and financial burden placed on the sector.
- Tourism businesses and operators need to recognise for their customers, guests and staff that health and safety is a very important consideration, and must place it at the core of everything they do.
- As Fáilte Ireland's own **Safety Guide for Small Tourism Businesses** outlines "Operating a safe business has a lot of benefits. If you can demonstrate that you are doing things safely customers feel confident and safe. If they know you care enough to make an effort about safety they will know you have their interests at heart. Doing things safely helps you to be organised and usually more efficient. Doing things safely is also a legal requirement. Accidents and injuries only get in the way of good business. A prosecution for breaches of safety can put you out of business".
- In addition, high levels of health and safety standards can potentially bring an activity which might otherwise be outside an insurers risk appetite within the scope of what they would consider insuring.
- Similar to Construction Safety Week, promoted by the CIF, Fáilte Ireland could take the lead role in promoting a similar initiative across the tourism sector with the objective of:
  - Reducing the number of accidents and incidents across the sector
  - Promoting a culture of sharing lessons learned and best practice case studies in safety, health and wellbeing
  - Reflecting on the positive initiatives taken and celebrating achievements in good safety performance, whilst appreciating the potential consequences of failing to act responsibly in terms of safety and health.
  - Continuing to work with all stakeholders throughout the sector to strengthen the tourism industry's safety and wellbeing culture.

# APPENDIX

**Appendix A**

**List of Participants**

**Appendix B**

**List of Tables & Figures**

**Appendix C**

**Bibliography**



# Appendix A - List of Participants

Body/ Organisation	
Alliance for Insurance Reform (AIR)	Peter Boland
Association Of Irish Festivals & Events (AOIFE)	Colm Croffy
Association of Leading Visitor Attractions (ALVA)	Bernard Donoghue
British Association of Leisure Parks, Piers & Attractions (BALPPA)	Paul Kelly
Blackrock Insurance Solutions	
Brady Insurance/EventInsure	Jane Brady
British Beer & Pub Association (BBPA)	Brigid Simmonds
Chubb Insurance	
Construction Industry Federation (CIF)	Dermot Carey
Cork Choral Festival	Elaine FitzGerald
Cork Mid Summer Festival	Conall Ó Riain
Cork Jazz Festival	Rory Sheridan
Coach Tourism & Transport Council of Ireland (CTTC)	Kevin Traynor
Dalata Group	Sean McKeon
Department of Finance	Cathal Sheridan
Galway Arts Festival	John Crumlish
HOTREC	Christian Bain
Ireland's Association of Adventure Tourism (IAAT)	Brendan Kenny

Body/ Organisation	
The Irish Street Arts, Circus & Spectacle Network	Lucy Medlycott
Irish Hotel Federation (IHF)	Tim Fenn
Irish Tourist Industry Confederation (ITIC)	Eoghan O'Meara Walsh
Licensed Vintners Association (LVA)	Donall O'Keefe
Personal Injuries Assessment Board (PIAB)	Stephen Watkins
Restaurants Association of Ireland (RAI)	Adrian Cummins
Shannon Heritage	Niall O'Callaghan
St. Patricks Festival	Susan Kirby
Tayto Park	Charles Coyle
The Underwriting Exchange	
Tourism Alliance UK	Kurt Jansen
Vintners Federation of Ireland (VFI)	Padraig Cribben
Westport House	Biddy Hughes & Seamus Meagher
Ireland's Association of Adventure Tourism (IAAT)	Brendan Kenny
Car Rental Council of Ireland	Paul Redmond

# Appendix B - List of Tables & Figures

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2	Average value of claims in Ireland compared to the UK - Personal Injuries Commission - Second & Final Report July 18
3	Examples of the level of awards for soft-tissue injuries in other countries - Personal Injuries Commission - Second & Final Report July 18

Figure No.	Figure Description
1	Methodology & Approach
2	No. of trips to Ireland and Overseas - CSO Tourism & Travel Data Quarter2 2019
3	Types of insurances for businesses
4	The Insurance Cycle - Hard Market Vs Soft Market
5	No. of Applications & Awards - Personal Injuries Assessment Board
6	Assessments completed by type - Personal Injuries Assessment Board
7	Figure 7: Personal injury cases filed in Irish Courts - 2014 to 2016 - The Courts Service Annual Reports
8	The average percentage of cases filed by Court, 2014 to 2016 - Extract From Courts Service Annual Reports
9	Total amount of personal injury awards by the Courts 2015 to 2016 - The Courts Service Annual Reports
10	Total amount of personal injury awards by Circuit & District Courts 2014 to 2016 - The Courts Service Annual Reports

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