APPENDIX 1

RE: REVIEW OF THE ADMINISTRATION OF CIVIL JUSTICE

The Self-Insured Taskforce (SITF) welcomes the opportunity to make a submission to the Working Group on the Review of the Administration of Justice.

The Group's members are drawn from Semi-States, Local Authorities, State Agencies and a number of private companies. Collectively we hold provisions against accident liabilities of almost **€1 billion** and employ around **95,000 staff**. We have vast experience of the day to day handling of personal liability claims under our self-insured programmes.

To set the context for our submission we outline some of the recurring experiences of the SITF members:

1. The vast bulk of litigated cases are finalised by way of negotiated settlement: some because of the merits of the case and others for economic reasons, including the avoidance of excessive litigation costs. Please see Appendix 1 for analysis of the proportion of cases that go to full hearing.
2. The Plaintiff dictates the pace of litigation. Despite attempts by the Defendant to bring cases on for trial, inordinate delays can occur. This undermines the ability of the Defendant to defend fully – the locus might have changed, expectations for compensation rise, and, not a small consideration, excessive legal and special expert costs can be incurred.
3. There is little or no detail in the Letter of Claim in most instances, and the notification is usually not within the two-month timeframe as required under the Civil Liability & Courts Act 2004. This causes delays and adversely impacts the Defendant's ability to carry out a proper investigation into the circumstances of the alleged incident. CCTV may no longer be retained and the locus may have changed. The pleadings are also often short on detail.
4. Cases are often brought before the incorrect Court. This may be a tactic by the Plaintiff to have the bar set for higher compensation in negotiations, and have the threat of incurring the higher Court's attendant legal costs in default of negotiated settlement. This is a factor taken into account when calculating the 'economic sum' by the SITF members. This also puts added pressure on the High Court Lists.

The administration of personal injury claims is obviously of considerable interest to us and it is in that context that some preliminary suggestions are made for this Review. In the tight timeframe of this call for submissions, we held a meeting of some Members and consulted with others electronically.

We would welcome a consultation process on a number of measures which are adversely effecting job security and operational efficiency. Our bottom line claims costs, which can result in the curtailment of services for those operating under fixed budgets, are not mediated through what is a volatile and dysfunctional insurance market as found by the recent Cost of Insurance Working Group.[1]

(a) IMPROVING PROCEDURES & PRACTICES

[1] The general views of the Self-Insured in this context are recorded on page 69 of the report of January 2018 report on Employers' and Public Liability insurance. http://www.finance.gov.ie/wp-content/uploads/2018/01/180125-Report-on-the-Cost-of-Employer-and-Public-Liability-Insurance.pdf

It is suggested that, given the fact that **less than 6% of injury claims proceed to oral hearing** (see Appendix 1), almost every such case could be regarded an 'outlier'. As such, there is a clear requirement for close and pro-active case management by the judicial system of litigation from the time proceedings are issued, supported by prescriptive pre-action protocols which will soon apply in clinical negligence claims.[2]

Such case management might be undertaken by judges assigned to the Commercial Division who would not ultimately be hearing these personal injury actions. The concept of case management has been under discussion as far back as 2001 when the then Chief Justice the Hon. Mr Justice Ronan Keane identified some of the main challenges and made detailed proposals for action.[3] In 2008 similar measures are reflected in recommendations by the Law Reform Commission. [4]

Many of the existing legislative and procedural provisions are acknowledged more in the breach than the adherence. For example, the requirement that a potential defendant be notified of an accident within two months is not being enforced even where substantial prejudice to the defendant can result e.g. road works completed and the locus no longer exists.[5]

Our experience is of wasted Motions lists before the personal injury judge. This often seems to be used as a way of clocking up fees by 'going through the motions'. The inefficiencies in the system reflect those identified by the Denham Report in 2004 and many of those 23 recommendations have yet to be implemented.[6]

While the Court of Appeal has recently tightened up some areas of delay, this is still a major feature of plaintiff actions. That often prejudices defendants' prospects of successful defence and their right to justice. There are existing rules which are not being rigorously imposed. This means that there are no deterrents to delays, which also result in excess costs.

Although we accept that it may not be within the remit of the Review of the Administration of Civil Justice, the continuing delays in establishing a better system for the adjudication of litigation costs is a matter of frustration for our Members.[7] The lack of transparent and predictable guidelines probably also causes harm to vulnerable court users and curtails their access to justice. There is a major increase in lay litigants, reportedly because of fears of incurring excessive legal costs and these are not always well-founded fears.

Members are generally of the view that General Damages are too high in this jurisdiction for minor and moderate injuries which represent the vast majority of the volume. We support the principle of proportionality enunciated in a number of Court of Appeal decisions since *Payne v Nugent* [2015] IECA 268. However, we are perturbed from a rule of law perspective that the administration of justice in the lower courts does not seem to accord with that appellate decision. This results in unwarranted unpredictability for both plaintiffs and defendants, in addition to adding substantially to costs and

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[2] *Changing the clinical negligence litigation landscape.*
https://www.lawsociety.ie/News/News/Stories/Changing-the-clinical-negligence-litigation-landscape/#.Wmj4b9GnyhA

[3] In a lecture delivered to UCC Law Society on 23 March 2001 as reported in The Bar Review April 2001 pages 321 to 328.

[4] Recommendations are on page 39. (LRC 97 - 2010) CONSOLIDATION AND REFORM OF THE COURTS ACTS

[5] Section 8 Civil Liability & Courts Act 2004.

[6] THE COMMITTEE ON COURT PRACTICE AND PROCEDURE. 29TH REPORT. INQUIRY TO EXAMINE ALL ASPECTS OF PRACTICE AND PROCEDURE RELATING TO PERSONAL INJURIES LITIGATION.

[7] Legal Services Regulation Authority Act 2015, many sections of which have not yet been commenced.

delays. Last December the first report of the Personal Injuries Commission, under the Chairmanship of Mr Justice Nicholas Kearns, also proposed such an objective percentage disability approach for soft-tissue injury.[8]

Many of our Members object to the latest Book of Quantum issued by the Personal Injuries Assessment Board in October 2016.[9] The increase in values for minor and moderate injuries offends the guidance from the Court of Appeal. Additionally, under existing legislation it is not for the Executive arm of Government to set the level of compensation as that would be contrary to the principle on the separation of powers. Statistically, the latest Book of Quantum also relies too heavily on 51,000 settlements by insurers over the two years from 2013. These would include excessive compensation amounts on settlements during a period before the Court of Appeal substantially reduced awards or overturned findings of negligence by the High Court.[10] However, at this point in time the latest Book of Quantum has the status assigned to it under the Civil Liability & Courts Act 2004.[11] There needs to be a procedure where it is consistently adhered to as we contend that an aspiration to treating '*like cases alike'* is a principle of justice reasonably sought by both plaintiffs and defendants.

The role of expert witnesses has been the subject of a report from the Law Reform Commission. [12] However, there are no practice directions or other formal guidelines in our litigation system to remind such experts that their role is to assist the court rather than advocate on behalf of the parties. It is noted that in two cases the judges referred the behaviour of witnesses to their disciplinary body.[13]

The listing system is wasteful of time and money. For example, in Dublin "*Up to 30 cases to include 2 Specially Fixed may be listed each day…Cases not assigned to a judge for hearing on the day on which they are listed will roll over from day to day until the end of that week. Any cases not reached or commenced at the end of a week will be dropped from the list and will require, in due course, an application to be made for a new hearing date in the usual manner. All Specially Fixed cases and cases afforded priority will retain priority over other cases and will be assigned for hearing in the order in which they appear in the list. All other cases will be assigned for hearing at random each day and not in the sequence in which they appear in the list."* [14] This is not an efficient use of either judicial resources nor respectful of the legitimate rights of the parties.

We suggest that there is a need for the Courts Service to produce more granular and more regular statistics on personal injury claims. This would promote openness and understanding of the true cost

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[8] https://dbei.gov.ie/en/Publications/Publication-files/First-Report-of-the-Personal-Injuries-Commission.pdf
[9] https://www.piab.ie/eng/news-publications/Corporate-publications/Book-of-Quantum.html
[10] *Half of cases overturned on appeal.*https://www.thetimes.co.uk/article/half-of-cases-overturned-on-appeal-2zj2tp
[11] Section 22 Civil Liability & Courts Act 2004
[12] (LRC CP 52 – 2008) CONSULTATION PAPER -EXPERT EVIDENCE. REPORT – CONSOLIDATION & REFORM OF ASPECTS OF THE LAW OF EVIDENCE (LRC 117-2016)
http://www.lawreform.ie/_fileupload/Evidence%20Report%20Completed%20Revised%2018%20Jan.pdf
http://www.lawreform.ie/_fileupload/consultation%20papers/cpExpertEvidence.pdf
[13] *Waliszewski -v- McArthur & Co* [2015] IEHC 264 – judge referred doctor to Medical Council for misconduct. *Dardis -v- Poplovka* [2017] IEHC 149 – criticism of plaintiff's accountant, two days' High Court costs to defendant
[14] Courts website at
http://www.courts.ie/legaldiary.nsf/97f92b362e8641b580256c590062823a/8efe1fa942a10e418025821f00583835?OpenDocument

of litigation, and dispel any misleading preconceptions (Please see Appendix 2 for examples of misleading information in the public domain.)

There is a lack of written and reasoned decisions on personal injury claims. These judgments should be issued in all cases to educate parties on what is expected of them in terms of duty of care, both plaintiff and defendant, as well as to assist the appellate jurisdiction.

Unnecessary legal fees are incurred because of the volume of unreported decisions. This often means that Counsel must be consulted to establish the current state of the law on a particular topic. This seems in conflict with the Constitutional imperative that justice be done in public. Where written decisions are issued on the Courts.ie website there is often a delay after the determination of a case and some appear not to have been properly proof-read before posting. There are severe limitations on search-ability of decisions by topic. There is an obvious need for more resources and the provision of time for writing up decisions immediately after conclusion of a hearing while all aspects are fresh in the minds of those involved.

Section 30 of the Civil Liability & Courts Act 2004, which represents the will of the Oireachtas after parliamentary debate through both Houses, requires the establishment of a database of plaintiffs and defendants. This has still not yet been progressed.

As reflected in reported remarks of Judge Nicholas Kearns, there "*were few deterrents for fraudsters*".[15] There is a low chance of detection in the instances of exaggerated and misleading claims. The objectives of Section 26 of the Civil Liability & Courts Act 2004 are clearly recorded in the parliamentary debates through both Houses. As the recent report of the Cost of Insurance Working Group indicates, defendants seem to be deprived of their right to seek justice under that legislation because of the threat of aggravated damages. Such damages are meant to have a limited role as detailed in 2000 report from Law Reform Commission.[16] It seems a Court Rule may need to be introduced to clarify.

There are a number of concerns about the administration of recoverability of Social Welfare benefits from 1st August 2014. While supportive of the principle of ending 'unjust enrichment', upon which we have made submission previously to the Department of Justice, there may be unintended consequences which have not been adequately considered. The issue is when a court order is a court order for the purposes of the legislation and the second issue relates to the compensator's obligation to pay the recoverable benefit when appealing a court order. We propose that an Affidavit of Settlement should be sufficient to satisfy the Department of Social Protection instead of their insistence on a court order. This is causing unnecessary litigation.

There is an unsatisfactory situation in Ireland that the Central Bank has refused to regulate Claims Management Companies. The President of the High Court recently ordered the closure of one such 'claims harvester'. [17] There is a disconnect between the regulation of solicitors and the extensive online advertising by such companies, some of which are based outside Ireland. We would propose

[15] Judge Nicholas Kearns fraud claims Sunday Independent 11th January 2018.
https://www.independent.ie/business/personal-finance/latest-news/fraudsters-making-false-car-insurance-claims-must-be-prosecuted-claims-exjudge-36477519.html

[16] (LRC 60 – 2000)

[17] High Court President orders closure of 'claims harvesting' website | Irish Examiner.
http://www.irishexaminer.com/breakingnews/ireland/high-court-president-orders-closure-of-claims-harvesting-website-816523.html

that the Personal Injury Summons should state whether the claimant was put in contact with their solicitor though such a source.

(b) REVIEWING THE LAW OF DISCOVERY

At times it seems from a defendant perspective that Discovery has become an automatic interlocutory stage in proceedings which needlessly adds to costs and delay. It is often a 'muscle flexing' exercise which is wasteful of judicial and parties' resources. Again this could be tackled through case management by appearing before the case management judge without the procedural complexity, and cost, of a motion.

At the other extreme, injured parties are putting their bodily integrity at issue by suing for 'pain and suffering' but there is no standing obligation to disclose medical history. In a review of cases dismissed for exaggerated and misleading claims under Section 26 of the Civil Liability & Courts Act 2004 there is a recurrent theme of undisclosed or only partially disclosed medical history. More fulsome disclosure should be mandatory in all personal injury cases under Court Rules.

(c) ADR

In the context of alternative dispute resolution, it is a disappointment that provisions on mediation at Section 15 and 16 of the Civil Liability & Courts Act 2004 seem not to have been supported by the judiciary and are not reflected in any Court Rules on personal injury claims. Perhaps the enactment of the Mediation Act 2017 will strengthen moves in that direction.

As highlighted in the data presented in the Appendices to this submission, in round terms only 2,000 of the 20,000 personal injury summons issued are reflected in court awards. This high level of unsupervised settlements must raise concerns about equity between the parties. We note with interest that in England there is a prohibition on settlement offers being made at the pre-medical report stage but we often have the contrary experience in Ireland of claimants not co-operating with independent medical examination despite a 2008 practice note by the Law Society of Ireland.[18]

In our experience there are too many personal injury claims dragged out unnecessarily to be 'settled on the steps' of the Court. In addition to this being addressed by pro-active case management as proposed, there is need for an enforced model of netting off the real issues at as early as possible a stage in the proceedings. Legal and/or evidential submissions should be required well in advance of trial not just to be shared between the parties but also ultimately provided to the judge before an oral hearing if it is necessary to proceed to that stage. Such marshalling of the real issues in contention would assist effective ADR. Again it seems that the judiciary have not been pro-actively supportive on the provisions for formal offers provided for at section 17 of the Civil Liability & Courts Act 2004.

We are also of the view that there has been a lost opportunity in not availing of the provision for Court appointed experts at section 20 of the Civil Liability & Courts Act 2004. An over-reliance on the adversarial model can deprive both plaintiffs and defendants of justice. For example, a number of motor accident cases have been opened to the Court on the basis of Irish Road Traffic Acts only

[18]https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Injuries-Board-Attendance-at-Medical-Appointments/#.WoIivSXFLIU

without acknowledgment of the superior authority of the ECJ in the interpretation of relevant EU Motor Insurance Directives which determine such entitlements, subject to national law on liability.[19] Recently the liability to discharge *Francovich* damages was held to fall on the Motor Insurers Bureau of Ireland for the failure of the State to properly implement such EU Directives.[20] There is a duty on the courts to apply EU law entitlements arising from directly effective Directives even where that redress is at variance with national law. We do not accept that the Courts availing of the assistance of their own experts is at variance with true objectives of the adversarial system to administer justice as between the parties in the action.

The primary ADR channel for uncontested injury claims is PIAB. There are currently a number of proposals by Government to enhance its operations.[21] Accordingly, these will not be repeated here.

(d) ELECTRONIC COMMUNICATIONS

There is a need to allow for the service of documents by electronic communication.

It is a reality that email is now the usual means of business communication and it is provided as a means of service under more recent Acts for several quasi-judicial bodies. This would aid efficiency for all parties. Obviously, this measure would be undertaken with the necessary security arrangements through use of modern technology, after due consultation with the Data Protection Commissioner.

(e) VULNERABLE COURT USERS

When there are rulings on offers in injury claims, the defendant is not permitted to be present in court. However, the media frequently report large sums approved in a settlement often with a photograph of the injured party. This has resulted in vulnerable claimants being hounded by unscrupulous parties. For 'persons of unsound mind' and for Minors it is suggested that their best interests would be protected by not allowing the media to publish such identities in articles which often disclose very sensitive personal data on the vulnerable party's medical condition.

Some of our Members have grave concerns about the proposed abolition of the existing Wards of Courts Office functions. Apparently these are to be transferred to rather vague and, as yet, under-resourced assisted decision making models.[22] Particularly among our Members who are publicly funded there is a concern that vulnerable plaintiffs who are currently protected through the Wardship system could find their funds misused and then have to fall back on State assistance when their needs exceed their remaining resources. We are aware that the Law Reform Commission did examine the issue of Vulnerable Adults back in 2006.[23] However, since then more recent evidence has emerged through HSE research on the financial abuse of the elderly, as reflected in the Law Society guidelines

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[19] Law Society Gazette December 2016 pages 24 to 25.

[20] October 2017 decision in *Farrell v Whitty & Ors*. ECLI:EU:C:2017:745

[21] Tánaiste and Minister for Enterprise and Innovation publishes the General Scheme of the Personal Injuries Assessment Board (Amendment) Bill 2017. https://dbei.gov.ie/en/News-And-Events/Department-News/2017/June/30062017.html

[22] More than 2,600 judged incapable protected as wards of court. https://www.irishtimes.com/news/crime-and-law/more-than-2-600-judged-incapable-protected-as-wards-of-court-1.3356429?mode=ampble

[23] 2006, the Law Reform Commission published a Report on Vulnerable Adults and the Law (LRC 83-2006), following from its Consultation Paper on Law and the Elderly (LRC CP 23-2003) and Consultation Paper on Vulnerable Adults and the Law: Capacity (LRC CP 37-2005).

on vulnerable and older clients.[24] The extent of undiagnosed capacity impairment is only now emerging and it is estimated that eleven people a day develop dementia.[25]

Even after the introduction of Payment Protection Orders (PPO's), which are likely to be of limited application in the claims most frequently encountered by our Members, there will be many large lump sum awards and some of these will involve vulnerable plaintiffs. There has been recent clarification by the Court of Appeal on the appropriate discount rate for the calculation of actuarial future loss claims. A practice direction setting out the current rate would not only enhance predictability and consistency for all parties but would also reduce outlay on experts' fees as well as shortening trials. It is acknowledged that the Government has failed to act in this context despite the provisions of Section 24 of the Civil Liability & Courts Act 2004.

IN SUMMARY, THE SITF RECOMMENDS:

1. Requirement for close and pro-active case management by the judicial system of litigation from the time proceedings are issued, supported by prescriptive pre-action protocols
2. Implement the remaining recommendations of the Denham Report (2004).
3. Existing rules should be rigorously imposed to avoid delays in the bringing of cases to trial and calling them on for hearing.
4. The principle of proportionality, enunciated in a number of Court of Appeal decisions, should equally apply to the lower Courts.
5. Section 30 of the Civil Liability & Courts Act 2004 requires the establishment of a database of plaintiffs and defendants. This should be implemented.
6. Practice directions or other formal guidelines should be provided for the role of the Expert Witness, stressing that their role is to assist the court rather than advocate on behalf of the parties.
7. Unnecessary legal fees are incurred because of the volume of unreported decisions. We recommend written and reasoned decisions on personal injury claims be made available. These judgments should be issued in all cases to educate parties on what is expected of them in terms of duty of care, both plaintiff and defendant, as well as to assist the appellate jurisdiction.
8. Claims Management companies should be regulated to avoid 'claims harvesting'
9. Section 26 of the Civil Liability & Courts Act 2004 is not effective in the deterrence of fraudulent or exaggerated claims. An effective process to deter such claims should be considered.

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[24] https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Transactions-involving-vulnerableolder-adults-to-include-requests-for-visits-to-residential-care-settings/#.WoIeCSXFLIU
[25] http://www.understandtogether.ie/

10. Full disclosure of medical history should be mandatory in all personal injury cases under Court Rules.
11. To facilitate earlier finalisation, and at reduced cost, we support the strengthening of provisions for alternative dispute resolution.
12. To aid efficiency we would support the service of documents by electronic communication.
13. Regarding the protection of vulnerable adults, a practice direction setting out the current discount rate would not only enhance predictability and consistency for all parties but would also reduce outlay on experts' fees as well as shortening trials.

Appendix 1 – Court Awards are Very Small Proportion of Total Settlements

The total number of court awards annually on personal injury actions is in the region of **2,000**. That volume includes 'medical negligence' which are currently outside the remit of PIAB where over 30,000 injury claims are registered annually.

In broad terms, over recent years the profile of personal injury can be summarised as below:

HELICOPTER VIEW OF INJURY CLAIMS VOLUMES	
34,000	Claims registered with PIAB (60% Motor, 27% Public Liability, 13% Employers' Liability)
13,000	Consents to PIAB assessment proceeding in 38% of claims (of 13,000 PIAB awards, the acceptance rate has been largely stable at 60%)
21,000	Released by PIAB to litigation
6,000	Rejected PIAB awards released to litigation
27,000	Potential Personal Injury Summons
20,000	Actual Personal Injury Summons issued [High excl 'med neg' 7,000: Circuit 12,000: District 1,000]
7,000	Variance which are neither litigated nor reflected in Court or PIAB awards

In the pre-PIAB era there were c.30,000 personal injury Writs and Civil Bills annually, of which less than 10% proceeded to trial.

In more recent years, injury claims proceed through three channels as below:

FINALISATION CHANNELS OF INJURY CLAIMS	
7,000	Finalised by formal PIAB awards
2,000	Court Awards but this volume includes 'med neg'
9,000	Recorded Compensation Award Volumes by Courts & PIAB
34,000	Claims Registered with PIAB (which excludes 'med neg'), so
25,000	No information on 74% of the volume of injury claims

Significantly more cases are settled without a hearing before a Judge – c. 25,000 versus c. 2000 that go to a full hearing. Therefore, Judges are hearing cases that have already gone through the rigour of assessment of liability on the part of the defendant, and also the consideration of settling for an 'economic sum'. The Defendant in bringing the case to full Court hearing therefore, is either fully convinced of the absence of liability on his part, or the sum being sought in compensation is considered excessive. Being mindful of the self-insured nature of the framework within which the SITF operates, and the direct hit on the bottom line, this is a significant weighing up of the options available, and the decision to go to full Court hearing is not taken lightly.

Appendix 2 – Lack of Detail in the Public Domain can give rise to Misleading Headlines

In an attempt to justify recent substantial premium increases, there have been some misleading headlines. For example, insurers stated in a press release in July 2017 that Circuit Court awards increased by 48% between 2013 and 2016.[26] That is an 'apples and oranges' comparison because of the increases in the financial limits of the lower courts.[27]

In contrast, data from PIAB for 2016 on the volume of new claims registered reflects an overall increase of (only) 1.5% on previous year and stable award values. [28] This is more consistent with the experience of the SITF.

We suggest that there is a need for the Courts Service to produce more granular and more regular statistics on personal injury claims. To give just one example to support that suggestion it seems to some of our Members that it is not helpful to a robust reform agenda for statements by Insurance Ireland to present potentially misleading statements on the trends in awards by the Courts. This can cause increased demands by plaintiffs that are not justified and results in unnecessary litigation.

Further, In September 2015 Insurance Ireland made a similarly misleading assertion in the context of High Court awards which were said to have increased by 43%. [29] The more robust statistic is the median value which actually reduced by 2.5%. For the sake of transparency the relevant data on the trend in the median values is set out below:

The High Court median value (ex top 4 @€5ml+ 'med neg')

- 2013 (range from 38k) – €65,000 on 590 awards
- 2014 (range from 38k) – €63,400 on 509 awards
- 2015 (range from 60k) - €67,000 on 469 awards

The Circuit Court median data demonstrates the trend below:

- 2014 = €11,000 on 1,018 awards (old limit 0-38k)
- 2015 = €15,000 on 1,012 awards (new 15k>60k)
- 2016 = €15,716 on 977– median value up 5% on 2015

The District Court to 15k– where scale costs apply

- *2015 = €7,000 on 500 hearings*
- *2016 = €7,500 on 535 hearings – median value up 7% on 2015*

While the award values have not increased as asserted by insurers, we still call for reversal in the increase in the financial limit of the Circuit Court, consistent with our opposition to that increase in our submission to the Minister for Justice on 4th March 2013 where we forewarned of the potential negative consequences. Psychologically, the impression may be conveyed that compensation up to €38,000 was not considered adequate and that cases at that level of severity were in future to attract damages up to €60,000. This has led to unreasonable demands and an increase in litigation

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[26] http://www.insuranceireland.eu/news-and-publications/news-press-release/average-circuit-court-personal-injury-award-increases-by-48-from-2013-2016-insurance-ireland

[27] In 2013 the limit on pleaded cases in the Circuit Court was €38,000 so of course the simple average would be lower than in 2016 because the limit changed to €60,000 in February 2014. Sections 14 and 15, Courts & Civil Law (Misc Provisions) Act 2013 with effect from February 2014.

[28] https://www.piab.ie/eng/news-publications/news/2016-personal-injuries-assessment-board-statistics.pdf

[29] High Court injury case awards up 34pc in year. https://m.independent.ie/irish-news/news/high-court-injury-case-awards-up-34pc-in-year-31496303.html

Insurers who are members of Insurance Ireland (II) state that their gross premium income in 2016 was €1,694ml on motor and €585ml on liability which is a total of €2.3bl. This information can be found in the II Factfile 2016. [30] There is substantial additional premium paid to insurers operating on a Freedom of Services basis who are not members of Insurance Ireland so conservatively policyholders in Ireland are paying in excess of €2.5bl annually for motor and liability insurance. In contrast, only €275ml can be identified in related compensation awards:

PUBLISHED RECORDS OF AWARDS BY PIAB & BY COURTS	
€169ml	Awarded and Accepted through PIAB
€106ml	Awarded by the Courts (ex 'med neg' per WG report @ 30% of High Court value) ⇨ High €85ml: Circuit €17ml: District €4ml
€275ml	Awards excl. delivery overheads

There is a clear need for improved data, preferably on a quarterly basis, from the Courts Service. This would better inform all interested parties on the various matrix relating to litigation such as the stages at which cases are concluded.

The statistics on awards which are currently published annually could give the misleading impression that there is an automatic right to compensation because no information in published on the volume of dismisses each year.

Improved statistics should show the injury claim volumes and values by type of accident (motor, Employers' Liability, Public Liability).[31] More transparency in data would improve access to justice and reduce unnecessary costly litigation.

We welcome this review and concur with the reported comments of the now Chief Justice on 3rd March 2015 that existing processes may not be fit for purpose. [32]

[30] Page 5 II Factfile 2016. http://www.insuranceireland.eu/media/Factfile%202016-Final.pdf
[31] Annual Report of the Courts Service – statistics section.
[32] https://www.irishtimes.com/news/crime-and-law/courts/supreme-court/supreme-court-judge-calls-for-review-of-procedural-law-1.2124871