

Injuries board frees up lawyers, but where are the savings?

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PERSONAL injury lawyers were crucial to the smooth running of the Irish compensation industry, we were told.

Couldn't be done any other way; had to do with justice you see. Honest Injun, it wasn't the money. The €450m honey pot paid out in litigation costs to process €1bn in personal injuries compensation in 2003 was just fair pay.

No, there was no link between the fees charged by personal injury solicitors and barristers and the scale of award — no evidence that the waves of cash in the system were acting as encouragement to waves of exaggerated claims.

It will add to costs, we were told. So convinced were the Personal Injuries Assessment Board critics that a cost-benefit analysis was inserted in the PIAB Act 2003, presumably to help with the public hanging.

Even as the fledgling PIAB worked its way into the compensation sector, critics just couldn't help themselves, jumping the gun before the first statutory analysis was completed, condemning PIAB for alleged inefficiency and castigating it for trying to bypass solicitors.

That's why the publication of Dr Vincent Hogan's cost-benefit analysis of the PIAB must read a bit like Friedrich Paulus's final report to Hitler from the frozen wasteland of Stalingrad 64 years ago this week.

Ultimately, the old adversarial system collapsed under its own weight and was not helped by greedy claimants and their willing legal advisers.

The insurance industry, while bleating about claims costs, merely ramped up motor and public liability

premiums and hid profits behind corpulent reserves against future claims, safeguarding themselves from allegations of profiteering.

Policyholders and small businesses paid through the nose for the excesses of our compensation culture while insurance companies made profits, regardless of claims costs, simply by passing them through to consumers.

By avoiding settlements based on the lengthy and high-cost adversarial process and by streamlining the system, PIAB was to provide a method through which personal injury claims could be assessed without eating up great chunks of legal time.

The Civil Liability & Courts Act 2004 played its part, introducing a Book of Quantum to the judiciary and creating a common benchmark in awards while harshly punishing false and exaggerated claims. It dovetailed neatly with the insurance industry hotline initiative on bogus injuries.

Before PIAB, about 33,000 writs were issued each year, even though less than one in ten ever made it to court. Last year, the total number of writs issued had dropped to 4,000.

In 2004, a staggering 15,000 High Court writs were issued, falling away to 750 in 2005. Meanwhile, the 20,000 civil bills lodged with the Circuit Court in 2004 collapsed to about 3,000 the following year.

The speed of settlement has accelerated, from over three years on average through the old system, to less than a year for 90pc of cases through PIAB.

But, perhaps, the most remarkable feature of the new market is the huge number of cases that now settle without engaging in a formal PIAB process at all. An estimated 10,000 personal injury events now reach agreed settlements, following guidance from PIAB and by adopting the

Book of Quantum figure as a template, within 90 days. A further 10,000 are processed by PIAB, with just 5,000 moving beyond, most of these settling before a court hearing.

Based on Dr Hogan's study, the saving in litigation costs compared to the old system is more than €24m. PIAB reckons that this will ramp up to over €40m this year. But the payoff to Ireland is a lot higher when the knock-on benefit of freeing up legal resources and devoting more court time to more serious issues is considered.

Dr Hogan draws our attention to the vast differences in costs between the old adversarial system and the new, where costs savings of 97pc arise compared to an average High Court award of sixty thousand, and cost savings of 88pc arise from an average Circuit Court award of sixteen thousand.

These results are heart warming and remarkable. Everybody wins, even the old personal injury lawyers who can now get on to meatier tests of their legal skills. If there is still a fly in the ointment, it's the general insurance market, which continues to remain over-concentrated.

Dr Hogan quite rightly fingers this in his report; overhead costs for claims has declined from a whopping 46pc of awards to just 6pc, but where is the corresponding decline in insurance prices? It is true that insurance prices, already in decline before PIAB, have fallen further but these were from massive heights.

Evidently Ireland's general insurance industry has lost none of its appetite for corpulent profit-taking, with the suspicion that insurers are snaffling up much of the new PIAB savings for their shareholders.

The answer is external intervention in the form of aggressive new competitors, attracted to a market that

has normalised and who are happy to build market share by undercutting Irish prices.

External entrants like Northern Rock and Bank of Scotland have already delivered better value for most consumers in deposits and mortgages, by triggering sharp competitive responses from existing players. Let's hope it will be sooner rather than later for Ireland's over-priced insurance markets.