

# COST OF MOTOR INSURANCE

LOWER CLAIMS COST = LOWER PREMIUM

*Property of RSA INSURANCE  
IRELAND DAC*

## Executive Summary

There is no one measure that will reduce the rising cost of insurance in Ireland, it must be holistically approached with an interlocking package of reform which will reduce claims costs and ultimately corresponding premiums.

Issues which we believe need to be addressed include:

1. **Enhance Effectiveness of the Personal Injuries Assessment Board (PIAB)** – The creation of the Personal Injuries Assessment Board had a positive impact when first introduced in reducing the cost of claims as it sought to address expensive legal costs in administering claims where liability was not in question and assessment of quantum of damages was all that was required.  
Over time, we believe the legal profession has circumvented the process resulting in the PIAB no longer being a lawyer free zone as was intended, with more cases ending in the more costly litigation process. In 2016, new claim submissions to PIAB were the highest seen to that date and acceptance levels dropped dramatically in the same year. Strict adherence to the PIAB process for claimants including the requirement to attend medical appointments as well as other processes to avoid situations where inflated costs and legal costs are incurred need to be implemented if the PIAB is to remain effective. Government launched a consultation in early 2014 seeking input in respect of PIAB reform, which was provided by the insurance industry. Four years have passed without any PIAB legislative reform with the need for the pace of reform to be accelerated.
2. **International Benchmarking of Personal Injury Awards** – Levels of awards for injury settlements are out of line with other European countries. e.g. whiplash awards in Ireland are multiples of the levels of awards in the UK (Minor Neck Injury – Ireland €19,400 v UK €7,200 (£6,372)). Awards in the Book of Quantum should be internationally benchmarked and a decision made as to the level of awards we want to provide in Ireland compared to international norms. It is not for RSA Insurance Ireland DAC to set policy on award levels but it must be remembered that award levels directly impact premium levels.
3. **The Legal Process & Costs** – The personal injury legal process involves numerous obsolete, unnecessary or over-complex rules of procedure which add to the length and cost of the legal process. Improving the efficiency and reducing the time associated with the process will reduce costs and put the claimant at the heart of the process.
4. **Tackling fraudulent & exaggerated claims** – The level of injury awards and the lack of sanction and deterrent encourage the 'have a go' claimant to pursue fraudulent or exaggerated claims. Stricter laws and penalties for fraudulent or spurious claims should result in criminal consequences. Reducing the overall level of awards, would discourage fraudulent and / or exaggerated claims as would effective sanctions.
5. **Uninsured Drivers** – The industry is paying for the cost of claims arising from uninsured drivers. This cost is passed on to the insured motorist in additional premium. Effectively tackling uninsured driving through tighter enforcement and prosecution would reduce costs incurred by genuine and insured motorists

6. Investment in Road Safety – Significant progress has been made in improving road safety in recent years. The implementation of penalty points in 2002 contributed positively to road safety and the reduced claims frequency in Ireland. Addressing known accident black spots together with sustained enforcement of penalty points, in particular for excessive speed and driving distractions, such as mobile phone usage, would contribute to reducing collisions and casualties. In addition, extending the driving licence system to include ongoing refresher training along with reducing driving test waiting times, which in areas is far greater than the 10 week target, would further demonstrate the focus on road safety.

# Table of Contents

Introduction .....	5
1. Enhance the Effectiveness of the Personal Injuries Assessment Board.....	6
1.1 Context .....	7
1.2 What is needed? .....	7
1.3 Failure to appropriately present details of injury or loss .....	8
1.4 Pre Litigation Alternative Resolution Process.....	8
1.5 Actions of the Court.....	8
1.6 Penalties for Noncompliance .....	9
In Summary, The Ask .....	10
2. International Benchmarking of Personal Injury Awards .....	12
2.1 Context.....	13
2.2 Personal Injuries Commission (PIC).....	13
2.2.1 Phase One.....	13
2.2.2 Phase Two .....	15
In Summary, The Ask .....	15
3. The Legal Process and Costs .....	16
3.1 Context.....	17
3.2 Review of the Administration of Civil Justice .....	17
3.2.1 Alternative Resolution – Mediation .....	17
3.2.2 Pre Action Protocols and Case Management .....	17
3.2.3 Court Pleadings & Documentation .....	18
3.2.4 Disclosure .....	18
3.2.5 Expert Witness .....	18
3.2.6 Tenders and Calderbank Type Offers .....	18
3.2.7 Hearing Dates .....	19
3.2.8 Consistency and Predictability of Court Awards.....	19
3.3 Legal Costs.....	19
In Summary, The Ask .....	20

4. Tackling Fraudulent & Exaggerated Claims .....	21
4.1 Context.....	22
4.2 The ability to effectively investigate.....	7
4.3 Reduced Incentive, increased deterrent.....	23
4.4 The need for more criminal prosecutions .....	23
In Summary, The Ask .....	24
5. Uninsured Drivers.....	25
5.1 Context .....	26
5.2 Penalties & Enforcement .....	26
In Summary, The Ask .....	27
6. Investment in Road Safety .....	28
6.1 Context.....	29
6.2 Maintain focus on Road Safety & Enforcement .....	29
6.3 Address known accident black spots .....	30
6.4 Driving Licence reform .....	30
In Summary, The Ask .....	31

## Appendix – Summary Slides

# Cost of Motor Insurance

## Lower Claims Cost = Lower Premiums

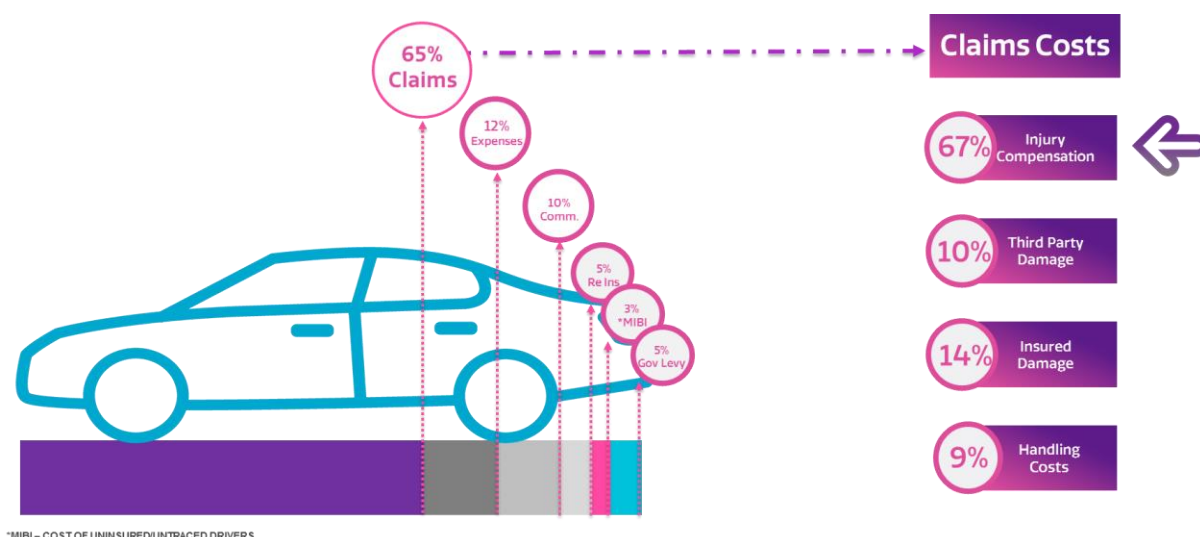
### Introduction

RSA Insurance Ireland DAC is a member of Insurance Ireland. Insurance Ireland, on behalf of member companies, have made a number of submissions highlighting the issues that need to be actioned in order to address high motor insurance costs. It is not the intention of this document to alter in any way those submissions.

Reducing the cost of insurance requires actions to reduce both the number of claims (frequency) and claims costs (severity – amount paid in claimant compensation and the associated legal costs in dealing with claims) without impinging on the rights of victims to receive fair and timely compensation.

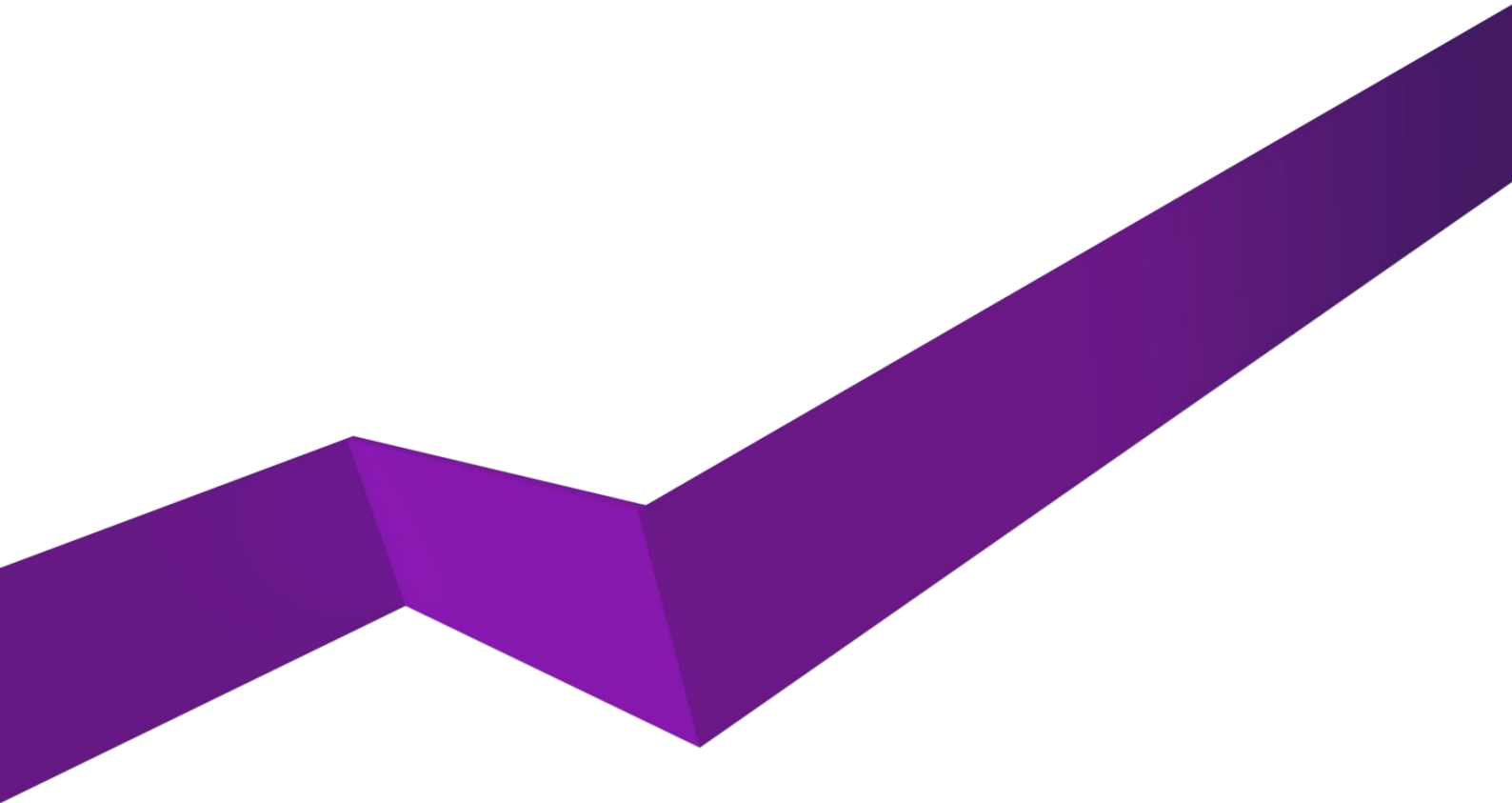
The Central Bank of Ireland analysis in their Bodily Injury Thematic Review 2015, found increases in the average cost per claim of approximately 8% in private motor, 27% in employer liability and 8% in public liability from year end 2012 to year end 2014. The Central Bank also noted increases in the frequency of private motor injury claims from year end 2013 to year end 2014 in the range of 4% to 12%, with an average of 8.3%.

The main driver of premium is the cost of claims and typically motor premium received is allocated as follows, with approximately 65% of premium allocated to claims along with 3% allocated to Motor Insurance Bureau contributions to cover claim costs for uninsured or untraced drivers.



Of the premium allocated to Claims, 67% is allocated to the cost of personal injury claims which is the cost of compensation, legal and other costs.

# **1. Enhance Effectiveness of the Personal Injuries Assessment Board**



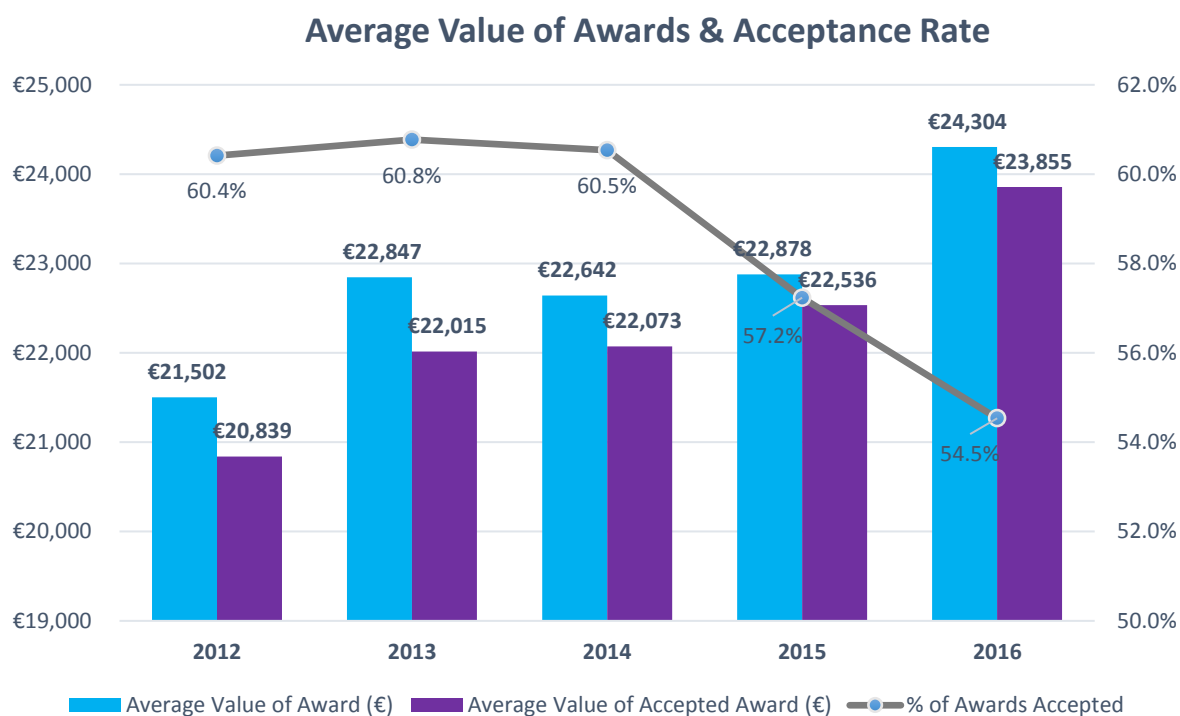
## 1.1 Context

Over the period 2012 – 2016 the volume of PIAB assessment applications increased by 15% from 29,602 to 34,056. This equates to approximately 1 in every 138 of the population of Ireland (assuming 4.7m people) presented a personal injury claim to the PIAB in 2016.

Over the same period, the value of Accepted Awards has increased by 14.5%. The Consumer Price Index for the period was neutral.

Despite the increase in the value of awards, the percentage of Accepted Awards has been declining year on year from 60.4% in 2012 to 54.5% in 2016. Of the total submissions made to PIAB, approximately 21% are settled through the acceptance of an award.

An increasing number of cases are being dealt with and settled outside the PIAB. This demonstrates the erosion of the effectiveness of the PIAB process over time.



## 1.2 What is needed?

The PIAB process is capable of and needs to be enhanced. It is still the most cost effective medium for settling injury claims. The changes proposed in the PIAB Amendment Bill, published in June 2017, in relation to strengthening compliance with the process are welcomed but the risk that PIAB may still be by-passed remains. For the Bill's proposals to work, a failure to comply with the PIAB process must be recognised and addressed by the Courts with clear sanctions applied. Appropriate legislation to enable this to happen must be passed and implemented without delay.



### 1.3 Failure to appropriately present details of injury or loss.

There is no meaningful sanction on a claimant who fails to provide the PIAB with complete details of claim. Too often an incomplete picture of both the extent of the injury suffered and the details of any incidental losses are presented.

Similarly there is no material sanction for failure to present for a medical examination which the PIAB feels is necessary to make an appropriate assessment. Such failure should be appropriately penalised and the process paused until such time as attendance confirmed.

The claimant must have an ongoing duty to provide the PIAB with full disclosure of any medical evidence / records in their possession together with any vouchers / documents in support of incidental losses / special damages as well as attending for any examination which the PIAB deems necessary.

This would afford the PIAB the opportunity to appropriately assess the injury and make a much more effective determination of damages and increase the volume of awards accepted.

We would also like to see the greater use by the PIAB of the powers already available to it under the Act, to hold cases in the assessment process for longer than the 9 months referenced, where appropriate, to enable an assessment be reached.

### 1.4 Pre Litigation Alternative Resolution Process

Litigation should remain the settlement route of last resort. Therefore we suggest that in the event that either the insurer, or the claimant, reject a PIAB assessment a mediation process should begin. We suggest that following rejection of an award a compulsory 6 month mediation process should commence. A framework should be designed around the mediated process. A timeline which provides for disclosure and dialogue between the parties should be established.

During the course of this process the statute limitation period should remain suspended ensuring the claimant is not prejudiced. Litigation should not begin until the conclusion of the mediation process. A mediation process upon the conclusion of the assessment has the potential to narrow the issues as between the parties and potentially resolve the claim.

### 1.5 Actions of the Court

If a claimant fails to include full details of their special damages in their PIAB application they should not be allowed to introduce new information or details into Court proceedings that were previously available and not submitted to the PIAB prior to assessment nor should they be entitled to recover costs for these elements.

In cases that require to be assessed by Judges there should be close adherence to the ranges provided in the Book of Quantum (BoQ) rather than merely Judges having a regard to the BoQ. Too often there are examples of cases where a Judge states that regard has been given to the BoQ but the judgement indicates a value well above the BoQ range.

There should be closer regard to the current rules which provide that an assessment by the PIAB will be regarded as a tender in the event that the claim litigates and the claimant fails to achieve a court award higher than the PIAB award. There should be clear cost penalties or other sanctions levied against the claimant in these circumstances.

## 1.6 Penalties for Noncompliance

Experience from other jurisdictions suggests that there must be sanctions that are capable of being imposed on the parties in the event that they do not engage in the established process. Rather than the court having regard or using discretion we would favour specific and certain sanctions being applied. The sanctions should be capable of being imposed upon either the compensator or the claimant in the event they do not, for example, comply with the disclosure duty and / or engage in a mediation process.

A claimant's ability to recover legal costs in full should be dependent upon their adherence to the rules. Equally an insurer who has failed to engage properly in the mediation process should be penalised via the payment of appropriate costs to the claimant's representative.

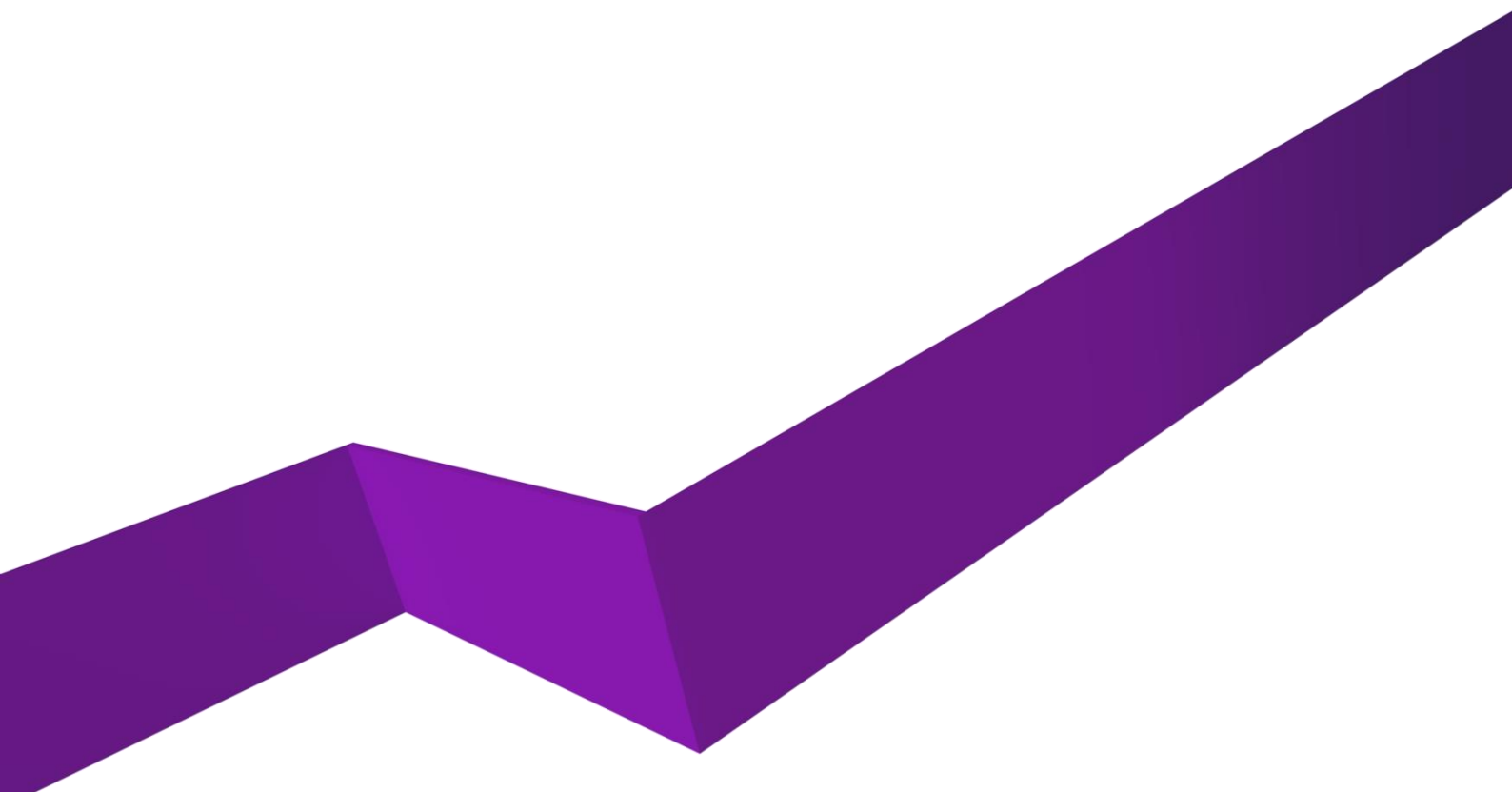
The courts must apply penalties as the absence of meaningful sanctions in the current process represents a weakness that must be addressed.

#### In Summary the Ask is ....

- 1 Clear and certain sanctions for failure to fully present details of injury or loss to PIAB for assessment to include not allowing additional elements of claim in any subsequent litigation that should reasonably have been presented during the assessment process.
- 2 Clear and certain sanctions for failure to attend for medical examination with process paused until attendance confirmed.
- 3 Greater use by PIAB of the powers available to continue assessment for longer than the statutory period of 9 months.
- 4 A pre-litigation Mediation process to be implemented for those cases that reject PIAB award.
- 5 Tighter adherence by Judges to Book of Quantum value ranges when assessing damages.
- 6 Closer regard to the current rules which provide that an assessment by the Board will be regarded as a tender in the event that the claim litigates and the claimant fails to achieve a court award higher than the PIAB award.



## 2. International Benchmarking of Personal Injury Awards



## 2.1 Context

The levels of compensation awarded for soft tissue injuries is out of line with the levels of compensation awards in the majority of our European neighbours and are the key driver of premiums. To reduce the cost of insurance the cost of awards must also be reduced.

The following table, taken from the First Report of the Personal Injury Commission, is clear evidence in this regard. Levels in other European countries are at levels below that even seen in the UK.

Neck Injuries		
Severity or Impact	Irish Book of Quantum	UK Guidelines on General Damages
Minor	up to €19,400 (£17,168)	up to €7,200 (£6,372)
Moderate	€20,400 to €52,200 (£18,053 - £46,195)	€7,209 to €35,176 (£6,380 - £31,129)
Severe	€76,000 to €139,000 (£67,257 - £123,009)	€59,974 to €119,638 (£53,074 - £105,874)
Back Injuries		
Severity or Impact	Irish Book of Quantum	UK Guidelines on General Damages
Minor	up to €18,400 (£16,283)	up to €11,435 (£10,119)
Moderate	€21,400 to €55,700 (£18,938 - £49,292)	€11,435 to €35,425 (£10,119 - £31,350)
Severe	€76,000 to €139,000 (£67,257 - £123,009)	€35,425 to €63,703 (£31,350 - £56,374)

PIAB estimate that approximately 80% of motor personal injury claims currently reported are 'whiplash' related. It is acknowledged by the Personal Injuries Commission that, based on European studies (CEA – Minor Cervical Spine injuries 2004), the frequency of such claims is greater than most other European countries with the exception of the UK.

It is reasonable to conclude that soft-tissue injuries account for a large proportion of claims by volume and a material proportion of overall cost.

In simple terms, as the main element of premium is the value of claims, unless compensation levels for soft tissue injuries are reduced, to a level in line with our European benchmarks, the cost of insurance will remain high. It is not the role of insurers to set award levels, this a government/societal issue.

## 2.2 Personal Injuries Commission (PIC)

RSA welcomed the recommendation of the Cost of Insurance Working Group (CIWG) to establish the Personal Injuries Commission (PIC) to investigate and make recommendations on processes in other jurisdictions which could enhance the claims process in Ireland and to benchmark international injury awards with those in Ireland and report on alternative compensation and resolution models.

### 2.2.1 Phase One

The report of the PIC published in November on Phase One of its work illustrates the complexities and challenges associated with the personal injury compensation

process. We acknowledge and appreciate the detailed work carried out by the PIC to date.

The work of Phase One included –

In respect of other relevant jurisdictions, particularly in Europe:

- Complete a comprehensive data gathering exercise to assess systems for handling personal injury claims, particularly soft-tissue ('whiplash') claims focusing on causes, frequency/incidence, diagnosis, treatment and appropriate compensation level;
- Report on systems where detailed grading of minor personal injuries is in operation;
- Assess the potential for medical professionals to prepare injury claim reports on a percentage disability basis with 100% being the maximum severity case
- Assess the potential for a national medical panel of trained and accredited medical specialists for completion of reports with a timely medical assessment of the extent and impact of the injury and include a standardisation of reporting methods by assessing specialists;
- Investigate the potential for the establishment of a panel of medical experts for use in Court
- A summary report should be made to the Minister for Business, Enterprise and Innovation and the Minister of State at the Department of Finance which will:
  - o Make recommendations as to the possible development of such practices in Ireland
  - o Indicate the timeframe for, benefits of, and risk associated with the implementation of the above recommendations

The four recommendations of the First report are detailed below.

Recommendation	A Standardised Approach to examination of and reporting on soft-tissue injuries should be adopted.
Suggested timeframe for implementation	To allow for the changeover in examination and reporting procedures it is suggested that a timeframe of mid-2018 is appropriate.
Recommendation	Training and Accreditation of medical professionals who complete personal injury medical reports should be promoted. This should become 'Best Practice' and training should be introduced at the CPD level.
Suggested timeframe for implementation	By end 2018
Recommendation	Link future publications of the Book of Quantum to the newly standardised examination and reporting injury categories i.e. 'whiplash' soft-tissue injuries/ QTF WAD scales. The Cost of Insurance Working Group report of January 2017 recommends that the next review of the Book of Quantum should take account of the output of the work of the PIC. This recommendation highlights the output of the initial PIC report in terms of its potential impact on this next review.
Suggested timeframe for implementation	2019 when the next Book of Quantum is due for publication.
Recommendation	Relevant injury data should be collated and published by appropriate bodies.
Suggested timeframe for implementation	By end 2018

RSA are generally supportive of these recommendations.

The PIC did not favour the use of a panel of suitably accredited, independent medical experts to assess cases involving soft tissue injuries. Whilst we acknowledge consideration was given to the issue we maintain the view that this approach would have added to the effectiveness and efficiency of the process and assisted in narrowing any issue of contention between the relevant parties. We would have liked to have seen this as a recommendation that could be explored further.

The concern at this stage is that the recommendations of Phase One are just that “recommendations” and without appropriate legislation to underpin them will stay as recommendations that cannot be consistently implemented. There is a need that they have the backing of law.

## 2.2.2 Phase Two

The PIC are now in Phase Two of their work. This is a critical phase with report due in Q1 2018.

- Establish a high-level benchmarking of international awards for personal injury claims with domestic ones as referred to in the Book of Quantum;
- Analyse and report on international compensation levels and compensation mechanisms;
- Analyse and report on alternative compensation and resolution models internationally, focusing on common law systems while taking account of social welfare, healthcare and related factors associated with each jurisdiction
- Report on “care not cash” models and variations in place internationally
- A summary report should be made to the Minister for Business, Enterprise and Innovation and the Minister of State at the Department of Finance which will:
  - o Assess the various systems in place and indicate the feasibility or otherwise for the possible development of such systems in Ireland
  - o Indicate the timeframe for, benefits of, and risk associated with the implementation of the above recommendations.

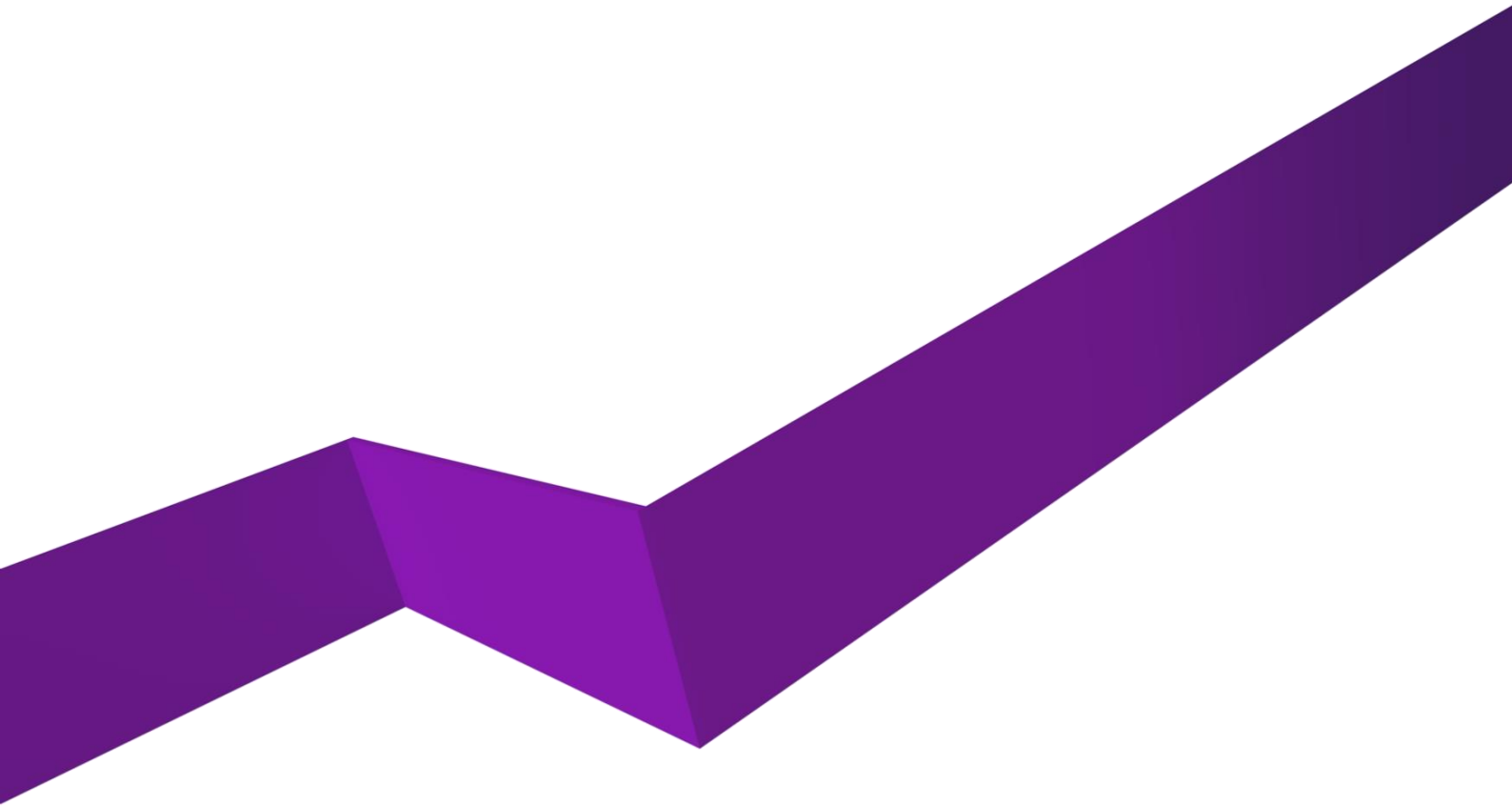
It is imperative when assessing the overall success of the work of the PIC & the CIWG that the output of Phase Two of the PIC considerations result in agreement on an appropriate level of compensation awarded in this jurisdiction. This decision will determine one of the main cost elements of claims and hence premium levels.

### In Summary the Ask is ....

- 1 A revised framework in which the level of compensation is clearly understood and consistently applied.
- 2 This framework is underpinned by legislation to ensure it is implemented and sustained.



## 3. The Legal Process and Costs





### 3.1 Context

Despite the requirement to bring a claim to the Personal Injuries Assessment Board and the upward review of the Book of Quantum in 2016, there has been a significant increase in the number of cases being litigated in the Courts.

The following comment from the Court Service Annual Report 2016 is evidence of that.

There were 21,898 personal injury suits filed in 2016, a 15% increase on the 18,992 in 2015 – 8,510 (including 1,001 medical negligence) in the High Court, an 18% increase on the 7,219 in 2015, and 12,330 in the Circuit Court, a 15% increase on the 10,631 in 2015. There were 1,158 suits filed in the District Court, little change from the 1,142 filed in 2015.

### 3.2 Review of the Administration of Civil Justice

A less confrontational approach to personal injury litigation is required. If litigation were to become a last resort there would be clear savings in terms of legal costs and resolution timescales.

The review by Mr Justice Kelly of the administration of civil justice in the State is welcomed and it is vital that any recommendations of the review group are actioned without delay if the current process is to become more efficient and cost effective.

The issues that need to be addressed include –

#### 3.2.1 Alternative Dispute Resolution – Mediation

The greater amount of engagement outside of the court room the better. Mediation as a means to resolve disputes should be pursued. The Mediation Act 2017 is welcomed. The Courts should actively and directly encourage mediation. In cases where mediation was not pursued the court should take regard of the failure to avail of it when making any decisions in relation to costs. Ongoing engagement between the parties should be maintained and the use of competing experts avoided.

#### 3.2.2 Pre –Action Protocols and Case Management

The introduction of pre-action protocols would encourage more pre-action contact between the parties, there would be better and earlier exchange of information and the parties would be more likely to settle claims without recourse to litigation.

The case management approach implemented in the Commercial Court should be introduced into the personal injury claims process. Case management would have a positive effect on the speed of resolution of disputes as the timetable of claims would be more tightly controlled. Alternative methods of dispute resolution should also be encouraged within case management.

### 3.2.3 Court Pleadings & Documentation

With the personal injury summons there should be a requirement to provide all medical reports, medical records for a number of years pre-accident and since the accident, expert reports and supporting documents for any claim made on which the summons is based.

If this was the case there would be less interaction required between the parties to establish the detail of the claim presented.

The exchange of information should be streamlined, and reports should be exchanged which would remove the need for further particulars.

In addition we suggest that each party to litigation should be obliged to file a declaration of readiness prior to the Notice of Trial being served.

### 3.2.4 Disclosure

There should be increased transparency in all litigation. The SI 391 rules should be enforced removing the risk of any surprises to either party in the run-up to a trial or ensure no further delays or adjournments are required. The same disclosure rules should apply in the District, Circuit and High Courts.

### 3.2.5 Expert Witnesses

A report(s) from a single accredited and independent expert (medical, engineering etc.) should suffice for straightforward cases. The adversarial aspect of involving two sets of experts in a case is a cause of frictional cost and delay. Where a witness is to give evidence, evidence should be taken on commission (similar to depositions) and this evidence compiled for presentation to the court. This would reduce the court time at hearing and reduce the witness costs for parties.

There should be a penalty for failing to serve all reports prior to the service of Notice of Trial.

### 3.2.6 Tenders and Calderbank Type Offers

The tender process in the High Court should be the same as in the Circuit Court and should be allowed at any point in the litigation process. The current rules around tenders mean that a Defendant can tender with their Defence or 4 months after service of the Notice of Trial. If the Defendant does not know the full extent of the Plaintiff's claim (sometimes because the Plaintiff has not complied with SI 391) the tender is unlikely to be accurate and will not prompt the Plaintiff to seriously consider it before proceeding further down the litigation process. The parties should be allowed to make Calderbank type offers at any stage and as often as they like, and cost penalties should follow.

### 3.2.7 Hearing Dates

The greatest factor in getting a case resolved is to have it listed for trial before a judge with little certainty that it will be heard. A review of how cases are listed for hearing is required to ensure time is used efficiently and effectively. Lengthy waiting time to get cases to trial adds additional cost and upset to both plaintiff and defendant.

We would advocate that more suitably qualified judges be appointed to deal with court lists in arrears in venues throughout the country and that the working hours of the courts and court offices should be extended to 9am – 5pm.

### 3.2.8 Consistency and Predictability of Court Awards

Strengthen the rules regarding judicial use of the Book of Quantum to ensure no disparity in compensation between court and PIAB awards. In addition, improve judges training in the evaluation of personal injury awards, including the use of the Book of Quantum, and/or consider reserving personal injury cases to judges experienced in personal injury litigation.

**48% increase in the average Circuit Court Award from €11,941 in 2013 to €17,722 in 2016**  
*(Analysis by Insurance Ireland of the Courts Service Annual Reports)*

## 3.3 Legal Costs

Legal costs in litigated cases are a significant issue and can account for more than 60% of the total cost of a claim. The current level of legal costs is not sustainable.

Appropriate guidelines on legal costs are required and should reflect the need for litigation to be affordable to the public. The provision to look at the impact of legal and other fees on personal injury awards has yet to commence. It won't commence until the establishment of the new Office of the Legal Costs Adjudicators (OLCA) in July 2018.

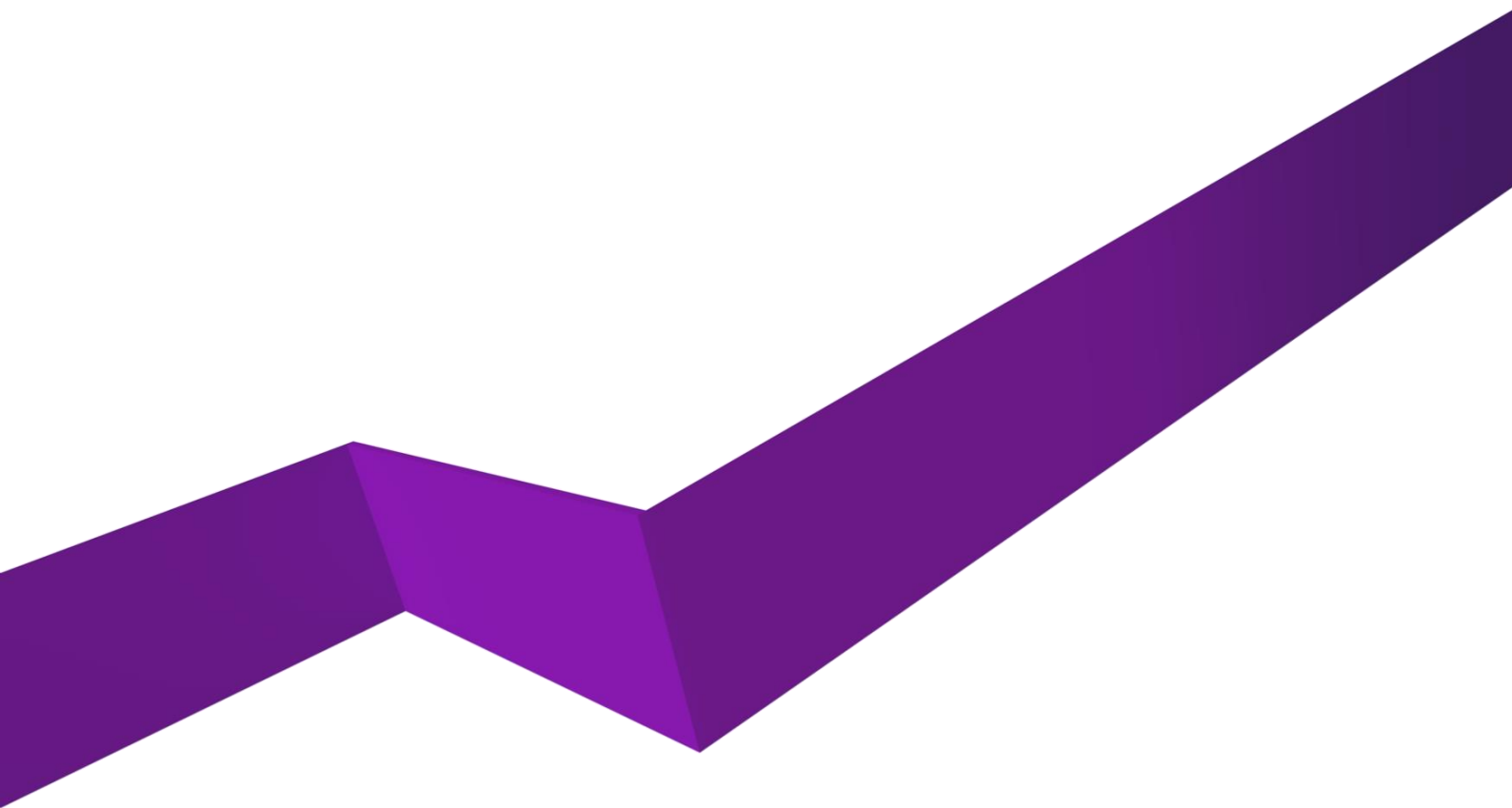
Guidelines should consist of parameters which are broad enough to facilitate swift negotiation on legal costs. Costs should not be linked to the size of the award and cases should be benchmarked in terms of their complexity. There should be a low complexity rate for cases emerging from the Injuries Board (i.e. cases where the Injuries Board award is rejected) and a high complexity rate where the Injuries Board has not dealt with the case e.g. where liability is at issue. Fixed costs regimes should also be considered.



### In Summary the Ask is ...

1. Greater use of Alternative Dispute Resolution opportunities to include Mediation.
2. Introduction of Pre-Action Protocols and Case Management in Personal Injury cases to assist effective and efficient progression of cases.
- 3 Greater transparency throughout the litigation process with strict adherence to and penalties for failure to comply with disclosure rules.
- 4 Use of an agreed and suitably accredited expert witnesses in more straightforward cases.
- 5 Revision to tender rules to allow use throughout process.
- 6 More efficient use of court availability and the trial listing process.
- 7 Consistency of awards through closer adherence by Judges to Book of Quantum value ranges when assessing damages.
- 8 More training for Judges.
- 9 Overhaul of legal costs regime.

## 4. Tackling Fraudulent & Exaggerated Claims



## 4.1 Context

According to Insurance Ireland, fraud is estimated to cost compensator companies in Ireland €200 million annually and increases the cost of the average motor insurance premium by approximately €50.

There are many types or levels of fraud including, opportunistic, exaggeration, misrepresentation, staged or induced.

*"We estimate 1 in 8 of all claims we receive are suspicious ..."*  
*David Fitzgerald CEO MIBI.*

Fraud is not a victimless crime. The social costs of fraudulent or exaggerated claims are significant. The cost to the taxpayer of unnecessary emergency service call-outs, additional burden on accident and emergency departments and doctors' surgeries of healthy people simulating injuries is another. For every false case that has to be dealt with by the healthcare system a patient in genuine need goes untreated.

## 4.2 The ability to effectively investigate

The effective investigation of insurance fraud is challenging for insurers particularly with data protection restrictions on the sharing of information. Whilst these exist, with positive intent, they create gaps in which potential fraudsters can capitalise and stay hidden.

The experience in other jurisdictions, although subject to the same data protection legislation, is that the sharing of intelligence is critical to detect and prevent organised insurance fraud and to work with police authorities to dismantle these criminal networks.

We would like to see engagement with the relevant authorities to agree an appropriate information sharing framework that supports the prevention, detection and prosecution of fraudulent activities.

We favour a strengthening of the relationship with the Gardaí in the area of fraud investigation and are supportive of the creation of an investigation unit within the Gardaí which has a specific focus on insurance fraud. The opportunities and objectives of such a unit should include:

- Raising awareness to deter potential insurance fraudsters from making a claim
- Raising awareness amongst the public to generate more observance and reports of potentially fraudulent activity
- Trace and prosecute perpetrators of insurance fraud, both individual and organised
- Seek recovery of monies received from fraudulent claims
- Expose rings operating ghost broking and other application-type insurance frauds

### 4.3 Reduced Incentive, increased deterrent

As it currently stands the level of injury awards, particularly for soft tissue injuries, and the lack of effective sanctions and deterrent encourage the 'have a go' claimant to pursue fraudulent or spurious claims.

We are also seeing situations where international claims fraudsters are looking to capitalise on the high compensation levels and incidents of Claims Fraud Tourism is on the increase. The level of compensation awards if reduced would remove this incentive. In addition, there needs to be stricter laws and penalties for fraudulent or exaggerated claims.

In litigated cases, the Civil Liability and Courts Act 2004 details provisions and penalties applicable to false or misleading evidence being presented when pursuing personal injury claims.

- Section 14 requires a plaintiff to swear an affidavit verifying the truth of the claim and other information supplied. If any material aspect is false or misleading the person is guilty of an offence for which the penalties are up to ten years in jail and a fine of up to €100,000.
- Section 26 states that where false or misleading evidence is given in a claim that the court has the powers to dismiss the plaintiff's action.

The standard applied by the courts to defendants when arguing that false or misleading evidence is being presented is challenging and even where evidence in this regard is accepted by the court the full sanctions as set out are not being applied. This creates a challenge on defendants, and their insurers, as to whether it is economically viable to pursue this particular defence. We would therefore like to see the courts strictly enforcing the sanctions that are already available.

### 4.4 The need for more criminal prosecutions

Very few cases of insurance fraud are referred by the courts to the Director of Public Prosecutions (DPP) and there are very few insurance fraud prosecutions by the DPP generally. Fraudsters, many of whom are seasoned criminals, need to be deterred. Suspended sentences are not an adequate deterrent. Insurance fraudsters must face the full rigours of the law in terms of custodial sentences.

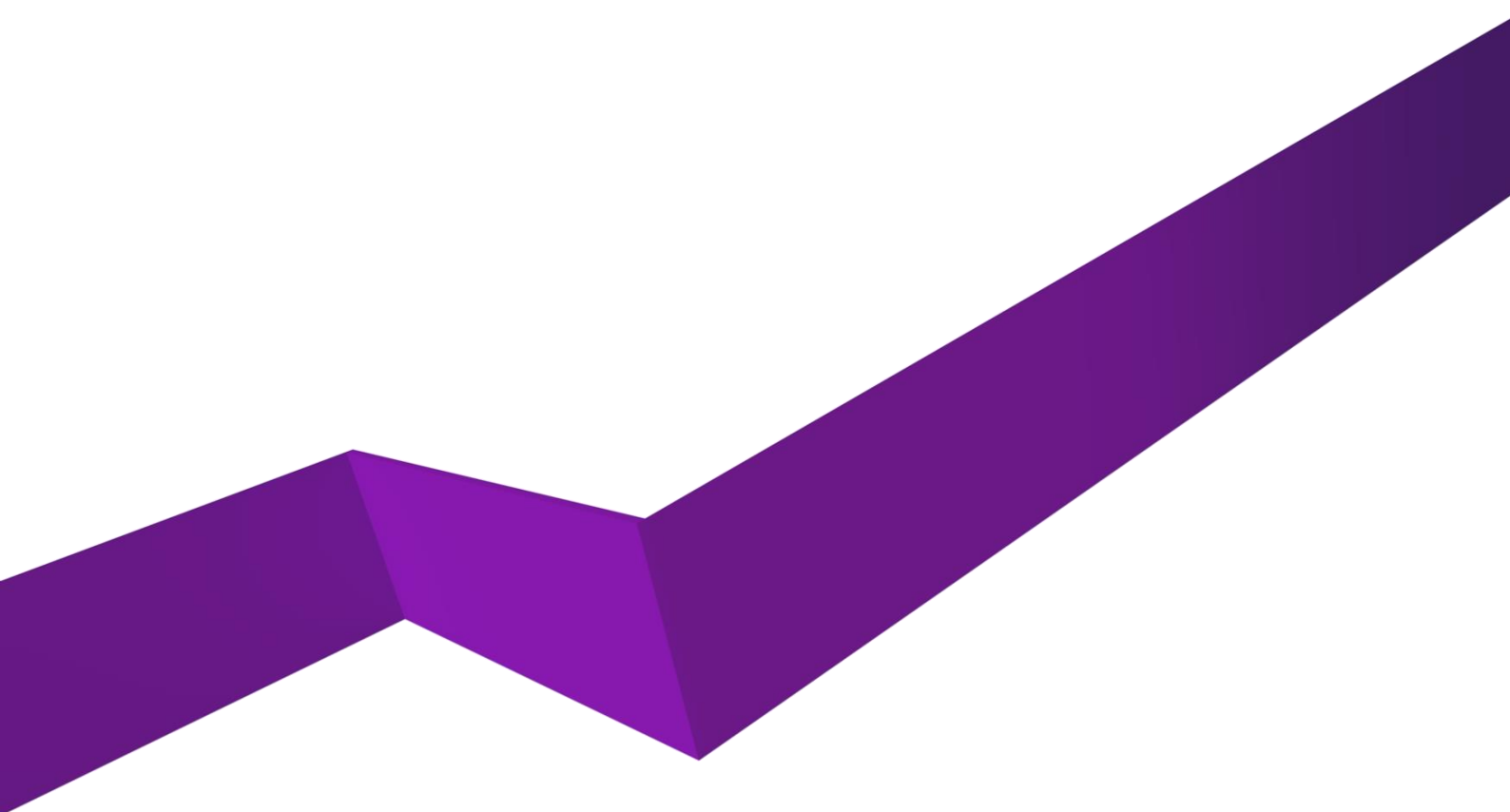
In Summary the Ask is ....

- 1 An appropriate information sharing framework that supports the prevention, detection and prosecution of fraudulent activities.
- 2 Establishment of an investigation unit within the Gardaí with specific focus on insurance fraud.
- 3 Reduce level of compensation awards to remove fraud incentive.
- 4 Civil courts strictly enforcing the sanctions that are already available.
- 5 Custodial sentences for insurance fraudsters.





## 5. Uninsured Drivers



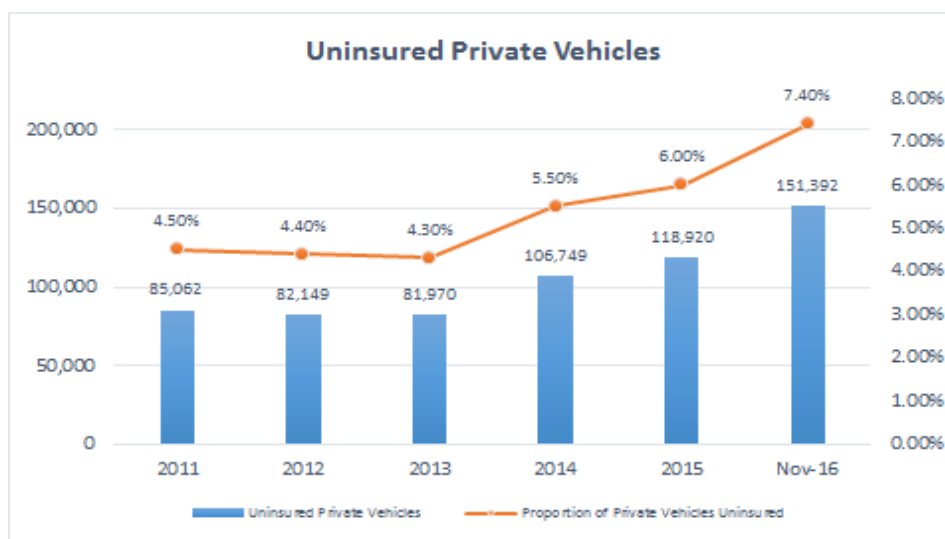
## 5.1 Context

The Motor Insures Bureau of Ireland (MIBI) was established in 1955 by an Agreement between the Government and the companies underwriting motor insurance in Ireland for the purpose of compensating victims of road traffic accidents caused by uninsured and unidentified vehicles. All insurers underwriting motor insurance in Ireland are required to be members of the MIBI. The MIBI is funded entirely by motor insurance companies operating in Ireland and ultimately by premiums paid by all insured motorists.

In 2016 the MIBI reported there were over 151,000 uninsured private vehicles on Irish roads. This is an increase of 78% in just 5 years. The proportion of the total private vehicles that are uninsured and the rate of increase is a significant concern.

The last number of years has seen a significant increase in the number of injury claims received by the MIBI. In 2017, 2758 claims were received.

On average the MIBI pays out over €60m in claims each year. The cost of these claims are paid by the insurance industry in levy contributions which equates to approx. €35 on the average motor insurance premium.



Data from MIBI Press release 19<sup>th</sup> Dec 2016.

## 5.2 Penalties & Enforcement

The increase in uninsured drivers demonstrates that the penalties applying to uninsured driving are not enough of a deterrent and there needs to be stronger enforcement up to and including sentencing for those who do not comply with the legal obligation for motor insurance.

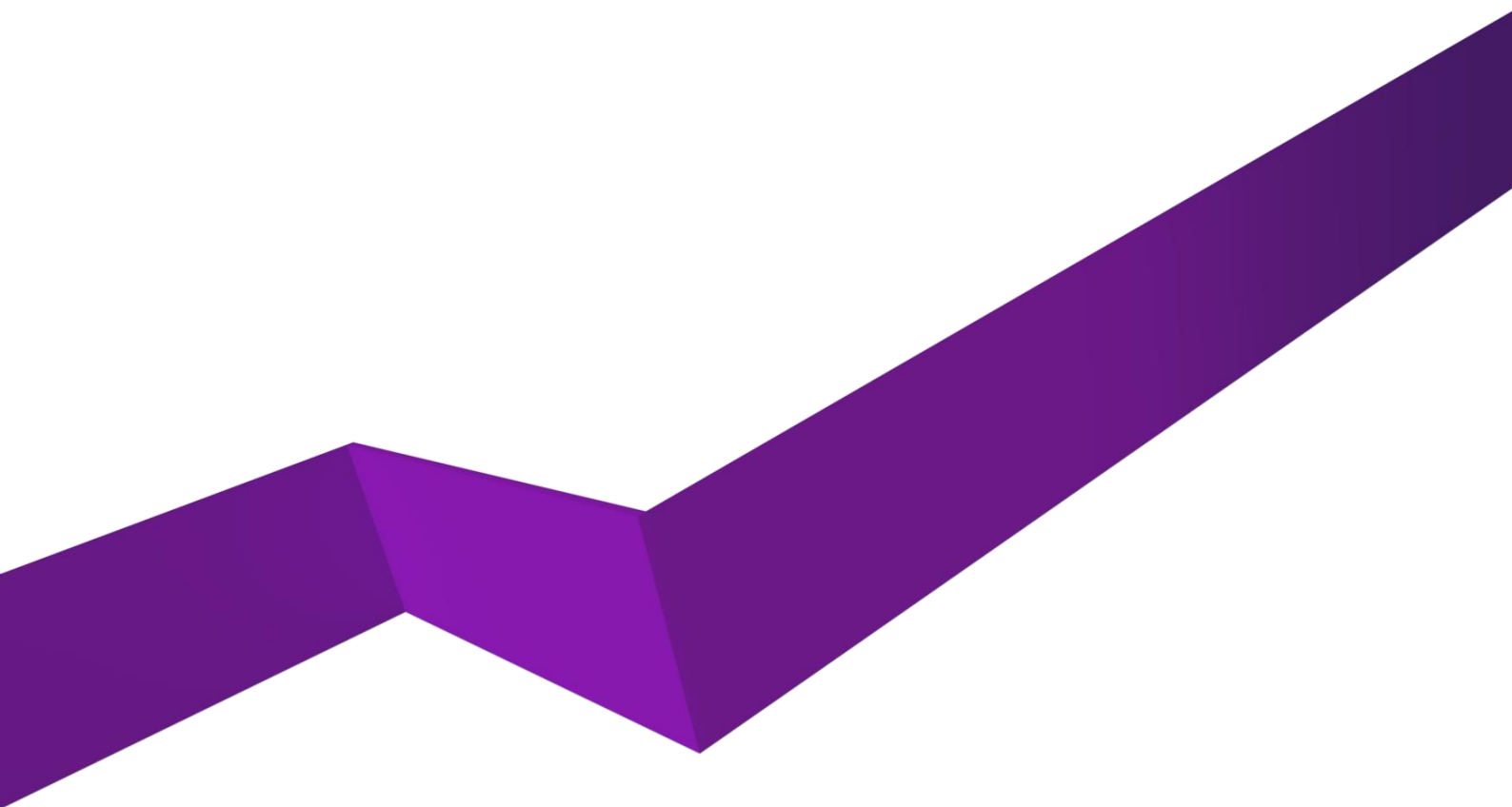
We are cognisant of the relationship between uninsured driving and insurance affordability, the responsibility sits with policy makers to ensure the appropriate actions are taken to address the main driver of premium cost which is the issue of high compensation awards.

#### In Summary the Ask is ...

- 1 Greater focus in the area of detection and prosecution of those driving uninsured.
- 2 Reduce the value of compensation awards which will reduce premium levels which will address the affordability issue and reduce the number of uninsured vehicles.



## 6. Investment in Road Safety

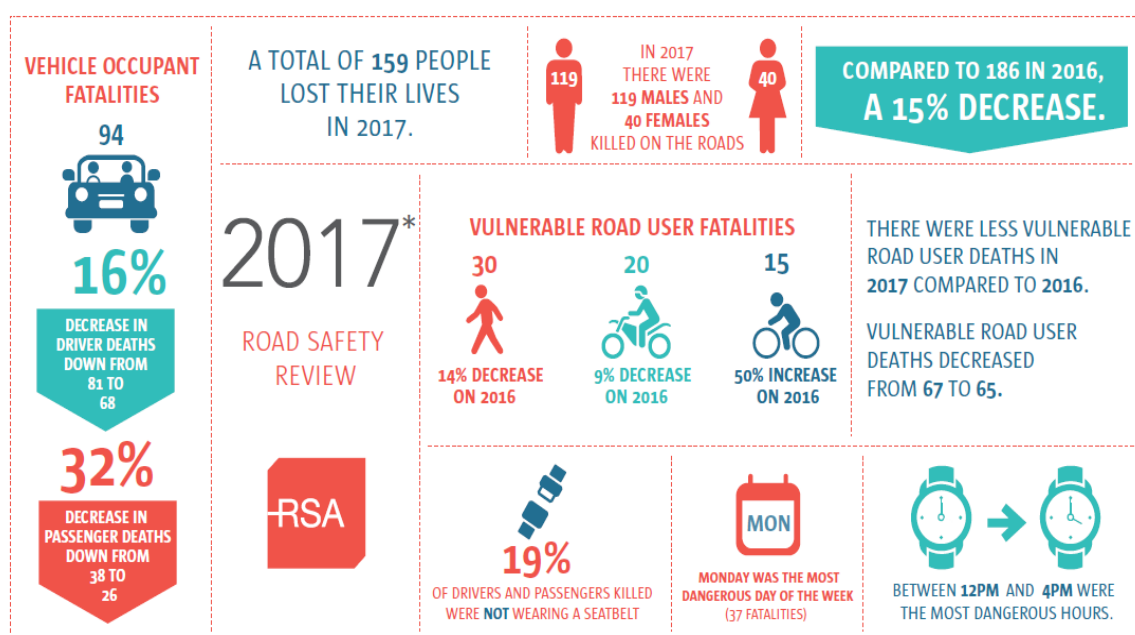
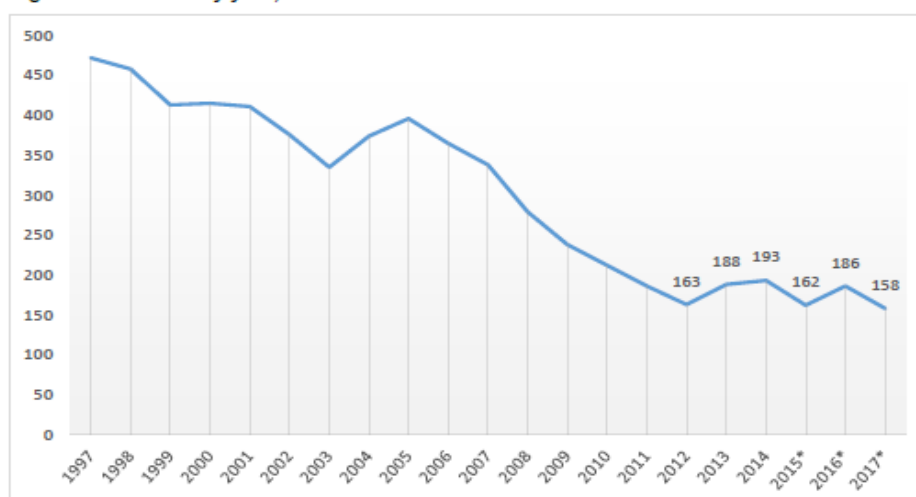


## 6.1 Context

Road safety awareness raising and enforcement have a direct link to keeping claims costs and premiums under control.

The following Road Safety Authority statistics relating to fatalities are evidence that significant progress has been made in the area of road safety.

**Figure 1. Fatalities by year, 1997-2017**



## 6.2 Maintain focus on Road Safety & Enforcement

The introduction of penalty points, random breath testing, rigorous enforcement activity by An Garda Síochána and effective Road Safety Authority awareness raising campaigns have had a real effect on road accident statistics.

An Garda Síochána and the Road Safety Authority need to be resourced adequately to carry out this important enforcement and awareness work.

There are certain period of time, e.g. Bank Holidays, where the volume of traffic on the move increases with an increase of road accidents. We suggest the introduction of 'Double' Penalty Points for speeding at Bank holiday weekends would be effective. This has been of benefit in countries such as Australia.

### 6.3 Address known accident black spots

The introduction of the National Car Test (NCT) put safer vehicles on the roads and massive investment in infrastructure investment resulted in the construction of safer roads and motorways.

As more cars and drivers are coming on to our roads and motoring activity is increasing there needs to be continued focus on addressing known accident black spots that remain.

### 6.4 Driving licence reform

The aim to have a national average waiting time for a driving test of no longer than 10 weeks is not being achieved. The majority of test centers are reporting waiting times well in excess of this level. Provisional licence holders are more likely to have an accident and delays in tests increases the risk that provisional licence holders, who have not achieved the required level of competence, will drive unaccompanied and become involved in an accident which results in damage to property and injury to other road users.

Good progress has been made in the area of graduated licencing. However once the test is completed and a driver has two years driving under novice plates there is no requirement for refresher training of any kind. We recommend that the graduated licence system is extended to include ongoing refresher training such as compulsory online completion of Rules of the Road training every ten years on renewal of licence. We would also suggest that in addition to the fitness to drive requirement for mature drivers, that there should be a compulsory retest for this vulnerable group.

#### In Summary the Ask is ...

- 1 Maintain the focus on road safety awareness and enforcement
- 2 Introduce 'Double' penalty points for times of known increased in accident & traffic volumes (*i.e. BH Weekends*)
- 3 Investment in infrastructure to address known accident black spot areas
- 4 Appropriately resource driving test centres to address increasing driving test waiting lists.
- 5 Extend the graduated licence system to include ongoing refresher training and retests for mature drivers





Head office  
RSA House  
Dundrum Town Centre  
Sandyford Road  
Dundrum  
Dublin 16  
Republic of Ireland  
Tel: +353 1290 1000