

Income Continuance Plans

*A review of the position and regulation of income
continuance plans*



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IMPORTANT NOTE

Watson Wyatt LLP and Matheson Ormsby Prentice have relied without independent verification upon the accuracy and completeness of information provided to us by the organisations consulted as part of this project. No account has been taken of any subsequent information or developments after 19 June 2003, when we completed our review.

Our review was designed to meet the agreed requirements of the Pensions Board in accordance with the contract agreed with them. Our report should not therefore be regarded as suitable to be used or relied on by any other party for any purpose or in any context. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Pensions Board for our report, or for the opinions we have formed.

A review of the position and regulation of income continuance plans.

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1 Executive summary

- 1.1 The Pensions Board has been asked by the Minister for Social and Family affairs ("the Minister") to review in consultation with the Department of Enterprise Trade and Employment ("DETE") the position and regulation of Income Continuance Plans, and to produce a report thereon for the Minister.

Products

- 1.2 Section 3 of this report summarises the various products that are currently available in the market. In general, the features of income protection products being offered in the Irish market by different providers are broadly similar, both in relation to the group income continuance products and individual income continuance products.
- 1.3 As part of the project we reviewed the product documentation currently being used by insurance companies in the market. This review showed the standard of product documentation to be quite varied across the marketplace. While there are varying standards of documentation in the marketplace there doesn't seem to be any evidence that the standard of documentation in general, issued by life assurance companies, is an issue. However, some companies do not currently cover clearly in their documentation some important points regarding the operation of these plans.
- 1.4 *We therefore recommend that the Irish Insurance Federation ("IIF") consider issuing a code of best practice in relation to facts that should be covered in product terms and conditions, similar to that issued by the Association of British Insurers. This would only affect those insurance companies not currently meeting the standards being set by the best practice insurance companies in the market.*
- 1.5 It was also evident from our review that insurance companies use a number of terms to describe income continuance products. The terms used include "income protection" and "permanent health insurance" ("PHI"). However, it seems that the term "income protection" has superseded that of "permanent health insurance" in the majority of insurance company literature. We consider that the use of terms such as "permanent health insurance" could mislead consumer expectations. *We therefore recommend that these products should be referred to as income continuance products or income protection products and in particular that the term "permanent health insurance" should no longer be used by either insurance companies or employers to describe these products.*

Coverage statistics

- 1.6 Section 4 gives details in relation to how many income continuance plans exist, how many people are included in such plans, and into what categories they fall. This product accounts for a relatively small proportion of the life assurance premium income. The IIF Factfile 2001 stated that the total premium income in respect of

domestic life assurance business in 2001 was €7,167.7 million. Income continuance premium income only accounted for 1.5% of this premium income.

1.7 In addition, the IIF statistics show that group business made up 89% of total new business sales in 2001, showing that the income continuance market in Ireland is heavily weighted towards group business.

1.8 We estimate that in the region of 13% of the working population are covered by income continuance plans. This is based on a working population of 1.827 million (source Central Statistics Office, May 2002 principal statistics) and the figures in table 4.1 of this section of this report.

Legal basis

1.9 Section 5 of the report describes the legal basis for income continuance products.

Claims management procedures

1.10 Section 6 of the report examines the claims management procedures and processes that currently exist in the Irish market. To understand these procedures and processes, the consultants met with the claims managers and underwriting managers in a number of insurance companies. Based on our meetings with the various companies it seems that insurance companies have tightened their procedures in the last five to ten years. This relates to claim admittance, ongoing claims management and claim termination.

1.11 We understand that in the past it may not have always been very clear that a precondition of continuing to receive income continuance benefits was that the employee must remain in employment. We also understand that some companies would in the past have continued to pay claims even when the employee was no longer in employment. However, it seems that this is another area where insurance companies have tightened up procedures and that in the current market such claims would not continue to be payable with the exception of those instances described in paragraph 6.24.

1.12 We also understand from our meetings that insurance companies do not generally get involved with the employer in any communication explaining these benefits to employees.

The sale and marketing of income continuance plans

1.13 Section 7 of the report examines the interaction of income continuance with pension plans in relation to areas including marketing, sales, disclosure of information and benefit payments. In order to understand these various interactions we met with some

sales personnel, both those employed directly by insurance companies and brokers who sell these types of products. We also met with marketing personnel in some of the insurance companies and benefit advisors to discuss the interaction of income continuance plans with pension plans under the various headings mentioned above.

- 1.14 We understand from our various meetings with sales and marketing personnel that income continuance plans are generally perceived as an integral part of a benefits package which tends to include pensions, life cover and disability benefits and are very much linked to pensions. But it is in the area of premium protection benefits that there is the clearest link to pensions and pension schemes, given that the purpose of the premium protection benefits is to insure an amount which the employer uses to meet some or all of the cost of the contribution to the pension scheme.
- 1.15 In addition, the terms and conditions of income continuance benefits are sometimes included within pension scheme booklets. This can reinforce the perceived link to a pension scheme. *As this is not a pension benefit we recommend that any description of this benefit should be separate from that in relation to pension benefits.* Where existing pension disclosures, (e.g. pension scheme booklets) currently include the details of income continuance benefits we are not suggesting that they should be reissued with the details of any income continuance benefits removed.
- 1.16 We understand that some pension schemes have been set up in a way that facilitated the employer in defining pension contributions as a rate or amount that is inclusive of the cost of insuring life and income continuance benefits. This practice can result in a reduction over time in the proportion of total contributions being paid into a pension account. Given the scope for income continuance premiums to vary significantly over time, we consider that continuation of this practice raises a concern. *We therefore recommend that it should not be legally permissible to set up a new pension scheme where the employer contribution is defined in any manner that is inclusive of the cost of any benefit, other than a relevant benefit as defined in section 770 of the Taxes Consolidation Act, 1997.*
- 1.17 *Where schemes are already set up in this way we recommend that there should be a requirement that trustees specifically disclose to members that this is so. In particular, we recommend that annual benefit statements for defined contribution schemes should include a clear and prominent statement to the effect that the net contribution to be applied to members' retirement accounts may reduce over time, if that is likely to be the case.*

The overall workings of income continuance plans

- 1.18 Section 8 sets out the consultants understanding of the overall interaction and workings of income continuance contracts between employers and employees, associated pension plans, and income continuance policies offered by insurance companies.
- 1.19 In the majority of cases this benefit is insured by the employer with the insurance contract being one between the employer and the insurer. This insurance contract may or may not provide benefits matching those promised to the employee.
- 1.20 Premium protection benefits are often added as a rider benefit to disability insurance policies, the intention being that this benefit (which is payable to the employer) will assist the employer in financing ongoing pension provision for the employees. The amount insured is not necessarily the amount that is paid into the pension scheme, it may be more or less than the amount actually paid into the pensions scheme.
- 1.21 Employees' entitlements under income continuance plans arise under employment contracts. In general, it seems that formal employment contracts make brief reference to the availability of the benefit, with detailed explanation being left to some other form of communication, such as a pension scheme booklet. This can cause confusion about the nature of the benefit and it's relationship with pension benefits. At present, best market practice is to communicate the details of an income continuance plan through a separate booklet or other separate communication.
- 1.22 Current pension scheme disclosure regulations require disclosure of the benefits payable under the pension scheme. The consultants regard this as covering disclosure of benefits arising following a period of absence due to disability including the arrangements made, if any, for continuation of active pension scheme membership in the period of absence and the death benefits payable during and after such a period.
- 1.23 Overall, we perceive that lack of adequate disclosure has been the most significant source of misunderstandings in relation to the interaction of income continuance plans and related pension plans. We do not believe that it is reasonable to allow this situation to persist and recommend strengthening the non-pensions aspects of disclosure. *We therefore recommend that the DETE introduce regulations, by Statutory Instrument, in relation to communications between the employer and the employee.* The purpose of the regulations should be to oblige employers that provide income continuance benefits for some or all of their employees to provide each such employee with a defined minimum amount of information in relation to the income continuance benefits. The regulations should specify both when the communication should happen and the content of the communication. Section 13 of this report lists what we consider is the minimum amount of information that should be included in such a communication.

1.24 We consider that existing pensions disclosure regulations provide for required disclosures in relation to pension schemes. In cases where disclosure remains inadequate, this may be because of a lack of understanding of the intended depth of the regulation in question. *We therefore recommend that the Pensions Board introduce specific guidance in its Guidance Notes drawing attention to pension scheme aspects of the disclosure recommendations described in the previous paragraph.*

1.25 It was also considered whether the regulation of income continuance plans should be within the remit of the Pensions Board or the DETE. *On balance it was considered that the regulation of income continuance plans, combining as they do an insurance product and elements of an employment contract, should continue to be regulated by the DETE.*

Employment law implications

1.26 Section 9 considers the employment law implications in relation to income continuance plans provided by employers for their employees and concludes that the nature and extent of disclosure by employers to employees in respect of their entitlement to income continuance benefit tends to vary and in many cases is inadequate. The fact that income continuance represents a term and condition of employment, (which may or may not be conditional), means that employers may not be able to rely on waivers contained in communication documents to employees to the contrary. In terms of regulation, the statutory regulation under the Terms of Employment (Information) Act 1994 is imprecise and arguably an ineffective deterrent.

Level of understanding of employers and employees in relation to income continuance.

1.27 Section 10 reviews the understanding of employers and employees in relation to Income Continuance. In order to carry out this task a questionnaire relating to the topic was sent to the heads of Human Resources of about 960 of the Business and Finance top 1000 companies some of which were targeted at the employer and others that were targeted at employees. The response rates to the two surveys were quite good with a response rate of just over 14% for the employer questionnaire and a 10% response rate for the employee questionnaire.

1.28 The replies to the employee survey showed that there is a relatively high level of awareness amongst this group of employees in relation to some of the features of income continuance benefits. However, just over one third of respondents were unaware of some of the key features. It is possible that the results may be skewed as nearly 30% of respondents did refer to documentation in order to complete the survey and in addition nearly all respondents had received some form of communication from their employer in relation to this benefit. It is difficult to say whether the same level of

awareness would exist for employees of other firms who did not participate in the survey.

- 1.29 There was some degree of inconsistency between the employee replies and the employer replies, particularly in relation to some of the scheme features, such as the definition of sickness, suggesting that even within this group of there was a degree of misunderstanding in relation to this benefit.
- 1.30 The results of the survey also showed that, of the employers who responded to the questionnaire, most communicated this benefit to its employees, with the most common medium of communication being inclusion of details in the pension scheme booklet. It is possible that the results of the survey may be somewhat skewed towards better practice employers. Many of the income continuance documents received from employers as part of the survey did not contain sufficient information to understand what the pension benefit entitlement may be for an employee absent from work and in receipt of income continuance benefits. We consider that this reinforces the need to require regulations to be introduced in relation to communications between the employer and the employee.

Consultative meetings

- 1.31 Section 11 summarises the various meetings that took place as part of the project. A common conclusion from the various meetings was that communications in relation to this product could be improved, particularly communications between the employer and the employees in relation to the availability and nature of this benefit. It was also suggested a number of times that it should be made much clearer that this was not a pension benefit and that it should not be packaged as part of the pension benefits. As mentioned above we consider that both of these points require a change in practice and are covered by recommendations in paragraph 1.23 and 1.15.
- 1.32 The Consumer Association also considered that the use of the term "permanent health insurance" to describe this product could mislead consumer expectations which we also consider can be misleading and is covered by the recommendation in paragraph 1.4.
- 1.33 The IIF considered that it might be beneficial to claimants, employers and the insurance industry if the terms of reference of the insurance ombudsman could be extended to cover corporate income continuance plans. Whilst the industry has not explored this option in detail to date, it would be prepared to look into the practicalities. *The consultants also consider that this might be beneficial and recommend that the IIF consider extending the terms of reference of the insurance ombudsman to cover corporate income continuance plans.*

- 1.34 Section 12 discusses income continuance benefits in other markets.
- 1.35 The project team recommendations are summarised in section 13 of this report.

2 Introduction

- 2.1 The Pensions Board has been asked by the Minister for Social and Family affairs ("the Minister") to review in consultation with the DETE the position and regulation of Income Continuance Plans, and to produce a report thereon for the Minister.
- 2.2 This report has been prepared jointly by Watson Wyatt LLP ("WW") and Matheson Ormsby Prentice ("MOP") ("the consultants"). The project consisted of ten separate tasks which were detailed in the request for tender issued by the Pensions Board on 28 May 2002. A summary of the request for tender is included in Appendix D. In the reply to the request for tender the consultants described the approach that would be taken to each of the ten tasks. The description of the approach used to carry out each task is included in Appendix E.
- 2.3 WW are an international firm of consulting actuaries with extensive experience in the areas of insurance and financial services, employee benefits, including income continuance benefits, and human resources.
- 2.4 MOP are a legal firm with considerable experience of advising on the legal aspects of pensions schemes and employee benefits, all aspects of employment law and advising insurance companies in relation to insurance regulations and structuring new insurance products.

3 Income continuance plans

Summary

- 3.1 Eight insurance companies submitted policy documentation to the project team. Most of the documentation received was product documentation that is currently being used in the market in respect of new business. Only a very small amount of historic product documentation was received. This tends to be more difficult to gather.
- 3.2 In general, the features of income protection products being offered in the Irish market by different providers are broadly similar, both in relation to the group income continuance products and individual income continuance products.
- 3.3 The main characteristics of the policies offered by insurance companies tend to be quite similar in terms of the benefits that they offer to policyholders and also the terms and conditions that apply to the policies. There are, however, some differences in the products being offered by the various individual insurance companies which impact on the likelihood of a claim being admitted and on the size of any such claim. These differences are explained in paragraphs 3.10 to 3.47.
- 3.4 Insurance companies use a number of terms to describe income continuance products. The terms used include "income protection" and "permanent health insurance". After comparing current versions of product documents against earlier versions it appears that the term "income protection" has superseded that of "permanent health insurance" in the majority of insurance company literature. However, a very small number of insurance companies are still using the term "permanent health insurance" to describe their products.
- 3.5 We consider that the use of terms such as "permanent health insurance" could mislead consumer expectations. We therefore recommend that these products should be referred to as income continuance products or income protection products and in particular that the term "permanent health insurance" should no longer be used by either insurance companies or employers to describe these products.

Standard of documentation

- 3.6 The standard of documentation is quite varied across the marketplace. Those companies whose product guides took the form of a "question and answer" document were generally clearer and easier to read. The important points about requiring full and honest disclosure of all relevant facts were invariably stated in bold. However, it was often the case that some of the definitions of situations under which benefits would or would not payable were more difficult to fully comprehend.
- 3.7 The insurance companies that were the more significant players in the group market tended to have a higher standard of documentation.

- 3.8 Documentation for individual policies is generally clearer than for group schemes, with formats that are easier to read and with less use of technical language. Again, however, there are differences in quality between the various companies.
- 3.9 While there are varying standards of documentation in the marketplace there doesn't seem to be any evidence that the standard of documentation in general, issued by life assurance companies, is an issue. However, as mentioned above the standard of documentation could be improved in some instances. We therefore recommend that the IIF consider issuing a code of best practice in relation to facts that should be covered in product terms and conditions, similar to that issued by the Association of British Insurers. This would only affect those insurance companies not currently meeting the standards being set by the best practice insurance companies in the market.

Background

- 3.10 Individual income continuance products are sold directly to individuals, whereas group products are generally sold to an employer for a group of employees (referred to as "employer sponsored" schemes). Individuals may also be part of a group arrangement set up by an affinity group (referred to as "voluntary schemes"). The main difference between these two types of group arrangements is that generally the employer meets the cost, or most of the cost on the former arrangement. In addition, employees do not generally choose to enter the arrangement. This is generally at the discretion of the employer. In the latter arrangement, the cost is met by the individual member and each member of the affinity group chooses whether or not to join the income continuance arrangement.
- 3.11 Employer-sponsored group income continuance products are contracts between an employer and an insurance company whereby generally the employer pays premiums to the insurance company to cover its employees. The insurance company pays out any benefits on sickness or disability to the employer, who then pays the absent employee in accordance with its contractual arrangements with that employee.
- 3.12 A voluntary group scheme generally involves a trade union or other affinity group setting up an arrangement via a broker, or directly with an insurance company, that allows its members to avail themselves of income continuance cover at more favourable premium rates than they would have been able to receive had they applied as individuals. The terms and conditions on these policies are likely to also be more advantageous to the member than if they were to seek cover on their own as an individual.
- 3.13 Individual income continuance policies are also offered in the marketplace, allowing people to arrange cover directly with an insurance company. These policies can be set up on a stand-alone basis, which involves the member paying premiums and in return

receiving a regular income benefit in the event of a claim being admitted by the insurer. Alternatively, they can be set up as additional benefits on top of those offered by a life assurance policy or a pension policy. (ie it is not a separate stand-alone policy). In these situations, the policyholder pays an extra premium that, in the event of a claim being admitted, will provide for a regular income benefit and may also meet the cost of premiums towards the original life assurance or pension policy.

3.14 In summary, the types of income continuance plans available in the Irish market fall into five broad categories. These are:

- Group income continuance schemes
 - Employer sponsored group schemes
 - Voluntary schemes
- Individual income continuance
 - Stand-alone
 - Plans associated with pensions business
 - Plans associated with life business

Group schemes

Many of the terms used in the following paragraphs are defined in the Glossary in Appendix A.

Degree of disability

3.15 The degree of sickness or disability that is required by almost all companies for a claim to be admitted is that the individual is unable to follow his/her own normal occupation. A very small number of the providers define sickness or disability as being unable to follow the individuals own occupation or a similar occupation.

Deferred periods

3.16 There is a range of deferred periods on offer in the market, including 13 weeks, 26 weeks, 52 weeks or 104 weeks. Most companies however only offer a subset of these options, usually limiting the choice to 13 weeks or 26 weeks. In a couple of instances, the only option available is a deferred period of 26 weeks.

Eligibility

- 3.17 In order to be eligible to join a scheme individuals must be permanent employees of the sponsoring employer, either part-time or full-time. This was consistent in all the documentation received from the insurance companies.

Benefits

- 3.18 The maximum benefit that a person may receive is generally 75% of pre-disability earnings less other income. The definition of “pre-disability earnings” is usually basic salary in the twelve months prior to disability, with some companies also including an average of fluctuating bonuses from the previous three years. The definition of “other income” varies across insurance companies. Most companies seem to deduct from the income continuance benefit any entitlement to State disability benefit. Most insurance companies also deduct benefits from any other income continuance insurance policies and any income that is still being earned whilst the individual is sick or disabled. Some insurance companies also specify that the benefit will be reduced to allow for the annualised equivalent of any loss-of-earnings court award.

Notification period

- 3.19 There is a wide degree of divergence evident from the documentation received in respect of the period within which the companies expect to be notified of any potential claims, in order to allow them to arrange for the necessary medical examinations that must be carried out before a claim is admitted. The only condition that appears with any frequency is that claims must be notified prior to one month before the deferred period ends. The condition can vary from seeking notification of any sicknesses within one month of the deferred period starting up to one month after the deferred period ends.

Late notification of claims

- 3.20 Similarly, companies react differently to late notification of sickness. Some companies will only pay a claim from the date that completed documentation is received, while others will require that half the deferred period must elapse from the actual date of sickness notification before any claim is admitted. There is also a company in the market that accepts no liability for any sicknesses notified more than six months after the end of the deferred period.

Indexation of benefits

- 3.21 Group products available in the market always offer the option for benefits to increase while in payment. A number of escalation options exist in the market. These escalation options include having the rate of benefit escalation equal to a fixed 3% or 5% per annum, or for benefits to increase in line with consumer price inflation, sometimes subject to maximum of 3% or 5% per annum. Not all companies offer this full range of escalation options.

Proportionate benefits

- 3.22 All insurance companies will pay proportionate benefits in the instance of an individual partly recovering from sickness or disability and returning to work part-time, in order to aid in the rehabilitation of the claimant. In this instance the disability benefit is usually reduced in proportion to the ratio of the earnings from the part time work to pre-disability earnings.

Exclusions

- 3.23 All companies have a list of exclusions, whereby they will not admit a claim. These include the following:
- HIV / AIDS, although some companies will allow a claim to be made if the disease was contracted through a violent assault
 - Illnesses caused by addiction to drugs or alcohol
 - War
 - Any self-inflicted injuries
 - Most companies, though not all, also exclude claims arising from illnesses or injuries arising out of hazardous pursuits or the act of committing a crime.

Pregnancy

- 3.24 Insurance companies have varying approaches in dealing with any illnesses arising as a result of pregnancy. No insurer will treat the period of pregnancy as counting towards the deferred period in the event of any illnesses arising as a result of the pregnancy. Instead, they will treat any such sickness as incepting on a certain date after the pregnancy ends. This date varies amongst providers and ranges from the actual date on which the pregnancy ends to thirteen weeks later.

Nature of insurance contract

- 3.25 We received some documentation from insurers, the purpose of which was to explain to employees the nature of the benefit being offered. These documents stated explicitly that the contract was between the insurance company and the employer, rather than with each individual employee. They also stated that any benefit would be payable to the employer who would then pay the employee in accordance with the contractual arrangement with the employee through the regular payroll system.

Unemployment

- 3.26 A condition for any claim to be paid is that the claimant remains in the employment of the sponsoring employer. It is generally specified in the terms and conditions, but not in all instances, that if this criterion no longer holds, then the benefit will cease to be paid. Similarly, cover will no longer be provided for any non-claimants if they become unemployed, including those who are sick at the time of redundancy. Some companies, but not all, explicitly state, however, that in the event of the sponsoring employer being wound up, the benefit will continue to be paid, except that it will go directly to the individual. In this situation, it is stated by at least one company that the definition of disability required for the benefit to continue to be paid will change from the ability to carry out one's own normal occupation to the ability to carry out any occupation to which the claimant is suited.
- 3.27 A distinction is made however with regard to premium protection cover, since if an employer winds up, then no further contributions can be made by the employee to the pension scheme and as such, no further premium protection benefit will be payable.

Linked claims

- 3.28 All companies make reference to how they deal with linked claims. A linked claim is one whereby a claimant recovers and then within a certain period suffers a relapse of the original illness or injury and is once again unable to work. Most companies will re-admit a claim immediately after the relapse occurs, provided it is within six months of the claimant returning to work following the original sickness or injury. A small number of companies require that the period between the re-occurrence of the sickness or injury and the date of returning to work is three months.

Continuation option

- 3.29 Few companies explicitly cover offering employees the right to continue their cover on an individual basis if they leave the sponsoring employer to work elsewhere, other than to say that no such option is available. However, we understand from our various meetings that this option is generally not available in the market.

Claims assessment process

- 3.30 The claims assessment process varies from company to company. All require a medical assessment from the claimant's qualified doctor and are likely, if necessary, to be asked to undergo an examination by a doctor nominated by the company. The insurance companies also state that further evidence will be required once the claim is in payment to verify continuing illness or injury, although it is not usually specified in the documentation what form this further evidence would take. Most insurance companies state clearly that payment of any benefits will cease if the claimant does not follow the advice of their medical practitioner. Some make an exception in the case of invasive surgery where the claimant has the right to refuse to undergo such treatment without losing any income protection benefits.

Premium protection

- 3.31 When setting up an income continuance plan, the employer can also choose the premium protection option. This benefit insures a contribution towards pension and life cover costs. The amount insured under the premium protection benefit does not necessarily match the actual contribution to the pension scheme.
- 3.32 The level of benefit covered by the premium protection option varies between companies. Some companies insure the full amount of employer and employee contributions towards any pension or life assurance policies, while others will only pay for member contributions, excluding additional voluntary contributions (AVCs). Some companies require the sponsoring employer to define on the application form the level of premium protection benefit.

Individual policies

Degree of disability

- 3.33 Once again, the degree of sickness or disability that is required by almost all companies for a claim to be admitted is that the individual is unable to follow his/her own normal occupation. A small number of companies define sickness or disability as being unable to follow the individual's own occupation or any similar occupation, and there is also a company that measures disability by the inability of the claimant to complete a number of basic activities of daily living (e.g. walking up stairs, lifting light objects)

Deferred periods

- 3.34 As with group schemes, there is a range of deferred periods on offer in the market. These are 13 weeks, 26 weeks or 52 weeks, with most companies again only offering a subset of these options.

Eligibility

- 3.35 In order to be eligible to apply for this benefit the individual must be in receipt of income or profits from an occupation, profession or trade.

Benefits

- 3.36 Once again, the situation is similar to that for group schemes, in that the maximum benefit that a person may receive from most companies is 75% of pre-disability earnings less other income. The definition of “pre-disability earnings” is usually basic salary in the twelve months prior to disability, with some companies also including an average of fluctuating bonuses from the previous three years. The definition of “other income” varies across companies. It always includes any social welfare benefit being received. Most companies also deduct benefits from any other income continuance insurance policies and any income that is still being earned whilst the individual is disabled. Some companies also specify that the benefit will be reduced to allow for the annualised equivalent of any loss-of-earnings court award.

Notification period

- 3.37 The majority of companies operate the same notification deadlines for individual policies as they do for group schemes. However, others require quicker notification, for example two months before the end of a six-month deferred period instead of one month beforehand for a group scheme.

Late notification of claims

- 3.38 Similarly, companies often take the same approach to late notification of claims as they do with group schemes, although a minority of companies instead will only treat the deferred period as having ended when all the necessary documentation and medical examinations have been completed and submitted.

Indexation of benefits

- 3.39 In the same manner as with group schemes, individual contracts offer the option for benefits to increase while in payment. The same options exist to have the rate of benefit escalation equal a fixed 3% or 5% per annum, or for benefits to increase in line

with consumer price inflation, sometimes subject to maximum of 3% or 5% per annum. Once again, not all companies offer the entire range of escalation options.

Proportionate benefits

- 3.40 As with group schemes, all companies will pay proportionate benefits in the instance of an individual partly recovering from sickness or disability and returning to work part-time, in order to aid in the rehabilitation of the claimant. In this instance the disability benefit is usually reduced in proportion to the ratio of the earnings from the part time work to pre-disability earnings. One company will reduce the benefit in payment by 75% of the post-disability earnings.

Hospital cash benefits

- 3.41 Some companies offer a hospital cash benefit, whereby they will make a payment to the policyholder for any time spent in hospital during the deferred period. This payment is based on the number of nights spent in hospital and the rate of benefit is the same as that under the main income protection benefit. Stays in hospital during the first week of sickness are generally excluded from this benefit.

Exclusions

- 3.42 Companies enforce the same list of exclusions as for group schemes under which they will not pay out any benefit.

Pregnancy

- 3.43 For individual contracts, companies operate identical procedures as for group contracts with regard to paying out benefits in respect of illness or injury arising from pregnancy.

Unemployment

- 3.44 Some of the companies mention that benefits in payment will cease if the claimant becomes unemployed, while others make no such reference to what would happen in the event of such a situation.

Linked claims

- 3.45 The period within which companies will waive the deferred period for linked claims is usually six months, although one company uses a shorter period of three months.

Claims assessment process

- 3.46 The claims assessment procedure is usually identical to that operated for group schemes in each insurance company. The brochures make clear that it is the claimant who must bear the cost of any medical examination with his/her doctor necessary for the claim to be admitted.

Premium protection

- 3.47 Where mentioned, the majority of the documentation specifies that all contributions towards pension or life assurance plans will be paid for by the company in the event of a claim. However, at least one company offers the option of choosing otherwise.

4 Income continuance coverage

Background

- 4.1 The objective of this task was to establish the facts in relation to how many income continuance plans exist, how many people are included in such plans, and into what categories they fall.
- 4.2 In order to carry out this task a questionnaire was prepared which was sent to all providers of income continuance plans in Ireland. A copy of the questionnaire is included in Appendix B. The questionnaire was sent to ten insurance companies and we received replies from seven companies. Due to circumstances one insurer was unable to partake in the survey. However, this particular insurance company no longer sells income continuance plans in Ireland and we understand that their existing business is relatively small. One other non-participant was not a significant player in this market. For two of the non-participants we were able to use the returns to the regulator (DETE) to estimate the volumes of income continuance business relating to these companies. We would expect that the impact on the total coverage statistics of the lack of figures from these particular companies would be immaterial.
- 4.3 As discussed in section 3 the types of income continuance plans available in the Irish market fall into five broad categories. These are:
- Group income continuance schemes
 - Employer sponsored group schemes
 - Voluntary schemes
 - Individual income continuance
 - Stand-alone
 - Plans associated with pensions business
 - Plans associated with life business
- 4.4 Nine insurance companies currently sell group business in the Irish market. However, only six companies sell group income continuance plans on a stand-alone basis, i.e. not associated with another product. We understand that some insurance companies will only sell a group income continuance plan if they also sell the pension plan to the employer or if they also sell a group life plan to the employer.
- 4.5 Eight insurance companies sell individual income continuance plans in the Irish market. However, only four companies sell income continuance plans as a stand-alone product. Some insurance companies will only sell these plans as a benefit linked to a pension plan or a benefit linked to a protection or savings plan.

4.6 There is one dominant player in the group market and another dominant player in the individual market.

Coverage statistics

4.7 The following table summarises the information received from insurance companies in relation to coverage.

Table 4-1

	Number of policies	Number of lives	Total annual premium income
Group business	5,507	201,328*	€87.8* million
Individual business	36,531	36,531*	€20.35* million
Total	42,038	237,859*	€108.15* million

**estimates - some insurers estimated these figures*

4.8 A significant proportion of the statistical information received from the insurance companies was based on information dated October\November 2002. The balance of the statistics were based on information as at December 2001. However, we do not feel that this would materially distort the statistics.

4.9 While the number of group policies was in most cases relatively straightforward for the insurers to quantify, it was not as straightforward in some cases for the insurers to supply the number of lives covered within these group arrangements. Where this was the case the insurers submitted estimates of the number of lives covered.

4.10 These statistics do not include plans where the employer may promise income continuance benefits to employees but the employer chooses not to insure the benefits promised. It is our understanding from talking to benefit practitioners that the practice of not insuring income continuance benefits is not at all common. This situation may sometimes arise where an employer is seeking to cover a very small number of employees but insurance cover is not available or if it is available the costs are prohibitive. Where this situation does arise the benefit may only be payable as an ex gratia payment.

4.11 As part of this project we met with the IIF. The IIF publish a booklet each year entitled Irish Insurance Federation Factfile. The 2001 fact file has recently been published. The relevant statistics published within the Factfile in relation to income continuance business are:

Table 4-2

Group premium income	€ 108.5 million
New business premium income	€ 18 million
Claims and benefits paid	€ 68.4 million

4.12 In addition, the IIF were able to supply the following split of new business between group and individual business for the year 2001.

Table 4-3

	Number of contracts	Premiums
Group premium income	1,177	€ 16.1 million
Individual business	1,574	€ 1.95 million

4.13 As can be seen from this table group business made up 89% of total new business sales in 2001. As a result the income continuance market in Ireland is heavily weighted towards group business. However, it is important to note that it is possible that some of the group new business may relate to existing group business being moved to a new insurer and being registered there as new business.

Voluntary schemes

4.14 Approximately 1.5% of group schemes are voluntary schemes. In general, the number of members in these voluntary schemes is significantly greater than the average number of members in an employer sponsored arrangement. Based on this percentage and some of the statistics we received from insurance companies, we estimate that in the region of 87,000 lives are covered under these voluntary schemes.

Escalation

4.15 Insurance companies estimated that approximately 80% of the group schemes are set up with benefits that escalate. This means that in the event of a claim the benefits payable would escalate each year while a claim is in payment. A number of different escalation rules are used in the market. The following table summarises the approximate percentage of group schemes using the various definitions.

Table 4-4

Definition of escalation	
3% subject to a maximum of CPI	8%
5% subject to a maximum of CPI	13%
3%	12%
5%	39%
7%	7.5%
CPI	0.5%
Proportion of group schemes that have escalating benefits	80%

- 4.16 Insurance companies estimated that approximately 70% of individual business is set up with benefits that escalate each year while in payment. As with group business there are a number of different escalation rules in use in the market. The following table summarises the approximate percentage of individual business using each definition.

Table 4-5

Definition of escalation	
CPI up to a maximum of 5%	17%
Dividend rate	4%
3%	9%
5%	32%
7%	8%
CPI	0.5%
Proportion of individual plans that have escalating benefits	70.5%

Deferred periods

- 4.17 There are also a number of different deferred periods (see explanation in the glossary Appendix B) in use in the market. We asked insurance companies to estimate the percentage of schemes currently using each deferred period. The following table summarises, for both group and individual business, the proportion of business written using each of the deferred periods for those companies that replied to this question.

Table 4-6

Deferred period	Proportion of group schemes	Proportion of individual business
4 weeks	0%	2.7%
13 weeks	41.6%	56.2%
26 weeks	53.6%	31%
52 weeks	4.6%	9.6%
104 weeks	0.2%	0.5%
Total	100%	100%

- 4.18 However, for voluntary schemes the deferred periods used tend to dovetail with the sick leave arrangements. (For example 365 days absence in a 4 year period).

Definition of when a claim is payable

- 4.19 There are a number of different definitions being used in the Irish market as to when a claim is payable. However, analysing the data received from the insurance companies it seems that for group business the majority of business is written using the "own occupation" definition of sickness. The own occupation definition means that once an individual is unable to carry out their own occupation at the end of the deferred period either because of sickness or disability then the claim will be admitted. Some group business is also written using the "own or suited" definition. This definition means that the individual must be unable to carry out their own or an occupation to which they are suited at the end of the deferred period in order that a claim is admitted. The "any occupation" definition seems to be used by a very small number of insurance companies, and generally only for certain occupations. This definition means that the individual must be unable to carry out any occupation for a claim to be admitted. Other definitions, such as the failure to be able to carry out a number of activities of daily living or daily working, do not seem to be in use in the group income continuance market. All these definitions are fully explained in the glossary of terms in Appendix A.
- 4.20 There seems to be a greater number of sickness/disability definitions in use in respect of individual business. However, the "own occupation" definition still seems to be the most common definition used. The "own or suited" definition is sometimes introduced at the underwriting stage and it is also used for occupational classes (see glossary), such as classes 3 and 4, which may not be considered eligible for cover using the "own occupation" definition. A small proportion of business seems to be written using the "any occupation" definition, but most companies that used this definition in the past no

longer use it. Some individual business also uses the failure to carry out a number of activities of daily living as the criteria when deciding when to admit a claim. However, we understand that this is a relatively recent development.

Occupational classes

4.21 In order to get an understanding of the types of occupations being covered by income continuance plans we asked the insurance companies to estimate how their business approximately split across the various occupational classes. Occupations tend to be split into four different categories. These are explained in more detail in the glossary of terms in Appendix A. Not all companies were able to supply this particular piece of data. However, we have summarised the data we did receive for both group business and individual business in the following table.

Table 4-7

Occupational class	Group business	Individual business
Class 1	88% (class 1 and 2)	49%
Class 2		28%
Class 3	8%	14%
Class 4	4%	9%

4.22 Most group business is written within free cover limits (see definition in glossary) which means that most employees within group arrangements are not subject to any significant underwriting. In contrast, all individuals seeking individual policies are subject to underwriting. As a result it would generally be expected that there would be a greater proportion of class 2, 3 and 4 lives covered under group schemes compared to individual arrangements. However, this doesn't seem to be evident from the table above. This may be because very few companies were able to gather reliable data for this split on group schemes.

Summary

4.23 This product accounts for a relatively small proportion of the life assurance premium income. The IIF Factfile 2001 stated that the total premium income in respect of domestic life assurance business in 2001 was €7,167.7 million. Income continuance premium income only accounted for 1.5% of this premium income.

4.24 In addition, the IIF statistics show that group business made up 89% of total new business sales in 2001, showing that the income continuance market in Ireland is heavily weighted towards group business.

4.25 We estimate that in the region of 13% of the working population are covered by income continuance plans. This is based on a working population of 1.827 million (source Central Statistics Office, May 2002 principal statistics) and the figures in table 4.1 of this section of the report.

5 Legal base for income continuance plans

- 5.1 The purpose of this task was to describe the legal basis for income continuance products.

Nature of providers

- 5.2 Income continuance products are established and administered by undertakings authorised to conduct business under the EC (Life Assurance) Framework Regulations, 1994 (the “Framework Regulations”) specifically Classes I (life assurance and contracts to pay annuities on human life as described in Article 1(1)(a)(b) and (c) of the First Directive, but excluding contracts within classes II and III), III (the assurances referred to in Article 1(1)(a) and (b) of the First Directive which are linked to investment funds), IV (permanent health insurance as defined in Article 8 of the Regulations) and VII (management of group pension fund as described in Article 1(2)(c) and 1(2)(d) of the First Directive where these are carried on by an undertaking authorised under the Regulations).

- 5.3 In the survey, of the eight providers who responded, only one entity did not have their head office in Ireland.

Regulation of income continuance products and providers

- 5.4 These products qualify as permanent health insurance, as defined by the Framework Regulations. The definition is:-

"the business of effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or a sickness or infirmity, being contracts that:-

- (a) are expressed to be in effect for a period of not less than five years or until normal retirement age for the persons concerned, or without limit of time; and
- (b) either:
 - (i) are not expressed to be terminable by the insurance undertaking under the terms of the contract; or
 - (ii) are expressed to be so terminable only in special circumstances mentioned in the contract

provided that the insurance is carried on by an insurance undertaking in the State which holds an authorisation granted in respect of Class IV in Annex 1 to these Regulations".

- 5.5 Authorisations are granted by the Minister for Enterprise, Trade and Employment if satisfied that the applicant complies with the appropriate provisions of the Insurance

Acts and Regulations. Undertakings must either be a company limited by shares or by guarantee, or an unlimited company within the meaning of the Companies Acts, 1963 – 2002. Registered societies may also apply for authorisation.

- 5.6 The Framework Regulations specifically regulate the conditions under which undertakings can offer and operate insurance contracts.
- 5.7 An undertaking is also required to possess a minimum guarantee fund and it is specifically mandated that an undertaking “shall be effectively run by persons of good repute with appropriate professional qualifications or experience”.
- 5.8 Article 13 of the Framework Regulations requires undertakings with their head offices in the State to provide the Minister with such information as he requires at such intervals as he determines. The Minister is entitled to take all appropriate measures to be satisfied that an insurance undertaking is complying or has the ability to comply with the Framework Regulations.

Provision by employers of income continuance plans

- 5.9 Income continuance plans are provided by employers to employees as part of the terms and conditions of employment. The Terms of Employment (Information) Act, 1994 obliges employers to disclose to employees that they may be entitled to income continuance, in the event of prolonged illness. A more detailed analysis of the employment law implications of income continuance plans is set out in section 9 of this report.

The Framework Regulations

- 5.10 Article 45 of the Framework Regulations provides at sub-article (1) that an insurance undertaking shall not issue any insurance policy in respect of which a proposal has been submitted by a person seeking insurance unless the information set out under points 1 –16 of Annex III has already been furnished to that person. This includes information about the insurance undertaking and the commitment itself. Annex III section 4 relates to the definition of each benefit and option, section 10 requires the disclosure of information on the premiums for each benefit, both main benefits and supplementary benefits where appropriate and section 14 requires disclosure of general information on the tax arrangements applicable to that type of policy.
- 5.11 Article 45 further provides that the information set out under points 17 to 22 of Annex III must be provided directly to the policyholder during the term of the insurance contract. This further disclosure obligation comes into effect only if there is a change in the details of the insurance company or the product itself during the period of the policy.

- 5.12 In the case of group income continuance plans, the person seeking the policy is the employer, and so the information referred to must be provided to the employer. The Regulations do not require any form of disclosure to the beneficiary of the policy, ie, the employee. Unless the terms of the policy itself or a contract of employment impose such an obligation, disclosure is not required.

Life Assurance (Provision of Information) Regulations, 2001

- 5.13 The Life Assurance (Provision of Information) Regulations, 2001 introduced a regime which requires suppliers of life assurance to provide information to clients resident in Ireland before they sign a proposal or application form in respect of a policy of insurance. These obligations are supplemental to those set out in the Framework Regulations. The Life Assurance Regulations came into effect on 1 February 2001.
- 5.14 It is not entirely clear from the drafting whether these regulations apply to group income continuance plans. It appears that they would not confer disclosure rights on employees as the ultimate beneficiaries of a plan. Although “client” is not defined (the definition provides that “client”, in relation to a policy issued in connection with a housing loan where the client is a lender, includes the mortgagor”), it is a reasonable presumption that the policyholder will usually be the employer sponsoring the scheme. Article 4(1)(b) provides that the regulations do not apply to a policy of insurance where none of the clients is an individual.

6 Claims management and underwriting

Background

- 6.1 The objective of this part of the project was to examine the claims management procedures and processes that currently exist in the Irish market.
- 6.2 In order to understand the processes that are in place in insurance companies to manage claims in respect of income continuance business we met with the claims managers in four insurance companies. We also felt that it would be appropriate to meet with some underwriting managers to help us understand the interaction of claims management with the underwriting process. We discussed in detail the processes in place with these claims and underwriting managers. The companies that we met included both companies writing relatively significant volumes of business and companies writing smaller business volumes.

Claims statistics

- 6.3 Before discussing claims management and underwriting it is worthwhile considering the number of income continuance claims currently being paid by insurance companies. We asked insurance companies to quantify both the number of claims currently in payment and the annualised amount of these benefits. We received information from all the respondents on the number of claims but only some information regarding the yearly amount of the claims. The following table therefore summarises the information received in relation to number of claims, split by group and individual business. (some companies estimated the split between group and individual business)

Table 6-1

	Number of claims in payment
Group Business	3,606
Individual business	814
Total	4,420

- 6.4 A significant proportion of the claims information received from the insurance companies was based on information dated October\November 2002. A small proportion of the claims information was based on information at 31 December 2001. However, we do not feel that this would materially distort the statistics.
- 6.5 The Irish Insurance Federation 2001 Factfile stated that claims and benefits paid in 2001 in respect of income continuance plans was € 68.4 million.

Claims Management

Group business

6.6 In our meetings with claims managers we covered four main topics. These were as follows:

- Risk management\ongoing support to employers.
- Claims admittance.
- Ongoing management of claims in payment.
- Termination of claims\settlement of claims.

6.7 The following sections summarise the main points arising from those meetings. All comments relate to the insurance companies that we met. Therefore, there may be other practices or procedures in place in other insurance companies that we are not aware of. However, we feel that the companies that we met would be representative of the industry.

Risk management\ongoing support to employers

6.8 There is a range of practices evident in the market. These range from the situation where the insurance company is very active in working with employers to manage the risk, to the situation where there is no interaction between the employer and the insurance company after the product has been sold until there is a potential claim.

6.9 Insurance companies more active in the whole area of risk management actively visit employers on a regular basis. Their aim is to educate employers more fully in relation to income continuance benefits and in particular to ensure that they understand that poor claims experience will result in an increased cost to the employer for this benefit. In some instances the insurers have worked with employers to implement absenteeism management systems, which, if implemented properly would at best be expected to reduce the number of claims or at least to ensure that there is early intervention when an employee is absent from work. However, this practice is the exception rather than the norm in the Irish market.

6.10 It was evident from our meetings that most of the communication in respect of these benefits is between the employer and the insurer, and usually through the medium of a broker. The exception being where a claim has been notified and the insurer is dealing directly with the claimant in relation to the claim.

6.11 We understand that the insurance companies do not generally get involved with the employer in relation to any communication explaining these benefits to employees. The exception being where an employer specifically asks that the insurer supply an employee explanatory booklet. However, this seems to be the exception rather than the normal practice in Ireland. Member's booklets tend to be requested for voluntary schemes only. However, all insurance companies that we met stated that they would supply, or at least review, an employee booklet, if requested to do so.

Claims admittance

6.12 In general, this seems to be an area where the insurance companies have tightened up their procedures over the past five to ten years. One of the areas where this is evident is in relation to the use of claims visitors in managing claims. The use of claims visitors wasn't very common in the past, but it now seems to be relatively common practice in the industry.

6.13 Insurance companies would now tend to visit claimants pre claims admittance using claims visitors who work on behalf of the insurance companies. One of the aims of these visits is to explain the purpose of the cover to the claimant and in particular to explain that this is not an early retirement scheme. In some cases the claims visitor will also assist the claimant in filling out the claims form. We also understand that claims forms are now more detailed than they had been previously.

6.14 Some, but not all the companies we spoke to, also visit the employer with the principal aim of the meeting being to educate the employer in relation to this benefit and help manage employer expectations regarding the benefit. Some insurance companies are also trying to educate the employer that early notification is vital in managing the claim.

6.15 In order to admit a claim an insurance company generally requires both a general practitioner's report and a consultant's report. If a consultant's report is not available then an independent assessment is also generally required. This level of medical evidence was not always sought in the past.

6.16 Many of these changes have been driven by poor claims experience.

6.17 Issues do arise in relation to claims admittance. The most frequent issues arising include the following:

- Disagreement regarding the degree of sickness. This may arise because the independent medical assessment disagrees with the general practitioner's or the staff doctor's assessment.

- The employer's view as to the employee's ability to return to work may differ from that of the insurance company. This is sometimes related to concerns from the employer regarding the risk of employer liability claims if the employee returns to work.
- The employee's view as to their ability to return to work may differ from that of the insurance company.
- Difficulty in assessing "self reported" claims, which includes illnesses such as stress related illnesses, fatigue, back pain etc.
- Misuse of benefits by employers. (ie as an "early retirement" scheme).

6.18 Insurance companies tend to have a procedure in place to review disputed claims internally. This may involve seeking further medical evidence. If this doesn't resolve the issue the insurance companies tend to steer the claimant towards the insurance ombudsman.

Ongoing management of claims in payment

6.19 This is also an area where insurance companies seem to have become much more active in the past 5 years or so.

6.20 Insurance companies are now more active in communicating with the employer on an ongoing basis in relation to the status of the claim. This communication may be directly with the employer or indirectly via the broker.

6.21 Insurance companies now tend to set the claims management procedure for each claim at the claims admittance stage. At that point a claim is categorised and this will determine how it is managed going forward. Claims management can range from reviewing the case once a year to being aggressively managed where the reviews can be very frequent. For example, stress related claims would tend to be more aggressively managed.

6.22 The first review date is generally set at the claims admittance stage and the reviews are generally carried out by claims visitors. Many of the insurance companies we talked to outsourced the claims visitor service.

Claims trends

6.23 Some companies we spoke to mentioned that there is evidence of an increasing number of "self reported" claims being notified. These would include stress-related claims, fatigue, back pain etc.

Claims paid directly to employees

6.24 We discussed with insurance companies the circumstances under which they would pay a claim directly to claimants. The circumstances under which this would occur are described below:

- In employer sponsored schemes, benefits are generally payable to the employer. However, it is the practice of the insurance companies that we met that benefits in payment would continue to be payable, but directly to a claimant, in the event that the employer goes out of business. In most cases this was stated in the terms and conditions of the policy. However, we understand that the insurance company may change the definition of sickness to a more strict definition when the employer ceases to exist and the claimant will be reviewed at that point to determine whether they meet the new definition sickness. We understand that in these instances insurance companies would not continue to pay any premium protection benefits.
- If the claimant is a member of a voluntary scheme.
- Some insurance companies will also consider paying benefits directly to a claimant if the employer makes them redundant. However, this would only tend to be in relation to cases where it has been agreed in advance between the insurance company and the employer that there is no hope at all of the particular claimant ever returning to work. In these cases the insurer agrees with the employer, in advance of the employer making the employee redundant, that the income continuance benefits would continue to be payable. This is generally purely at the discretion of the insurance company and is not part of the insurance contract. However, we understand from our conversations with insurance companies that some of the older contracts in the market are not very explicit in terms of defining clearly that the claimant must remain an employee in order to have a valid claim.

Terminating and settling claims

6.25 This is another area where the insurance companies that we spoke to had become much more active over approximately the past five years, with some insurers being more active than others.

6.26 In particular, insurers are much more active in working with claimants in getting them back to work. This has been somewhat assisted by what some insurers feel has been a change in attitude amongst some employers. In general, it was felt that there is an increasing level of co-operation from employers in working with claimants in returning to work. However, we understand that there is still some concern amongst employers regarding employer liability claims in relation to employees that return to work on a part time basis as they are usually not at that point considered recovered enough to return to full-time work. In addition, if there is doubt regarding the medical evidence,

in particular a difference of opinion between the GP or staff doctor and the insurer's medical opinion, then the employer can be very slow to take the employee back to work.

In order to assist claimants to return to work insurance companies will generally consider some or all of the following:

- Using rehabilitation programmes, such as cardio programmes, physio programmes, career change programmes.
- Fund retraining programmes.
- Pay partial benefits when an employee returns to work part time.
- Pay full benefits through a period of adjustment.

6.27 In some cases, if an employee is being made redundant while in receipt of income continuance benefits, then some insurance companies may consider making a contribution to the redundancy package being put together by the employer. The insurer would then cease to pay any further income continuance benefits to that claimant. However, this is very much at the discretion of the insurance company and is not part of the insurance contract.

6.28 Generally, under the terms of the insurance contracts, if an employee who is receiving income continuance benefits is made redundant then they are regarded as having left service and the income continuance claims will cease to be paid. We understand from the insurance companies that we met that this can sometimes be the cause of disputes. The disputes can arise because employers sometimes view these benefits as a means of providing early retirement or redundancy. The exception being the circumstances described in paragraph 6.24.

Lump sum settlements

6.29 It is only possible to make lump sum settlements in relation to income continuance benefits on older non-revenue approved schemes. However, in some instances a lump sum can be paid to claimants as a result of an Ombudsman ruling.

Voluntary schemes

6.30 We understand that voluntary schemes tend to be more expensive than employer sponsored schemes. This is mainly due to the voluntary nature of the arrangement and therefore the greater risk of anti-selection against the insurer. Anti-selection would result in the members of the affinity group that were covered for income continuance benefits being on average less healthy than the affinity group in general. This could result in higher a proportion of claims being experienced by the scheme compared to

the proportion of claims that would be experienced had joining the scheme been mandatory.

6.31 We also understand that managing claims can be more difficult for the insurer in voluntary arrangements. One of the reasons for this is that there is no direct contact between the employer and the insurance company, as these schemes are generally arranged by trade unions representing the workers. This makes initiatives such as a phased return to work more difficult to implement.

6.32 We understand from our meetings that there were also voluntary schemes set up in the past where the contract was between the employer and the insurance company but employees were contributing to the cost of benefits. However, we understand from the insurers that we met with that new schemes are no longer set up in this way.

Additional comments

6.33 A number of additional comments were made during the course of our meetings which we felt worthwhile mentioning in this report. These were as follows:

- Insurance companies feel that it is important that they can manage claims and work closely with employers and employees in relation to admitting and managing claims. And in order to continue to develop and grow this market it was viewed as very important they could continue to operate in this way without legislative restrictions being introduced in this area.
- A question was raised as to whether there is any way that the State can assist in raising awareness of the benefits of income continuance plans?

Claims management

Individual business

6.34 Similarly to group business, procedures in insurance companies relating to the claims management in respect of individual business have been tightened up in approximately the last five years. Initiatives such as the use of claims visitors, frequent reviews and the use of rehabilitation programmes are also used for individual business.

6.35 Many of the issues that arise in relation to claims admittance for individual business are similar to those that arise for group business. In addition to the issue of disagreement regarding the degree of sickness, the other common issues that arise seem to be in relation to over insurance, non-disclosure and failure of the insured to notify the insurance company of a change in occupation.

- 6.36 Insurance companies will generally only insure a proportion of people's earnings, say 70%. This is to ensure that there is some incentive for a claimant to return to work.
- 6.37 Over insurance is where an individual insures a higher salary than they earn. Over insurance tends to be more of an issue for self employed individuals. In some cases of over insurance some of the insurance companies we met with, but not all, would consider refunding part of the premiums paid in respect of the over insured benefit.
- 6.38 Some insurance companies experienced better success rates on individual business in assisting claimants to return to work.

Underwriting

Group business

- 6.39 We understand that a significant proportion of group business falls under the free cover limits and therefore the degree of underwriting that takes place at individual member level is minimal.
- 6.40 Generally when existing schemes come up for renewal, which is generally every two to three years, insurance companies will prepare a quotation based on the existing arrangement. The cost tends to be closely linked to claims experience of the particular scheme. If the cost is too expensive the insurance company will generally offer the employer or scheme representative an altered scheme at a lower cost. For example, the insurer may suggest to the employer that the deferred period be lengthened. The most common period of renewal is after two years, but we understand that there are schemes in place where the renewal is up to every four years.
- 6.41 We understand in some cases, if at renewal the scheme features change, the employer may decide to self insure the difference between the old scheme, which may have been communicated to the employee, and the new insured scheme. For example by altering the short-term sick pay arrangement to coincide with the extension of the deferred period.
- 6.42 On voluntary schemes any changes are generally communicated by the relevant association. On employer sponsored schemes the communication of any changes to the employer is usually handled by the broker. Insurance companies would not tend to get directly involved in any communication with the employees regarding changes.

Individual business

- 6.43 In contrast to group business most individual business is subject to strict underwriting procedures. Individuals can be both underwritten from a medical perspective and also

from a financial perspective. In addition, the insurance company will increase premiums to reflect the occupational risk associated with certain occupations and in fact some occupations will not be considered insurable at any cost. Some of the occupations that some insurers will not insure through individual policies include nurses, farmers, underground workers and publicans. The list tends to differ between insurance companies.

- 6.44 Exclusions are also commonly used in relation to individual business. Some of the standard exclusions to cover include, issues relating to the back, mental illness and issues relating to eye and ear.

Summary

- 6.45 Based on our meetings with the various companies it seems that insurance companies have tightened their procedures in the last five to ten years. This relates to claim admittance, ongoing claims management and claim termination.
- 6.46 It is generally a precondition of continuing to receive income continuance benefits that the employee must remain in employment. We understand that in the past this may not always have been very clear. We also understand that some companies would in the past have continued to pay claims even when the employee was no longer in employment. However, we understand that this is another area where insurance companies have tightened up procedures and that in the current market such claims would not continue to be payable. The exceptions being those described in bullets 1 and 3 of paragraph 6.24.
- 6.47 We also understand from our meetings that insurance companies do not generally get involved with the employer in any communication explaining these benefits to employees.

7 The sale and marketing of income continuance plans

Background

- 7.1 The objective of this part of the project was to identify the interaction of income continuance with pension plans in relation to areas including marketing, sales, disclosure of information and benefit payments.
- 7.2 In order to understand the various interactions mentioned above we met with some sales personnel, both those employed directly by insurance companies and brokers who sell these types of products. We also met with marketing personnel in some of the insurance companies and benefit advisors to discuss the interaction of income continuance plans with pension plans under the various headings mentioned above.
- 7.3 The following paragraphs summarise the key points from the various meetings.

Interaction with pensions

- 7.4 Income continuance plans are generally viewed as an integral part of a benefits package during the sales process. The package generally includes pensions, life cover and disability benefits. Therefore, while income continuance (or disability benefit) is legally separate from the pension scheme it is not generally viewed as a benefit separate from the pension scheme. Therefore, in many instances it is very much linked to pensions.
- 7.5 Similarly, in relation to individual business, it was felt that income continuance plans were very much linked to pensions and pension sales.
- 7.6 However, many people we talked to felt that income continuance benefits should have no link to pensions or pension scheme trustees. In particular, the view was that these are a salary/wages issue and not a pension issue.
- 7.7 It was the view of some of the practitioners we spoke to that this benefit was still viewed by some employers and employees as an early retirement vehicle. However, it was also felt that this view is slowly changing as employers gain a better understanding of this benefit.
- 7.8 The link with pensions may also be reinforced by the annual statement issued by the pension scheme to employees which may include a reference to the income continuance benefit.
- 7.9 We understand that some pension schemes have been set up in a way that facilitated the employer in defining pension contributions as a rate or amount that is inclusive of the cost of insuring life and income continuance benefits. Whilst we believe that the practice has been largely discontinued in respect of new schemes, it is nonetheless the

case that it continues in force in certain insured schemes where it had previously applied.

- 7.10 This practice allowed employers to establish an absolute ceiling on the cost of long term benefits. However, where risk insurance costs increase over time, as can be the case if risk insurance costs are allocated to individuals at individual rates, or where the age profile of the scheme increases over time, the practice can result in a reduction in the proportion of total contributions being paid into a pension account. At the extreme, the pension contribution after reduction for risk premiums could fall to zero and possibly even result in a net deduction from the pension scheme. Further investigation would be required to ascertain if this could happen.
- 7.11 We have not been able to quantify the number of schemes that have been set up in this way. However, the practice appears to have been confined to insured schemes, which tend to be smaller schemes, and may therefore not affect a significant number of scheme members. However, a number of the people that we met expressed the view that many employers and some brokers may have failed to understand the impact on the contribution being paid to pension of this practice. Given this, and taking account of the scope for income continuance premiums to vary significantly over time, we consider that continuation of this practice raises a concern.

Interaction with pensions - premium protection

- 7.12 It is in the area of premium protection benefits that there is the clearest link to pensions and pension schemes. The purpose of this benefit is to insure an amount which, in the event of an employee being absent from work due to sickness or disability, the insurance company would pay this amount to the employer (on group business). The employer then uses this amount as a contribution towards the amount that is paid into the pension scheme in respect of that employee. The amount insured is not necessarily the amount that is paid into the pension scheme. In many cases the amount insured may be different.
- 7.13 We understand that the majority of group income continuance arrangements that are set up would also include an amount within the total amount insured to cover a contribution towards the pension scheme in the event of a claim being made. We understand from our various meetings that this would be the situation in over 90% of schemes.
- 7.14 We understand that where a contribution towards the pension scheme is insured that it is generally included within the income continuance contract, i.e. there is not a separate contract for this benefit. It is generally allowed for by increasing the income continuance benefits insured by a percentage of salary decided by the employer. This

is then used as a contribution towards to the cost of providing pension and life cover benefits for the employee in the event of a claim.

Sales process

- 7.15 We understand that for group business it is a relatively common practice, unless the scheme is a very large scheme, to sell the pension and life cover benefits first and revisit the employer at a later date to sell the income continuance benefits. This is mainly due to the difficulties that can arise during the underwriting process. Similarly, on individual business, where the underwriting tends to be stricter than on group business, the pension is generally set up first with income continuance benefits being set up at a later date.
- 7.16 A significant proportion of group income continuance sales are via the broker distribution channel. Consequently there is not a lot of marketing activity in relation to this business targeted at employers. The marketing activity for group business is generally targeted at the broker.
- 7.17 Group life cover is part of the pension scheme and the income continuance benefit is separate from the pension scheme. However, the income continuance scheme generally tends to be placed with the group life in a significant number of cases. It was estimated that this could be up to 75% of the time. However, it was also felt that there is a growing trend that while the employer may be sold a package consisting of pension, life cover and income continuance benefits it is becoming more common for each of the elements to be brokered separately. With the introduction of Personal Retirement Savings Accounts ("PRSAs") it was felt that this trend would continue to grow.

Disclosure of information

- 7.18 The terms and conditions of income continuance benefits are sometimes included within pension scheme booklets. This can result in members of the pension scheme forming the understanding that the income continuance benefits are part of the pension scheme.
- 7.19 Some sales personnel we spoke to felt that while the concept of income continuance plans is relatively straightforward the product is considered to be quite complex. It was suggested that employees should receive documentation that would help them understand the benefit better. In particular, in addition to receiving the terms and conditions it was suggested that all employees covered under group arrangements should also receive a simple explanatory booklet.

- 7.20 It was the view of some practitioners that the benefit is frequently not fully understood, by either the employer or the broker. In particular, it was felt that it was not generally understood that a job must be kept open for the benefit to be payable.
- 7.21 Communications from the insurance companies to employers and employees tend to be through the broker. The insurance companies will on request review or prepare an employee booklet. However, this request is not very common. In addition, where employee booklets do exist it was queried whether such booklets always contain all of the important facts relating to the benefit.
- 7.22 As group schemes are generally renewed every few years there is contact with the broker and possibly the employer at these times. (the most common frequency seems to be two years)
- 7.23 In some cases the benefit features may be revised at the renewal stage. The practice as to how, and if, these revisions are communicated to employees can differ from employer to employer. In some cases, if the changes are relatively minor, we understand that the changes may not be communicated to employees. In other cases a revised booklet containing new details would be issued, but without highlighting changes. In other cases the changes would be highlighted to employees.
- 7.24 As most sales in relation to group business are through the broker distribution channel it can in some instances be difficult for the insurers to get direct access to the employer.
- 7.25 Individual business would be subject to the life disclosure regulations. However, group business is currently exempted from these disclosure regulations.

Payment of benefits

- 7.26 Many of the current schemes in place have benefits that increase in payment. We understand that this caused some issues in the past. The reason being that in times of low inflation or salary freezes increasing benefits are being paid to employees absent from work while employees actively at work are receiving lower increases. In some extreme circumstances this resulted in the moral hazard of employees being better off on income continuance, resulting in there being little incentive for an employee to return to work. However, as the benefits being paid are usually a percentage of the basic salary and also that individuals absent from work for an extended period miss out on promotional increases it was felt that this was not a common problem.

Comments specifically relating to voluntary schemes

- 7.27 It is our understanding from our various meetings that in general members of voluntary schemes tend to be more informed in relation to their income continuance arrangements than members of employer sponsored schemes.
- 7.28 Some brokers are very active in promoting these schemes to existing members and potential members. The schemes are sometimes advertised in the relevant trade magazines, either included as a separate enclosure or else included as an advertisement. Some brokers also use work-site marketing extensively to promote these schemes. In addition, some brokers will also market the benefits of these schemes to students who, when they complete their studies and gain employment, would be eligible to join the various schemes in place.
- 7.29 Post renewal of these schemes some brokers will also, in agreement with the insurance company, have a fixed period whereby new members can join the scheme by filling out a shortened application form. Generally potential members only need to fulfil certain criteria, such as being actively at work and have not been absent from work for more than seven consecutive days in the previous year, in order to qualify for benefits. Outside this period members must complete a full application form and will generally be fully underwritten.
- 7.30 Some brokers, but we understand not all involved in this area of the business, get heavily involved in communications to scheme members and will prepare member booklets that are then distributed to all scheme members.
- 7.31 Similarly, when the terms of these schemes change during the renewal process some brokers will communicate these changes using the medium of trade magazines. We understand that the unions also get involved in communicating any changes to members.
- 7.32 The renewal process for some of these voluntary schemes can be quite involved and usually involves a tendering process where four to five insurance companies are asked to propose for the business. The broker generally manages the process but involves the union representative at all stages. The process generally concludes with a recommendation being made by the broker to the affinity group executive who ultimately make the decision.
- 7.33 In the past there were some issues in trying to get cover for particular schemes in the Irish market, primarily because of poor claims experience. However, we understand that this has not been an issue in recent years.

- 7.34 Many of the voluntary schemes relate to the public sector and therefore there are rarely issues regarding making members redundant. However, we understand that there is a tendency for members of voluntary schemes to perceive these benefits as an addition to their pension.

Summary

- 7.35 We understand from our various meetings with sales and marketing personnel that income continuance plans are generally perceived as an integral part of a benefits package which tends to include pensions, life cover and disability benefits. Therefore, in many instances income continuance benefits are very much linked to pensions. But it is in the area of premium protection benefits that there is the clearest link to pensions and pension schemes, given that the purpose of the premium protection benefits is to insure an amount which the employer uses to meet some or all of the cost of the contribution to the pension scheme.
- 7.36 In addition, the terms and conditions of income continuance benefits are sometimes included within pension scheme booklets. This can reinforce the perceived link to a pension scheme. As this is not a pension benefit we recommend that any description of this benefit should be separate from that in relation to pension benefits. Where existing pension disclosures, (e.g. pension scheme booklets) currently include the details of income continuance benefits we are not suggesting that they should be reissued with the details of any income continuance benefits removed.
- 7.37 It also seemed to be evident from our meetings that the level of understanding of this benefit amongst employers and employees could be improved. In particular, it was felt that there may not always be a clear understanding of some of the important features of the product, such as the need for the employee to remain as an employee in order for benefits to continue to be payable. The issue of communications between the employer and the employee is covered in more detail in section 9.
- 7.38 Insurance companies do not seem to get involved in any communication of benefits directly to the employee. All communication tends to be with the employer and is generally conducted via the broker.
- 7.39 We understand that some pension schemes have been set up in a way that facilitated the employer in defining pension contributions as a rate or amount that is inclusive of the cost of insuring life and income continuance benefits. This practice can result in a reduction over time in the proportion of total contributions being paid into a pension account. Given the scope for income continuance premiums to vary significantly over time, we consider that continuation of this practice raises a concern. We therefore recommend that it should not be legally permissible to set up a new pension scheme where the employer contribution is defined in any manner that is inclusive of the cost

of any benefit, other than a relevant benefit as defined in section 770 of the Taxes Consolidation Act, 1997.

- 7.40 Where schemes are already set up in this way we recommend that there should be a requirement that trustees specifically disclose to members that the scheme is set up in this way. In particular, we recommend that annual benefit statements for defined contribution schemes should include a clear and prominent statement to the effect that the net contribution to be applied to member's retirement accounts may reduce over time, if that is likely to be the case.

8

The overall workings of income continuance plans

Background

- 8.1 The objective of this task was to set out the consultants understanding of the overall interaction and workings of income continuance contracts between employers and employees, associated pension plans, and income continuance policies offered by insurance companies.
- 8.2 The approach taken in completing this task was to draw upon Watson Wyatt and Matheson Ormsby Prentice's experience of advising employers and employees in relation to the design, documentation and communication of retirement and income continuance benefit plans.

Contract between employer and employee

- 8.3 In group arrangements, the contract giving rise to an entitlement on the part of an employee, if any entitlement exists, is one between the employer and the employee. This may be expressly set out in an employment contract or may arise less directly, for example through inclusion of the employee in the income continuance plan.

Use of insurance

- 8.4 Provision of income continuance benefits imposes a contingent liability on the employer. Future benefit payments depend *inter alia* on uncertain factors such as rates of incidence of illness or disability, and rates of recovery. Because of the financial implications of this uncertainty, it is customary for employers to insure their risk in offering this benefit.
- 8.5 However, there is no obligation to insure these benefits. For example, benefits provided at very short durations after onset of illness or disability are usually provided under an uninsured short-term sick pay arrangement. While these arrangements do not contain many of the classic features of insured income continuance plans, they nonetheless constitute short-term income continuance arrangements operated by employers. We are also aware of a very few cases where long-term income continuance benefits are provided by an employer who has elected not to insure the risk.
- 8.6 Similarly, there is no obligation to insure the full benefit promised by the employer to the employee. However, insurance products are generally designed so that any insurance benefit payable in the event of a claim is reduced by other earnings. This tends to mean that the area where a mismatch most commonly occurs between the benefit provided and that insured under the insurance policy is in connection with premium protection benefits.

Documentation and communication

- 8.7 Formal income continuance plans are usually referred to in employment contracts. The reference made can be quite brief and reliance is often placed on other documents, including staff manuals, booklets, announcements, and in some cases, insurance policy documents to fill in the detail.
- 8.8 Where an income continuance plan is insured, a policy document, reflecting the agreement made between the insurer and the employer, will exist. It is common in these cases for any supplementary materials given by the employer to the employee to specify that the benefits are available subject to insurance and to the terms of the insurance contract.
- 8.9 Employers providing formal income continuance plans may make arrangements for ongoing communication, including provision of information about the potential benefits arising (usually by including a supplementary section on a pension scheme benefit statement) or by arranging for income continuance benefits to be covered as an adjunct to a presentation to employees in relation to other long-term benefits. Whilst this would be considered best practice, there is a perception that employers fear that over-communication may give rise to a significant flow of spurious or bogus claims for income continuance benefit, which would in turn give rise to greater management costs and ultimately a risk of serious deterioration in the scheme experience, leading to increased insurance costs. Practices relating to ongoing communication therefore vary considerably.
- 8.10 Income continuance plans are legally separate from pension arrangements. However, whilst this is the case, it has nonetheless been customary for initial information about income protection arrangements to be provided through the pension scheme booklet. In general, the information provided relates to the manner in which benefits would be calculated and the treatment of death and pension benefits for those claiming income continuance benefits. The quality of information in the areas of eligibility for benefit, underwriting restrictions, exclusions, and claims management tends to vary.
- 8.11 In recent years, some companies have introduced separate income continuance plan booklets with a view to, firstly, highlighting the legal separateness from pensions and, secondly, facilitating the provision of greater detail in relation to the workings of the income continuance plan. This approach would be regarded as best practice at present.
- 8.12 On the other hand, some other companies do not communicate details of the income continuance plan to employees generally. This can arise for several reasons; the most common being that the income continuance plan is available to a limited subset of the work force. In these situations, some choose to communicate the benefit quite informally and may not actually formally document the benefit.

Disclosure obligations relating to pension schemes - The Pensions Act, 1990

8.13 The Pensions Act 1990 (the “Act”), Section 54(1) provides that:

“the trustees of a scheme or any employer to whom a scheme relates shall furnish such information to such persons in such circumstances and within such time limits as may be prescribed in relation to the following:

(c) the rights and obligations that arise or may arise under the scheme, and

(d) such other matters as may be prescribed which appear to the Minister to be relevant to schemes of a particular description to which the scheme belongs.”

8.14 The circumstances and time limits in relation to the communication of that information are prescribed by the Occupational Pension Scheme (Disclosure of Information) (No 2) Regulations, 1998. (the "Disclosure Regulations")

8.15 The disclosure regulations require disclosure *inter alia* of "What benefits, if any, are payable under the scheme, and how they are calculated." It follows that there is a requirement for schemes to disclose any treatment of members who are absent from work due to illness or disability.

8.16 Article 9 of the Disclosure Regulations provides that certain information must be furnished to every person who becomes a member of the scheme within 2 months. Schedule C sets out the relevant information and includes a requirement that members be told which benefits, if any, are payable only at some person’s discretion, the conditions on which benefits are paid and any options relating thereto.

Interaction between income continuance plans and associated pension plans

8.17 Income continuance plans interact with pension plans in a variety of ways:

- Income continuance provision may be raised during discussions leading to provision of an occupational pension scheme.
- The benefits under the otherwise legally separate arrangements may be jointly communicated, as mentioned above.
- Pension scheme rules may make reference to the treatment of employees in receipt of income continuance benefit.
- The income continuance plans may include provisions designed to support ongoing funding of pension benefits (ie premium protection).

Operation of temporary absence provisions in pension schemes

- 8.18 Where an employee becomes ill or disabled and cannot attend work, his\her ongoing treatment with respect to the pension scheme would usually be specified by the rules of that scheme. The particular provisions of scheme rules vary from scheme to scheme, reflecting the nature of the pension scheme and the original intent of the scheme sponsor.
- 8.19 In general, temporary absence provisions would apply and the onset of illness or disability would not trigger benefit payments from the pension scheme, but would usually trigger specific arrangements relating to members not attending work. The arrangements made in respect of recipients of benefits under an income continuance plan may or may not vary from those of members temporarily absent from service for other reasons.
- 8.20 In defined contribution schemes, the question to be determined is what will be the basis of contributions to be paid by and in respect of the member during his\her absence? The provisions found in pension schemes are wide ranging:
- In some schemes, no provision is made for continuation of contributions;
 - Others may provide for continuation of contributions, but at a limited level;
 - Others may specify that employer contributions will be continued only if employee contributions are maintained;
 - Many pension schemes that operate alongside income continuance plans provide for continuation of employee and employer contributions. In defined contribution schemes this will largely be consistent with the terms of the income continuance plan in that the contributions may be fixed, may increase in line with the escalation of the income continuance benefit, or they may possibly increase in some other way.
- 8.21 In defined benefit pension schemes, two questions need to be settled by the temporary absence provisions applying to income continuance beneficiaries. They are the definition of pay on which pension will be based and the extent, if any, to which benefits continue to accrue to the member during disability or illness (i.e. accrual of service). Once again, the provisions found in practice are wide ranging:
- Pensionable pay may be fixed at date of onset of illness or disability, or at some later date such as date of admission of the claim. Alternatively, the pensionable pay definition may be set by reference to pay at onset, increasing on a specified basis during disability;
 - Pensionable service may be frozen at date of onset or some similar date such as date of admission of claim. Alternatively it may continue to accrue during disability.

- The arrangements may be left to the discretion of the Trustees and/or the Employer. This approach is commonly found in cases where the income continuance plan was not in place at the time of establishment of the pension scheme.
- If service is to continue to accrue, it would normally be necessary to arrange continuation of employer (and where relevant, employee) contributions to the pension scheme. The manner in which the continuing contributions are calculated is often approximate, reflecting the usual position where the balance of pension costs are met by the employer in any event.

Premium protection arrangements

8.22 Where pension contributions are paid during disability, it is very common to extend the income continuance insurance policy so that the insurance recovery received by the employer includes a contribution towards the cost of maintaining contributions.

8.23 The term used to refer to this extension of cover is "premium protection". The following points arise in relation to these arrangements.

- The level of the premium protection benefit would not always coincide with the cost of funding ongoing accrual of pension benefits. This is particularly true in defined benefit schemes, where the ongoing cost of benefit accrual varies by member but where the level of premium protection benefit is usually set at a fixed percentage of salary for all employees. In these schemes, the ongoing cost of benefit accrual can also vary over time whilst the premium protection benefit would rarely be reviewed.
- The situation in defined contribution schemes is usually different insofar as it is can be easier to more closely match the contribution arrangements. However, a number of issues can arise which can make this difficult to exactly match the contributions. These include the following:
 - Contributions can increase in line with the rate of salary escalation in the company. It is not generally possible to insure benefits that increase in line with salary escalation.
 - The contributions may be expressed as a percentage of salary but that percentage may differ depending on age or possibly years of service. Again it may not be straightforward, or possible, to get insurance cover to match this pattern of contributions.
- There is no requirement to include an escalator in defining the premium protection benefit. However, it is the case that most schemes that operate an escalator on the income protection benefit would also operate the same escalator on the premium protection benefit, if one were provided.

- As is the case in relation to the income protection benefit, the existence of an escalator on the insured premium protection benefit does not necessarily mean that the contributions paid to the pension scheme while an employee is absent must escalate in the same way. This is reasonable insofar as it is not always possible to secure insurance that would exactly match how contributions into the pension scheme would vary over time.
- In defined benefit arrangements where this benefit is in place the premium protection benefit is simply a contribution towards the cost of the member remaining in the pension scheme and receiving benefits other than a leaving service benefit. Ultimately how the benefits accrue to a member in receipt of income continuance benefits will depend on the pension scheme rules.

8.24 The benefits secured by a premium protection benefit in a defined contribution scheme are defined by reference to the investment proceeds arising from the application of the contributions to the members' individual retirement accounts within the scheme. It is difficult to foresee issues arising in relation to this.

8.25 The situation with respect to defined benefit schemes is different. Here the benefit may depend solely on the wording of the rules of the pension scheme, or may depend on provisions made within the contractual arrangement between the employer and the employee. Difficulties can arise as follows;

- The rules of the pension scheme may be restrictive in terms of the definition of pensionable salary and accrued service. This can result in the benefit provided not meeting employee expectations.
- The rules of the pension scheme and the benefits communicated by the employer to the employee may differ, leading to disputes.
- The rules of the pension scheme may simply be unclear as to the exact treatment of members in receipt of disability income benefit. This could occur in instances where the pension scheme was set up prior to the income continuance scheme.

8.26 Where there is no premium protection benefit, the benefit available may be established by reference to service completed and salary at the date of commencement of illness. This is akin to a leaving service benefit at that date.

Death in service benefits

8.27 Schemes providing death in service benefits would usually also provide a death in service benefit to a member who is temporarily absent due to incapacity. However, there is no requirement for this. Equally there is no requirement that the death in service benefit be maintained at the level that would have applied had the member not

been absent. This can lead to erosion of the value of the death in service benefit if the benefit is not linked in some way to pay inflation. The amount of death in service benefit payable, if any, while an employee is absent from work due to sickness or disability is generally defined in the pension scheme rules.

Other areas of interaction

- 8.28 In schemes with an ill-health rule, the ill-health rule may preclude payment of any ill- health pension in circumstances where an income protection benefit is being paid.
- 8.29 Some interaction between income protection plans and pension schemes also exists in relation to the general rights (i.e. other than those covered above) of members under pension schemes. In general, because insurers require that employment be maintained whilst income continuance benefits are in payment, employees in receipt of income continuance benefits would be treated as active members of their pension schemes and would therefore enjoy similar rights as employees in active employment. Clearly this is not the case where employment is legally terminated and the continued payment of an income continuance benefit after termination of employment would not confer additional rights on the recipient above those enjoyed by deferred pensioners in the pension scheme.

Regulation of income continuance benefits

- 8.30 The interaction between income continuance plans and associated pension plans described above has raised the query as to whether the regulation of income continuance plans should be within the remit of the Pensions Board or the DETE. We do not consider that it is appropriate that it should be within the remit of the Pensions Board for the following reasons:-
- Not all income continuance plans provide “premium protection” for pension contributions. Therefore, if the Pensions Board were to be regulator, it would find itself regulating employee benefit products which did not have any connection with pension plans.
 - Income continuance plans are established and administered by undertakings authorised under the EC (Life Assurance) Framework Regulations, 1994 (the “Framework Regulations”). They are insurance products. The competent authority for these products, under the Framework Regulations, is the DETE.
 - The DETE is the responsible Department for matters relating to employment and the regulation of the employment relationship. It would seem to us inappropriate to take away from that Department the regulation of income continuance plans, particularly in cases in which those plans had no element of premium protection for pension contributions.

- 8.31 For the reasons set out above, we would recommend that the regulation of income continuance plans, combining as they do an insurance product and elements of an employment contract, should continue to be regulated by the DETE.

Summary

- 8.32 In the majority of cases this benefit is insured by the employer with the insurance contract being one between the employer and the insurer. This insurance contract may or may not provide benefits matching those promised to the employee.
- 8.33 Premium protection benefits are often added as a rider benefit to disability insurance policies, the intention being that this benefit (which is payable to the employer) will assist the employer in financing ongoing pension provision for the employees.
- 8.34 Employees' entitlements under income continuance plans arise under employment contracts. In general, it seems that formal employment contracts make brief reference to the availability of the benefit, with detailed explanation being left to some other form of communication such as a pension scheme booklet. This can cause confusion about the nature of the benefit and its relationship with pension benefits. At present, best market practice is to communicate the details of an income continuance plan through a separate booklet or other separate communication.
- 8.35 Current pension scheme disclosure regulations require disclosure of the benefits payable under the pension scheme. The consultants regard this as covering disclosure of benefits arising following a period of absence due to disability including the arrangements made, if any, for continuation of active pension scheme membership in the period of absence and the death benefits payable during and after such a period.
- 8.36 Overall, we perceive that lack of adequate disclosure has been the most significant source of misunderstandings in relation to the interaction of income continuance plans and related pension plans. We do not believe that it is reasonable to allow this situation to persist and recommend strengthening the non-pensions aspects of disclosure. We therefore recommend that the DETE introduce regulations, by Statutory Instrument, in relation to communications between the employer and the employee. The purpose of the regulations should be to oblige employers that provide income continuance benefits for some or all of their employees to provide each such employee with a defined minimum amount of information in relation to the scheme benefits. The regulations should specify both when the communication should happen and the content of the communication. Section 13 of this report suggests what we consider the minimum amount of information that should be included in such a communication.

- 8.37 Existing pensions disclosure regulations provide for required disclosures in relation to pension schemes. In cases where disclosure remains inadequate, this may be because of a lack of understanding of the intended depth of the regulation in question. We therefore recommend that the Pensions Board introduce specific guidance in its Guidance Notes drawing attention to pension scheme aspects of the disclosure recommendations described in the previous paragraph.
- 8.38 It was also considered whether the regulation of income continuance plans should be within the remit of the Pensions Board or the DETE. On balance it was considered that that the regulation of income continuance plans, combining as they do an insurance product and elements of an employment contract, should continue to be regulated by the DETE.

9 Employment law implications

- 9.1 The purpose of this task was to consider the employment law implications in relation to income continuance plans provided by employers for their employees.

Introduction

- 9.2 The employment law implications arising out of the provision of the benefit of income continuance are grounded in the fact that entitlement to this benefit constitutes a term and condition of employment (which itself may or may not be conditional) and as such affords the employee certain rights in respect of the provision of this benefit. These rights relate to the disclosure, variation and determination of this benefit. In the following paragraphs each of these aspects are considered generally from an employment law perspective in the context of current statute and common law in this area.

Disclosure of the Income Continuance Benefit to the Employee

- 9.3 Communication of the right to receive income continuance is usually by way of a reference to this benefit in the contract of employment. Often the reference to this benefit contains minimal detail as regards the conditions governing entitlement to receive it, issues regarding the nature of the benefit itself, or the circumstances governing termination of the benefit. In many cases the contract merely states that the employee may be entitled to this benefit. However, quite often reference is made to a more detailed policy document or explanatory booklet, which tends to be included in the company handbook or available from the employer.
- 9.4 The majority of the explanatory booklets which were provided by a range of employers who responded to the questionnaire contain wording to the effect that the terms governing the income continuance benefit, as set out in the booklet, do not create or confer any rights between the employer and employee. This waiver is inconsistent with the principle that entitlement to and provision of this benefit constitutes a term and condition of employment. As the provision of this benefit in itself constitutes the creation of a term and condition of employment (which may or may not be conditional), which in turn automatically confers rights on an employee, waivers of this nature may be ineffective. Clearly, however, the provision of the benefit is subject to the terms and conditions contained in the employer's policy with the insurance company.
- 9.5 In partial recognition of the fact that the provision of income continuance benefit does create a right that an employee can rely on, one of the employer's explanatory booklets examined acknowledges that the employer's contract with the insurance company may create a right to benefit between the employer and employee. However, it tempers this acknowledgement with the observation that entitlement to this benefit is subject to the terms of the policy between the employer and the insurance company. Similarly, the explanatory booklet of another employer explicitly acknowledges that the employer's

contract with the insurance company, confers legal rights on employees to participate in this benefit and it is also explicitly stated that any of the terms referred to in the explanatory booklet cannot override the terms governing the provisions of the contract between the employer and the insurance company, to the extent that the conditions are different.

Terms of Employment (Information) Act, 1994

- 9.6 In terms of legislative regulation, the employer's obligation to disclose to an employee the fact that he/she may be entitled to income continuance, in the event of prolonged illness, is governed by the Terms of Employment (Information) Act 1994 (the "Act").
- 9.7 The core obligation under the Act is that employers provide employees with a written statement of their terms and conditions of employment within two months of taking up employment.
- 9.8 Section 3 (iii) of the Act states that an employee's terms and conditions, including those relating to incapacity and pensions, can be given to the employee in the form of a reference to provisions of statutes, or instruments made under statute, or of any administrative provisions or collective agreements governing those particulars, which the employee has a reasonable opportunity to read during the course of his/her employment, or which are reasonably available to the employee in some other way.
- 9.9 However, owing to the Acts' failure to specify what "any terms and conditions" means, the degree of disclosure required to be made by an employer to an employee in respect of provision of income continuance benefit is difficult to ascertain and by implication difficult to regulate.
- 9.10 With regard to enforcement and regulation of the employer's obligations, the Act provides for the making of complaints by employees in relation to any contravention of the Act by their employers. Section 3(6) also provides that the Minister may by Order require employers to give or cause to be given to employees within a specified time a statement in writing containing such particulars of the terms of their employment as may be specified in the Order. The Act does not give any indication as to the circumstances in which the Minister might exercise this power.
- 9.11 Claims with respect to perceived breaches of the Act must be made by an employee to a Rights Commissioner. A Rights Commissioner has power to order the employer to alter or add to its statement of terms and conditions. In terms of financial penalties, the maximum award which the Rights Commissioner can make, is an amount not exceeding four weeks remuneration. Clearly therefore, from the point of view of encouragement of comprehensive and meaningful disclosure, the meagre financial penalties imposed for breach of the Act are not impressive. This would explain why, in the main, it appears that employers tend to make vague, non-committal references to

the provision of the benefit of income continuance in the contract of employment, or other such formal communications between the employer and the employee. The financial penalty set down by the Act does not represent a major deterrent.

9.12 Whilst the employer would appear to have significant discretion to be selective in terms of the information which he provides to employees with regard to their entitlement to income continuance, there have been a number of decisions issued by the Labour Court touching on this point which suggest otherwise. The decisions arising out of these cases intimate (but do not expressly state), that in circumstances where the effect of the non-disclosure or inadequate disclosure is that the employee loses some benefit under an income continuance arrangement (because, for example, he/she failed to send in some notice or submit a claim within the requisite period) this may in itself leave the employee with a remedy for breach of contract in the amount of the lost benefit.

9.13 The cases (fn^{9.13}) lend support to the possibility that an employee may have an alternative form of redress for breach of the provisions of the Act by the employer by virtue of instigation of civil proceedings. There is also emerging case law which suggests that civil action in respect of inadequate disclosure of a contingent benefit, can be grounded not only on breach of statute, but also on the employers implied duty to exercise due care of the economic well being of its employees. This emerging duty has only recently been recognised by the Courts and has been implied in contract and more recently in tort.

Employer's duty to exercise due care for the economic well being of its employees

9.14 The seminal case in this area is that of *Scally v Southern Health and Social Services Board [1991] IRLR 522*. In this case, the employee's contract of employment incorporated a statutory superannuation scheme. Entitlement to the maximum pension depended on 40 years service. Because doctors do not normally qualify until their mid to late twenties, the Health Service Regulations, 1975 gave employees the right to purchase "added years" of pension entitlement in order to make up their full entitlement. The purchase could only be made within the first twelve months of taking up employment. The plaintiff was not aware of this right. The House of Lords held that there was a contractual obligation to bring the existence of this right to purchase extra years to the notice of the employees. Such a duty existed in the case of all contracts of employment which provided for contingent benefits. In particular, this duty existed where: (i) the terms of the contract had been negotiated collectively and

^{9.13} FAS and Phyllis Gaffney Janssen, LCR 16672, 20 November, 2000.

Radio Telefis Eireann and Irish Transport and General Workers Union, LCR 12579, 28 September 1989.

BOC Gases Limited and Services Industrial Professional Technical Union, Rec. No. 17032, 22 January 2002.

not with the individual employee; (ii) a particular term is contingent upon the employee taking specific action to avail of the entitlement; and (iii) the employee could not be expected to be aware of the benefit.

9.15 The significance of *Sally* is that in that case the Court implied into the contract of employment a term imposing a duty on an employer to exercise due care for the economic well being of its employees, the duty as to an employees economic well being giving rise to an action for damages if it is breached.

9.16 Recently, in the case of *Hagen v ICI [2002] IRLR 31*, whilst the Court recognised that an employer is not under a positive obligation to offer advice to an employee, in a situation where an employee is faced with a choice relating to the exercise of rights under a contract of employment relating to his financial position, it did note that where the employer does offer advice and makes statements and representations, it is under an implied contractual obligation to ensure that the advice, statements or representations it chooses to make or communicate, are given having taken reasonable care. The claimants in *Hagen* had not pleaded the existence of such an obligation in contract and the Court had to consider whether an equivalent obligation arose in tort. The Court held that in the circumstances of the case there was a corresponding tortious duty. However, it was noted that there are a number of practical problems with establishing a tortious duty of this nature. Most notably, before an employer can be liable for making a negligent statement which impacts on the economic well being of its employees, the employees will need to show that they relied on those statements. The reliance must be reasonable and must have caused the loss. Notwithstanding the evidential difficulties in bringing a claim of this nature, the duty to take reasonable care to safeguard the economic well being of employees has been firmly established. Both the implied duty in contract and the tortious duty are likely to play an increasingly important role in employment litigation and almost certainly provide employees with an alternative source of redress, in circumstances where an employer's failure to disclose, or inadequate disclosure, in respect of income continuance benefits has resulted in economic loss for the employee.

Variation to the terms governing the provision of Income Continuance Benefit

9.17 As the provision of the benefit of income continuance, offered by an employer, constitutes a term and condition of employment, variation in the conditions governing the provision of this benefit may only be legally effective if it is made with the employee's consent, either express or implied. Very often the employee's contract of employment will contain an express variation clause. In addition, the documentation outlining the conditions governing entitlement to receive this benefit usually contain a clause whereby the employer reserves the right to suspend, discontinue or modify the rules governing the provision of this benefit upon giving written notice to eligible employees. However, any unilateral variation which purports to rely on an express

variation clause contained in the contract of employment and/or any such ancillary documentation, would have to be reasonable.

- 9.18 Minor variations in the terms governing receipt of income continuance may be legitimised by an express variation clause. However, significant variations, for example the conditions governing eligibility to participate in the income continuance plan, or termination of the right to receive benefit, tend to require the express consent of the eligible employees who will be affected by the change.
- 9.19 As the variation of the terms governing receipt of income continuance will only tend to impact upon an employee when he/she has a need to make a claim, an employer cannot rely on the employee's acquiescence to the variation as valid consent. As the impact of any significant variation will not be immediately apparent to the employee, the employer must obtain the employee's express consent to this variation. The only scenario where employee's acquiescence may be deemed to be valid consent is if the employer could show that the employee accepted compensation offered by the employer on the clear understanding that this compensation was being offered in order to close off any claim which the employee may have had arising out of the variation of the provisions governing receipt of income continuance. The employee's acquiescence must be an informed acquiescence. It may be more appropriate to regard the informed acquiescence as express consent, in the sense that having been informed of the reason behind the offer of compensation and having proceeded to accept the compensation, this acceptance in itself constituted express consent to the variation.
- 9.20 This argument would be strengthened if the employee was furnished with written (as opposed to oral) notification of the proposed variation, the impact which this will have on the employee in terms of benefit entitlements and the nature of the compensation being offered in consideration for the variation. Even if the employee did not sign this document, in acknowledgement that his/her acceptance of the compensation was in full and final settlement of any rights he/she may have arising out of the variation, acceptance of the compensation may in itself constitute express consent to the variation so as to render it lawful.
- 9.21 For the employee's consent to be valid, he/she must be fully informed as to the impact of the variation of the terms governing receipt of income continuance, and the proposed method of compensation. The employee's subsequent consent to the variation must be expressly given, ideally in writing. This consent must be unequivocal and permanent.
- 9.22 In circumstances where the income continuance benefit is unconditional the second condition to lawful variation of a contract is the supply of consideration by the party in whose favour the variation has been granted. The employer is, effectively, obliged to offer some form of consideration for the variation of the income continuance

entitlement. There are no rules in Ireland governing the nature or level of compensation which would be required and/or appropriate. For the compensation to be acceptable to the employee it must be adequate.

- 9.23 In assessing what will be reasonable and sufficient compensation for such variation, one must look at the nature of the variation and the impact that it will have on an employee's income continuance entitlement.
- 9.24 Should an employer fail to obtain express consent to a significant variation, this increases the likelihood under Irish law that the variation will not be contractually enforceable and will be a breach of contract. If the provision of income continuance constitutes a fundamental term or condition of employment (this would be the case in respect of current recipients of the benefit), the variation may be considered to represent a repudiation of the contract of employment, such as to justify an employee immediately resigning and bringing a claim for constructive dismissal.
- 9.25 In such circumstances, the employee could pursue a claim before the Employment Appeals Tribunal under the Unfair Dismissals Acts, 1977 – 2001. The redress that may be awarded in these circumstances would be compensation (of up to 2 years gross remuneration), reinstatement or re-engagement.
- 9.26 Compensation is the most likely award in these circumstances, particularly since the employee will have resigned and is unlikely to want to return to work for the employer. Another option open to an employee is to bring a claim for breach of contract to a court of appropriate jurisdiction. The employee does not have to leave employment to bring a claim of this nature. The remedies available are damages and/or a declaration that the benefit of income continuance should be provided, as originally promised.
- 9.27 This analysis highlights that irrespective of the existence of waivers and express variation clauses in the documentation, which communicates details of the benefit to the employee, under Irish law an employer may not be able to make major alterations to the nature of the benefit without first obtaining the employee's express consent.

Termination of Income Continuance

- 9.28 In circumstances where a disabled employee retires, takes early retirement, recovers and returns to work or dies their income continuance benefit will automatically cease. However, another circumstance which can disentitle an employee to income continuance benefit is leaving employment. If this is not voluntary, but rather is brought about by way of dismissal, then, notwithstanding that the contract of employment may provide for termination in this way, the employee may be entitled to bring a claim for breach of contract and/or wrongful dismissal.

- 9.29 Generally, most income continuance policies taken out by an employer require that for an employee to be eligible for participation under the scheme, the employee must remain in employment. Termination of the employee's contract of employment, by reason of prolonged incapacity, would disentitle the employee to income continuance. Ordinarily, provided an employer follows fair procedure, and acts reasonably, it is entitled to dismiss an employee on grounds of prolonged absence. This action is taken when an employee has been absent from work for a significant period of time, and is not in a position to give a reasonable return date. In such circumstances the employer can regard the employee as having frustrated the contract of employment, thereby entitling the employer to dismiss the employee. However, this entitlement is qualified if the employer operates an income continuance scheme.
- 9.30 Often the provisions regarding termination of an income continuance scheme, as set out in the policy document between the employer and the insurance company and as communicated to the employee, may be directly inconsistent with the terms of the contract of employment.
- 9.31 Contracts of employment often provide a power to dismiss in the event of prolonged illness beyond a certain period (either continuous or in aggregate). The exercise of this power may be inconsistent with the income continuance scheme if this provides for payments in respect of an employee to cease if he ceases to be an eligible employee (because, say he was dismissed for cause).
- 9.32 Relevant case law (fn^{9.32}) makes it clear that an employer cannot simply dismiss an employee on the grounds of ill-health, in circumstances where the effect of dismissal would be to deny the employee a right to income continuance. It would seem that the circumstances where a termination of this nature would be legally acceptable, would be if the terms of the insurance policy operated so as to disentitle the employee to income continuance.
- 9.33 In terms of what constitutes dismissal for cause, Irish case law is silent on this point. However, there is UK case law (fn^{9.33}) to suggest that an employee on income continuance may only be dismissed for reasons of redundancy or in cases of misconduct.

^{9.32} *Aspen v. Webbs Poultry and Meat Group (Holdings) Limited* [1996] IRLR 521.

Atari Games Ireland Limited and Services Industrial Professional Technical Union, LCR 14102, 11 June, 1993.

^{9.33} *Adin v sedco Forex International Resources Limited* [1997] IRLR 280.

Hill v. General Accident Fire and Life Corporation [1998] IRLR 641.

Villella v. MFI Furniture Centres Limited [1999] IRLR 468.

Summary

- 9.34 The nature and extent of disclosure by employers to employees in respect of their entitlement to income continuance benefit tends to vary and in many cases is inadequate. The fact that income continuance represents a term and condition of employment, (which may or may not be conditional), means that employers may not be able to rely on waivers contained in communication documents to employees to the contrary. In terms of regulation, the statutory regulation under the Terms of Employment (Information) Act 1994 is imprecise and arguably an ineffective deterrent. Emerging case law suggests the establishment of a duty on employers to care for the economic well being of an employee in respect of contingent benefits referred to in the contract of employment. This emerging duty has been grounded in both contract and tort and offers an alternative and arguably more effective form of redress for employees than the current statutory remedy.

10 The level of understanding amongst employers and employees in relation to income continuance plans

- 10.1 The purpose of this part of the project was to review the understanding of employers and employees in relation to Income Continuance.
- 10.2 In order to carry out this task we sent a questionnaire to the heads of Human Resources of about 960 of the Business and Finance top 1000 companies. The purpose of the questionnaire was to gather information relating to the employers understanding of income continuance plans. In addition, we also prepared a questionnaire targeted at employees which we also sent to the heads of Human Resources of those companies targeted requesting that the questionnaire be passed onto five of their employees.
- 10.3 Our experience of typical response levels for employer surveys is in the region of 10%. However, it can vary considerably from this percentage. We received 138 replies to the survey from employers which is a response rate of just over 14%. We also received 481 replies from employees which was a 10% response rate. As part of the response we also received 48 income continuance booklets from employers
- 10.4 For completeness we have included copies of the surveys sent to both the employers and the employees in Appendix C.

Summary of conclusions from employer surveys

Key Facts

- 10.5 All companies that responded to the survey offered pension benefits to some or all of their staff, but only 73% of companies also offered income continuance benefits to some or all of their staff.
- 10.6 This suggests that the results of the survey may be somewhat skewed towards better practice employers because the results exceed those we would have expected based on our experience. However, the results of the survey do give us some information as to what the better practice employers may be doing in relation to income continuance.
- 10.7 While in 46.7% of the companies that responded pension benefits were offered to all employees, only 23.7% of companies offered income continuance benefits to all employees. Approximately 42% of companies offered pension benefits to full time or permanent employees while only about 25% of companies offered income continuance benefits to these employees.
- 10.8 Some employers stated that income continuance benefits were only made available to management or were given to staff on a discretionary basis.
- 10.9 Of those companies that did offer income continuance benefits 87% of the schemes were paid for by the employer. In only 2% of cases the costs were met by the

employees and in 11% of cases the costs were met by the employer and the employee. However, the 11% seems high based on our understanding of the market. We checked a number of these cases against the documentation we received and in a number of cases the documentation stated that the employer met the full cost of disability benefit. Employers may have misinterpreted the question and based their reply on how the pension scheme is funded. We also understand that the 2% actually referred to voluntary schemes, where one would expect that the cost would be met by the employees.

- 10.10 The survey shows that in nearly 98% of cases the employer does issue some sort of information to the employee in relation to income continuance and in just over half of cases the information is given in more than one format. The most common medium of communication, i.e. 45% of cases, is inclusion of income continuance benefit details within the pension scheme booklet. The next two most common mediums used were inclusion of details in the employee handbook (36%) and including information in the standard terms and conditions of employment (31.5%). 21% of companies had a separate income continuance booklet.

Key features of the company's income continuance benefits

- 10.11 A significant proportion (73%) of the schemes described in the survey had a deferred period of 26 weeks, the next most common were 13 weeks and 52 weeks with 11% and 12% respectively of scheme in the survey being set up on this basis.
- 10.12 Just over half (53%) of the schemes included in the survey used "unable to follow your own occupation" as the definition of sickness. The definition "unable to follow your own occupation or an occupation to which you are suited" was used in 22% of schemes in the survey and "unable to follow any occupation" was used in 16% of cases. Only 1% of schemes used the definition "failure to carry out a minimum number of activities of daily living/working" and the balance fell under other.
- 10.13 The benefits covered under the schemes in the survey ranged from 30% of salary to 75% of salary with the majority of schemes, i.e. 47%, using two thirds of salary and 24% of schemes using 75% of salary. Between 80% and 90% of schemes reduce the percentage of salary covered by the benefit by deducting an allowance for the State disability benefit. Some schemes also capped the benefits payable. However, this was only the case in 21% of the schemes in the survey. Based on our experience we would have expected that the majority of schemes would have some sort of cap in place.
- 10.14 Approximately 74% of schemes had benefits that would escalate in payment and the types of escalation rates used included, CPI, CPI subject to a maximum of 5% per annum, 5% fixed per annum and 3% fixed per annum.

Interaction of income continuance benefits with the pension scheme

- 10.15 Of the companies that replied to the survey approximately half had defined benefit pension arrangements in place and half had defined contribution pension arrangements in place. Of the companies that participated in the survey where there is a defined benefit arrangement in place, pensionable service would continue to accrue while a scheme member is in receipt of income continuance benefits in 91% of the schemes. In addition, 67% of these defined benefit schemes have the pensionable salary escalating while a scheme member is in receipt of income continuance benefits.
- 10.16 Of the companies that participated in the survey which have defined contribution arrangements in place, in 90% of cases contributions continue to be paid into the pension scheme while a member is in receipt of income continuance benefits and of these cases 53% stated that the contributions would escalate over time.

Insurance and income continuance

- 10.17 Of the companies that participated in the survey who had income continuance benefits in place approximately 4.5% of companies stated that they did not insure the benefits. In addition, the survey results suggest that where benefits are insured the employer does not generally envisage paying benefits that differ from those insured.

Income continuance claims

- 10.18 Of the companies that participated in the survey which had income continuance benefits in place:
- 57 had claims initiated by employees in the last 3 years, with a total of 276 claims initiated;
 - 54 had claims admitted in the last 3 years, with a total of 206 claims admitted;
 - 21 had claims rejected in the last 3 years, with a total of 88 claims rejected;
 - 53 are currently paying claims with a total of 318 claims in payment.
- 10.19 15 of the companies that completed the survey also commented that the main reason why claims were rejected was that the medical evidence showed that the potential claimants were fit for work. In some instances the independent medical view regarding an employee's ability to return to work was different from that of the person's general practitioner or the staff doctor.
- 10.20 It was the view of approximately 50% the companies that participated in the survey that employees generally return to work after a period of being in receipt of income continuance benefits. Where it was viewed that employees generally return to work it

was estimated by these companies that on average 50% of such employees returned to work.

10.21 Approximately half of the companies in the survey with income continuance benefits in place used options such as part time working or revised duties in order to encourage employees back to work.

10.22 We also asked employers whether they generally terminated employment contracts after a period of sickness. Just over 19% of respondents to this question stated that they did terminate contracts in these circumstances.

10.23 27 companies also made some general comments regarding the working relationship that they had with their insurance company. The majority of the comments made, i.e. 17 comments, were very positive in that companies were happy with the entire process. The balance of the companies made a number of comments suggesting areas that could be improved. While there doesn't seem to be any significant evidence that these are issues in general, nor do we consider them to be issues, we felt it was worthwhile including the various points for completeness. The points made were as follows:

- Underwriting is a very lengthy process.
- The renewal process can be slow and inefficient.
- The process of admitting claims can be slow resulting in claimants being owed back money. In some cases this has been because of delays in getting medical opinions.
- In some cases it was not considered in the interests of the employer or employee for the insurance company to encourage the employee back to light duties.
- The regular reviews of claims in payment by the insurer were in some cases considered to be too frequent.
- In some smaller schemes it can be very difficult to get cover for some employees with pre-existing conditions.
- It was considered that there was no transparency in the underwriting process, with no procedure in place to appeal any decisions.
- Employers found it irritating that in order to get a quotation for income continuance benefits it is sometimes necessary to also place the life cover benefits with the same insurance company.

Summary of conclusions from employee surveys

10.24 There were 481 responses to the employee survey. The following table summarises the profile of the survey respondents.

Table 10-1

Occupation		Proportion of duties that are manual		Annual salary range before tax, excluding overtime	
		% of manual work	% response		
Manager	32.7%	0%	47.5%	< €15,000	1.5%
Professional\technical	24.9%			€15,000 - €25,000	21.1%
Secretarial\administration	27.2%	1-20%	31.6%	€25,000 - €40,000	36.7%
Sales	5.1%			€40,000 - €60,000	21.5%
Craft and skilled manual	2.8%	21-50%	9.7%	> €60,000	19.2%
Other manual	3 %				
Other	4.3%	51% or more	11.2%		

10.25 Of the employees that replied to the survey 97% had employer sponsored pension arrangements in place. 63% of the respondents were aware that they could receive benefits from an income continuance arrangement. 29% of respondents stated that they were not entitled to income continuance benefits and only 8% did not know whether they would receive income continuance benefits.

10.26 In the following paragraphs we have analysed the replies to the employee survey for respondents who stated that they could receive benefits from income continuance benefits.

10.27 Most of the respondents within this group (i.e. 93%) did receive some sort of communication from their employer regarding the existence of income continuance benefits within their company. In fact, approximately 40% of these employees received the information in more than one way. The most common means used to communicate the information were to a) include it in the terms and conditions of employment, b) include it in the employee handbook and c) include it in the pension scheme booklet. Each of these methods was reported to be used between 35% and 40% of the time. Only 6% of the employees within this group of respondents stated that a specific income continuance booklet was issued to them by their employers, which is quite different to the 21% result from the employer survey.

Key features of the company's income continuance benefits

10.28 The employee survey asked nine key questions in relation to type of cover provided by the income continuance benefits covering details such as, "when would the benefit be payable?" and "how much would the benefit be?" The level of knowledge amongst respondents varied by question. The following table summarises the percentage of respondents that replied with "Don't know" to each of these questions:

Table 10-2

Question	Percentage of Don't knows
For how long must you be absent from work before income continuance benefits would commence?	20%
What definition of sickness or disability must you satisfy in order to apply for income continuance benefits from your employer?	36%
Is your cover subject to any exclusions?	53%
What percentage of your salary would you receive from your employer as an income continuance benefit if you were to make a claim?	35%
Is there a maximum ceiling to the benefit, regardless of salary level?	53%
Is the overall benefit reduced to allow for the state disability benefit?	35%
Does the benefit payable increase during the claim period?	42%
If Yes, by how much does it increase each year?	21%
If you are absent from work for an extended period and you are receiving income continuance benefits can your contract of employment be terminated?	43%

10.29 These replies show that there is a relatively high level of awareness amongst this group of employees in relation to some of the features of income continuance benefits. However, just over one third of respondents were unaware of some of the key features, such as the definition of sickness/disability used, the percentage of salary which is payable in the event of a claim and the interaction with the State disability benefit.

10.30 The pattern of answers to these particular questions were generally in line with the replies from the employers survey in that:

- A significant proportion of schemes have a deferred period of 26 weeks.
- "Unable to follow your own occupation" was the most common definition used to define qualification for payment of the benefit and was at least twice as common as the "own or suited occupation" definition.
- The most common percentage of salary used was between 60% and 69% salary. However, the survey showed a similar percentage falling in the range 70% to 80%.
- The majority of respondents stated that the income continuance benefits were reduced to allow for the State disability benefit.
- The majority of respondents stated that the income continuance benefits would increase while in payment.

Interaction of income continuance benefits with the pension scheme

10.31 113 of the respondents stated that their pensionable service would continue to accrue in their defined benefit pension scheme while they were receiving income continuance benefits. However, only 48 stated that their pensionable salary would escalate in the same period. It is not clear to us whether this difference is because this is what actually happens or whether employees simply did not know.

10.32 Similarly, of the respondents who were members of a defined contribution arrangement, 78 stated that contributions would continue to be paid into their pension schemes while they were in receipt of income continuance benefits. However, only 25 stated that the contribution would increase over the period of payment. Again it is not clear to us whether this difference is because this is what actually happens or whether employees simply did not know.

10.33 We also checked a number of documents, mainly pension scheme booklets, supplied by employers and in a lot of cases there was not enough information in the documents to understand what exactly happened in relation to pension scheme benefits while an employee was absent from work and in receipt of income continuance benefits.

Insurance and income continuance benefits

10.34 Approximately half of the respondents in this group were aware that the income continuance benefits being provided by their employer were insured with an insurance company. The other half did not know what the situation was.

10.35 While the replies were broadly consistent between the employee and the employer surveys there were instances whereby the employees understanding of the benefits, as

demonstrated by their replies to the surveys, was inconsistent with features of the benefits as described by the employer.

- 10.36 In a sample of employee replies examined the greatest inconsistency seemed to be in relation to the definition of sickness. This could suggest that the employees did not generally understand this particularly point very well. In addition, in some cases the employees thought they had benefits when they didn't and in other cases employees said they didn't have these benefits when the employer replies suggested that they did.

Summary

- 10.37 While the results of the survey may be somewhat skewed towards better practice employers they do give us some information as to what the better practice employers may be doing in relation to income continuance.
- 10.38 In most cases the employer does communicate this benefit to its employees with the most common medium of communication being inclusion of details in the pension scheme booklet.
- 10.39 A small number of the employers responding to the survey stated that they did not insure income continuance benefits.
- 10.40 Many of the documents received from employers did not contain enough information to understand what exactly happened in relation to pension scheme benefits while an employee was absent from work and in receipt of income continuance benefits.
- 10.41 The replies to the employee survey showed that there is a relatively high level of awareness amongst this group of employees in relation to some of the features of income continuance benefits. However, just over one third of respondents were unaware of some of the key features. However, it is possible that the results may be skewed as nearly 30% of respondents did refer to documentation in order to complete the survey and in addition nearly all respondents had received some form of communication from their employer in relation to this benefit. It is difficult to say whether the same level of awareness would exist for employees of other firms who did not participate in the survey.
- 10.42 There was some degree of inconsistency between the employee replies and the employer replies, particularly in relation to some of the scheme features such as the definition of sickness suggesting that even within this group of there was a degree of misunderstanding in relation to this benefit.

11 Summary of consultative meetings

- 11.1 The objective of this part of the project was to consult with interested parties including employers (e.g. IBEC), trade unions (e.g. ICTU), consumer representatives (e.g. CAI) and the insurance industry (e.g. IIF). In addition, members of the project team met with the Irish Association of Pension Funds (IAPF). As part of this process a meeting was also held with the DETE to brief the Department in relation to the project and to receive any input from the DETE.
- 11.2 The following consultative meetings are summarised in this section:
- Meeting with the Irish Insurance Federation
 - Meeting with the Irish Congress of Trade Unions
 - Meeting with the Irish Business and Employers' Confederation
 - Meeting with the Irish Association of Pension Funds
 - Meeting with the Consumer Association of Ireland

General Summary

- 11.3 A common conclusion from the various meetings was that communications in relation to this product could be improved, particularly communications between the employer and the employees in relation to the availability and nature of this benefit. It was also suggested a number of times that it should be made much clearer that this was not a pension benefit and that it should not be packaged as part of the pension benefits. As discussed in sections 7 and 8 we consider that both of these points require a change in practice and are covered by recommendations in paragraphs 8.35 and 7.36.
- 11.4 The Consumer Association also considered that the use of the term "permanent health insurance" to describe this product could mislead consumer expectations which we also consider can be misleading and is covered by the recommendation in paragraph 3.5.
- 11.5 The IIF considered that it might be beneficial to claimants, employers and the insurance industry if the terms of reference of the insurance ombudsman could be extended to cover corporate income continuance plans. Whilst the industry has not explored this option in detail to date it would be prepared to look into the practicalities. The project team also consider that this might be beneficial and recommend that the IIF consider extending the terms of reference of the insurance ombudsman to cover corporate income continuance plans.

Meeting with the Irish Insurance Federation

Purpose of the meeting

- 11.6 The purpose of the meeting was firstly to discuss where, in the experience of the IIF, issues have arisen in the past in relation to income continuance plans and secondly to identify areas where improvements could be introduced in relation to the operation or regulation of income continuance plans.

Scope

- 11.7 The IIF expressed surprise in relation to a number of points which we have listed below:
- that the project also extended to individual income continuance plans
 - that the Pensions Board were charged with carrying out this work.

Issues

- 11.8 The meeting covered a number of different areas relating to the operation of income continuance plans. The areas covered during the meeting were as follows:
- Sales process
 - Underwriting process
 - Claims process
 - Renewal process (group business)
 - Communication between:
 - Employer
 - Employee
 - Insurer
- 11.9 The following is a summary of the comments made during the meeting.

Sales

- 11.10 Individual business is subject to a number of different protections. These include:
- Life disclosure regulations

- Central Bank rules regarding appropriate advice
- IIF sales codes of practice for direct employees
- Cooling off periods
- General industry rules regarding competency.

- 11.11 However, there are fewer protections in place in relation to group business. For example, group business is currently exempted from the disclosure regulations. It was felt that this was reasonable on the basis that group business is a business to business product and the employers choose to take out this benefit.
- 11.12 Most group schemes are arranged through a broker. It was estimated that up to 90% of sales were accounted for in this manner. The schemes that go directly to the insurance companies tend to be the very large schemes.
- 11.13 This product is often described as a complex product. However, it was felt that the product concept itself is relatively straightforward but that claims process can be viewed as complex.
- 11.14 One of the issues that can arise in relation to individual business is that individuals can over insure themselves. In the event of a claim insurance companies will not pay out an over insured benefit amount but rather will reduce the claim amount to reflect the benefit that should have been insured in the first place. Insurers try to avoid this situation by clearly asking for salary level on the proposal form.
- 11.15 The general view was that the sales process does work well.

Underwriting

- 11.16 It was agreed that this is a benefit that is tightly underwritten, particularly in relation to individual business. The underwriting can mean that cover is not always available to individuals with certain occupations. This doesn't tend to be as much of an issue for group business as most of the business written falls under free cover limits.
- 11.17 In the past individuals may have been disappointed because insurance companies did not accept certain occupations for income continuance benefits. However, we understand that in recent years insurance companies further educated brokers in relation to this issue and that most brokers would now have copies of the insurance companies acceptable occupations. This helps ensure that client expectations are managed leading to fewer disappointments.
- 11.18 It was not felt that there were any significant issues arising in relation to underwriting.

Claims process

- 11.19 Claims management is a very important aspect of this business for insurance companies. The insurance industry in general has tightened up on its claims procedures in the last five to ten years. Insurance companies are now much more active than previously at managing claims, both from the initial contact with the employer, where expectations are managed, to working with claimants and the employers to encourage claimants back to work. In particular, there was a change in practice in the industry about five years ago from "investigating claims" to "actively working with claimants to rehabilitate claimants".
- 11.20 The IIF would be very concerned about any attempt to regulate this area if it would inhibit the insurance companies' ability to work with either the employer or the employee in managing the claim. In particular, anything that would:
- restrict access to the employee (the claimant)
 - restrict the current level of interaction possible with employers
 - place restrictions in relation to independent medical assessments either at the underwriting stage, claims admittance stage or ongoing claim review stage.
- 11.21 In particular, there are only a limited number of providers operating in the market and it was felt that any attempt to place restrictions in these areas could reduce the number of providers operating in the market.
- 11.22 In recent years insurers have seen a change in attitude of employers in relation to the area of claims management. Employers are becoming more co-operative in working with insurers to manage claims and are more aware of the impact of poor claims on their costs. It was also felt that there is now a much greater understanding amongst employers that this benefit is not an early retirement scheme, which was how these schemes were sometimes viewed in the past.
- 11.23 In employer sponsored arrangements the benefit is always paid to the employer, except where the company closes or where all parties agree that the individual will never recover. In these cases the benefit is paid directly to the employee.

Renewal process

- 11.24 Group arrangements are generally written as permanent non-cancellable insurance where the premium rate can be changed, usually every 2 years. The premium will generally reflect the actual experience of the scheme. If the employer feels that the premium is too high the insurance company will generally offer to alter the benefits with the aim of reducing the premium payable.

- 11.25 It was not felt that there were any significant issues arising in relation to the renewal process.

Communications

- 11.26 At the moment, in relation to employer sponsored schemes, all communications from the insurance company regarding income continuance benefits are between the employer and the insurer. The exception being at claims stage where the insurer may directly communicate with the employee. The IIF felt that it could be argued that the employer should make more information available to the employee. However, this would need to be balanced with the fact that the employer may only wish to communicate a certain amount of information to help them manage issues such as absenteeism and an increased number of claims.

Ombudsman

- 11.27 Corporate business is currently outside the terms of reference of the insurance ombudsman. However, in the past the ombudsman has considered some corporate business cases.
- 11.28 The IIF felt that it might be beneficial to claimants, employers and the insurance industry if the terms of reference of the insurance ombudsman could be extended to cover corporate income continuance plans. The industry has not explored this option in detail to date but would be prepared to look into the practicalities .

Standard wording

- 11.29 We raised the question at the meeting as to whether standard wordings describing income continuance plans should be introduced. The IIF felt that the wordings already in use in the market were practically the same across insurance companies and therefore they were already relatively standard. In addition, it was felt that the current situation, of not requiring insurance companies to use standard wordings, was not causing any issues.
- 11.30 In the UK the Association of British Insurers introduced as best practice standard wordings for use in relation to income continuance plans. However it was felt that the UK market was a much bigger market and may therefore have required some form of standardisation, particularly as companies there tried to compete using policy wordings. It was felt that this was not an issue in the Irish market.
- 11.31 In addition, it was felt that the introduction of standard wordings could lead to issues in the future as it would be very difficult for insurers to continue to develop this business allowing it to adapt to changing circumstances.

- 11.32 We also raised the question of whether companies should use definitions of sickness such as Activities of Daily Living ("ADLs") or Activities of Daily Working ("ADWs"), rather than what is generally used in the market which is "unable to carry out your own occupation".
- 11.33 The own occupation definition is generally seen as being more comprehensive and clearer than the ADLs or ADWs. However the IIF did not rule out companies developing new types of income continuance plans in the future.

Employer sponsored schemes where the employee contributes

- 11.34 We asked the view of the IIF about the number of "employer" schemes in the market where the employee contributes to the cost.
- 11.35 It was felt that the number was very small. Perhaps of the order 0.1%. These particular schemes are particularly difficult for both the insurer and the employer to manage. Unlike other employer sponsored schemes each requires individual revenue approval. Issues also arise at claim stage as the benefit must be paid to the employee and this also gives rise to issue of who collects any tax payable. For these reasons it was felt that it was unlikely that new schemes would be written on this basis.

Interaction with pension

- 11.36 The IIF reiterated the point that pension plans and income continuance plans are very different but that this is not always appreciated. In particular one is a savings vehicle and the other is a risk product.
- 11.37 It was felt that no real issues arise in relation to premium protection.

Statistics

- 11.38 We received a copy of the 2001 IIF Fact File which contains information for 2001 in relation to income continuance new business annual premium income, income continuance total annual premium income and the amount of income continuance benefits paid in 2001. In addition, we also received a more detailed breakdown of new business premium income into individual and group business.

Summary

- 11.39 The following points summarise the key points from the meeting:
- It was felt that the operation of income continuance plans is working well at the moment, especially given the relatively recent changes in the area of claims management.

- The view was that this is a very worthwhile benefit.
- Different issues tend to arise on individual and group business and that the report should reflect on these two areas.
- In relation to group business it was felt that it could be argued that the employer should make more information available to the employee. However, this would need to be balanced with the fact that the employer may only wish to communicate a certain amount of information to help them manage issues such as absenteeism and an increased number of claims.
- The IIF felt that it might be beneficial to claimants, employers and the insurance industry if the terms of reference of the insurance ombudsman could be extended to cover corporate income continuance plans. The industry has not explored this option in detail to date but would be prepared to look into the practicalities .
- The IIF would be very concerned about any attempt to regulate the area of claims management if it would inhibit the insurance companies ability to work with either the employer or the employee in managing the claim. In particular anything that would:
 - restrict access to the employee (the claimant);
 - restrict the current level of interaction possible with employers;
 - place restrictions in relation to independent medical assessments either at the underwriting stage, claims admittance stage or ongoing claim review stage.
- There are only a limited number of providers operating in the market and it was felt that any attempt to place restrictions in these areas could reduce the number of providers operating in the market.
- Do not see any significant issues for individual business.
- If there are recommendations the industry will consider them.

Meeting with the Irish Congress of Trade Unions ("ICTU")

Purpose of the meeting

- 11.40 The purpose of the meeting was firstly to discuss where, in the experience of the ICTU, issues have arisen in the past in relation to income continuance plans and secondly to identify areas where improvements could be introduced in relation to the operation or regulation of income continuance plans. The scope of this meeting did not include individual income continuance business.

Issues

- 11.41 The meeting covered a number of different areas relating to the operation of income continuance plans. The areas covered during the meeting were as follows:
- Sales process
 - Claims process
 - Communications between employer, employee and the insurance company
 - Termination of employment while in receipt of income continuance benefits
 - Interaction with pension schemes
 - Fully/partially employee-funded arrangements

Sales process/interaction with pension scheme

- 11.42 Trade unions tend to negotiate with employers on behalf of employees for the introduction of a pension scheme. In general, when terms are being negotiated for the pension scheme the concept of income continuance benefits is introduced. In the past this led union officials and employees to understand that the income continuance benefits were part of the pension scheme arrangement.
- 11.43 In the opinion of ICTU the costs of income continuance arrangements are in most cases met by the employer. There are some cases where the employees meet the cost but this is not the norm.
- 11.44 It was the view of ICTU that employees do not generally understand how their pension operates, until perhaps close to retirement. Similarly it was felt that employees (and possibly some employers) do not generally understand how income continuance plans operate.

- 11.45 It was suggested that communications could be improved in a number of areas including:
- Greater transparency in relation to products so that they can be more easily understood
 - The relationship or non-relationship with the pension scheme should be highlighted to employees
 - It should also be made very clear to employees as to who is paying for this benefit and who is the owner of the benefit.
- 11.46 ICTU suggested that employees may be of the view that they have income continuance benefits that will fully protect their pensions when this may not be the case.

Claims process/terminating claims

- 11.47 Employees out of work due to long-term disability do not tend to go to the unions if an issue arises in relation to income continuance plans, as the unions would have no leverage with the insurance companies. Their leverage is with the employers.
- 11.48 ICTU would be anxious to see some form of redress available to claimants other than bringing insurers to court. It was suggested consideration should be given to whether the terms of reference for the Pension Ombudsman should include group income continuance plans. The main reasons for considering income continuance under the Pensions Ombudsman scheme is that like pensions group income continuance plans are a collective arrangement. If they are not included under the Pensions Ombudsman scheme then there should be clarity over the terms of reference of the Insurance Ombudsman to ensure that income continuance plans would be covered there.
- 11.49 ICTU would be supportive of insurers working with claimants in order to help them return to work, provided that the employees condition would not deteriorate as a result of returning to work. E.g. use of caseworkers, retraining programmes, partial benefits when claimants return to work part-time (i.e. insurers actively working with claimants to rehabilitate claimants). They would not be supportive of the "investigative" approach to claims management, e.g. the use of private investigators etc.
- 11.50 ICTU felt that the ongoing reviews of claims by insurance companies while in payment cause claimants a lot of stress. It was felt that it would better if insurers could use very good medical evidence in the first instance and then to review cases less frequently.
- 11.51 In some instances both the advice of the GP and the legal advisor would be in favour of the claimant remaining out of work. However, ICTU recognises that it is generally in the best interest of the claimant to be able to return to some sort of work. It was felt

that it might be beneficial to further educate GPs and legal advisors in relation to this point.

- 11.52 Employment law allows employers to dismiss employees if they are too ill to work. However, a query was raised as to whether employees were aware of the consequences for payment of their income continuance benefits of being made redundant. The view was that employees were probably not aware of the impact, if any, on their ICP claim payments of being made redundant in these circumstances.

Communications

- 11.53 Employees have a right to know what they are entitled to and therefore the employer should communicate these benefits to employees. It was suggested that this is an area that could be improved. However, it was understood that the employers might fear over communicating this benefit as it may increase the number of claims or level of absenteeism.
- 11.54 Similarly, it was also felt that there was scope for better communications between the insurer and the employees. However, it recognised that this may increase insurance company costs, which ultimately may lead to an increase in premiums.

Other points

- 11.55 ICTU would be interested in the number of claimants.
- 11.56 It was queried whether there is any evidence of a cartel operating regarding what is offered by insurance companies, given that there are a relatively small number of providers. It was suggested that this should be monitored.
- 11.57 If income continuance benefits are such a good concept then they should be provided by the Department of Social Welfare?
- 11.58 ICTU expressed surprise that the Pensions Board were allocated this task.

Summary

- 11.59 In addition to the points mentioned in section 11.52 to 11.55 the following summarises the suggestions made.
- 11.60 It was felt that communications could be improved in a number of areas including:
- Greater transparency in relation to products so that they can be more easily understood.

- The relationship or non-relationship with the pension scheme should be highlighted to employees.
- It should also be made very clear to employees as to who is paying for this benefit and who is the owner of the benefit.
- Communications between the employer and employee in relation to benefits available, especially relating to the effect on benefit payments of being made redundant.
- Communications between the employee and the insurance company.

11.61 ICTU would be anxious to see some form of redress available to claimants other than bringing insurance companies to court. It was suggested consideration should be given to whether the terms of reference for the Pension Ombudsman should include group income continuance plans.

Meeting with Irish Business and Employers Confederation ("IBEC")

Purpose of the meeting

- 11.62 The purpose of the meeting was firstly to discuss where, in the experience of the IBEC, issues have arisen in the past in relation to income continuance plans and secondly to identify areas where improvements could be introduced in relation to the operation or regulation of income continuance plans.

Termination of employment

- 11.63 Experience some years ago indicated that most insurance companies made payment of income continuance claims conditional on the claimant still being employed by the employer. This caused issues for employers particularly when they were faced with having to dismiss employees on the grounds of incapacity for which income continuance was being paid. There were particular difficulties in recent years in replacing such staff temporarily particularly for multinational companies with recruitment embargoes. It has also caused difficulties for employers where the insurance company decide on the basis of their medical evidence that continuing the income continuance payments is no longer justified, but the employees and/or employers medical advice say they are still not fit for work. This happened in the mid to late 1990's.
- 11.64 There has been Employment Appeals Tribunal referrals where the employer had to factor into settlement negotiations the value of the income continuance benefits, thus increasing the cost of the case. In many cases the employers did not realise that income continuance claim payments were conditional on the employee remaining in their employment.
- 11.65 There were some insurance companies that were prepared to negotiate a deal with employers. In that instance the insurance company would agree to continue paying the income continuance benefits after the employer made the employee redundant. However, this was very much at the discretion of the insurance company.
- 11.66 IBEC suggested that the insurance company income continuance policy conditions be amended so that benefit payments were not conditional on continuing employment. Wording such as "the insurance company forfeits the requirement that the claimant must continue to be in employment where there is no foreseeable prospect for individuals to return to work" was suggested as an example of a revised policy wording that could be used.

Communications

- 11.67 It was suggested that there was not sufficient communication between the insurer and employer and employer and employee in relation to these benefits. While there may be information available in the staff handbook it was felt that neither employer nor employees may always be aware of detail of the benefit available and the conditions under which it can be paid out. It was suggested that communications between the insurer and employer and in turn the employer and employee in relation to income continuance benefits could be improved.

Interaction with the pension scheme

- 11.68 Income continuance plans should not be packaged as part of pensions. They should be sold as a stand-alone product.

Other comments

- 11.69 IBEC suggested that there was a growing view amongst employers that while this was a good benefit it was increasingly becoming a benefit that was more trouble than it was worth.

- 11.70 In particular, this view is held because:

- The benefit is viewed as being ineffective in managing long term absence from the work place due to disability or sickness, i.e. the employer is unable to dismiss employees in this instance because income continuance benefits would no longer be payable. Also employees who are receiving income continuance payments will remain on staff and their absenteeism will be reflected in the overall absenteeism rates of the company.
- If the employer does dismiss these employees they are likely to be required to increase the settlement by the value of the income continuance benefit.
- Cost of the benefit.

Summary

- 11.71 IBEC suggested that the insurance company income continuance policy conditions be amended so that benefit payments were not conditional on continuing employment.
- 11.72 Income continuance plans should not be packaged as part of pensions. They should be sold as a stand-alone product.

Meeting with Irish Association of Pension Funds ("IAPF")

Summary of key points

- 11.73 The remit of the IAPF does not extend to income continuance plans. Therefore the Association has a limited interest from a policy perspective in the area of income continuance plans.
- 11.74 The IAPF would endorse the principle that income continuance benefits, including a contribution to life and pension benefits, should continue to be payable if an employee is unable to work due to illness or disability and that the benefits should escalate each year in payment. However, the IAPF recognises the practical issues associated with offering these benefits and that benefits can only be paid in line with the rules associated with the income continuance plan set up by the employer, which may or may not include benefits that escalate or include a contribution towards life and pension benefits. In particular, the employer may not want to provide these type of benefits or may not be able to afford these benefits.

Communications

- 11.75 The IAPF felt that employees needed to know what benefits they are entitled to so that they understand what their situation would be if something serious were to happen to them, making them unable to work. If employees were suitably informed then they would be able to make informed decisions as to what additional insurance cover they may require.
- 11.76 It was felt that this communication should be ongoing and not only at one point in time. However, it was recognised that the communication should be made in a way that would not increase the probability of a "claims culture" developing in a scheme. Such a culture would be to the detriment of the scheme and could, if costs rose significantly, jeopardise the existence of the scheme.

Regulation

- 11.77 The IAPF felt that it was important not to over-regulate these products as this could result in providers withdrawing from the market and employers becoming less interested in setting up these arrangements. This could ultimately lead to the demise of income continuance plans being made available for the benefit of employees.
- 11.78 The IAPF felt that this should not be categorised as a pension benefit and therefore should not fall under the remit of the Pensions Board.

Additional points

- 11.79 The IAPF members we met as part of this process had significant experience in relation to pension business. Consequently, they also had a very good general knowledge of the income continuance market. Therefore, they were able to comment on the more detailed operation of income continuance plans. We have noted their various comments in the following paragraphs.
- 11.80 When some companies consider the issue of income continuance benefits, they would also consider it alongside of the ill-health early retirement benefits that the pension scheme would have available. In some instances, if the early retirement benefits are considered quite generous, the employer may only consider insuring income continuance benefits for a limited group of employees. In this case, the decision to purchase income continuance benefits is viewed more as an investment decision of the employer made with a view to mitigating ill-health risk within the pension scheme.
- 11.81 When a pension scheme is being wound-up, i.e. if the employer is winding up the business, it was the experience of some of the members we met that the income continuance benefits would continue to be paid, but that the contribution in respect of the pension scheme would cease to be paid. It was stated that it would be preferable if the contribution towards pension and life cover benefits could continue to be payable into a personal pension arrangement.
- 11.82 It was suggested if there could be a disconnection between the employer and the insurer in how these arrangements are set up that some of the issues that arise in relation to income continuance would no longer be issues. However, it was recognised that this could essentially lead to schemes being set up on a voluntary basis which could lead to less employees being eligible for this type of benefit.
- 11.83 IAPF members were aware of instances in the past where insurance companies agreed to pay income continuance benefits to employees when they were made redundant. However, it was felt that this no longer happened, the exception being if a company was being wound-up. In that case, members felt that insurers would continue to pay any income continuance benefits already in payment. However, the decision to pay such benefits was at the discretion of the insurance company.
- 11.84 It was suggested that there should be a mechanism in place so that benefits would continue to be payable to individuals even if they were made redundant where there was no prospect of them returning to work at all.
- 11.85 When employers are being advised in relation to a benefits package for employees, income continuance benefits are generally discussed. However, cover is often only considered for senior management in the first instance. Other employees may be considered at a later date.

- 11.86 It was felt that pension scheme booklets for new schemes would not generally include details in relation to the income continuance benefits. This may be because it is no longer as common for companies to introduce new income continuance schemes. However, the pension scheme announcement letter generally included details of the disability benefit.
- 11.87 If an individual employee did choose to top-up the income continuance benefits provided by the employer by seeking private cover, it was recognised that an issue could arise as the insurance company may reduce the benefit insured by the amount of income being received from the employer under the employers income continuance plan.
- 11.88 It was felt that the vast majority of income continuance schemes that were set up also included premium protection within the cover.
- 11.89 The members we spoke to had not come across any self-insured income continuance arrangements.
- 11.90 The members were also not aware of any schemes where the insurance contract was between the employer and insurer but the employees paid for the benefit.

Meeting with Consumer Association of Ireland ("CAI")

Summary of key points from the meeting

- 11.91 The Consumer Association of Ireland have had limited dealings in relation to income continuance products. However, they are aware of a number of issues associated with these type of products. The following paragraphs summarise the points discussed.
- 11.92 It was felt that a lot of people did not understand these products and consequently consumers in general may not be aware of what would and what wouldn't be covered by these products.
- 11.93 However, while consumers may not generally understand the products it was felt that consumers might not view it as a particular issue unless they were making a claim. It was felt that this situation would change if consumers needed to make a claim.
- 11.94 It was the understanding of the CAI that in the vast majority of cases the employer paid for this benefit and therefore any issues arising would not tend to come to the attention of the CAI.
- 11.95 Where issues have been brought to the attention of the CAI these have generally related to the product not covering what the consumers had thought it would cover. In particular, the consumer had not understood that certain illnesses or conditions would not be covered. These tended to relate to individual business.
- 11.96 It was the view of the CAI that communications between the employer and the employees on employer paid arrangements could be improved. It was suggested that the insurance industry needs to provide either instruction, training or guidance for the employer to assist them in communicating this benefit in a clear and easy to understand way to employees. It was also felt that the communication to the employee should be proactive. It was suggested that the area of communication was one that the insurance industry should focus on.
- 11.97 The whole area of communication was considered to be a particularly important issue. The point was raised that if consumers are not well informed about the benefits they are eligible for then they will not be able to make an informed decision as to what type of insurance cover they should consider purchasing to protect themselves and their families.
- 11.98 The CAI felt that in the current economic environment and in particular given the recent significant rises in cost of other insurances that the cost of income continuance benefits will become even more of an issue in the future.

- 11.99 The CAI felt that using the term "permanent health insurance" to describe income continuance plans could cause issues. In particular, it was felt that use of the word "permanent" could mislead consumer expectations in relation to this benefit. This is because the benefit is payable both on a permanent basis and a non-permanent basis depending on the nature of the illness leading to a claim. It was important that consumers understood that qualification to make a claim under such a product did not mean that the person was entitled to the benefit permanently.
- 11.100 The CAI recognised that this benefit is generally packaged with the pension scheme but suggested that it would be more appropriate if this were not the case.
- 11.101 It is the view of the CAI there is a need to inform the consumer in relation to these products so that they can exercise their option to choose or not. The CAI felt that there were organisations that would be willing to assist in this communication to potential consumers and offered their own services in doing so.

12 Income continuance plans in other markets

United Kingdom

Overview

- 12.1 Income continuance plans are commonly referred to in the UK market as income protection plans (IP). This product has been around for over 100 years. However, a general lack of awareness and understanding of the product has led to limited sales. It is generally viewed as less spectacular than critical illness insurance and more complex than life insurance.
- 12.2 For many years there have been optimistic predictions about the future of income protection. Sales have increased reasonably over the past couple of years, but the overall market penetration is still somewhat disappointing, with perhaps 10%-12% of the UK working population having some form of income protection cover.
- 12.3 In the past, the industry has missed some key opportunities presented by the state such as the introduction of the new incapacity benefit in 1995 (which toughened the means-testing) and in 1996 when the individual income protection benefits became tax free. However, it is felt that there is now a big opportunity to increase coverage given the continued decline of final salary pension schemes which will remove an employer's ill-health early retirement facility as a way of managing long term disability of employees.
- 12.4 The continuing uncertainty associated with the global economic and political environment, together with the impact of a prolonged stock market decline, means many employers are facing tougher times. Periods of economic uncertainty tend to be associated with deterioration in income protection claims experience.
- 12.5 Employees are under more pressure at work and are on average working longer hours. Further, uncertainty caused by mergers and acquisitions and the consequent reorganisations adds to the worries that people might have about their job. This is likely to result in an increase in stress related claims under income protection policies. These factors could lead to an increase in the cost of these products making it more challenging to increase coverage of income protection plans.

Individual income protection

- 12.6 Table 1 below summarises the individual sales from 1997 to 2001.

Table 1

Calendar year	New business premium volume (£ million)	% Change
1997	51	n/a
1998	57	12%
1999	57	0%
2000	63	11%
2001	69	10%

Source: Association of British Insurers

- 12.7 There has been little product development activity in recent years. The last major development was budget income protection in 1998; however, mortgage related income protection has shown a surge in recent years in conjunction with the rise in house sales.
- 12.8 A number of UK providers are now offering budget plans in the UK market where in the event of a claim there is a maximum number of years for which the benefit is payable. The maximum period ranges from two to five years. These products are cheaper than products that pay benefits up to recovery or retirement age if sooner.
- 12.9 The main development has been the transition from permanent health insurance to income protection to more accurately reflect what cover is being provided. There has also been the publication of the Association of British Insurers Statement of Best Practice for income protection which progressed the concerns expressed in the Office of Fair Trading Health Insurance Report of May 1998. It enabled further consistency in the type of cover provided in the market and a clearer understanding of income protection insurance for consumers.
- 12.10 The most common exclusions are AIDS and normal pregnancy. Others include war, self-inflicted injury, drugs and alcohol abuse, hazardous pastimes and pursuits, criminal acts and failure to seek or follow medical advice. There is growing concern regarding alcohol and drug abuse as it is manifesting itself as the root cause in other income protection claims such as stress or depression.
- 12.11 The most recent industry experience is summarised in Tables 2, 3 and 4 below for inceptions and recoveries separately. The source is the CMI (Continuous Mortality/Morbidity Investigations). In the last year a number of bancassurers have joined the CMI and have started to contribute their data. The tables below show figures for actual experience over expected experience, where expected experience is based on the CMIR12 table.

Table 2 – Individual IP inceptions (male class 1); expected = CMIR12

Deferred period	1991-94	1995-98	1999	2000
DP 4 weeks	72%	69%	48%	57%
DP 13 weeks	97%	86%	64%	76%
DP 26 weeks	141%	152%	115%	119%
DP 52 weeks	276%	321%	281%	261%

Table 3 – Individual IP inceptions; female vs male (class 1)

Deferred period	1991-94	1995-98	1999	2000
DP 4 weeks	196%	151%	142%	89%
DP 13 weeks	206%	159%	175%	166%
DP 26 weeks	260%	199%	228%	292%
DP 52 weeks	216%	193%	154%	225%

Table 4 – Individual IP recoveries (male class 1); expected = CMIR12

Deferred period	1991-94	1995-98	1999	2000
DP 4 weeks	61%	53%	55%	55%
DP 13 weeks	49%	44%	43%	51%
DP 26 weeks	43%	41%	36%	44%

Group income protection

- 12.12 Table 5 below summarises the group income protection sales from 1997 to 2001, where the growth has been more favourable than the corresponding individual income protection sales above.

Table 5

Calendar year	Premium (£ million)	% Change
1997	269	n/a
1998	297	10%
1999	350	18%
2000	398	14%
2001	465	17%

Source: GE Frankona - Group Risk Survey

- 12.13 The current market penetration for group income protection (GIP) is only around 7% of the UK employed population. However, there was 17% growth in premium from 2000 to 2001 as shown above, and there are a number of reasons why it is felt that this growth should continue, including the following;

- more and more UK employers are seeking solutions to cope with the substantial costs of sickness absence, which the Confederation of British Industry estimates to be around £11 billion per year.
- as stated above, the increasing move away from defined benefit to defined contribution pension schemes will mean that funding of ill-health retirements will no longer be possible.
- moreover, the tightening of eligibility rules for the State Incapacity Benefit means that individuals will need to take more responsibility for their own welfare.

- 12.14 The most significant development in recent years has been the formation of GRID, which stands for Group Risk Development. It was set up to promote the value of group protection for employees and other groups by increasing awareness and understanding. The group is made up of insurers, reinsurers and consultancies who are active in the group risk market. It has three main strands – marketing of group insurance, best practice and acting as a single focus of communication for passing information and ideas between the industry and government.

United States

- 12.15 In the US disability income insurance provides a portion of earnings while an insured employee is unable to work due to accident or illness. Policies commonly replace 50-70% of an insured's pre-disability income. Choices in benefits and deferred periods, in some policies now provide comprehensive protection while others define disability more narrowly, covering only accidental injury or illness. Policies may also include coverage for partial disability, residual benefits, cost-of-living adjustments, survivor benefits, and pension supplements.
- 12.16 US health care costs are rising at double-digit rates (12% - 18%). The workforce is ageing, there is a shortage of new workers, and management is demanding higher levels of productivity. With smaller budgets, the reality that employers will be expected to do "more with less" and the "less" will be older and sicker, employers are being forced to re-think how and what benefits they offer, and the actions they can take to encourage a more productive workforce
- 12.17 Employers continue to be interested in benefit integration, and more and more vendors are able to provide integrated disability and absence management solutions. 51% of employers surveyed in the Watson Wyatt Health Care Survey 2000/2001 noted they have integrated programs in place; 6% said they would have a program in place over the next year; and 23% planned to have a program in place at some point.
- 12.18 Voluntary group programs and/or individual programs may gain more popularity as employers want to offer disability benefits, but may not be able to afford contributions and funding requirements.

Trends in claims experience

- 12.19 Disability costs in the workplace are growing at a rate of 8% per year. Direct costs of short term disability and long term disability to employers equates to 2.1% of payroll, while indirect costs can be up to 2 ½ times that.

12.20 New short term disability and long term disability claim submissions are being driven by the following diagnoses:

- Musculoskeletal
- Injury/poisoning
- Normal pregnancy
- Pregnancy complications
- Mental disorders
- Circulatory system
- Neoplasms
- Nervous system diseases
- Respiratory system diseases

Source: JHA 2000 US Group Disability Rate Study & Risk Management Survey

12.21 In addition after September 11, 2001, insurers have seen an increase in disability claims stemming from the terrorist attacks, and some anticipate more, including mental nervous claims.

Self-reported claims

12.22 Insurance companies have generally experienced an increase in the number of claims that related to self-reported claims. The top five conditions considered subjective or self-reported conditions include:

- Chronic fatigue
- Fibromyalgia
- Low back pain
- Environmental/chemical sensitivity
- Sprain/strain

12.23 Approximately 61% of carriers limit subjective or self-reported conditions; 22% are investigating the possibility and 17% are not planning to include them in their policies

Source: JHA Subjective Disorder Claim Limitation Survey, 1999

13 Recommendations

Recommendation 1

Regulation of income continuance benefits

- 13.1 The interaction between income continuance plans and associated pension plans described above has raised the query as to whether the regulation of income continuance plans should be within the remit of the Pensions Board or the DETE. We do not consider that it is appropriate that it should be within the remit of the Pensions Board for the following reasons:-
- Not all income continuance plans provide “premium protection” for pension contributions. Therefore, if the Pensions Board were to be regulator, it would find itself regulating employee benefit products which did not have any connection with pension plans.
 - Income continuance plans are established and administered by undertakings authorised under the EC (Life Assurance) Framework Regulations, 1994 (the “Framework Regulations”). They are insurance products. The competent authority for these products, under the Framework Regulations, is the DETE.
 - The DETE is the responsible Department for matters relating to employment and the regulation of the employment relationship. It would seem to us inappropriate to take away from that Department the regulation of income continuance plans, particularly in cases in which those plans had no element of premium protection for pension contributions.
- 13.2 For the reasons set out above, we would recommend that the regulation of income continuance plans, combining as they do an insurance product and elements of an employment contract, should continue to be regulated by the DETE.

Recommendation 2

Communication between employers and employees

- 13.3 We recommend that the DETE introduce regulations, by Statutory Instrument, in relation to communications between the employer and the employee. The purpose of the regulations should be to oblige employers that provide income continuance benefits for some or all of their employees to provide each such employee with a defined minimum amount of information in relation to the scheme benefits.
- 13.4 The regulations should specify both when the communication should happen and the content of the communication.
- 13.5 We suggest that the content of the communication should cover at least the following points:

- Are the benefits at the discretion of the employer - ie can the employer choose to amend or terminate the benefits?
- Are the benefits subject to insurability?
- The nature of the relationship with the insurance company, if any (ie who is the insurance contract between)?
- Who pays for the benefits?
- Who are the insurance benefits payable to?
- What benefit is payable, including any limits?
- How is the benefit payable?
- Are there any circumstances when cover is excluded?
- Does the benefit increase and, if so, at what rate?
- Under what circumstances are benefits payable?
- What is the deferred period?
- Under what circumstances does membership of the scheme cease?
- Under what circumstances do benefits in payment cease?
- What happens if the employee is made redundant while in receipt of benefits?
- What happens if the company is wound up?
- Exactly what happens in relation to membership of and benefits under the pension scheme while an employee is in receipt of income continuance benefits? And in particular:
 - where employees covered by the income continuance scheme are also members of a defined benefit pension arrangement:
 - Does pensionable salary escalate and, if so, how?
 - Do years of service continue to accrue and, if so, how?
 - What is the death in service benefit while in receipt of income continuance benefit? Does it escalate and, if so, how?
 - What pension benefits do they qualify for if employment is terminated while in receipt of income continuance?
 - (this obligation may be fulfilled by cross referencing to a section of the pension scheme booklet where these points are explicitly and clearly covered)
 - where employees covered by the income continuance scheme are also members of a defined contribution arrangement;

- What employer and employee contributions continue to be payable?
- How are these contributions funded?
- Do these contributions escalate and, if so, at what rate?
- What is the death in service benefit while in receipt of income continuance benefit? Does it escalate and, if so, how?
- What pension benefits do they qualify for if employment is terminated while in receipt of income continuance?
- (this obligation may be fulfilled by cross referencing to a section of the pension scheme booklet where these points are explicitly and clearly covered)

13.6 We recommend that the new regulations should include sanctions for non-compliance with these regulations.

Recommendation 3

Pension scheme disclosure

13.7 We recommend that the Pensions Board introduce specific guidance in its Guidance Notes drawing attention to pension scheme aspects of the disclosure recommendations above.

Recommendation 4

13.8 We recommend that in future the disclosure in relation to income continuance schemes be separate from that in relation to pension benefits. Where existing pension disclosures, (e.g. pension scheme booklets) currently include the details of income continuance benefits we are not suggesting that they should be reissued with the details of any income continuance benefits removed.

Recommendation 5

Product description

13.9 We feel that the use of terms such as "permanent health insurance" which can be misleading should no longer be used in relation to income continuance products. We recommend that these products should be referred to as income continuance products or income protection products and in particular that the term "permanent health insurance" should no longer be used by either insurance companies or employers to describe these products.

13.10 We suggest that there are two ways that this could be implemented. These are as follows:

- The IIF could issue a best practice statement on the issue to its members; or
- The DETE may consider implementing it in some way by regulation.

Recommendation 6

Insurance ombudsman scheme

- 13.11 We recommend that the IIF consider extending the terms of reference of the insurance ombudsman to cover corporate income continuance plans.

Recommendation 7

Terms and conditions

- 13.12 While there are varying standards of documentation in the marketplace, in general there doesn't seem to be any evidence that the standard of documentation currently in use in the marketplace is an issue. However, some companies do not currently cover clearly in their documentation some important points regarding the operation of these plans.
- 13.13 We therefore recommend that the IIF consider issuing a code of best practice in relation to facts that should be covered in product terms and conditions, similar to that issued by the Association of British Insurers.

Recommendation 8

Contributions

- 13.14 We recommend that it should not be legally permissible to set up a new pension scheme where the employer contribution is defined in any manner that is inclusive of the cost of any benefit, other than a relevant benefit as defined in section 770 of the Taxes Consolidation Act, 1997.
- 13.15 Where schemes are already set up in this way there should be a requirement that trustees specifically disclose to members that the scheme is set up in this way. In particular, we recommend that annual benefit statements for defined contribution schemes should include a clear and prominent statement to the effect that the net contribution to be applied to member's retirement accounts may reduce over time, if that is likely to be the case.

Rosemary Commons
Watson Wyatt LLP

Brian Buggy
Matheson Ormsby Prentice

A Glossary

1 Premium Protection

When setting up an income continuance plan, the employer can also choose the premium protection option. This benefit insures a contribution towards pension costs. The amount insured under the premium protection benefit does not necessarily match the actual contribution to the pension scheme.

For individual business in the event of a claim the premium protection benefits will be payable to the individuals pension arrangement.

2 Employer sponsored schemes

Employer-sponsored group income continuance products are contracts between an employer and an insurance company whereby the employer generally pays premiums to the insurance company to cover its employees. The insurance company pays out any benefits on sickness or disability to the employer, who then pays the absent employee in accordance with its contractual arrangements with that employee.

3 Voluntary schemes

A voluntary group scheme generally involves a trade union or other affinity group setting up an arrangement via a broker or with an insurance company that allows its' members to avail themselves of income protection cover at more favourable premium rates than they would have been able to receive had they applied as individuals. The terms and conditions on these policies are likely to also be more advantageous to the member than if they were to seek cover on their own as an individual.

4 Free cover

The maximum level of income continuance cover that will be provided for an individual in a group scheme without that individual having to be medically underwritten for proof of good health.

5 Deferred period

The period of time for which an individual must remain seriously ill or injured before he/she will receive any benefit from an income continuance policy.

6 Definition of sickness

This is generally defined as follows:

- Own occupation - That the claimant is wholly unable to continue to work at the trade or profession specified in the application form.

- Own or suited - That the claimant is wholly unable to continue to work at the trade or profession specified in the application form and unable to work in any other trade or profession for which they are appropriately qualified.
- Any occupation - That the claimant is unable to work for profit or remuneration at any trade or profession.
- Failure of activities of daily living - That the claimant is incapable of carrying out a number of essential tasks involved in everyday life, for example walking up and down stairs.
- Failure of activities of daily working - That the claimant is incapable of carrying out a number of essential tasks involved in working life, for example being unable to sit in a chair for longer than 30 minutes.

7 Occupational classes are generally defined as follows:

- Occupational class 1 – Professional, managerial, executive, administrative and clerical classes not engaged in manual labour.
- Occupational class 2 – Master craftsmen and tradesmen engaged in management and supervision; skilled operatives engaged in light manual work in non-hazardous occupations.
- Occupational class 3 – Skilled operatives engaged in manual work in non-hazardous occupations.
- Occupational class 4 – Skilled and semi-skilled operatives engaged in heavy manual work or subject to special hazard.

8 Continuation option

Individual members of group schemes may have the right to continue their income continuance cover with the insurer after ceasing to work with the sponsoring employer.

9 Broker pools

It may be possible for an insurance broker to arrange more favourable premiums or free cover limits with an insurance company for group schemes if they place certain volumes of business with that insurer.

10 Self reported claims

These are claims where independent verification of the illness or injury is difficult and the evidence for the claim is largely based on the claimant's own testimony. Eg back injuries, mental illness and repetitive strain injuries.

B Questionnaire sent to insurance companies

Income Continuance (Income Protection) Survey

September 2002

Individual Business

Please answer the following questions using up to date inforce and claims information.

Section 1 - Individual business inforce data

1. Please complete the following questions

i) do you currently sell individual Income continuance (IC)?

- on a stand alone basis _____
- as a rider on pension plans _____
- as a rider to a life protection\savings plan _____

ii) did you previously sell individual income continuance plans, but no longer do so? If so, please enter the approximate date at which you stopped selling the product type.

- on a stand alone basis _____
- as a rider on pension plans _____
- as a rider to a life protection\savings plan _____

2. Please complete the table below giving details of lives, premiums and benefits for the different types of IC plans as applicable. Please note the effective date of this inforce data. _____

Type of IC plan	Rider on a pension plan	Rider on a life protection plan	Stand alone IC plan
Inforce data			
Number of inforce policies			
Number of lives covered (if different from above)			
Total annual IC (only) premiums (or charges)			
Total annualised insured IC benefits			

3. Please indicate the most frequently used deferred periods, e.g. 13 weeks, 52 weeks etc, indicating where possible approximate percentages of the business with the various deferred periods.

4. Approximately what proportion of the business currently inforce has benefits that escalate in payment?

5. Please indicate the most frequently chosen escalation-in-payment rates, e.g. 3%, CPI limited to 3% etc., indicating where possible the approximate percentage of the business that falls under the various definitions.

6. Please indicate the range of claim definitions that you offer. Where definitions are offered on a restricted basis please give brief details (e.g. own occupation - occupation classes 1 and 2 only). Please also indicate if a previously used definition is no longer available.

Own occupation	
Own or suited occupation	
Any occupation	
Failure of activities of daily living	
Failure of activities of daily working	
Other definitions	

7. Please broadly define the occupation classes that are used (e.g. class 1 = professional and managerial)

Occupation class	Broad definition of occupation class

8. Please indicate the distribution of insured lives by occupation class.

Occupation class (e.g. 1 to 4 or 1 to 6)	

Section 2 - Individual business claims data

9. Please complete the table below.

Claims information as at (insert Date) _____

Type of IC plan	Number of inforce claims	Annualised benefits in payment
Rider on a pension plan		
Rider on a life protection plan		
Stand alone IC plan		

10. Please indicate, if possible, how your current claims split (by number of claims) across the various deferred periods.

11. Please complete the table below.

Occupation class (e.g. 1 to 4 or 1 to 6)	Number of inforce claims	Annualised benefits in payment

Group Business

Please answer the following questions using up to date inforce and claims information.

Section 3 - Group business inforce data

12. Please complete the following questions

i) do you currently sell Group Income continuance plans?

- on a stand alone basis _____
 - only in conjunction with group life cover _____
 - only in conjunction with the pension scheme _____
- _____
- _____

ii) did you previously sell group income continuance plans, but no longer do so? If so, please enter the approximate date at which you stopped selling the product.

- on a stand alone basis _____
 - in conjunction with group life cover _____
 - only in conjunction with the pension scheme _____
- _____
- _____

13. Please complete the table below giving details of lives, premiums and benefits for different types of IC plans as applicable. Please enter the effective date of this inforce data. _____

Type of IC plan	
Inforce data	
Number of inforce schemes	
Number of lives covered	
Total annual IC premiums	
Total annualised insured IC benefits	

14. What proportion of inforce schemes, if any, offer the income continuance benefits to their members on a voluntary basis? (as opposed to compulsory)

15. Please indicate the most frequently used deferred periods, e.g. 13 weeks, 52 weeks etc, indicating where possible approximate percentages of schemes with the various deferred periods.

16. Approximately what proportion of schemes currently inforce have benefits that escalate in payment?

17. Please indicate the most frequently chosen escalation-in-payment rates, e.g. 3% CPI limited to 3% etc., indicating where possible the approximate percentage of schemes that falls under the various definitions.

18. Please indicate the range of claim definitions that you offer. Where definitions are offered on a restricted basis please give brief details (e.g. own occupation - occupation classes 1 and 2 only). Please also indicate if a previously used definition is no longer available.

Own occupation	
Own or suited occupation	
Any occupation	
Failure of activities of daily living	

Failure of activities of daily working	
Other definitions	

19. Please broadly define each occupation class above (e.g. class 1 = professional and managerial)

Occupation class	Broad definition of occupation class

20. Please indicate the distribution of insured lives by occupation class.

Occupation class (e.g. 1 to 4 or 1 to 6)	

Section 4 - Group business claims data

21. Please complete the following table.

Claims information as at (insert Date) _____

Total number of inforce claims	Total annualised benefits in payment

22. Please indicate, if possible, how your current claims split (by number of claims) across the various deferred periods.

23. Please complete the table below.

Occupation class (e.g. 1 to 4 or 1 to 6)	Number of inforce claims	Annualised benefits in payment

C Questionnaires sent to employers and employees

Income Continuance Plans - Employee survey

IMPORTANT NOTE

The Minister for Social and Family Affairs has asked the Pensions Board to carry out a review of Income Continuance* benefits. This survey forms part of this review work. A large number of employees across various industry groups have been asked to complete this survey. We would greatly appreciate if you could assist us with this review by completing this survey and returning it directly to:

Watson Wyatt LLP
65/66 Lower Mount Street
Dublin 2

using the prepaid reply envelope provided.

If you have any queries please contact Rosemary Commons of Watson Wyatt LLP at 01 6616448.

All individual responses to this survey will remain confidential to Watson Wyatt LLP and there is no need to include your name on this survey.

*Income Continuance benefits are designed to provide employees with a regular income if they are unable to work because of sickness or disability.

Income Continuance Plans - Employee survey

Background information

Company Name _____

Please state your occupation Proportion of duties that are manual Annual salary range before tax, excluding overtime

And please tick as appropriate:	<input type="checkbox"/> 1	0%	<input type="checkbox"/> 1	< €15,000
<input type="checkbox"/> 1 Manager	<input type="checkbox"/> 2	1-20%	<input type="checkbox"/> 2	€15,000 - €25,000
<input type="checkbox"/> 2 Professional\technical	<input type="checkbox"/> 3	21-50%	<input type="checkbox"/> 3	€25,000 - €40,000
<input type="checkbox"/> 3 Secretarial\administration	<input type="checkbox"/> 4	51% or more	<input type="checkbox"/> 4	€40,000 - €60,000
<input type="checkbox"/> 4 Sales	<input type="checkbox"/> 5		<input type="checkbox"/> 5	> €60,000
<input type="checkbox"/> 5 Craft and skilled manual				
<input type="checkbox"/> 6 other manual				
<input type="checkbox"/> 7 other				

Income continuance benefits

1. Does your employer provide you with:-

Pension benefits:	<input type="checkbox"/> 1 Yes	Income continuance benefits:	<input type="checkbox"/> 4 Yes
	<input type="checkbox"/> 2 No	(if no please return survey in envelope provided)	<input type="checkbox"/> 5 No
	<input type="checkbox"/> 3 Don't know		<input type="checkbox"/> 6 Don't know

2. If income continuance benefits are provided please identify the source(s) of information available to you which contain details of your income continuance benefits? (please tick as appropriate)

- 1 Information is included in your terms and conditions of employment
- 2 Employee handbook
- 3 A specific income continuance booklet
- 4 Other specific income continuance communication
- 5 Information is included within your pension scheme booklet
- 6 Details are on internal company intranet
- 7 Induction training
- 8 Email from management

]9 Other (please give details) _____

Key features of your company's income continuance benefit (if provided)

3. For how long must you be absent from work before income continuance benefits would commence?
-]1 Don't know]2 4 weeks]3 8 weeks]4 13 weeks
]5 26 weeks]6 52 weeks]7 other (please specify) _____
4. What definition of sickness or disability must you satisfy in order to apply for income continuance benefits from your employer?
-]1 Don't know
]2 Unable to follow your own occupation
]3 Unable to follow your own occupation or an occupation to which you are suited
]4 Unable to follow any occupation
]5 Unable to perform a minimum number of activities of daily living/working
]6 Other (please describe) _____
5. Is your cover subject to any exclusions?
-]1 Yes
]2 No
]3 Don't know
- If Yes, who communicated your exclusions to you?
-]4 HR
]5 Line manager
]6 Fellow employee (please give their title only)? _____
]7 Other (please give details) _____
- When was this communicated to you?
-]8 On joining/induction
]9 On completion of probationary period
]10 Other (please give details) _____
6. What percentage of your salary would you receive from your employer as an income continuance benefit if you were to make a claim?

]1 Don't know

]2 < 49%

]3 50% - 59%

]4 60% - 69%

]5 70% - 80%

]6 81% +

Is there a maximum ceiling to the benefit, regardless of salary level?

]7 Yes Please state the ceiling? € _____

]8 No

]9 Don't know

Is the overall benefit reduced to allow for the state disability benefit?

]10 Yes

]11 No

]12 Don't know

7. Does the benefit payable increase during the claim period?

]1 Yes

]2 No

]3 Don't know

If Yes, by how much does it increase each year?

]4 Up to 3%

]5 Between 3% and 5%

]6 Other (please give details) _____

]7 Don't know

8. If you are absent from work for an extended period and you are receiving income continuance benefits can your contract of employment be terminated?

]1 Yes

]2 No

]3 Don't know

Interaction of income continuance benefits with the pension scheme (complete 9 or 10 as applicable)

9. If your employer operates a pension scheme where the benefits are typically based on length of service and salary at retirement date (usually called a Defined Benefit pension scheme):

Does your pensionable service continue to accrue while you are in receipt of income continuance benefits?

- ₁ Yes
- ₂ No
- ₃ Don't know

Does your pensionable salary escalate while you are in receipt of income continuance benefits?

- ₄ Yes
- ₅ No
- ₆ Don't know

10. If your employer operates a pension scheme where the benefits are based on the accumulated value of contributions paid (typically called a Defined Contribution pension scheme):

Are contributions paid to the pension scheme while you are in receipt of income continuance benefits?

- ₁ Yes
- ₂ No
- ₃ Don't know

If Yes, do these pension contributions increase during the period of sickness/disablement?

- ₄ Yes
- ₅ No
- ₆ Don't know

If Yes, by how much each year? _____

Insurance and income continuance benefits

11. Are you aware if the income continuance benefits provided by your employer are insured with an insurance company?

- ₁ Yes Please state name of company if known _____
- ₂ No
- ₃ Don't know

12. Have you any comments about any personal experiences you may have had when joining your employer's income continuance arrangements?

Income continuance claims

13. Have you ever received a benefit from an employer's income continuance scheme?

Yes

No

14. Was this while employed by your current employer?

Yes

No

15. If you have returned to work following a claim, please describe the circumstances in which the claim ended, ie:

You returned to a similar role following your absence

You returned to part-time duties

You returned to revised duties

You were made redundant and subsequently found alternative employment

Other (please give details) _____

16. Have you any comments about your experience of making a claim (either to your employer or the insurance company) for income continuance benefits?

17. Have you any comments about how your claim was managed whilst you were receiving benefits?

18. Did you refer to any documents in order to assist you in completing this survey? Yes

No

Thank you for taking part in this survey

Income Continuance Plans - Employers survey

IMPORTANT NOTE

The Minister for Social and Family Affairs has asked the Pensions Board to carry out a review of Income Continuance benefits. This survey forms part of this review work. We would greatly appreciate if you could assist us with this review by completing this survey on behalf of your employer and returning it directly to:

Watson Wyatt LLP
65/66 Lower Mount Street
Dublin 2

using the prepaid reply envelope provided.

If you have any queries please contact Rosemary Commons at 01 6616448

Income Continuance Plans - Employers survey

Background information

Company Name _____ Number of employees in Ireland _____
Total annual payroll € _____ Your name and title _____

Key facts

1. Please tick as appropriate

a) Does your company offer pension benefits to:
(please tick one box only)

- ₁ All employees
₂ Full time employees only
₃ Specific groups of employees
₄ Not offered to any employees
₅ Other (please give details) _____

b) Does your company offer income continuance benefits to:
(please tick one box only)

- ₆ All employees
₇ Full time employees only
₈ Specific groups of employees
₉ Not offered to any employees
₁₀ Other (please give details) _____

If income continuance benefits are provided please continue to answer the following questions. If not, please return the survey as it is to Watson Wyatt using the prepaid envelope.

2. What is the total number of employees covered for income continuance benefits and what is the total annual salary related to these employees?

_____ % of the Irish workforce covered for income continuance benefits

€ _____ is the total annual payroll relating to these employees

3. Who meets the cost of the income continuance benefit?

- ₁ The employer
₂ The employees
₃ Both employer and employees

4. If income continuance benefits are provided, please identify the source(s) of information available to your employees which contain details of these benefits? (please tick as appropriate)

- ₁ Information is included in their standard terms and conditions of employment
₂ Employee handbook
₃ A specific income continuance booklet
₄ Other specific income continuance communication
₅ Information is included within the pension scheme booklet

- _6 Details appear on the internal company intranet
 - _7 Induction training
 - _8 Email from management
 - Other (please give details)
-

Please include a copy of any income continuance literature and a copy of any pension booklets given to employees with your reply. We would also be grateful to receive a copy of your standard terms and conditions of employment.

Key features of the company's income continuance benefit - (only complete this section if it not covered by any material you enclose with the reply)

5. How long must an employee be absent from work (the deferred period) before they may claim income continuance benefits?

- _1 4 weeks _2 8 weeks _3 13 weeks
- _4 26 weeks _5 52 weeks _6 other (please specify)_____

6. Briefly describe under what circumstances an employee may claim for income continuance benefits (i.e. definition of sickness or disability used):

- _1 Unable to follow their own occupation
- _2 Unable to follow their own occupation or an occupation to which they are suited
- _3 Unable to follow any occupation
- _4 Unable to perform a minimum number of activities of daily living/working
- _5 Other (please describe) _____

7. What is payable to employees in receipt of income continuance benefits?

Percentage of salary _____%

Is there a maximum ceiling to the benefit, regardless of salary level?

- _1 Yes Please state the ceiling €_____
- _2 No

Is the overall benefit reduced to allow for the state disability benefit?

- _3 Yes
- _4 No

8. Does this amount increase during the claim period?

₁ Yes

₂ No

If Yes, by how much does it increase each year?

₃ Up to 3%

₄ Between 3% and 5%

₅ Other (please give details) _____

Interaction of income continuance benefits with the pension scheme

9. If the company\employer operates a pension scheme where the benefits are typically based on length of service and salary at retirement date (usually called a Defined Benefit pension scheme):

Does pensionable service continue to accrue while a scheme member is in receipt of income continuance benefits?

₁ Yes

₂ No

Does the pensionable salary escalate while a scheme member is in receipt of income continuance benefits?

₃ Yes

₄ No

10. If the company\employer operates a pension scheme where the benefits are based on the accumulated value of contributions paid (typically called a Defined Contribution pension scheme):

Are contributions paid to the pension scheme while a scheme member is in receipt of income continuance benefits?

₁ Yes

₂ No

If Yes, then do these pension contributions increase during the period of sickness/disablement?

₃ Yes Please give details of the increase that applies each year? _____

₄ No

Insurance and income continuance benefits

11. Please complete the following:

ARE THE INCOME CONTINUANCE BENEFITS INSURED?

₁ Yes Please state name of insurance company _____

₂ No

Annual cost of insuring income continuance benefits as % of payroll? _____%

Monetary amount of annual benefits insured? € _____

12. Do you as the employer envisage paying benefits to employees that differ from the benefits covered under the insurance policy?

]1 Yes Please explain _____

]2 No

13. If an exclusion is imposed upon an employee (or potential new employee) by your income continuance insurer then who is responsible for communicating that exclusion to him/her?

]1 The company\employer

]2 The broker

]3 The Insurance company

]4 Other (please give details) _____

14. Please write in any comments you have to make about your experience of dealing with the insurer in relation to the:-

Sales process _____

Renewal Process

Underwriting process

Initial claim admittance

Ongoing claims management

Income continuance claims

15. Please fill in the following table:-

How many claims have been initiated by employees in the last 3 years _____

How many claims have been admitted in the last 3 years _____

How many claims have been rejected in the last 3 years _____

16. Please list typical reasons for claims being rejected:

17. How many employees are currently claiming income continuance benefits and what is the total monthly payments being made to these claimants each month?

Number of claimants _____

Total monthly payments € _____

18. Do employees generally return to work after a period of receiving income continuance benefits?

]1 Yes

]2 No

Approximately what percentage of employees return to work? _____%

19. What options (if any) do you consider in order to facilitate a return to work?

]1 Part-time work

]2 Revised duties - different role and responsibilities

]3 Other (please give details) _____

20. Have you settled any previous income continuance claims by paying a lump sum in lieu of future benefit payments?

]1 Yes

]2 No

If yes, approximately how many were settled in this way and when was the most recent settlement?

21. Are employment contracts generally terminated after a period of sickness absence/ disability?

]1 Yes

]2 No

If Yes, after what period?

]3 6 months

]4 12 months

]5 18 months

]6 2 years

]7 Other (please give details)_____

22. If employment contracts have been terminated in this way please describe how this affects a members pension benefits and income continuance benefits.

23. If employment contracts have been terminated in this way while an employee is in receipt of income continuance benefits, have there been any repercussions for your company\employer in terms of legal action?

]1 Yes

]2 No

If Yes, can you give some brief details of the nature of the legal action?

Thank you for taking the time to take part in this survey and for including the requested documentation.

D Request for tender

Aims

- 1 The objective is to review the position and regulation of Income Continuance Plans ("ICPs"), and to produce a report thereon for the Minister, having consulted with the Department of Social and Family Affairs, the DETE, the existing regulator and the various interested parties referred to below. The review incorporates group and individual plans.

Tasks

- 2 The review will:
 - establish the facts in relation to how many Income Continuance Plans exist, how many people are included in such plans, and into what categories they fall;
 - identify the different types of Income Continuance policies offered by insurance companies;
 - describe the legal base for such plans including any EU legal influences;
 - examine the claims management procedures and processes that currently exist;
 - identify Income Continuance Plan interaction with pension plans in relation to areas including marketing, sales, disclosure of information and benefit payments;
 - consider the overall interaction and workings of Income Continuance contracts between employers and employees, associated pension plans and Income Continuance policies offered by insurance companies;
 - consider employment law implications in relation to Income Continuance contracts offered by employers to their employees;
 - review the understanding of employers and employees in relation to Income Continuance;
 - consult with interested parties including employers (e.g. IBEC), trade unions (e.g. ICTU), consumer representatives (e.g. CAI) and the insurance industry (e.g. IIF) on the basis of short intensive (but comprehensive) process involving representative bodies;
 - identify any gaps or otherwise in regulation or regulatory structures affecting any aspect of Income Continuance Plans (other than solvency of Income Continuance policies with insurance companies, value for money or tax issues) which work to the detriment of any of the parties to such plans and make recommendations on how these might be resolved;
 - review any issues arising from the above and make any comments that occur on foot of the research undertaken and the analysis performed;

- conclude with a report incorporating the above.

The assignment specifically excludes:

- the solvency of Income Continuance policies issued by insurance companies;
- issues relating to value for money;
- issues relating to the taxation treatment of Income Continuance contributions and benefits.

E

Summary of project tasks

The Tasks

Task 1:	Establish the facts in relation to how many Income Continuance Plans exist, how many people are included in such plans, and into what categories they fall;
Method:	<p>We will prepare a questionnaire that will be sent to all providers of ICPs in the Irish market seeking from each provider:</p> <ul style="list-style-type: none">• the number of ICPs that are premium paying split by group arrangements and individual arrangements.• the number of members covered within the group arrangements where the ICPs are within a group arrangement.• number of policies where benefits are in the course of payment split by group arrangements and individual arrangements. <p>We will also endeavour to estimate the numbers covered by self insured ICPs within group pension schemes by including appropriate questions on the questionnaire to employers described under Task 8 below.</p> <p>The ability to gather this information and the quality of the information that is gathered will be very dependent on the degree of co-operation that we receive from the ICP providers and also on their ability to supply the information in the required format. Assistance from the DETE in this regard will clearly be an advantage.</p>
Output:	The output will be a table showing the breakdown of coverage and total number of individuals covered.

Task 2 :	Identify the different types of Income Continuance policies offered by insurance companies;
Method:	<p>We will:</p> <ul style="list-style-type: none">• contact all the ICP providers in the Irish market and request information in relation to their product range including policy conditions, marketing materials and product brochures.• analyse the plans offered by different providers and where necessary contact the providers to seek clarification on particular features of the plans.• gather information in relation to what products are currently

	<p>sold and what products were sold in the past but may no longer be available, where the information is available.</p> <ul style="list-style-type: none"> • where we are aware of types of ICPs that are available in other markets that are not yet as yet available in the Irish market, describe these plans
Output:	A section of the final report will include the details of our findings, including a breakdown of the types of products available in the market

Task 3:	Describe the legal base for such plans including any EU legal influences
Method:	Completion of Task 2 will make available reasonably comprehensive examples of the documentation relating to the ICP product range in Ireland. This documentation will be reviewed in conjunction with the regulatory basis for such products.
Output:	The final report will include a section detailing the legal base and common forms of ICP products in Ireland.

Task 4:	Examine the claims management procedures and processes that currently exist.
Method:	<p>We will:</p> <ul style="list-style-type: none"> • arrange meetings with a senior underwriter in a number of the provider companies. • discuss claims management procedures and processes with the underwriter. • where available request copies of any written procedures. • prepare a list of hypothetical scenarios in advance of the meeting to discuss with the underwriters <p>The ability to gather this information and the quality of the information that is gathered will be very dependent on the degree of co-operation that we receive from the ICP providers. The providers may only be happy to provide this information if the output from these meetings are presented in a summary form and companies are not separately identified in the final report.</p>

Output:	A section of our final report will summarise the findings from these various meetings, analyse the results and make comments as appropriate.
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Task 5:	Identify Income Continuance Plan interaction with pension plans in relation to areas including marketing, sales, disclosure of information and benefit payments
Method:	<p>We will:</p> <ul style="list-style-type: none"> • arrange a number of meetings with sales personnel, both those employed directly by providers and brokers who sell these type of products. • prepare a questionnaire for use during these interviews which will cover how the sale of ICPs interacts with the sale and marketing of pension plans, what is disclosed during the sales process and what follow up information is given to the employer/employee in relation to ICPs. • discuss with some of the marketing managers of the main provider companies the interaction of ICPs with pension plans under the various headings mentioned above.
Input:	A section of the report will summarise our findings in relation to these tasks, analyse the results of our findings and make appropriate comments.

Task 6:	Consider the overall interaction and workings of Income Continuance contracts between employers and employees, associated pension plans and Income Continuance policies offered by insurance companies
Method:	<ul style="list-style-type: none"> • In order to complete this task we will draw upon both WW's and MOP's extensive experience of advising employers and employees in relation to the establishment, documentation and communication of retirement and income continuance benefit plans

	We will supplement this knowledge by including a number of questions in relation to this task in the questionnaire described under Task 8. In addition, we will also cover this point during our consultations described under task 9.
Output:	A section of our final report will summarise the findings from the surveys and the meetings referred to under Tasks 8 and 9. It will describe the various interactions that exist and describe how they differ from each other and comment as appropriate.

Task 7:	Consider employment law implications in relation to Income Continuance contracts offered by employers to their employees
Method:	Drawing on their extensive experience in this area and the results of Task 6 and the questionnaires referred to at Tasks 8 and 9, MOP, together with WW, will analyse the legal issues (in particular from an employment and pensions law perspective) presented by the ICP products offered in Ireland and their manner of establishment and communication to employees.
Output:	The final report will contain a section setting out the employment law implications revealed by completion of this Task.

Task 8:	Review the understanding of employers and employees in relation to Income Continuance
Method:	We propose to split this into 2 parts: <ul style="list-style-type: none"> Part 1 - Review the understanding of the employers We propose to prepare a questionnaire that we will send to heads of Human Resources of the Business and Finance top 1000 companies and also to companies on the WW Irish client base. The purpose of the questionnaire will be to extract information relating to the employers understanding of ICPs.

	<ul style="list-style-type: none"> • Part 2 - Review the understanding of the employees <p>We propose to prepare a questionnaire targeted at employees which we will send to heads of Human Resources of the Business and Finance top 1000 companies and also to companies on the WW Irish client base, requesting that the questionnaire is passed onto a number of their employees. We will also include a number of reply envelopes pre-addressed to WW so that the employee can send the responses directly to WW.</p> <p>Our experience of typical response levels for employer surveys is in the region of 10%. However, it can vary considerably from this percentage. Therefore we intend to supplement the responses we receive from the surveys by covering these particular points as part of our consultations with employer and employee groups described under task 9.</p>
Output:	We will collate all the data from the surveys. We will report and analyse the results from the surveys and compare the findings to those that result from the consultations described under Task 9.

Task 9:	Consult with interested parties including employers (e.g. IBEC), trade unions (e.g. ICTU), consumer representatives (e.g. CAI) and the insurance industry (e.g. IIF) on the basis of short intensive (but comprehensive) process involving representative bodies;
Method:	<ul style="list-style-type: none"> • In conjunction with the Department a series of consultative meetings would be set up with a number of interested parties. These parties would include IBEC, ICTU, CAI, IIF, IAPF. • A series of questions would be prepared in conjunction with the Pensions Board which will be used to focus the various consultative meetings. • The team will facilitate these meetings.
Output:	We will report on and summarise the various consultative meetings in a section of the final report making comments where appropriate.

Task 10:	Identify any gaps or otherwise in regulation or regulatory structures affecting any aspect of Income Continuance Plans (other
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	<p>than solvency of Income Continuance policies with insurance companies, value for money or tax issues) which work to the detriment of any of the parties to such plans and make recommendations on how these might be resolved</p>
Method:	<ul style="list-style-type: none"> • As part of the work in relation to the tasks described above we will endeavour to identify where issues may exist in relation to ICPs and identifying why the issues arise.
Output:	<p>We will:</p> <ul style="list-style-type: none"> • Summarise the various issues that arise in relation to ICPs both from our findings having carried out the tasks described above and also from our knowledge and experience of ICPS. • Describe why these are issues. • make recommendations as to how these might be resolved. <p>We would also intend to cover these points during the consultative process described under task 9 and seek the views of the various parties as to how the various issues may be resolved.</p>