

2015

2016



2017



2018

Insurers in crackdown on injury fraudsters

Social media posts and witness interviews key to exposing scams

Lack of dedicated insurance fraud unit is a ‘scandal’, says former High Court president



Significant time and resources have gone into investigating the existence of a 'compo culture' and rogue practices in the legal and medical professions.

This is an investigative series from December 2019.



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NEW-LOOK SPORT SECTION

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Revealed: How GPs and lawyers are fuelling our claims culture

- :: Solicitors asking doctors to change their medical reports
- :: 'You're still worth 10 grand if you recover,' reporter is told

Amy Molloy

DOCTORS are fuelling Ireland's compensation culture by actively encouraging patients to bring personal injury claims, an *Irish Independent* investigation has found.

Our probe discovered some doctors are even recommending particular solicitor firms.

Meanwhile, solicitor firms in turn are directly referring clients to GPs and orthopaedic surgeons to have injury reports prepared.

The undercover investigation found at least seven firms are sending clients to the same orthopaedic

Irish Independent investigation

- surgeon. It also uncovered how:
- :: Some medical reports were found to be "word-for-word", "copy and paste like" and with incorrect patient names;
 - :: Solicitors and claimants asked doctors to amend medical reports;
 - :: Physical examinations for whiplash lasted as little as 40 seconds;
 - :: One solicitor claimed he's paying

a GP in bulk "for up to 10 medical reports at a time", but said they "don't have a special relationship".

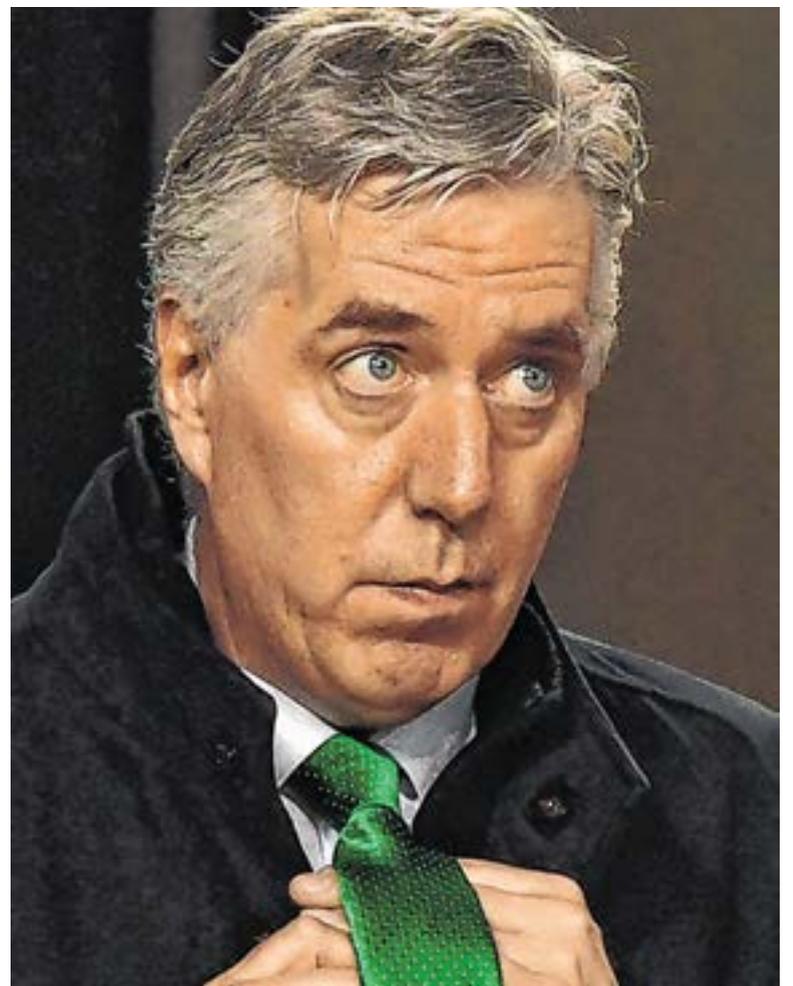
At one stage a reporter was told it was "probably best to leave out" of the medical report that she suffered from back and neck stiffness prior to a "rear-ending accident".

A solicitor said, "You're still worth 10 grand" when the reporter asked what happens if she had fully recovered.

The solicitor added: "If you get seven-and-a-half grand into your hand after all expenses... that's happy days."

Continued on Page 4

Inside the FAI: Secret contracts, hidden losses and spiralling debt



John Delaney: The worst thing ever to happen to Irish football?
Reports pages 2-3 and Sport



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What happened when undercover reporter **Amy Molloy** attended solicitors and GPs after filling out a form on a claims harvesting website

‘If you get seven and a half grand... happy days’

ASOLICITOR told an undercover reporter “you’re still worth 10 grand” after she said she felt OK following a rear-ending accident, adding: “If you get seven-and-a-half grand into your hand after all expenses... that’s happy days.”

The reporter came into contact with a number of solicitors and medical professionals after filling out an assessment form on a claims harvesting website.

This site asked for the reporter’s name, number and a brief description of the accident.

She then received a call back from a number of solicitors, who all told her over the phone they would arrange for her to go to named medical

‘Insurers just want to throw money at you...’



See the video online at independent.ie

professionals to have a medical report prepared.

The reporter then presented herself to some of these as a walk-in patient.

One GP asked her, “Have you been to a solicitor?” when she said she was in a rear-ending accident.

The senior GP then recommended two solicitor firms during the medical consultation. One of the firms recommended had already contacted the reporter through the claims harvesting website.

The GP told the reporter she would get money if she brought a claim for whiplash and her case likely wouldn’t go to court as “insurers just want to settle.”

She said her neck was sore after her car was rear-ended

Insurance probe: Reporter Amy Molloy outside the Four Courts, Dublin.

PHOTO: OWEN BRESLIN



while driving. The reporter said there was a bit of damage done to the car and she didn’t think anything was wrong, but her neck started to feel sore shortly afterwards.

The GP diagnosed her as having whiplash after asking her to do some neck stretches,

issued a sick cert and told her she would be entitled to compensation if she brought a claim.

Two weeks later, the reporter attended a second consultation with the same GP which was set up by a solicitor the GP had previously recommended.

The physical examination lasted less than 40 seconds.

The GP said it would “probably be best not to” include in the medical report that she suffered from back and neck stiffness before the rear-ending accident if this health issue hadn’t been subject of a previ-

Medics are encouraging patients to bring claims – even

From Page 1

Our probe discovered how some solicitors and claimants are even asking doctors to amend medical reports.

In one case, a firm requested a GP omit from his report how a patient had previously made a number of claims for separate accidents as “it wasn’t relevant”.

In another case, a patient asked a doctor to increase the length of their prognosis.

The Law Society of Ireland says it has no policy in place regarding the relationship between solicitors and GPs, as “issues surrounding the referral of clients to GPs

simply haven’t arisen”.

The reporter came into contact with these solicitors and medical professionals after filling out an assessment form on a claims harvesting website.

After filling in a brief description, the reporter received several calls from different solicitors, who all said they would arrange for her to go to named medical professionals to have a medical report prepared.

One GP told the reporter she would get money if she brought a claim for whiplash, and said her case likely wouldn’t go to court as “insurers don’t want the hassle”.

The GP diagnosed her as

having whiplash after asking her to do some neck stretches – and issued a sick cert.

During the same consultation, the GP said it would “probably be best not to” include in the medical report that she suffered from back and neck stiffness before the rear-ending accident if this health issue hadn’t been subject of a previous claim.

As well as writing medical reports for solicitor firms, this doctor is also one of 180 GPs on the Personal Injuries Assessment Board’s panel of independent doctors.

The injuries board is Ireland’s independent State body which assesses personal injury



Advice: Some doctors are encouraging patients to bring personal injury claims.

PICTURE POSED

compensation. It was set up with the intention of reducing the need for solicitors and litigation.

During the first of two medical consultations, the GP said it would be better to make a claim by going through a solic-

itor’s firm on a ‘no win, no fee’ basis, instead of paying a GP directly for a medical report and making an application to the injuries board.

The GP then proceeded to recommend two solicitor firms.

A spokesperson for the injuries board said its guidelines for medical practitioners acting on its behalf are that “doctors do not advocate for either party [defendants or plaintiffs], and must instead advocate for the medical facts”.

The spokesperson added that the GP was acting as the undercover reporter’s doctor and not on behalf of the injuries board during the consultations.

The *Irish Independent* attended consultations with three other doctors who did not recommend a solicitor’s firm or encourage the reporter to bring a claim, but they did diagnose her as having whiplash.



ous claim. "It's probably best to, erm... One of the questions on this is whether you've had previous trouble with your back and neck or your neck particularly if you're making a claim, they will want to know whether it's an exacerbation of a previous problem or whether it's a

new problem," the doctor said.

The reporter then asked: "Which one gets more money?"

The doctor responded: "I don't know really, I don't think it makes much difference.

"What you have to be careful of is if you have had trouble

which has been documented by a GP previously and you've had investigations and treatments done with your GP or hospital doctor and you don't declare it that can land you in trouble as they'll say it's not due to the accident.

"In your case where you've

had back stiffness, it's probably best to leave it out in other words not to declare it as it's not been documented with a previous GP, or it hasn't been the subject of a previous claim, do you get what I'm saying?"

"Lots of people have a bit of back trouble," they added.

The doctor also told her the whiplash claim likely wouldn't go to court as "insurers don't want the hassle".

During a consultation with the solicitor who recommended the reporter to this GP, he described his relationship with the doctor as "completely independent".

"We don't have any specific relationship with [redacted], we don't pay [redacted] anything extra, in fact [redacted] gives it to us for a lot less because we push a lot of clients their way and it's a lot faster, so it's not like we pay them extra to say things, we don't."

The solicitor also told the reporter it "looks very good on paper for me" if she went to

'You say, 'my back is still sore, doctor...' it's very good on paper'

the doctor again five months after an accident. "If you got your GP to give you a check-up, you say 'my back is still sore, doctor, I've had this accident in March, it is now September', it's very good on paper.

"That's all I'd say about that, it's good on paper. It helps me to get to the next level, do you understand what I'm saying?"

When the reporter asked what would happen if a doctor examined her and she felt fine, the solicitor said: "Well then you're fully recovered... You're still worth 10 grand though. It's a no brainer."

He added that "insurers just want to throw money at you" and said they only investigate suspicious claims.

"You're not at risk, it's a genuine case. We wouldn't take it on if we thought it was fraudulent because it gives us all a bad name," he said.

"We only represent genuine clients."

recommending particular law firms

lash and provided sick certs.

During our investigation, we also uncovered that a number of firms are directly referring clients to the same orthopaedic surgeon.

A source in the insurance industry revealed they are investigating this person's relationship with certain solicitor firms.

"We are concerned about how some of the medical reports all outline the same symptoms including problems doing the ironing and taking stuff out of the dishwasher," the source said.

"Some of the reports are almost word for word."

A personal injury claimant

who brought a successful claim told the *Irish Independent* how he was referred to this orthopaedic surgeon by a firm which contacted him via a claims harvesting website.

"I was genuinely injured and have nothing to hide but I would say the doctor was, let's say, very encouraging about bringing a claim," he said.

In response to queries, the Law Society of Ireland said issues around the referral of clients "simply haven't arisen".

"Given the lack of difficulty on the topic in practice, there hasn't been a need to develop a formal policy or protocol," the spokesperson said.

In its medico-legal guide-

lines, the Law Society states if a client continues to have symptoms from injuries, the solicitor can advise his client to request their GP to refer them to a consultant who specialises in the relevant areas.

However, the majority of solicitor firms which contacted the *Irish Independent* via a claims harvesting website did not follow this procedure and instead set up direct appointments with consultants.

When asked if there would be concerns about a solicitor sending all or most of its clients to one particular medical professional, a spokesperson said: "The Law Society can-

not speculate on hypothetical cases."

A spokesperson for the Medical Council of Ireland said: "Medical reports must be factual, relevant, accurate and not misleading.

"Their content must not be influenced by financial or other inducements or pressures.

"You should explain to the patient that you have a duty to the third party as well as to the patient, and that you cannot keep relevant information out of the report."

The Irish College of General Practitioners wished to clarify it is the role of a GP to give "medical advice".

Just what does it take for a GP to diagnose you with whiplash?

Amy Molloy



WHIPLASH - it's the diagnosis which divides medical opinion.

Some professionals believe it's a myth.

One former Irish neurosurgeon even went as far as saying it's "nothing but a gravy train for medics, victims and lawyers".

But other medical experts say it is a legitimate condition. The *Irish Independent* decided to investigate what it takes to get a whiplash diagnosis.

I attended four GP consultations and complained of neck pain and stiffness following a "rear-ending accident". I wasn't in any accident, and I didn't overly exaggerate my symptoms.

Each doctor asked me to do a series of stretches and I did them relatively comfortably.

There were no grimacing faces or wincing sounds, but I said I was a bit sore on the left side of my neck.

So an uninjured reporter was able to walk into GP practices off the street, complain of a bit of stiffness and walk out with a whiplash diagnosis and a sick certificate.

The physical examinations with each doctor lasted less than two minutes. Physiotherapist Margaret Hanlon, who

You can fake pain but you can't fake restriction of movement

is an expert witness for the Irish Society of Chartered Physiotherapists, said the standard whiplash test carried out by physios usually lasts between 30 and 45 minutes.

"Whiplash shouldn't be easy to fake," she told the *Irish Independent*.

"We carry out a series of movements to see if there is a match up between what you're telling us and what we're finding on testing.

"You can fake pain but you can't fake restriction of movement."

Ms Hanlon carries out physical examinations for personal injury cases and has compiled a number of reports for the Personal Injuries Assessment Board, the independent body which assesses compensation claims.

She has come across patients who have exaggerated their injuries, but insists it's easy to identify those who are genuine and those who are not.

Ms Hanlon says GPs diagnosing whiplash injuries can sometimes be problematic as they may not have much experience in that area.

Currently, Ireland has among the highest pay-outs for whiplash injuries in Europe. In the first half of 2018, victims of whiplash were awarded an average of €20,000 - 4.4 times higher than in the UK.



Comment

Rising tide of anger over housing will crash down on Fine Gael if it doesn't loosen the purse strings
Martina Devlin 29

Ballyboden new kings of Leinster

Colm Keys in Sport



+ *'My wife's family buy too many Christmas presents'*

Health & Living



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Salty seadog: Surf's up as Storm Atiyah blasts the coast

A dog plays in the surf at Spanish Point, Co Clare, as gales and high seas batter the west coast.

PHOTO: PRESS 22

High winds, falling trees, power cuts: Page 3



FAI bypassed with €2m for the grassroots

THE embattled Football Association of Ireland (FAI) is to be bypassed so that the grassroots game can be funded to the tune of more than €2m next year.

Sports Minister Shane Ross has been under pressure to ensure local teams don't suffer from what one senior politician has branded "the biggest scandal in Irish sport ever".

It was revealed on Friday that the FAI has liabilities of €55m and former chief executive John Delaney's exit package amounted to €462,000.

Fine Gael TD Fergus O'Dowd, chair of the Oireachtas Sport Committee, last night said he has invited Mr Ross and the FAI to an emergency meeting of the committee on Wednesday.

Full report, Page 2

Compo culture: lawyers ask GP to omit client's history of claims

'It isn't good enough' – minister responsible for insurance reform calls on Law Society to investigate

Amy Molloy

FAMILY doctors are facing pressure to bury patients' claims history, or to amend medical reports for personal injury claims, the *Irish Independent* can reveal.

Our undercover investigation has already exposed how some lawyers

and GPs are fuelling compensation culture by actively encouraging patients to bring claims.

But we also found some GPs facing requests that are in contravention of the Medical Council stating no third party should influence the content of a doctor's medical report.

In one case, a firm requested a GP

Irish Independent investigation

omit how a patient had previously made a number of claims for separate

accidents. "Our client would appreciate if you could remove the reference to them often being the subject of claims," the letter states. The firm felt this wasn't "relevant" to the medical report.

We found that solicitors and patients have asked doctors to:

• Increase the length of a prognosis;

• Change the details of an accident – which the doctor refused to do;

• Include symptoms not mentioned during previous consultations.

Junior Minister Michael D'Arcy is now calling on the legal and medical regulatory bodies to investigate.

Continued on Page 4

ANNUAL APPEAL



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Clamp down on rogues who fuel claims culture, minister urges Law Society

Amy Molloy

THE minister responsible for tackling spiralling insurance costs has called for investigations into how some doctors and solicitors are fuelling a compensation culture.

Junior Finance Minister Michael D'Arcy says medical and legal regulatory bodies must probe the involvement of their members in exaggerated or fraudulent claims.

He spoke out as Fianna Fáil criticised the slow pace of reform, claiming a lack of movement by Government has given people an incentive to make claims.

An undercover investigation by the *Irish Independent* exposed how some doctors are actively encouraging patients to bring claims for whiplash injuries.

Fine Gael minister Mr D'Arcy said: "It isn't good enough.

"It is now for the regulatory bodies [the Law Society and Medical Council] to deal with. We need to have a properly constructed sector.

"It is concerning if there are professionals who may know cases are exaggerated or fraudulent."

Mr D'Arcy said he has a "huge amount of respect" for the medical and legal professions, but added: "I do get annoyed by some cases that are being presented."

The *Irish Independent's* investigation found some doctors are actively encouraging patients to bring personal injury claims, with some even recommending particular legal firms.

An undercover reporter was told by a solicitor that "insurers just want to throw money at you" and settle personal injury claims.

Mr D'Arcy said a report from the Central Bank is expected within a couple of weeks

which will provide details on how many claims are being settled, the level of premiums being paid and the level of awards.

"I can understand insurance companies paying because every day in certain courts can be €30,000 to €50,000," said the minister.

"If the claim is less than that, it's a commercial reality, but that doesn't make it right, it doesn't make it appropriate and doesn't make it correct.

"There are dozens of exaggerated cases where people are looking for more than they should."

Mr D'Arcy said his main aim is to get the level of awards down, but he also intends to look at the area of legal fees.

"Legal fees are a huge part of it, the figures we have [show] that up to 40pc can go towards legal fees."

Meanwhile, Fianna Fáil's business spokesman Robert Troy said the *Irish Independent* investigation highlights that "an insidious cabal exists" between a minority of doctors and solicitors "who are the big winners out of this".

He claimed: "They have been free to carry out their activities as a result of Government lethargy."

He said that Fianna Fáil introduced a Bill aimed at tackling insurance fraud in 2018 but there has been "no movement".

Mr Troy said Justice Minister Charlie Flanagan indicated in March that there would be a decision on progressing the Bill or not, but it still hasn't happened.

Last night Mr Flanagan said: "It is my duty to ensure that all legislation which passes my desk is constitutionally sound, legally robust and workable."

He added that there are "legal and constitutional concerns" with the Bill.

'Commercial reality':

Junior Minister Michael D'Arcy said he understands settling, given the cost, but it's not right

PHOTO: DAMIEN EAGERS



Tomorrow
'Fraudulent claimants are getting a free shot... they have nothing to lose'
Inside Compo Culture Day 3

In Focus

How solicitors and claimants are asking GPs to amend their medical reports

From Page 1

During the *Irish Independent* investigation, it emerged that some doctors are recommending particular solicitor firms.

Meanwhile, solicitor firms in turn are directly referring clients to GPs and orthopaedic surgeons to have injury reports prepared.

But it also emerged that solicitors and patients can sometimes put pressure on doctors to amend medical reports for personal injury claims.

In one letter - seen by the *Irish Independent* - a patient

90pc of patients in a study did not return once case was over

said: "I am concerned that under comment/opinion/latest prognosis that you indicated that there would be full recovery within four to six weeks and in fact having seen you recently I outlined to you that the injury had not settled and I am in considerable pain with the injury."

In another letter, a solicitor asked a GP to add details to the medical report about the patient's symptoms, including how she couldn't wear high heels or walk to the shop unaccompanied.

"The issues in relation to the impact the injury is

having on our client's day to day activities is of great significance in relation to the case..." the letter says.

"It is one of the areas that our client will be compensated by way of general damages so it is imperative that the impact is addressed and outlined in the medical report so that our counsel can assess the potential quantum of damages accurately."

One solicitor asked a GP to change the details of the accident, stating that their client had made an error during her medical consultation.

The GP refused, saying: "With respect... my medical notes make no reference to that. Thus I am unable to amend my medical report as requested."

A GP with more than 30 years' experience told the *Irish Independent* "Sometimes after we assess patients we get letters from the patients or their solicitors asking for us to include other issues that they forgot to mention during the original consultation.

"While I have seen a lot of genuine claimants, sometimes I have people limp into my office but walk perfectly out to their car."

A recent study of 100 patients from the Mater Hospital pain management service found more than 90pc of patients with whiplash attending a Dublin pain management



Check-up:

Some patients and their legal teams ask for reports from doctors to be altered

PHOTO POSED

clinic failed to return for additional treatment once their legal action was completed.

The Medical Council of Ireland says medical reports must be "relevant, factual, accurate and not misleading. Their content must not be influenced by financial or other inducements or

The public will lose faith in any watchdog

COMMENT

Amy Molloy

WHEN given evidence of a solicitor bragging about how two clients had bogus claims dismissed and didn't have to pay costs, the Law Society of

Ireland said it couldn't comment on specific cases.

When asked if it would be concerned by a different solicitor referring all his clients to the same GP to have medical reports prepared, the society said it couldn't comment on hypothetical cases.

But when asked if any lawyer had ever been investigated for knowingly helping a client bring an exaggerated claim, the legal watchdog was emphatic in its response.

"No solicitor has ever been

'The Law Society needs to stop sticking its head in the sand'

investigated for knowingly helping a client bring an exaggerated claim," it said. But just because nobody has been investigated for something, does that mean it isn't happening?

Sometimes asking the society to comment on our personal injury system can feel a bit like interviewing Arsene Wenger.

The former Arsenal manager would famously say: "I didn't see it" when asked about a controversial moment in a game.

He later admitted to a



pressures.” When asked about some solicitors asking for reports to be amended, a spokesman for the Law Society said: “[We] cannot pre-judge any cases, complaints or individual solicitors and cannot legally provide specific answers to your questions.”

The latest revelations come

after an investigation by our undercover reporter.

She attended solicitors and GPs after filling out a form on a claims harvesting website.

At one stage the reporter was told it was “probably best to leave out” of the medical report that she suffered from back and neck

‘People limp into my office then walk out fine’

stiffness prior to a “rear-ending accident”.

A solicitor said: “You’re still worth 10 grand” when the reporter asked what happens if she had fully recovered. The solicitor added: “If you get seven-and-a-half grand into your hand after all expenses... that’s happy days.”

‘The doctor basically just wrote all the things I said..’

Amy Molloy

A MAN who brought a personal injury claim after a car accident says the medical expert his solicitor referred him to “barely examined him”.

The claimant was involved in a rear-ending accident in 2017 and suffered injuries to his neck and lower back.

He said he was looking for information online about how the accident would affect his insurance when he came across a personal injury website.

The man filled out a free online assessment form on the site, and was immediately contacted by two solicitor firms.

“I didn’t even realise it was a legal site as it didn’t mention solicitors anywhere, I just thought it was something along the lines of the Citizen’s Information website,” he told the *Irish Independent*.

He was advised by the two solicitors that he was entitled to compensation and they said they would arrange a medical assessment with “our doctor”.

“I eventually decided to go with the Dublin solicitor and they told me their doctor sees clients of the firm on a regular basis,” he said.

“I never met the solicitor either, everything was done over email and phone.”

He says the consultation with the doctor – who is a qualified orthopaedic surgeon – was “very brief” and he found them to be “very encouraging about taking a claim”.

“The doctor basically just wrote down what I said about my injuries,” the man added. “I might have been asked to stand up but the doctor didn’t

‘Insurers just want to throw money at you..’



See the video online at independent.ie

really physically examine me.”

The man was awarded €8,500 after the claim was settled and the solicitor received fees of between €1,000 and €1,500.

He was also assessed by his own GP, and the orthopaedic surgeon referenced this in his report.

“On the basis of the history given and his clinical examination it would appear that he did sustain, on balance of probabilities, musculo-ligamentous injuries to his neck, left trapezius and lower back,” the medico-legal report said.

The orthopaedic surgeon writes medico-legal reports for a number of legal firms at the same time.

A source in the insurance industry revealed how this doctor has been involved in writing reports in dozens of cases being defended by insurance companies.



Our View
Scandal of insurance costs must be on election agenda
23

that repeatedly refuses to acknowledge a problem exists in its profession

French newspaper that he pretended not to have seen certain incidents to protect his players.

The Law Society isn’t pretending not to see things, however it is refusing to acknowledge that there are a small number of solicitors who are fuelling Ireland’s compensation culture.

The society insists that it is up to judges to refer matters if he or she suspects a solicitor may have knowingly helped a client to bring an exaggerated claim. To date, no judge has ever



Persistent: Reporter Amy Molloy has had her requests for comment from the Law Society rebuffed repeatedly

felt the need to do this.

Watchdogs are put in place to keep those under its umbrella in check.

But the public quickly loses faith in a watchdog which time and time again refuses to comment or acknowledge there may be a problem with some members of a profession.

Take for example personal injury claims which are thrown out of court after the defence provides social media pictures showing a person participating in an activity weeks after

they allegedly suffered a ‘life-changing injury’. The Law Society has repeatedly argued that clients must swear an affidavit verifying their claims and therefore the solicitor had to take their client at their word.

But that’s a bit like a journalist printing a story without doing any fact-checking of their own.

We journalists have to corroborate.

Yet even when the medical evidence is sketchy or a client seems to be extremely accident prone, some

solicitors don’t seem to ask the important questions.

The legal and insurance sectors are so busy pointing the blame at each other that they’re failing to look at the problems closer to home.

And in the meantime, the public is being forced to pay extortionate premiums and businesses are continuing to close.

The Law Society needs to stop sticking its head in the sand and acknowledge that ambulance chasing is happening – and try to do something about it.

Doctor rents hotel room for personal injury claim cases after HSE review

Amy Molloy

A DOCTOR who was previously placed under review by the HSE is renting a room at a Dublin hotel to examine personal injury claimants.

An undercover reporter was given an appointment with this doctor at a hotel on the city's north side by a solicitors' firm who contacted her after she filled out a form on a claims harvesting website.

The firm set up a direct appointment with 'Dr Paul' (not his real name) and told the reporter to go to the hotel and ask for the doctor at reception.

A solicitor with the firm said 'Dr Paul' would ask for "a detailed description of the accident circumstances, a history of what medical treatment you have had and detail of how bad the pain is and how this has affected you".

"The examination should take no longer than 20 minutes."

A manager at the hotel said the doctor rents a room "randomly" and was last there in December. The manager added they had "no association" with 'Dr Paul' and that he "just rents a room".

This doctor was previously placed under review by the HSE while working at a hospi-

tal after staff raised concerns. The issues were referred by the HSE to the Medical Council.

The doctor is still registered with the Medical Council and neither the HSE nor Medical Council would confirm the outcome of the review.

A spokesperson for the Medical Council said: "I am unable to provide a comment on the individual doctor."

'Dr Paul' would ask for 'detailed description of accident circumstances'

The HSE did not respond to numerous queries.

It is understood the doctor now mostly does consultancy work.

When the reporter contacted 'Dr Paul' directly saying she wished to pursue a claim without a solicitor and go through the Injuries Board, the doctor advised it would be better to instruct a solicitor: "The opposing solicitors may attempt to undermine your case if the expert [me] was instructed by yourself rather than by a third party such as a solicitor on your behalf."

The *Irish Independent* previously revealed how a cosy relationship exists between

certain legal firms and medical professionals.

Our probe discovered some doctors are even recommending particular solicitor firms.

Meanwhile, solicitor firms in turn are directly referring clients to GPs and consultants to have injury reports prepared.

The Legal Services Regulatory Authority, the new independent body tasked with investigating complaints against solicitors and barristers, says where a solicitor is found to be accepting and paying for legal referrals from a personal injury website, it may constitute misconduct under the Legal Services Regulation Act 2015.

A spokesperson said: "The LSRA began receiving and investigating complaints against legal practitioners on October 7, 2019. There are three main grounds for complaints: inadequate standard of service; excessive costs; and misconduct.

"An allegation that legal practitioners were involved in personal injury compensation claims which they knew to be exaggerated may come under the complaints provisions in relation to misconduct.

"The LSRA has to date received a small number of complaints of this nature, which are currently being processed."



On song: Billie Eilish arrives at the Oscars in Los Angeles last weekend – she's been tipped to win one next year for her Bond theme song. PHOTO: AP/JOHN LOCHER

Prize Bond: Billie Eilish tune tipped for an Oscar

Keiran Southern

BILLIE EILISH has released her sombre James Bond theme song 'No Time To Die' to critical acclaim.

The 18-year-old pop sensation – the youngest artist ever to record a 007 title track – revealed a haunting ballad exploring themes of lies and betrayal.

It features heavy use of the piano as well as Eilish's signature whisper. Fans will recognise the chord that ends the song, taken from Monty Norman's original Bond

theme. In recording the track, Eilish – who will perform it live for the first time at the Brit Awards next week – joins an illustrious list of artists including Adele, Sam Smith, Madonna, Paul McCartney and Shirley Bassey.

"Was I stupid to love you? Was I reckless to help?" Eilish asks on 'No Time To Die', which she co-wrote with her brother and collaborator Finneas.

It gradually builds up to a point where Eilish sings: "Fool me once, fool me twice. You'll never see me cry,

there's just no time to die."

'No Time To Die' has so far proved to be a big hit with both fans and critics, while Bond music historian Jon Burlingame said he would be surprised if the song did not earn Eilish an Oscar nomination next year.

The teenager revealed she and Finneas wrote it in three days.

Eilish said she was "still in shock" about being asked to record a Bond title track.

'No Time To Die' is actor Daniel Craig's fifth and final outing as James Bond.

THE DEFINITIVE RICH-LIST 2020

The 250 richest people in Ireland, exclusively in this week's

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Real stories: The impact of insurance on families was highlighted in the past year as childcare facilities and play centres struggled to find and afford cover.

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Death knell for family days out as top insurer quits Ireland

∴ Bouncy castles, play centres, yoga classes under threat as Ireland labelled 'basket case'

Charlie Weston
PERSONAL FINANCE EDITOR

THE insurance crisis has escalated after one of the last firms covering the leisure sector pulled out of the market.

The move puts thousands of jobs at risk. UK operator LeisureInsure said it will not quote for new business from this week, and from the end of the month will cease all renewals.

It was one of the last few insurers covering event companies, bouncy castle operators, leisure centres,

yoga classes, soccer coaches, drama classes, some play centres and a large number of leisure companies.

Operators in the leisure sector largely rely on British insurers as Irish-based insurers are reluctant to provide cover in this area, citing large losses on what is called liability insurance. The Alliance for Insurance Reform said thousands of businesses would not be able to get cover. Some estimates put the number of jobs at risk as high as 4,500.

Full report: Pages 4-5



Dancing queen Mairead: Mums backed me

Mairead Ronan admits going on 'Dancing with the Stars' was the scariest thing she has ever done, but also the most enjoyable. She reveals mothers around the country got behind her on the show. **See Weekend Magazine**

Inside

The A-Z of Brexit



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ANALYSIS



Charlie Weston
PERSONAL FINANCE EDITOR

Our basket-case compo system means that fun is now cancelled

INTERNATIONAL insurers are turning away from “basket-case” Ireland due to our sky-high compensation awards.

Reforms being introduced at the moment are too little, too late, according to the insurers. The consequences of this are that leisure activities can't get insurance and are facing closure, meaning fun is set to be cancelled in this State.

Event companies, bouncy castle operators, leisure centres, yoga classes, soccer teachers, drama classes, some play centres and a large number of leisure companies are going to find it almost impossible to get insurance cover.

The reason for this is the withdrawal from the market of one of the main insurers for the leisure sector.

Irish insurers are generally not interested in providing liability insurance for businesses with high footfalls that they regard as high risk. They are too eager to protect their rising profits to be bothered covering a play centre which is vulnerable to claims.

Profits are again surging for our domestic insurers and much of that is due to the fact that they are extremely selective about what they will cover.

That's why up to now many leisure firms were using UK operator LeisureInsure. But it, according to its underwriter AxaXL, has decided it has had enough of this market with its high and frequent claims.

Litigious people too eager to make a claim, insurers, medics, judges and lawyers, are all playing a part in the deepening insurance crisis that grips us.

A headline on the satirical online publication 'Waterford Whispers' this week caught out some people who believed it was true. It said: "Waterford man awarded €179k after receiving bad pint from city nightclub."

Outrageous, but it could almost be real, such is the dysfunctional nature of our compensation system.

That is why British operator LeisureInsure is just the latest to pull out of this market.

British insurers regard our claims system as a “basket case” and say they could no longer make any money here. LeisureInsure is just one of around 10 British insurance companies that have turned their backs on the liability market here, leaving companies in the lurch, due to high levels of claims.

Firms in the leisure sector are now paying the price for our dysfunctional compensation system.

Just this week a child who fractured her ankle jumping off a trampoline settled her High Court action for €35,000. This was despite claims in court that the girl allegedly failed to follow the specific and repeated instructions given to her regarding the correct way to land on the mats.

It is all very well to be generous to a girl who fractured her foot coming off a trampoline.

But when the bill for this is the closure of leisure firms, the loss of jobs and the ending of fun activities, we as a society need to conclude that the compo culture has become corrosive and out of control.

Thousands of jobs at risk after main insurer for leisure sector pulls out

Fears firms will pack up or operate without insurance

Charlie Weston
PERSONAL FINANCE EDITOR

THE insurance crisis has escalated after one of the last firms covering the leisure sector pulled out of the market. The move puts thousands of jobs at risk.

UK operator LeisureInsure said it will not quote for new business from this week, and from the end of the month will cease all renewals.

It was one of the last few insurers covering event companies, bouncy castle operators, leisure centres, yoga classes, soccer teachers, drama classes, some play centres and a large number of leisure companies.

Operators in the leisure sector largely rely on British insurers as Irish-based insurers are reluctant to provide cover in this area, citing large losses on what is called liability insurance.

Oxford-based LeisureInsure was a management agent for insurer AxaXL in this market.

It dealt with insurance brokers and directly with policyholders.

The Alliance for Insurance Reform said thousands of businesses would not be able to get cover.

The withdrawal of the insurer will hit the likes of play centres, paintballing and adventure centres.

Some estimates put the number of jobs at risk as high as 4,500, although some cover is being provided to the sec-

tor by brokers with access to a specialist division of Allianz.

“Our hearts go out to the small businesses affected by the LeisureInsure and AxaXL decisions,” said Peter Boland, of the Alliance for Insurance Reform.

“These are friends, families, neighbours with otherwise perfectly viable businesses being closed due to something entirely outside their control.”

Head of the Irish Inflatables Federation Gerry Frawley said the 220 members of the organisation were insured through LeisureInsure and now cannot get cover.

He was told by the insurer

the withdrawal of LeisureInsure has left a major gap in the market.

He said around 10 British insurers pulled out of this market in the last three years.

Compensation payments have been cited as the reason for these withdrawals, he said. “The amount, frequency, severity and uncertainty around compensation is the issue.”

“There is no insurer in Ireland writing business for leisure centres or play centres or for the likes of paintballing,” Mr Gill added.

A spokesperson for AxaXL, a specialist division of insurance giant Axa, confirmed that it had reviewed its business in Ireland with LeisureInsure and was pulling out.

“We have concluded that current, well-documented market dynamics mean this business does not fit our business plan going forward. As such we will not be renewing this business with LeisureInsure in Ireland as of August 1, 2019.”

Mr Boland called on the Government and Taoiseach Leo Varadkar to engage directly with Irish insurers to figure out an urgent solution to the crisis.

Jane Bready, of Event Insure in Leitrim and Dublin, said her brokerage had capacity to cover community festivals and other local events.

But she said British insurers regard this market as a “basket case” due to high awards and frequent claims.

Call for Taoiseach to intervene: Peter Boland wants crisis to be tackled



that the compensation system in this country meant that it was no longer profitable for UK insurers to operate here.

The likelihood of a crash-out Brexit was also leading many British insurers to review operations in this market.

Mr Frawley said there was now a fear many firms that rent bouncy castles and inflatables will go out of business. And there is a risk some will carry on without insurance.

He said the situation was serious with severe implications for the industry.

Keith Gill, of leading insurance broker First Ireland, said



Feeling flat:

Charlie Weston

BOUNCY castle business owners are facing a crisis after the main insurer for the sector pulled the plug.

Gerry Frawley, of the Irish Inflatables Federation, says operators face closure, leading to a fear that some will carry on without insurance.

The 220 members of the association were covered by Oxford-based LeisureInsure, with AxaXL the underwriter.

But AxaXL has confirmed that it had reviewed its business in Ireland with LeisureInsure and was pulling out.

“We were using

‘It’s how I make my living’ – traders reeling as

Gabija Gataveckaite

DUBLIN traders have been left reeling following the confirmation of the closure of the capital's annual Christmas flea market.

The market was home to more than 280 stalls and ran each December. Last year, it took place over two weekends as opposed to the usual one weekend.

Organisers confirmed the market will not go ahead this year due to “insufficient infra-



Market forces:

Alison Lowndes Barker's business survives in winter through flea market sales at Christmas

structure and support” for the event.

Trader Alison Lowndes Barker, who is originally from Tallaght but lives in Dublin 8, said the market helped her business survive through the quieter winter months.

“I depend on it every year, it gets me through the few quiet months,” she said.

Ms Lowndes Barker sells hair accessories, greeting cards and jewellery which she designs and makes herself.

“Without the flea, my busi-



The Week
Ireland isn't a utopia, but we're a world leader in democracy
Jason O'Mahony
26



Bouncy castle firms left deflated and facing closure

LeisureInsure. But now we can't get cover at all."

Firms that hire out bouncy castles are considered risky by insurers as the potential for slips and trips is high.

Mr Frawley said the fact LeisureInsure had pulled out was a disaster for his members.

"This effectively means that for the moment bouncy castles and other inflatables cannot get public liability insurance in the Republic of Ireland," he said in a note to members.

The operators hire out and install the bouncy inflatables and then leave them with the clients. But despite the fact the hire firms are not

Let down: Gerry Frawley, of the Irish Inflatable Hirers' Federation.

PHOTO: DAMIEN EAGERS/INM

overseeing the children who use the bouncy castles, they still get sued if there is an accident, Mr Frawley said.

"It is not profitable for anyone to insure in this arena and take the risk as there is a tendency by the legal system to blame the insurance company if there is an accident."

Asked what he and his members would do with no company willing to insure them, Mr Frawley said: "We are exploring all avenues but we have drawn a blank so far. We are in serious trouble and there is a risk some will operate without insurance."

Mr Frawley, whose business Bounce Ireland is

based in Navan, Co Meath, said people in British insurance companies regard recent reforms here, such as a move to get judges to review award levels, as too little, too late.

The Judicial Council bill passed in the Houses of the Oireachtas last week. It makes provision for judges to set up a committee to recalibrate award levels to bring them more into line with those paid in other countries. However, there is some doubt about how quickly this will happen.

"There is a lack of action by the Government and the politicians are to blame," Mr Frawley said.

popular Christmas flea market cancelled

ness wouldn't be where it is now and I have a lot to thank for it. It's my baby, it's how I make a living."

The Dublin flea market was held monthly in Newmarket Square until it had to be moved due to construction works in 2018.

The market has been hosted as a pop-up shop in the Digital Hub in Thomas Street, but it remains to find a permanent home.

However, the annual Christmas market was the largest

'Without the flea, my business wouldn't be where it is now'

event for the organisers and Ms Lowndes Barker said the event attracted people internationally.

"It's such a shame that councillors aren't fighting for the markets, we're meant to be a city of culture," she said.

Organisers broke the news yesterday with a statement on its website.

"Sadly we have come to the heavy realisation that, at this time, there is insufficient infrastructure and support for an event of this type and scale

in Dublin city," the statement read.

It said the market received more than 600 submissions to trade from all over the country in 2018 and attracted 73,000.

The organisers are set to campaign for a new venue to host the market.

The market previously took place at the Point Shopping Centre in Dublin's city centre. The Point Shopping Centre did not reply to requests for comment at time of publication.

HEALTH

Tax change could mean €6 rise in cost of supplements

Eilish O'Regan
HEALTH CORRESPONDENT

THE price of some popular food supplements could rise by over €6 if the Government decides to subject them to the standard VAT rate in the upcoming Budget.

A price survey shows the cost of fish oils, probiotics, vitamins and supplements claiming to promote health and well-being will all see a substantial hike if the 23pc VAT rate is imposed.

Revenue has provided a long-standing concession, allowing a zero VAT rating of vitamins, minerals, and fish oils, but it said this is being exploited with too many products claiming the exemption.

The Government is now considering a report which sets out a series of options that will result in some or all vitamin and mineral tablets being more expensive.

The move is being opposed by Health Stores Ireland, representing 200 health food stores, amid warnings it will drive consumers to buy unregulated products online.

Chief executive Matt Ronan said it would "contribute to a further decline in retail choice and diversity in rural towns. These imported products are not subject to the same regulations applied to retail stores".

The consultation document currently being examined by Department of Finance officials sets out a number of options including imposing the standard rate on all or some products. It could be confined to sports, slimming or cosmetic supplements.

Another option is to choose a reduced 13.5pc of VAT or go the lowest 9pc VAT hike.

In a submission, Health Minister Simon Harris said the Department of Health did not in general recommend

Possible price of supplements

- Eskimo Oil 105 capsules – €14.99 to €18.45
- Higher Nature: Red Sterol Complex 30 caps – €9.72 to €11.95
- Macánta Curcumin (Turmeric Extract) 200mg 60 caps – €19.95 to €24.55.
- Optibac EveryDay Probiotic Extra 30 caps – €22.99 to €28.30
- MacuShield Gold 90 Capsules – €28.55 to €35.15
- Udo's Choice Super 8 Microbiotic 30s – €25.99 to €31.97

food supplements. But there are two exceptions including folic acid for pregnant women to reduce the risk of having a baby with a birth defect.

The other exception is vitamin D for infants.

It is also the case that food supplement products may be recommended in specific circumstances by health professionals for their patients.

The Revenue Commissioners decided that 23pc VAT should apply to all food supplements from March 1 last, but Finance Minister Paschal Donohoe deferred this pending the report of the public consultation process.

Mr Ronan said: "The consultation process appears to have been flawed since the beginning as it does not provide an option for the zero rate of VAT to be maintained.

"The impact of this VAT imposition could be catastrophic for local retailers across the country who stock food supplements."

BREXIT

Banks reassure their customers

Charlie Weston

BANKS have assured consumers that a crash-out Brexit will have no impact on their mortgage and stressed that any savings in an Irish bank will continue to be protected by the State's Deposit Guarantee Scheme.

Consumers are worried that Brexit will have a negative impact on their day-to-day banking.

But the Banking and Payments Federation

Ireland (BPF) said that if the UK pulls out of the European Union, banking services will continue here as normal, such as existing debits/standing orders, ATM services, domestic debit and credit payments.

However, BPF warned that people buying from UK suppliers may be faced with higher taxes or tariffs.

The banking body has a frequently asked questions section on its website at www.bpf.ie.



Business
Rohans share €47m dividend bonanza after a 'positive year'
32

Real stories

'We never thought this day would come' - family-run nightclub shuts down due to spiralling costs

Facebook post by Amy Malloy. The main image shows a woman standing in front of a red building with a sign that says 'NITECLUB'. To the right is a dark vertical graphic with white text: "Your DR is not working... You just don't know it yet." Below the graphic is a red button that says "LEARN MORE".

'We weren't at fault' - hotel owner slams insurance companies for settling injury claims

Facebook post by Amy Malloy. The main image shows a man in a blue suit standing outdoors. To the right is a vertical graphic with a teal background, the word "PROTECT" in white, and the Alliant logo at the bottom.

'It wasn't our fault' - Wright Group on defending customer's broken ankle claim, and how insurance closed well-known nightclub

Facebook post by Amy Malloy. The main image shows a man in a white shirt standing in front of a building. To the right is a vertical graphic with the text "Choose Righter" and a logo.

'It's eating me up inside' - Manager of popular sports bar 'thrown to the wolves' during Covid crisis as insurer exited Irish market

Facebook post by Amy Malloy. The main image shows a man standing behind a bar. To the right is a vertical graphic with a blue background, a logo, and the text "BUY NOW".

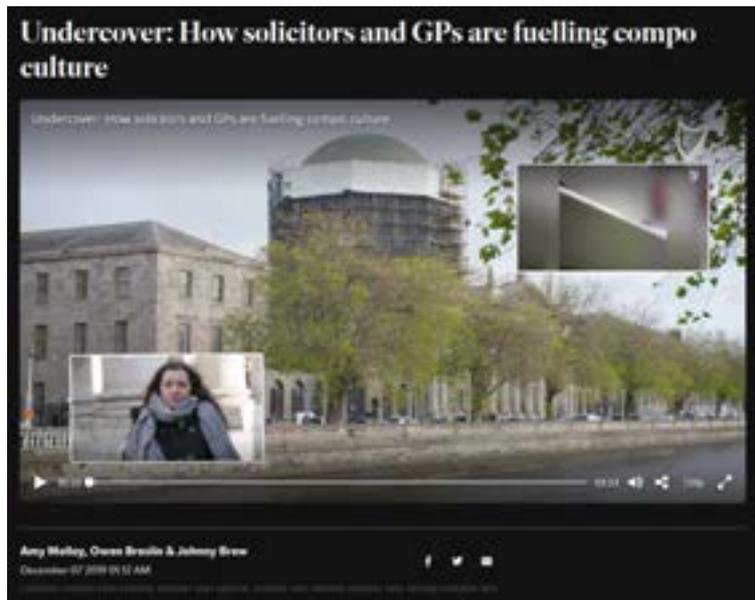
'We just spent our savings on pub revamp ... now insurance broker says we'll get nothing'

Facebook post by Amy Malloy. The main image shows a man in a grey jacket standing in front of a pub. To the right is a vertical graphic with the text "The 100 Best Pubs in the World" and a logo.

'We were told we're being unreasonable' - more pubs take action against FBD over Covid claims

Facebook post by Amy Malloy. The main image shows a man and a woman sitting at a desk. To the right is a vertical graphic with the text "Gain a Professional Diploma 100% online" and a logo.

Undercover work



Exposés

'The stress on our 70-year-old policyholder was unnecessary' - third person withdraws claim after 'minor tip'



WATCH: 'We will continue to fight these claims' - CCTV shows man 'slipping' in Supermac's after photographing wet floor



Key to any campaign is results. Pressure from the Irish Independent has put insurance reform on the political agenda.

Recent developments:

- **Personal Injuries Guidelines Committee currently recalibrating compensation payouts.**
- **Perjury laws are before the Oireachtas.**
- **New Cabinet sub-committee established.**
- **Programme for Government acknowledges insurance costs “are a hugely significant issue for businesses, motorists, households and a range of sport, community and voluntary groups.**



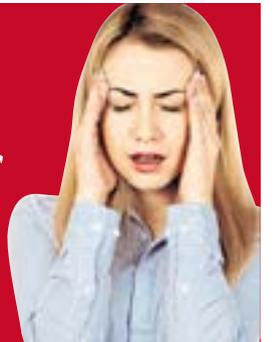
Cooney to start

Change at scrum-half needed for Wales clash – Tony Ward



'I can't deal with my sister-in-law's behaviour'

Health & Living



Head turner:

Irish actress Jessie Buckley arrives at the Baftas at the Royal Albert Hall in London last night. Buckley was nominated for Best Actress for her role in 'Wild Rose' but lost out to Renée Zellweger for her performance in 'Judy'.

PHOTO: GETTY

See page 18



Judge warns minister to keep out of injury payout review

Philip Ryan
DEPUTY POLITICAL EDITOR

A SUPREME Court judge has told the Government minister tasked with insurance reform not to interfere with her review of personal injury payouts.

In an extraordinary letter, Justice Mary Irvine insisted she would not be influenced by the cost of compensation on businesses or community and volunteer groups.

The judge was recently appointed as the chair of the Judicial Council's Personal Injuries Guidelines Committee in line with legislation enacted by Minister of State Michael D'Arcy.

In a letter obtained by the *Irish Independent* under the Freedom of Information Act, Mr D'Arcy congratulated Ms Justice Irvine on her appointment and noted there was "considerable" public interest in the Judicial Council's plans to "recalibrate" the awards for personal injury claims.

Continued on Page 20

Parties scramble for middle ground to stem Sinn Féin tide

Philip Ryan
DEPUTY POLITICAL EDITOR

FINE Gael and Fianna Fáil are locked in an election battle to hold the centre ground as Sinn Féin's support grows.

Both parties have been caught off guard by the shock rise in support for Sinn Féin as the General Election campaign enters its final week.

Finance Minister Paschal Donohoe insisted he was "not

Fianna Fáil and Fine Gael caught off guard by rise in support for SF

giving up or giving in on the centre" but said he would have to "fight" to ensure it holds.

"We have to continue to change the political centre to make sure it works for more people," he told the *Irish Independent*.

Meanwhile, senior figures in Fine Gael are warning the party needs to significantly change its strategy to focus on Sinn Féin's policies rather than dismissing it as not being a normal party.

However, there are divided



opinions in the party as other senior ministers believe attacking Sinn Féin is driving voters towards Fianna Fáil.

"A number of people have told the Taoiseach every time you take on the Shinners it

plays into Martin's hands," a senior Fine Gael source said.

Fianna Fáil will tell voters that supporting them is the only way to keep Sinn Féin out of power.

"We will tell voters that if they vote for Mary Lou, they could be putting Marxists like Ruth Coppinger and Richard Boyd Barrett in government," a senior party source said.

Continued on Page 4

Philip Ryan: Nobody saw this coming, least of all Sinn Féin
Page 4

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D'Arcy has little to lose by heaping pressure on judiciary over insurance costs

ANALYSIS

Shane Phelan

FOR the second time in recent months the junior minister responsible for insurance reform has managed to raise the ire of a senior judge.

Michael D'Arcy is a man under pressure.

In his role he repeatedly gave assurances that tackling high premiums was at the top of the political agenda.

But these promises have been undermined by the glacial progress of reform under the Government he was a part of.

A prime example of this was the plan to set up a Judicial Council with a committee to recalibrate the size of personal awards.

As far back as September 2018, the Personal Injuries Commission (PIC) recommended that legislation to establish the council be given priority.

The PIC suggested award guidelines could be recalibrated under the council.

Yet it was a further 10 months before the necessary legislation was signed into law and a further five months again before the council was established.

All the while the heat intensified on the minister as businesses closed, struggled to pay premiums or in some instances to even get insurance at all.



Against this backdrop, it is perhaps understandable that Mr D'Arcy now stands accused of not once, but twice seeking to influence the work of the judiciary.

First he suggested in a 'Business Post' interview last November that the new personal injury guidelines committee, which hadn't even been set up at the time, would use the Personal Injuries Assessment Board research to identify the most

Standing firm: Ms Justice Mary Irvine sent Michael D'Arcy away with a flea in his ear. PHOTOS: COLLINS COURTS; DAMIEN EAGERS

common injuries that result in claims and this would be dealt with by March.

He also said it would go further than just taking 15pc or 20pc off the top of awards.

The following month he wrote a letter offering to meet the committee and placing the Costs of Insurance Working Group at its disposal.

On both occasions he drew sharp rebukes, first



They want action and they want it now

from Chief Justice Frank Clarke, and more recently from the committee's chair, Ms Justice Mary Irvine of the Supreme Court. Their objections had more to do with judicial independence than any resistance to slashing awards.

Mr Justice Clarke has previously told this newspaper the PIC report had to be taken seriously and if awards were significantly higher in Ireland there

would be consequences for competitiveness and jobs.

During her time on the Court of Appeal, Ms Justice Irvine was seen as being at the forefront of a more realistic approach to compensation and reducing injury awards.

But while the senior judges have taken a principled stance of standing up for their independence under the separation of powers, this will cut no ice with business, community and voluntary groups caught up in the crisis. They want action and they want it now, not in two or three years.

Mr D'Arcy knows this and also knows he has little to lose by heaping pressure on the judges to act.

The problem is the judicial council solution is not a quick fix and was never going to be.

It may be politically popular to urge the judiciary to get a move on and slash compensation rates, but it does not necessarily follow that this will happen.

Mr Justice Clarke has been at pains to state the committee will be independent, even from him, and will decide itself how it conducts its work.

For her part, Ms Justice Irvine sent Mr D'Arcy away with a flea in his ear.

She told him the role of the committee was not to recalibrate damages in a manner favourable to any particular interest group, as seemed to be his understanding.

The judge also said the committee would be at all times mindful of the rights of persons injured through the negligence of others to receive compensation awards which are fair, just and proportionate.

Judge criticises minister for trying to advise her on personal injury awards

Continued from Page 1

In his letter dated December 9, 2019, the minister, who is also the chair of the Cost of Insurance Working Group (CIWG), said he fully understands the "separations of powers and the independence of the judiciary".

Mr D'Arcy also noted that the Personal Injuries Commission, which he established, found personal injury awards were much higher in Ireland than the UK and recommend that Judicial Council should "address this disparity".

"The purpose of this letter is therefore only to indicate the

CIWG is available to offer whatever assistance it can should you decided to consult with it," Mr D'Arcy said.

However, three days later, Justice Irvine wrote back saying: "I regret that I should have to write a letter such as this in reply."

Justice Irvine insisted it was not for the minister to "advise or urge upon" her committee how it should "discharge its obligations".

"In light of your letter it is necessary to emphasise that the purpose of the legislation passed by the Oireachtas is to be found in the legislation itself and that the role of the

committee, as therein provided for, is not to recalibrate damages in a manner favourable to any particular interest group as would appear to be your understanding," the judge added.

Justice Irvine said her committee would continue to review compensation payments while being at "all times mindful of the rights of persons injured through the negligence of third parties".

The clash is the latest in an ongoing row between the judiciary and the Government over plans to reduce the cost of insurance.

In November, days before his

letter to Justice Irvine, Mr D'Arcy publicly said the Judicial Council's review of compensation would bring payouts in line with those awarded in the UK.

'Our role is not to recalibrate damages in manner favourable to any interest group'

He said guidelines for compensation in the five most common types of personal injury cases will be reduced by between 15pc and 20pc by

March this year. However, Chief Justice Frank Clarke hit out at what he described as "recent publicity" around the Judicial Council's committee on personal injuries.

In a statement, Justice Clarke said: "I feel that it is incumbent on me to emphasise the total independence which the law gives to that committee subject only to such directions as the Judicial Council itself may give."

He also said there was "no basis" for suggesting the committee would pick the five most common injuries or finish its work by March.

The Judicial Council was

formally established in December last year following the passage of legislation through the Dáil.

The aim of the council is to oversee and review the work of the judiciary.

The legislation specifically required the council to form a committee to address awards given in personal injury cases.

The Government has been under pressure to address the rising cost of public liability insurance for businesses.

There has been a wave of businesses, mostly in the leisure industry, which have closed due to the rising cost of insurance.

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Insurance price-fixing allegations to be probed by watchdog

:: Brokers' role in public liability market will form major part of the investigation

Kevin Doyle
GROUP POLITICAL EDITOR

A MAJOR investigation will be launched into the public liability insurance market by the country's competition watchdog.

The Competition and Consumer Protection Commission (CCPC) will probe whether sharp or anti-competitive practices are resulting in businesses being ripped off.

In particular it will look at the role of brokers amid suspicions that some could be working in cahoots, the *Irish Independent* understands.

Soaring premiums have been blamed for putting a series of activities at risk including street festivals, farmers' marts, tidy town efforts, children's play centres and sports events.

The move is on foot of an intervention from Business Minister Heather Humphreys, who has promised the CCPC extra resources so that the

issue can be prioritised. In correspondence seen by this newspaper, Ms Humphreys said insurance prices are now being raised as "a potential systemic threat to the very existence of many businesses".

She advised the CCPC that concerns have been raised "on the roles of insurance firms and intermediaries (such as brokers) in, at times, very sharp increased levels of public liability premia".

On July 17, the minister requested a report and recommendations by the end of the year. However, chairperson of the CCPC Isolde Goggin replied two weeks later saying such is the scale of research required it will take a minimum of a year to complete. It has been agreed the competition watchdog will have its resources 'beefed up' so the issue of public liability insurance can be specifically looked at.

Continued on page 10



Anguish: Mystery over Nóra's death goes on as family wait for post-mortem answers

THE family of Nóra Quoirin face a further agonising wait to find out what happened to the Irish teenager as a post mortem is yet to determine how she died. Despite four medical staff carrying out the post mortem, there have been no conclusive results as of yet. **Full story: Pages 2-3**

Johnson says some MPs 'collaborating' with EU to block Brexit

Kevin Doyle, Richard Wheeler and Josh Thomas

BORIS Johnson has accused some MPs and the EU of collaborating to block Brexit, as he warned of the increasing risk of leaving without a deal.

The British prime minister claimed Brussels is "not moving in its willingness to compromise" and warned a no-deal Brexit becomes more likely the longer this goes on.

"There's a terrible kind of collaboration, as it were, going on between people who think they can block Brexit in parliament and our European friends," he said.

Mr Johnson's remarks, made during a self-styled 'People's PMQs' on Facebook from his Downing Street desk, came after the European Commission insisted Britain needed to explain its ideas on the way forward if talks were to progress.

Meanwhile, Finance Minister Paschal Donohoe has been pursuing a 'twin-track' approach to his Budget.

Mr Donohoe had ordered officials to prepare one Budget based on the current 'central scenario', which assumes a Brexit deal will be reached before October 8.

However, his department's resources are now being firmly redirected towards the "alternative Budget" which caters for a disorderly Brexit.

Tax cuts and pension increases are now extremely unlikely.

Full reports: pages 14-15

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COMMENT

Kevin Doyle
GROUP POLITICAL EDITOR



Watchdog must show its teeth to get companies to act on costs

ALMOST everybody in this country has some form of insurance, which is generally paid begrudgingly.

Whether it's for motor, health, travel or business cover, it's an investment we hope never to have to make a profit on.

But somebody is cashing in big time. Insurance companies' earnings are on the rise along with premiums. Three of the major firms – Aviva, RSA and FBD – reported combined profits of almost €200m for last year.

Insurers have argued that they are merely insulating themselves from a crazy compensation culture and greedy lawyers.

Businesses believe they are being ripped off at a time when the economy is going strong. The only thing that both sides tend to agree on is the Government needs to act.

To be fair there have been some initiatives. A heavy focus on motor insurance has seen prices fall by upwards of 20pc since a peak in July 2016. Greater powers have been given to the Personal Injuries Assessment Board (PIAB) and, just before its summer recess, the Dáil passed legislation which should see compo pay-outs recalibrated downwards.

However, progress is regressively slow and we hear continuous stories of businesses facing closure because of insurance costs.

Business Minister Heather Humphreys was the first Government minister to read the public mood on the now infamous 'swing-gate' episode.



More straight-talking is needed from Government, along with reform

Back in May, she told the Dáil that businesses "feel that they are being punished for this compensation culture".

"I have to say that my view on this is very simple – people need to have some common sense and they need to be responsible for their own personal safety.

"So if you trip or you fall, you have to ask yourself why it happened, and more often than not the answer is because of your own carelessness," she said.

More of that straight-talking is needed from Government, along with reform. Today, we reveal that in the background Ms Humphreys has been working with the Competition and Consumer Protection Commission to establish an investigation into the market. Of course, the fear is that the watchdog will find itself toothless when going up against an industry which has a history of being slow to engage. Or that we end up with another report that will gather dust on a shelf.

That can't be allowed because this issue is affecting the very fabric of Irish society. Festivals, play centres and even tidy towns' committees have all been curtailed.

They are paying the financial price now. In time, the Government will pay a political price unless change is made to happen.

Huge investigation to find reason for insurance hikes

Exclusive: Probe to examine sharp practice and role of brokers as public liability premiums soar

Continued from page 1

A source close to the minister said: "The insurance industry in this country seems to think it is beyond reproach. The CCPC has necessary statutory powers to find out what's going on and the industry is legally obliged to co-operate."

Rising premiums have been blamed for putting a series of social and business activities at risk. In the past two years alone, 75 street festivals have collapsed due to unsustainable rises in public liability insurance costs, according to the Association of Irish Festivals and Events.

And retailers estimate that on average, for every €1 allocated to an insurance claim, a business must make €100 in sales to recoup this outlay.

Ms Humphreys has asked the CCPC to examine "how that market operates, how competition works in that market and whether any practice or method of competition affects the pricing levels of public liability insurance within that market".

The Government has been under huge political pressure over rising insurance costs for some time now.

While primary responsibility for the problem lies with the Department of Finance, there is now an acceptance that businesses "feel like they're being fleeced".

"Businesses can't understand why they're seeing massive jumps in their premiums when they have had no claims," a source said.

"Shopping around doesn't

seem to make a difference as the increases are across the board."

The Department of Business hopes by funding a study, the industry will take a review of its own practices.

Motor insurance has fallen in recent years after the initiative of a similar probe.

"There's also concerns that intermediaries, including brokers, benefit from increased premiums," a source said.

"All of this is completely unfair and the very least that businesses deserve is greater transparency, and an opportu-



Intervention:
Business Minister Heather Humphreys

nity to shop around."

One concern raised by businesses is that if they get an insurance product from one broker, they can't get one from another.

The CCPC has powers under 2014 legislation to interview individuals, gather documentation and commission expert analysis on the market.

While its preferred approach is to gather information on a voluntary basis, the body does have the right to compel companies to co-operate if necessary.

In correspondence with the minister on July 29, the CCPC expressed concerns about whether the insurance industry will actively co-operate with its work.

Ms Goggin wrote "it is clear"

there are issues within the insurance sector.

"Data is critical in competition in the insurance market," she said.

The CCPC has previously raised issues with the Government about the availability of data in the insurance sector and the willingness of the industry to provide information.

Ms Goggin advised the minister that buy-in from the industry would help the CCPC to reach conclusions quickly and deliver constructive recommendations for the Government.

But if necessary the CCPC "will use all of its statutory powers in order to deliver" because "any lack of co-operation will impact on the timelines for the study".

The CCPC said it is aware of the "economic significance of this market" and therefore it is "paramount that analysis of this complex market is robust and that recommendations to address the current market issues are credible and of value".

An ongoing investigation by the CCPC into the motor insurance industry, which is in its latter stages, will be kept separate from the new line of inquiry. The motor investigation began three years ago and has looked into whether motor insurers and brokers have engaged in anti-competitive practices by openly signalling premium price moves.

In it, the CCPC has had at least 55 witness summons hearings and obtained over 1.4 million emails and documents.



Flanagan goes to war with leading insurers

Hugh O'Connell
POLITICAL CORRESPONDENT

JUSTICE Minister Charlie Flanagan has launched a scathing attack on the "handsome" profits of one of country's leading insurers, FBD.

Mr Flanagan escalated the Government's war of words with the insurance industry in an interview with the *Irish Independent* by singling out the largest Irish-owned insurer following the recent announcement that its profits had doubled in the first-

half of this year. Mr Flanagan claimed FBD was making a "handsome" profit of €1.25m a week and demanded it cut its premiums.

"I am always reluctant to name names but FBD has now moved from a situation where it was making a million euro profit a week to now making €1.25m profit a week.

"That's handsome," Mr Flanagan said.

"This is a wholly owned Irish company set up by Irish farmers and I believe it's important now that we see the resolve on

the part of the insurance company to reduce premiums that they promised.

"I look to profits of €1.25m a week and I say they can do much more. What I am saying is that insurance companies operating in Ireland are making very handsome profits and they're doing so without operating in a transparent arena."

FBD Insurance, which has more than 500,000 customers in Ireland, recently reported profit before tax of €38.6m in the six months to the end of June, up from €18m in the

previous year. Chief executive Fiona Muldoon said it made "no apologies for making a profit".

"Like every company, we are in business to make a profit for our shareholders and we are not apologising for that," she previously told this newspaper.

She insisted FBD offers "very good-value insurance".

FBD declined to respond to Mr Flanagan's remarks and pointed to Ms Muldoon's recent opinion piece in the *Irish Independent* where



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Ireland will face biggest diplomatic challenge in years as China rises to top dog in global economy
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Swing-gate: Minister refuses to back Bailey

Hugh O'Connell

JUSTICE Minister Charlie Flanagan has refused to back Fine Gael TD Maria Bailey to run for the party in the next general election.

Ms Bailey has faced growing calls from within Fine Gael not to run for re-election in Dún Laoghaire following the swing-gate controversy.

Mr Flanagan is the first Cabinet minister to comment on Ms Bailey's re-election bid which he repeatedly declined to endorse in an interview with the *Irish Independent*.

The Laois TD said Ms Bailey, who was sacked as chair of the Oireachtas Housing Committee last month, had paid a "hefty price" for the controversy over her now-withdrawn personal injury claim against a Dublin hotel for falling off a swing in 2015.

"I think the Maria Bailey case was unfortunate. I acknowledge that Maria Bailey has made some serious errors of judgment and I think she has paid for that by way of the sanction," he said.

But Mr Flanagan refused repeatedly to be drawn on whether Ms Bailey should be allowed run again.

"I am not part of an investigative process, I am not a member of the national executive, I was for in excess of 15 years.

"I am a former party chief whip, I am a former party chairman, I am a player on the team, I am not a selector. I don't decide," he said.

It was a matter for the local constituency organisation and Fine Gael's national executive whether Ms Bailey should be allowed to run, he said. But asked for his personal view, Mr Flanagan said: "I don't have a view on other constituencies. I go before my own constituency convention."

FBD and calls for EU to crack down

she denied the industry was making super profits and questioned whether judges and lawyers were doing enough to tackle high award levels and suspected fraud.

But Mr Flanagan turned his ire directly on the industry, repeating there was a "lack of transparency".

Without mentioning a specific company, he said over the past year he had seen instances of insurers "plucking figures from the sky" to calculate premiums. He called on the EU to mount



War of words:
Justice Minister Charlie Flanagan

a crackdown on insurance companies and said he looked forward to the completion of the European Commission's investigation into allegations of cartel behaviour in the Irish insurance industry.

"I look forward to that study being completed next year. Insurance companies have been quick to absolve themselves of responsibility for reducing premiums," he said.

"I think it's important that the insurance industry operates under a transparent framework. I want to acknowl-

edge what Europe is doing and go further and say that I would like to see greater initiatives on the part of the EU at introducing a more rigorous arena for insurance companies to trade in.

"There is a lot of secrecy, there is an absence of transparency and what we're seeing is handsome profits.

"The European Commission is investigating reports of a cartel. I don't have that evidence."

Mr Flanagan said that premium increases were "unfair".

SOCIAL MEDIA

Data watchdog to ask Facebook if it is listening to our online voice chats

Adrian Weckler
TECHNOLOGY EDITOR

THE Irish Data Protection Commission (DPC) says it is seeking answers from Facebook for having provided audio from private conversations on the Messenger app to outside contractors for analysis.

The news may resurrect suspicions that the social media giant sometimes listens in to things it does not have express permission to.

However, Facebook says that it only did this to US users and that it has now stopped workers from manually listening to the audio clips.

"Further to our ongoing engagement with Google, Apple and Microsoft in relation to the processing of personal data in the context of the manual transcription of audio recordings, we are now seeking detailed information from Facebook on the processing in question and how Facebook believes that such processing of data is compliant with their GDPR obligations," a spokeswoman for the Irish DPC told the *Irish Independent*.

When asked whether it would still pursue the matter if it turned out only to be a US-focused activity, the spokeswoman said that it was awaiting further clarification from Facebook on this point.

Facebook's response is that the listening activity was only applied to conversations through Messenger that were specifically tagged to use the service's transcription feature. This is a feature that typically turns a voice message into a text message. The company said that the transcription feature is an opt-in activity that users had to manually choose. The contractors were checking whether Facebook's artificial intelligence correctly interpreted the messages, which were anonymised.

However, the tech giant did not seek specific consent from users for human oversight of the conversations.

"Much like Apple and Google, we paused human review of audio more than a

week ago," a Facebook Ireland spokeswoman said.

Earlier this year, Amazon and Apple came under scrutiny for collecting audio snippets from consumer computing devices and subjecting those clips to human review, a practice critics say invades privacy.

Executives in each company say that manual analysis of voice-recognition software, such as that used through Amazon Alexa and Google Voice technology, is crucial for determining whether the software is delivering accurate results.

But the tech giants have been plagued by persistent conspiracy theories claiming that some companies secretly listen into user conversations to glean valuable information for advertising and marketing purposes.

Facebook founder and chief executive Mark Zuckerberg was quizzed about this when he appeared before the



Questions:
Data Protection
Commissioner
Helen Dixon

houses of the US Congress two years ago.

The *Irish Independent* put this question to Zuckerberg on a visit to Facebook's Dublin office earlier this year. He replied: "Absolutely not."

At present, the Irish DPC has 11 statutory enquiries into Facebook or one of its constituent companies, Instagram and WhatsApp.

Under GDPR privacy law, the Irish watchdog can apply fines of up to €20m or 4pc of annual turnover where it determines that there has been a failure to protect citizens' privacy rights.

The current probe comes just weeks after Facebook agreed to pay a \$5bn (€4.48bn) fine to American regulators over privacy breaches in the US.

It is currently facing further legal action in the US over its use of facial recognition. This week, Amazon announced that its 'Rekognition' facial recognition technology can now recognise fear in people's faces.



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Insurance scammers facing 10 years in jail for perjury

Government will fast-track law aimed at crackdown on 'compensation culture'

Hugh O'Connell, Amy Molloy and Cormac McQuinn

NEW laws to crack down on 'compo culture' by jailing people who lie under oath for up to 10 years could be passed by TDs within days.

The Government is moving to fast-track legislation that will seek to put the offence of perjury on a statutory footing for the first time.

In recent days, the *Irish Independent* has exposed how some lawyers and GPs are fuelling compensation culture by actively encouraging patients to bring claims.

The investigation also uncovered how some solicitors are asking doctors to amend medical reports for personal injury claims.

The new laws, which could come

Irish Independent investigation

into force early next year, will see people who lie under oath or misrepresent themselves in court facing prosecution. Sanctions include a fine of up to €100,000 or a jail term of up to 10 years.

Meanwhile the Legal Services Regulatory Authority, which handles complaints against lawyers, said it was investigating a small number of misconduct claims about solicitors.

Continued on Page 4



Saoirse success: New Golden Globe nod the latest accolade for Irish star

SAOIRSE RONAN has been nominated for a Golden Globe for her role in Greta Gerwig's film 'Little Women'. The Carlow actress (25) – who previously won the award for director Gerwig's 'Lady Bird' – has a leading role in the film opposite Meryl Streep. **SEE PAGE 3**

'Late Late' man quits smoking to help secure €3m debt deal

Shane Phelan

HEAVILY indebted former 'Late Late Show' musical director Frank McNamara has given up cigarettes to save money and is now playing piano at funerals to boost his income.

The High Court has heard Mr McNamara (59) and his wife, barrister and former television presenter Theresa Lowe (56), were now saving €140 a week after both giving up cigarettes.

But a decision on whether the court will approve a personal insolvency arrangement, writing off €2.9m of the €3.7m in debts the couple owe,



Saving: Frank McNamara and his wife Theresa Lowe owe €3.7m

has been deferred until at least next week.

Mr Justice Denis McDonald had been expected to rule on the matter yesterday, but he adjourned proceedings after an American vulture fund raised concerns about rental income received by Mr McNamara.

Rudi Neuman, counsel for Tanager, raised concerns over €62,000 in rent he estimated Mr McNamara was paid in respect of an inheritance property in the years before he sought the personal insolvency arrangement.

Continued on Page 6

RTÉ 'like Netflix'

We give just as good value, says boss **P22**

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Perjury law could be in force in days – minister

Continued from Page 1

The perjury legislation has strong cross-party support and has already passed the Seanad.

Perjury is currently a common-law offence but levels of prosecutions have been low, with only a handful of people dealt with by the courts over the past decade.

The legislation is being backed by Fianna Fáil and Sinn Féin and will be debated at second stage in the Dáil tomorrow.

Responding to Fianna Fáil's criticism of the slow pace of reform in the insurance sector, Justice Minister Charlie Flanagan told the *Irish Independent* last night in relation to the legislation: "I will be leading the debate and it can be passed in a few days if Fianna Fáil support it."

The Perjury and Related Offences Bill 2018 has been championed by Independent Senator Pádraig Ó Céidigh, who said it would be "very, very significant" for insurance claims.

The Government has amended the original bill proposed by Mr Ó Céidigh and adopted it as its own. Government amendments will extend the statutory offence of perjury to people who give evidence before commissions of investigation and tribunals of inquiry.

Many industry stakeholders, particularly in the business community, have called for new legislation to make it easier to prosecute people who lie under oath or in sworn affidavits.

The proposal has taken on new importance given the public outcry over the cost of insurance.

The Department of Justice has consulted with other government departments and the Attorney General Seamus Woulfe at regular intervals this

year in a bid to get the draft legislation to a position where it can be passed into law.

Mr Flanagan said the focus should be on passing the legislation as soon as possible.

Elsewhere, the Legal Services Regulatory Authority (LSRA), the new body responsible for investigating complaints against legal professionals, said it was currently investigating a small number of misconduct complaints about solicitors.

Commenting on this newspaper's investigation – where we were contacted by a number of solicitors via a claims harvesting website – the LSRA said: "Where a solicitor is found to be accepting and paying for legal referrals from a personal injury website, this may itself constitute misconduct under the Legal Services Regulation Act 2015, and may result in a referral to the Legal Practitioners Disciplinary Tribunal."

"Legal practitioners are required to act with independence and integrity, act in the best interests of their clients, and maintain proper standards of work," the spokesperson added.

The Medical Council of Ireland also said it was willing to investigate any complaints which may be made about the findings of our investigation.

Sinn Féin finance spokesman Pearse Doherty, who lambasted insurance companies for their role in Ireland's compo culture when they appeared before an Oireachtas Committee, said legal and medical regulatory bodies needed to hold their members to account. He is calling them to also appear before the Oireachtas.

"Exaggerated claims are the exact same as fraudulent claims, and anyone who facilitates or assists them, they need to face law," he said.

INTERVIEW

'Fraudulent claimants have nothing to lose...they are getting a free shot'

Amy Molloy



AS A senator, businessman and former solicitor, Pádraig Ó Céidigh says there were many watershed moments that motivated him to introduce perjury legislation in Ireland.

This country's personal injury system and the ongoing insurance crisis have been the subject of much debate.

But one recurring problem is that the small minority of people bringing fraudulent claims before the courts are going unpunished.

"They're getting a free shot, they've nothing to lose," Mr Ó Céidigh said.

"I'm not trying to catch people out from telling lies [with this bill], I'm getting them not to tell them in the first place because of the repercussions."

If the Perjury Bill passes into legislation, those found to be telling lies on affidavits or in court could face a fine of up to €100,000 or 10 years in prison; a far cry from a slap on the wrist or simply having costs awarded against you.

Mr Ó Céidigh met more than 60 different stakeholders to get their insights into the Bill. From solicitors and business owners, to the Department of Justice and the Garda Ombudsman.

One particular body decided not to have any input, however.

Despite numerous requests



to meet, the Law Society of Ireland – Ireland's legal watchdog – didn't wish to give its views on how to make the Perjury Bill effective.

"As a former solicitor, I found it incredibly disappointing," said Mr Ó Céidigh.

"I spoke to dozens of solicitors and barristers about this, mainly in Dublin and Galway, and they all supported it."

"I made several attempts to meet the Law Society themselves and they didn't acknowledge me and didn't meet me. I wanted to get their input on the structure and drafting of the Bill."

'You do have a duty to ask... can you prove this? Can you show this?'

The Galway man previously ran a small legal firm and said the key thing he needed to do his job to the best of his ability was the credibility and the integrity of his clients' evidence.

When asked whether more onus should be put on solicitors to verify their client's version of events, he said: "You've got to take them at their word."

"You do have a duty to ask for back-up evidence. Are there any witnesses? Can you prove this? Can you show this?"

"You are hoping and expecting that the back-up evidence they give you is based on solid

'Vital' community centre facing closure

Charlie Weston
PERSONAL FINANCE EDITOR

A COMMUNITY facility in a deprived area of Dublin is threatened with closure due to surging insurance costs.

Killinarden Community Centre caters for hundreds of people, but it is unable to raise the funds to pay for its cover. Its premium has shot up by 300pc recently.

The Tallaght facility is a key resource for the area.

Manager of the community centre Hilda Hamilton said the facility would have to close if funds could not be found to

pay for the insurance. The cost of cover has gone from €8,000 in 2011 to €34,500 at present.

She said funds were so short that only €20,000 of the current premium had been paid, and now the insurance company was demanding the rest of the money.

Hundreds of people use the facility every week, with the after-school clubs and senior citizen activities popular.

"We are a poor community so we have no membership fees."

"We have an open-door policy and we don't charge for a lot of the things we do," Ms Hamilton explained.

300pc

The increase in the cost of insurance

€34,500

Cost of insuring the centre

300

The number who use the centre a week

She estimates that between 200 and 300 people a week access the centre, which plays a vital role in the community.

There are two managers and two youth workers attached to the facility. Their wages are paid for from financial supports from the likes of South Dublin County Council and the Department of Children and Youth Affairs.

But she says the centre has to fund raise to pay for the likes of insurance, maintenance and other costs.

"Almost €10,000 has been due on the insurance since July. They are ringing looking

Focus on legislation:

Justice Minister Charlie Flanagan hopes to push the Perjury Bill through the Dáil.

PHOTO: JUSTIN FARRELLY



News
Our people reject hate speech and welcome new Irish, says Flanagan
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information. At the end of the day, the solicitor is putting their own neck on the block by taking the case.”

The Perjury Bill has passed through the Seanad – where it faced no objections.

Support

It is due to be debated in the Dáil this week, and Mr Ó Céidigh is hopeful it will be passed into legislation before Christmas.

“There’s no guarantee, but there is big support for it,” he said.

When asked about the *Irish Independent’s* investigation

‘All I want is to do my best’: Pádraig Ó Céidigh on Barna pier in Galway Bay.

PHOTO: TONY GAVIN

– which found that certain medical professionals and solicitors are fuelling Ireland’s compensation culture – Mr Ó Céidigh said it was “worrying”. “Let’s call a spade a spade. I can’t comment too much as I haven’t done my own research... but in my experience I have found, honest to goodness, the vast majority of solicitors to be very straight up.”

Under the Perjury Bill, legal and medical professionals will also be indicted if they are found to have knowingly assisted in the bringing of a fraudulent claim.

“Solicitors and medical professionals could implicate themselves under the current legislation.

“All I want to do is do my best, do our best as a team, to bring in this piece of legislation and I think that it is going to get everyone to think twice or three times about bringing a claim and about the nature of the claim they want to bring.

“An awful lot of people tell the truth, the whole truth and nothing but the truth, so help them God, but that’s not the case in a number of situations.”

as insurer demands €10,000 payment

for it, but we can’t pay. And if we can’t pay the centre will have to close,” she said.

She has spoken to politicians about the situation, but added: “Nobody really cares.”

As a condition of getting insurance last July, the centre has had to restrict a number of the activities in the centre, particularly those for children.

It also has to ensure that any groups using the centre has its own insurance cover.

This has led to a situation where Ms Hamilton says she had to ask the head of the prayer group to see its insurance documents.



Under threat: Manager Hilda Hamilton and director Lily Greene with youth workers at a Christmas party for the elderly at the Killinarden Community Centre.

PHOTO: ARTHUR CARRON

INSURANCE

Flanagan urges industry to hand details of bogus claims to gardaí

Cormac McQuinn

JUSTICE Minister Charlie Flanagan has urged the insurance industry to provide details to the gardaí of any suspected bogus injury claims of which it is aware.

It came as he defended the Government’s efforts to tackle compensation culture after the *Irish Independent* exposed how some doctors are actively encouraging patients to bring claims for whiplash injuries.

The undercover probe also found solicitor firms are directly referring clients to GPs and orthopaedic surgeons to have injury reports prepared.

The revelations prompted Fianna Fáil to claim “Government inaction and a lack of appetite to tackle insurance fraud has led to a culture whereby people are incentivised to take claims”.

Mr Flanagan insisted gardaí are acting on the issue. He added: “I’m calling on the insurance industry to provide details of fraud from their files to the gardaí.”

The minister said gardaí needed such evidence if the Director of Public Prosecutions was to bring charges. He said Garda Commissioner Drew Harris “has the full backing of Government on this issue”.

Mr Flanagan insisted the Government was putting in place measures which were “workable”.

He pointed to the imminent establishment of the Judicial Council which will set guidelines for personal injury payouts as an example of the Government making progress on efforts to tackle the claims culture. The council will also promote the need for consistency in the level of damages being awarded by the courts.

The Government has said the guiding principles of the council will be that “modest

‘People are now incentivised to take claims’

injuries should attract modest damages”.

“After 20 years of promises, we have now enacted the Judicial Council Bill,” Mr Flanagan said.

He added that the funding was in place and he expected the council to be established “within the next three weeks”.

“Premises and staffing are being addressed and the Chief Justice and his colleagues are actively engaged,” added Mr Flanagan.

EMPLOYMENT

Minimum wage hike led to some workers having their hours cut

Donal O’Donovan

SOME employers cut workers’ hours after a 2018 increase in the minimum wage, but the effect was shortlived, according to new research from the ESRI.

In January 2018, the Government raised the minimum wage from €9.25 an hour to €9.55.

The increase led to some immediate reductions in the hours worked by minimum-wage employees in the Dublin and west regions and in the manufacturing sector nationally, according to a new ESRI study, funded by the Low Pay Commission – the body set up to advise Government on setting the minimum wage.

The research shows the reduction in hours did not persist into the second half of 2018.

However, during the first and second quarters of 2018, the hours worked by minimum wage employees fell by an average of 1.6 hours a week in Dublin and 1.7 hours a week in the west region, compared to those of non-minimum-wage employees. During the same period, the hours worked by minimum-wage workers employed in the manufacturing sector also fell by an average of 1.6 hours a week compared to their non-minimum-wage counterparts.

Seamus McGuinness, one of the authors of the report, said minimum-wage changes could affect some areas of the labour market differently, and that the effects found in 2018 could become more persistent during a period of lower economic growth.



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FF effort to curb 'compo culture' in courts runs into a legal brick wall

Businesses at risk because of insurance costs, warns TD Troy

Amy Molloy and John Downing

EFFORTS to curb personal injury claimants seeking bigger court payouts than those given to them by the Personal Injuries Assessment Board have been hit by serious legal problems.

The move, being pushed by Fianna Fáil TD Robert Troy, would also give claimants just one year to take legal action under dramatic new changes to the law.

However, hopes the measure could form a key part in ongoing coalition talks received a setback at the weekend as those close to the process said there were too many legal problems associated with it.

Mr Troy and his party are pushing for an overhaul of the personal injury system in a bid to reduce insurance costs for businesses through a range of measures. These include the referral of cases to gardaí and the introduction of a register of claimants.

Mr Troy said he believed his proposed legislation "could go a long way in tackling rising insurance costs" and help weed out dodgy personal injury claims.

Under his Personal Injuries Assessment Board (Amendment) Bill 2020, a person would have only have one year to bring a claim after an injury occurred. As the law currently stands, a person has up to two years to bring a claim following an accident.

The Private Members' Bill would also give the Personal Injuries Assessment Board the power to report a case to gardaí if it suspected the claim may be fraudulent.

The Injuries Board would have the authority to furnish gardaí with any documentation it deemed relevant for any Garda investigation into a personal injury application.

This would include documents provided to the board by the claimant or the claimant's solicitor.

As part of the bill, the



Claims campaign: Fianna Fáil TD Robert Troy

Injuries Board would also be responsible for establishing a register of claimants.

The register will include the name and address of the solicitor for each party, the name and occupation of each party and details of the award made.

Perhaps the most significant change proposed under the bill is that the High Court would not be allowed to vary the amount of money awarded to a claimant by the Injuries Board if a claimant rejects the assessment, except for in "exceptional circumstances".

A claimant would only be able to appeal a decision made by the board to the High Court on a point of law and not to seek a bigger payout.

Reformed

"We want to see the Injuries Board reformed," said Mr Troy.

"We want to see the board's powers strengthened and for it to go back to what it was originally established for, and that was to deal with the vast majority of claims, reduce legal costs and reduce the backlog in the courts.

"When it initially came about, we didn't have the huge payouts and high premiums that we have now.

"Insurance costs before Covid was one of the main overheads that businesses had. It is putting the viability of businesses at risk and I believe this legislation can go a long way to tackle this and we'll be pushing for it to be passed by the newly constituted Dáil.

"It can be modified, it can be improved but we believe the aspirations of the bill are very sound and will reduce the

costs of insurance, and that's the main thing," Mr Troy said.

Yesterday sources close to the government negotiations said they supported the spirit of Mr Troy's legislation and its associated aims. "But it will not pass scrutiny by the Attorney General much less any test in the courts. There are just too many legal complications," the source said.

It is expected that any coalition agreement emerging from the ongoing talks will include a section on dealing with compensation, legal and insurance costs. All three parties are conscious of the fact that Sinn Féin – which may be leading the Opposition – is very vocal on the issue.

The Personal Injuries Assessment Board was established in 2004 in an effort to reduce the costs and delays associated with injury claims. It proved a big success once it was established and it aimed to resolve matters in a non-adversarial way, minimising litigation and legal conflicts.

But in recent years injuries have been returning more frequently to the courts.

According to the most recent annual report in 2018, the board made 12,112 awards and 6,206 were rejected, moving to court litigation.

This means that more than 50pc of awards were rejected. In 2016, more than 45pc were rejected and in 2017 almost 50pc were rejected.

Fianna Fáil finance spokesman Michael McGrath did a deal of work on insurance costs during the lifetime of the recent administrations, arguing for fundamental reforms.

Interview

'I don't feel that society should have to pay for every little thing that is wrong'

Amy Molloy speaks with former minister Michael Smith, who was faced by the rising tide of Army deafness cases in 1997



WHEN Michael Smith became defence minister in 1997, his first major task was to deal with an onslaught of personal injury claims from members of the Defence Forces.

In an unprecedented move for a government minister, the former Fianna Fáil politician walked into the High Court to plead for the level of compensation awards to come down.

As of today, the Department of Defence has settled 16,829 claims relating to noise induced hearing loss and paid out €290m in compensation.

Included is the €100m in fees paid to solicitors, barristers and medical experts. There are currently five claims pending before the courts.

Speaking from his home in Co Tipperary where he has been cocooning due to the coronavirus pandemic, Mr Smith recalls one day in particular.

"The department received 40 applications from one legal firm in one day and the only thing different on each of the applications was the names of the soldiers," he said.

The symptoms and description of the cases were nearly identical: "Personal injury claims were rampant when I became minister. To some extent it had got out of hand and one of the reasons was the quantum in the courts for claims, in my view, was extraordinarily high.

"I had no difficulty with people who had genuine claims because they had their hearing impaired by their work, but I do believe a small few may not have been genuine.

"I feel that if you live to 60 years of age and you don't have cancer or heart disease and you are mentally fine, but maybe you have to turn up the radio or television a small bit louder, then you are quite lucky.

"I don't feel society should

have to pay for every little thing that is wrong."

The surge in claims was dubbed the "army deafness saga". Between 1992 and 2002, thousands of Army personnel brought claims for hearing loss resulting from exposure to loud noises during military operations.

Soldiers claimed the government failed to provide adequate ear protection and after a few claims were successful before the courts, the Department of Defence was soon inundated.

The watershed moment arrived when one individual was awarded IR£80,000 in the High Court for minor hearing loss. It was later reduced on appeal by the Supreme Court, but after this the floodgates opened wide.

Until then, the department had received 4,000 claims over a period of five years. Within nine months of that court case, it had received a further 4,000 for hearing loss.

The late Fine Gael minister Jim Mitchell, who was chairman of the Public Accounts Committee at the time, slammed the rise in claims. "Anybody who thinks this is not a scam must be blind. We are a laughing stock among defence forces around the world," he said.

Reflecting on the comments, Mr Smith said Mr Mitchell was a "direct kind of guy", and while he "may have been marginally over the top sometimes", he did it for the "most genuine of reasons".

"If you're struggling and a colleague of yours has been to court and has received a significant award, the temptation must be enormous," he said.

"If your colleague is taking a holiday, able to extend the house or buy a new car and it is happening before your eyes, well I'd find it hard to blame someone who is trying to rear a family, struggling to pay the bills [for bringing a claim]. I really feel that it would be hard to come down on them.



Safe at home: Former defence minister Michael Smith cocoons near Roscrea, Co Tipperary. PHOTO: DON MOLONEY



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charging their clients and the “unfortunate” advertisements inviting soldiers who had suffered hearing loss to come forward.

“I still stand over the comments,” he said.

It wasn't the first time he got into trouble while getting tough on the deafness claims.

Contrary to legal advice he received, Mr Smith took it upon himself to walk into the High Court to air his concerns about the level of awards being paid out. The move was seen by some as an attack on the separation of powers.

“I think it may be the only time a minister was ever to do that kind of thing. It was viewed as interfering with the judiciary but I didn't see it that way.

“I had a simple philosophy,” he said. “If you have limited resources as an organisation, you need to devote them to the most essential areas.

“We were anxious to try to support the peacekeeping contingents in different parts of the world, trying to get better equipment, trying to improve very inadequate accommodation. All these things were essential to making the Army stronger and as I saw it, paying out millions in claims was going to hinder all that.”

During his tenure, Mr Smith launched a two-pronged assault on the soaring cost of the claims and helped to significantly reduce the level of awards.

He sought to introduce tougher standards for measuring hearing loss and also cracked down on legal fees.

At one point, it was feared more than £2bn would be paid out in compensation. In a bid to prevent the department being crippled, Mr Smith oversaw the introduction of the army deafness early settlement scheme.

It allowed soldiers to settle without resorting to the courts and significantly reduced costs.

On average, soldiers received £10,000 through the scheme, whereas payouts of up to £40,000 were being made by the courts.

According to a spokesperson for the Department of Defence, there are five claims pending before the courts in relation to hearing loss.

“As they are ongoing, it would be inappropriate for the minister to comment further,” the spokesperson added.

Ireland's personal injury system has been the subject of much debate as insurance costs continue to cripple businesses across the country.

“In the long run, even though people don't say it that way, the ordinary person always pays,” Mr Smith said of the personal injury system.

“It's hard to understand when you sometimes read of the profitability of certain businesses in the insurance area to relate that to the kind of increases being imposed on struggling businesses.

“Different efforts have been made by successive governments but all of us can do better. All of us.”

“One of the problems overall is there has been a lessening in the morality of claims.

“I grew up in a society where if you fell and broke your leg, it was something that just happened but that doesn't seem to be the case now.”

As to whether the Army deafness saga undermined public respect for the Defence Forces, Mr Smith says he doesn't believe this to be the case.

“The finest of people serve in the Defence Forces, then and now,” he said.

“I was honoured to be in Kosovo and Lebanon and they represented Ireland in the most positive way, but like everything, scars emerge in different organisations.

‘I grew up in a society where if you fell and broke your leg, it was something that just happened’

“You have to live through that and the vast majority are extremely honourable and need to get the best help and support.”

While a faction of the public criticised the soldiers for bringing the claims, some directed their anger at the firms representing them on a no win, no fee basis. Some were accused of soliciting clients and the Law Society of Ireland had to crack down on advertising regulations.

Mr Smith was outspoken on the issue and recalls how he “got into trouble” for comments he made in an interview on a Sunday radio show.

The former minister hit out at the legal fees lawyers were

Claims by Defence Forces personnel cost State €5m in damages and fees

Amy Molloy

THE Department of Defence paid out more than €5m for personal injury claim settlements and subsequent legal costs in 2019, the *Irish Independent* can reveal.

More than €3m was paid out in compensation for members of the Defence Forces, while legal costs amounted to just over €2m.

There was a significant spike in the number of personal injury claims made by Defence Forces members in 2018 and 2019.

The compensation paid out is at the highest level seen since the department was inundated with claims relating to noise-induced hearing loss during the 1990s in what was dubbed the “army deafness claims”.

From today, the Department of Defence has settled 16,829 claims relating to noise-induced hearing loss and paid out a total of €290m in compensation.

There are currently five claims pending before the courts.

“It would therefore be inappropriate for the Minister for Defence [Paul Kehoe] to comment further on this matter,” a spokesperson for the Department of Defence said.

A total of 147 personal injury claims were made against the Defence Minister by current or former soldiers in 2019 for injuries suffered while in the line of duty.

Fifty-one were related to the use of the anti-malarial drug Lariam.

The drug is issued to army personnel when volunteering abroad.

But it has been linked to insomnia, depression and psychiatric problems.

As with the army deafness claims, a successful High Court case led to a surge in claims relating to the issuing of the drug.

The State Claims Agency, which was established in 2001 after concerns were raised about the Government's handling of the deafness claims, cited in a report that a High Court case led to a “significant increase in new Lariam-related cases”.

In 2017, a claim relating to Lariam was settled for a significant figure and the Department of Defence has seen a rise in the number of claims since.

The State Claims Agency manages all personal injuries claims taken against the Minister for Defence.

External legal costs incurred by the agency arising from the defence of any claims are

Approach is to settle cases expeditiously where State is considered liable

refunded by the Department of Defence.

In 2019, plaintiff legal costs amounted to €862,408, while department legal fees amounted to €1,153,130.

A total of €3,177,130 was paid to Defence Forces members in personal injury settlements last year.

In 2018, the department spent more than €6m on personal injury settlements and legal costs, compared with just €3.31m in 2017.

A total of 221 personal injury cases were taken in 2018, an increase of 118 from 2017.

A spokesperson for the Department of Defence said the State Claims Agency's approach was to “settle cases expeditiously” where the State was considered liable.

“In cases where liability is fully disputed by the State, all necessary resources are applied to defending such claims robustly,” the spokesperson added.



Claims pending:
Defence Minister Paul Kehoe



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Smell the coffee

How reusable cups became a battleground



Cheltenham winner loses €70m debt deal over forged document

Horse owner
Conor Clarkson



Shane Phelan

AN APPLICATION for a personal insolvency arrangement writing off more than €70m in debts has been withdrawn after it emerged a

forged document was submitted to the High Court.

The dramatic development came in a case involving well-known businessman and horse owner Conor Clarkson. He claimed transactions

recorded in his bank account totalling over €4,000 related to purchases from a computer outlet. An invoice was supplied to the court to support his story, but it emerged yesterday the invoice was not genuine.

Mr Justice Denis McDonald said the case raised serious issues and he would have to consider whether to take further action. Speaking to the *Irish Independent*, Mr Clarkson said: "The whole process

of the High Court application has been a huge amount of pressure and sadly a mistake was made, which I accept ownership of."

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Insurers are told to slash their rip-off motor rates

Central Bank report finds surge in price of premiums despite fall in claims costs

Charlie Weston
PERSONAL FINANCE EDITOR

INSURERS have been called on to immediately cut motor premiums after a damning report from the Central Bank showed the industry making huge profits on the back of drivers.

The report shows premiums are up but claims are down. And insurance company profits on motor policies are at a high.

The Central Bank report shows that the average motor premium was up by 42pc between 2009 and last year.

Average premiums were just over €700, some €265 more than in 2009.

Over the same period the cost of claims per policy fell by 2.5pc.

Central Bank statisticians found the average cost of claims per policy was €226 last year, down almost €10 per motorist since 2009.

Profitability for motor insurers operating in this market was 9pc of total income last year.

This is considered to be an extremely healthy level of profits for motor insurers.

The Alliance for Insurance Reform said the report showed the "greed" of the insurance industry.

Peter Boland, of the Alliance, said: "The motor insurance data lays bare the scale of the greed that has driven the current insurance crisis, enriching insurance companies and lawyers

Continued on Page 4



Big 'Little' star: Saoirse's in style

Irish actress Saoirse Ronan with co-star Florence Pugh at a photocall in London to highlight their new film 'Little Women', which releases in cinemas here on December 26. PHOTO: TIM P WHITBY

'I will fight extradition bid tooth and nail,' declares Bailey

Ralph Riegel

IAN BAILEY has vowed to fight "tooth and nail" against his extradition to France after he was arrested on foot of a European Arrest Warrant (EAW) issued by French authorities.

The High Court endorsed the third EAW issued in nine years by France for the Manchester-born freelance journalist in connection with the death of Sophie Toscan du Plantier (39) in west Cork.

It is the first phase in what is expected to be a historic legal battle over the extradition of Mr Bailey, who in May was convicted in absentia in France of the murder that happened almost 23 years ago.

Mr Bailey has consistently protested his innocence in relation to the murder of the mother-of-one.

Last night, he told the *Irish Independent* he would fight the extradition bid "tooth and nail".

"I feel very aggrieved because it seems like I am being sacrificed to the French," he said.

In 2017 the High Court ruled the second French extradition request was an "abuse of process". However lawyers for the State said the law had changed since that decision and Mr Bailey had also been convicted in France.

Full report, analysis: Pages 2&3

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