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Jennifer McCann MLA
Chair of the Finance and Personnel Committee
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9 March 2011

Dear Ms McCann

Damages (Asbestos Related Conditions) (Northern Ireland) Bill 2010

My colleague Nick Starling wrote to you on 11 January setting out our substantial concerns about the Northern Ireland Assembly's power to pass the Damages (Asbestos-Related Conditions) Bill (NIA Bill 10/10) under the Northern Ireland Act 1998. I enclose a copy of that letter for ease of reference.

Despite the Northern Ireland Human Rights Commission giving evidence to the Finance and Personnel Committee, we remain concerned that the highly complex legal arguments about insurers' rights under the European Convention on Human Rights have not been adequately considered and debated by the Finance and Personnel Committee. Our concerns that the Bill's substantive provisions, if passed, would breach the insurers' Convention rights are compounded by the manner in which the Bill is being dealt with. Given the Committee's inability to consider and reflect on all relevant evidence there must be real doubt that the Assembly can discharge its legal obligation to act proportionately in interfering with the insurers' legitimate rights and interests. Failure to discharge that duty puts the UK Government at risk of breaching its international obligations.

The Committee itself must have recognised these concerns when it requested an extension to the Committee Stage of the Bill, which the Assembly refused on 14 February. Furthermore, in its report on the Bill, the Committee notes that at its meeting on 16 February "a number of gaps in the evidence base were identified" including in relation to:

- Expert medical advice on the nature of pleural plaques and any associated physical or psychological harm (from both supporters and opponents of the approach taken in the Bill);
- Information on potential public liabilities relating to Harland and Wolff;
- Legal briefing on the law of tort and negligence, including any potential implications which the Bill might have in this area;
- Representation from the business sector; and
- Personal testimony from persons with pleural plaques.



Although the Committee has since heard from DETI officials and from people with pleural plaques, this was outside the timescales for the Committee to digest this evidence and include it in the official report. We believe the Committee had also planned to hear evidence from the Chief Medical Officer for Northern Ireland, the Confederation of British Industry and other experts on the subject matter of the Bill. In addition, the Committee has not undertaken a formal clause-by-clause scrutiny of the Bill.

All of these factors create substantial and real doubt as to whether the Assembly has acquainted itself with all the relevant facts sufficiently to reach an informed view about all relevant considerations, including whether the Bill can be regarded as being in the public interest and having a proportionate interference with the rights of the insurers affected. If the Committee considering the Bill is of the view that "the evidence received to date is incomplete and there is insufficient time to collect and consider all of the further evidence required to enable the Committee to reach a fully informed position [on the Bill]", there must be substantial doubt as to whether the Assembly will be in a position to do so when it considers the Bill at Final Stage. We urge full consideration of this view before the Bill is referred back to the Assembly for Final Stage.

I have written to the Minister for Finance and Personnel and the Assembly Speaker expressing similar concerns.

Yours sincerely

Maggie Craig
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10 January 2011

Dear Jennifer McCann

Draft Damages (Asbestos Related Conditions) (Northern Ireland) Bill 2010

I am writing in regard to the draft Damages (Asbestos Related Conditions) (Northern Ireland) Bill 2010, which the Finance and Personnel Committee is shortly due to consider during Committee Stage of the Bill.

On behalf of our members, I would like to emphasise my sincere concern at the lack of time available for the Committee to properly scrutinise and consider oral evidence on legislation that, if passed, will dramatically affect the way in which the insurance industry operates in Northern Ireland.

Our members welcome the fact that the Committee has called the Association of British Insurers and representatives from the insurance industry to give oral evidence on the Bill, but we are extremely concerned that the Committee will not have time to receive oral evidence from the medical profession, academia or actuarial experts, all who have important views on the need for and impact of this contested Bill.

The Committee is also aware that similar legislation is currently the subject of legal challenge in Scotland and we strongly advise that the Committee seeks independent legal advice on whether the Bill is within the competence of the Northern Ireland Assembly. In addition, we believe that the Bill may breach Articles 1 and 4 of the European Convention of Human Rights and would urge the Committee to seek evidence on this matter.

We are also aware that the Department of Enterprise, Trade and Investment in its recently published spending proposals has provided £31million for state liabilities from asbestosis and pleural plaques. Despite the impact of this costly figure on the DETI budget, we believe it to be a conservative estimate at best and suggest that the Committee should have the proper time and opportunity to consider oral evidence from DETI officials on how this figure was arrived at and the detail of how it is broken down. We do not recollect the Regulatory Impact Assessment associated with the Bill identifying such a cost and would also urge the Committee to seek wider independent evidence on the potential financial impact of the Bill, both to the Northern Ireland Executive and to the insurance industry.



We recognise that the Committee has an important role in scrutinising this contested legislation, which as it stands, will fundamentally change the law of negligence. We believe that the two oral evidence sessions with outside organisations on 12th and 19th January does not reflect the important and varied views that exist, nor does it give the Members of your Committee adequate scope to properly carry out its function in considering the Bill. We would strongly urge you to consider these matters before proceeding.

Yours sincerely

Nick Starling

Nick Starling
Director of General Insurance and Health