



PAC32-R-1768 13 6/12/18
Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta
National Treasury Management Agency

An Ghníomhaireacht um Éilimh ar an Stát
State Claims Agency

30th November 2018

Ms. Margaret Falsey,
Committee of Public Accounts Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.

Committee of Public Accounts

03 DEC 2018

Received

Our Ref: CB/PW/PAC

Please quote our reference number on all correspondence

Your Ref: PAC32-I-1183

Dear Ms. Falsey,

**Re: Matters Related to Medical Negligence, Open Disclosure and CervicalCheck/
Thalidomide-Related Litigation**

I refer to your letter dated 21st November 2018, following on from the writer's attendance at the Committee meeting on Thursday 8th November 2018, seeking information concerning points 1 to 7 as set out in your letter.

I wish to reply, seriatim, to the points raised by you, as follows:

1. Please find attached data concerning the number of maternity cases taken against hospitals indemnified by the Clinical Indemnity Scheme (CIS) – Appendix I;
2. The General Indemnity Scheme (GIS) is operated by the State Claims Agency to indemnify approximately 148 State authorities. The Scheme operates to indemnify the State authorities in respect of personal injury and property damage actions taken against them by persons who allege such injuries and/or property damage were caused by the negligent acts or omissions of such State authorities, their servants or agents. Personal injury and property damage may be caused to State employees (and their property) or other third parties (and their property).

We presume that the reference to the *O'Toole* report is a reference to the report which was carried out at the request of the Minister for Defence in relation to protected disclosures under the *Protected Disclosures Act, 2014*, concerning compliance by the Air Corps with the relevant health and safety standards with regard to the safe use of toxic chemicals. It is common case that the *O'Toole* report concluded that the author was not in a position to comment whether any chemical exposure was, in fact, harmful and caused injury.

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The Agency is dealing with 7 claims arising from alleged exposure to toxic substances at Baldonnel Aerodrome. We are limited, given that all 7 claims are litigated, in relation to our reply to the Committee save to state that the Agency's investigations and the commissioning of expert reports remains on-going and, in the meantime, the State's Defences, already served, have placed the onus of proof on the plaintiffs in respect of negligence and causation.

Given that the cases are at litigation stage, we cannot possibly comment any further on these cases at this time.

3. Please see the attachment herewith outlining the steps/stages from notification of a claim to its conclusion separated between clinical and general indemnity cases – Appendix 2.

It should be noted that when a **non-clinical claim** is received by the SCA from (a) a lawyer acting on behalf of a claimant or (b) the Injuries Board, the Agency first carries out a detailed investigation of the liability and causation issues. If liability and causation is conceded, the Agency endeavours to have direct settlement negotiations with the claimant's legal representative(s). If liability and causation is not conceded, following a detailed investigation of the accident circumstances, liability is formally denied. Less than 3% of the SCA's cases proceed to a formal trial.

In the event of a notification of a **clinical claim**, the SCA immediately commences its liability and causation enquiries through the appointment of medical experts to review the claimant's care. In parallel, the Agency meets with and takes detailed witness statements from practitioners. It should be noted that it is usual for a claimant's lawyer, prior to making a claim on his/her behalf, to have already commissioned medical experts' reports in support of his/her case. Therefore, the Agency, per force, when it receives notice of a claim, is invariably lagging behind the claimant in carrying out its investigations.

It should be noted that in infants' cases, the event giving rise to the claim and the receipt of the claim may be many years apart. The Agency only ever becomes involved when the letter of claim is received. When the Agency receives a letter of claim in infants' catastrophic injury cases, it is invariably the case that the infant's lawyers have already received their liability and causation reports which inform the content of the later Personal Injuries Summons when it is served on the Agency. This has the inevitable consequence that the Agency has to "play catch-up" as it can only commence its liability and causation investigations when it receives a letter of claim. Infants' families, in some circumstances, complain about this delay but it is one over which the Agency has no control given its duty to properly investigate cases.

Finally, the Injuries Board has no remit for clinical negligence cases.

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4. Please find attached data in relation to the reporting by health enterprises of incidents likely to give rise to claims – Appendix 1.
5. Prior to 2012, the SCA did not procure Barrister panels. Barrister panels, from the time of the inception of the Agency in 2002, were drawn up based on the expertise of Barristers in the defence of personal injury litigation and the location of the various Courts' circuits throughout the country. During the lifetime of the selected panels, Barristers were frequently added to the panels to replace Barristers, who for example, were appointed Judges of the various Courts or who were appointed to the Inner Bar. In a minority of cases, some Barristers were removed from the panel for sub-par performance, as assessed by the Agency.

In 2012, the SCA formally procured panels of Barristers, Junior and Senior Counsel, in respect of non-clinical and clinical negligence litigation. The panels were chosen, following the procurement exercise, to represent the SCA's personal injury litigation across the various legal circuits throughout the country. The panels of Barristers were incepted in January 2014. In the procurement documentation, the SCA expressly reserved the right, should it deem it necessary or expedient to do so for any reason, to appoint a Barrister not on a Panel. Over the years, the SCA has periodically relied on such a right, to appoint Barristers not on the panel, having regard to the specialisation and the particular skills of any individual Barrister and the nature of the litigation.

In relation to the Thalidomide cases, these were taken over for management by the SCA on foot of *SI No. 124 of 2012*. The Office of the Chief State Solicitor was the Solicitor on record on behalf of the State defendants in those cases. Counsel, in the cases, had already been nominated, sometime previously, by the Office of the Attorney General. In 2016, Junior Counsel was called to the Inner Bar and there was a requirement, therefore, to choose a new Junior Counsel with experience and expertise in the defence of medicinal product liability matters. Seamus Breen, Junior Counsel, following discussions with the SCA, was appointed by the Chief State Solicitor's Office, given his established and acknowledged expertise in medicinal product liability matters. Subsequently, the Chief State Solicitor's Office, due to pressure on resources in its office, came off record in the Thalidomide matters and was replaced by Hayes, Solicitors, a firm with an established track-record in the Defence of medicinal product liability litigation.

For transparency purposes, payments to Counsel, whether on or off panel, are published biannually, on the SCA's website. No payments have been made to any of the State's Counsel in the Thalidomide cases.

6. The total cost associated with the preparation and delivery of the Discovery documentation, by HSE and the Department of Health, in the H1N1 vaccine cases, amounts, over the last three years, to €3.70m. This sum relates to the cost of the hiring of Documentary Counsel (11) and the IT platform technology in relation to the documents' searches. Approximately 15.6m documents were identified as potentially relevant to the Department of Health's Discovery. To date, in excess of 1m documents have been manually reviewed. There are an additional 11.8m documents being reviewed as relevant documentation. This review is currently utilising predictive coding. It is expected that Discovery will be complete by February 2019. The HSE's Discovery was completed some time ago.

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7. Please find attached data in relation to SCA cases, for the last three years, where sums were paid directly to the *Accountant, Courts of Justice*, following settlement of these cases – Appendix 1.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Breen', with a long, sweeping horizontal stroke extending to the right.

**Ciarán Breen,
Director.**

Enc.

APPENDIX

1

SCA Query Reference	Q90017
Query Title	PAC Questions.
Requestor	PAC / Ciarán Breen
Date of request	22/11/2018
Reporting period	All Active Claims up to the 31/10/2018

Query

The following data were requested by the Committee subsequent to the SCA's 8th November appearance.

1. A note on the number of maternity cases taken against the State.
2. A note on rate of reporting by health enterprises of future liabilities.
3. A note on the SCA cases that were paid into the Wards of Court fund including the number of cases and sums of money paid for the last three years.

Response from SCA:

The information compiled in this document is extracted from the National Incident Management System (NIMS).

Table 1 shows all clinical claims received in Healthcare for Maternity Services from 2013-2018 (31/10/2018).

		Year Clinical Claim Received					
		2013	2014	2015	2016	2017	2018 (31st Oct)
Maternity services	No. of claims received	64	77	115	112	145	113

Table 1: Clinical claims received in Healthcare for Maternity Services

Table 2 shows the number of clinical and general incidents reported on NIMS across all Healthcare locations from 2013-2018 (until 31/10/2018).

		Year Incident Reported					
		2013	2014	2015	2016	2017	2018 (31st Oct)
Number of Incidents		105,236	125,598	133,060	151,075	161,809	160,185

Table 2: Number of incidents reported on NIMS in Healthcare

Table 3 shows the number of claims in healthcare where damages were lodged to the “Accountant, Courts of Justice” from 2015-2018 (until 31/10/2018).

Payments made to the “Accountant, Courts of Justice” include minors without capacity; adults without capacity and minors, generally, when payments have been made to the “Accountant, Courts of Justice”.

Transaction Report Date				
	2015	2016	2017	2018 (31 st Oct)
Number of claims	64	62	69	73
Damages (€)	€101,599,798	€81,838,290	€126,347,570	€87,183,478

Table 3: Damages lodged to the “Accountant, Courts of Justice” from 2015-2018 as of 31/10/2018

Definitions:

National Incident Management System (NIMS): Incidents (which include claims) are reported using the "National Incident Management System". This is hosted by the State Claims Agency (SCA) for the HSE, other Healthcare enterprises and State Authorities. An incident can be a harmful Incident (Adverse Event), no harm incident, near miss, dangerous occurrence (reportable circumstance) or complaint.

Claim Create Date: Official date that the claim was created on NIMS. If a record is first logged to the system as a claim, the "Claim Create Date" and "Create Date" will be the same, however, if a record was once an incident and subsequently transitioned into a claim, the "Claim Create Date" will differ from the "Create Date", with the "Create Date" representing the date the incident was first recorded, and the "Claim Create Date" representing the date the record transitioned to a Claim

Clinical: A clinical incident on NIMS is one which falls under the Incident Hazard category of Clinical Care.

General: A general incident on NIMS is one which falls outside of the Clinical Care Incident hazard category.

Paid Total: Relates to the amount of money paid on a claim over its lifetime. This may include payments made in previous years.

Incident reported: The date the incident was created on NIMS.

Service: States which medical specialty an incident occurred under, e.g. surgery, anaesthesia, dental, maternity, etc.

APPENDIX

2



Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta
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An Ghníomhaireacht um Éilimh ar an Stát
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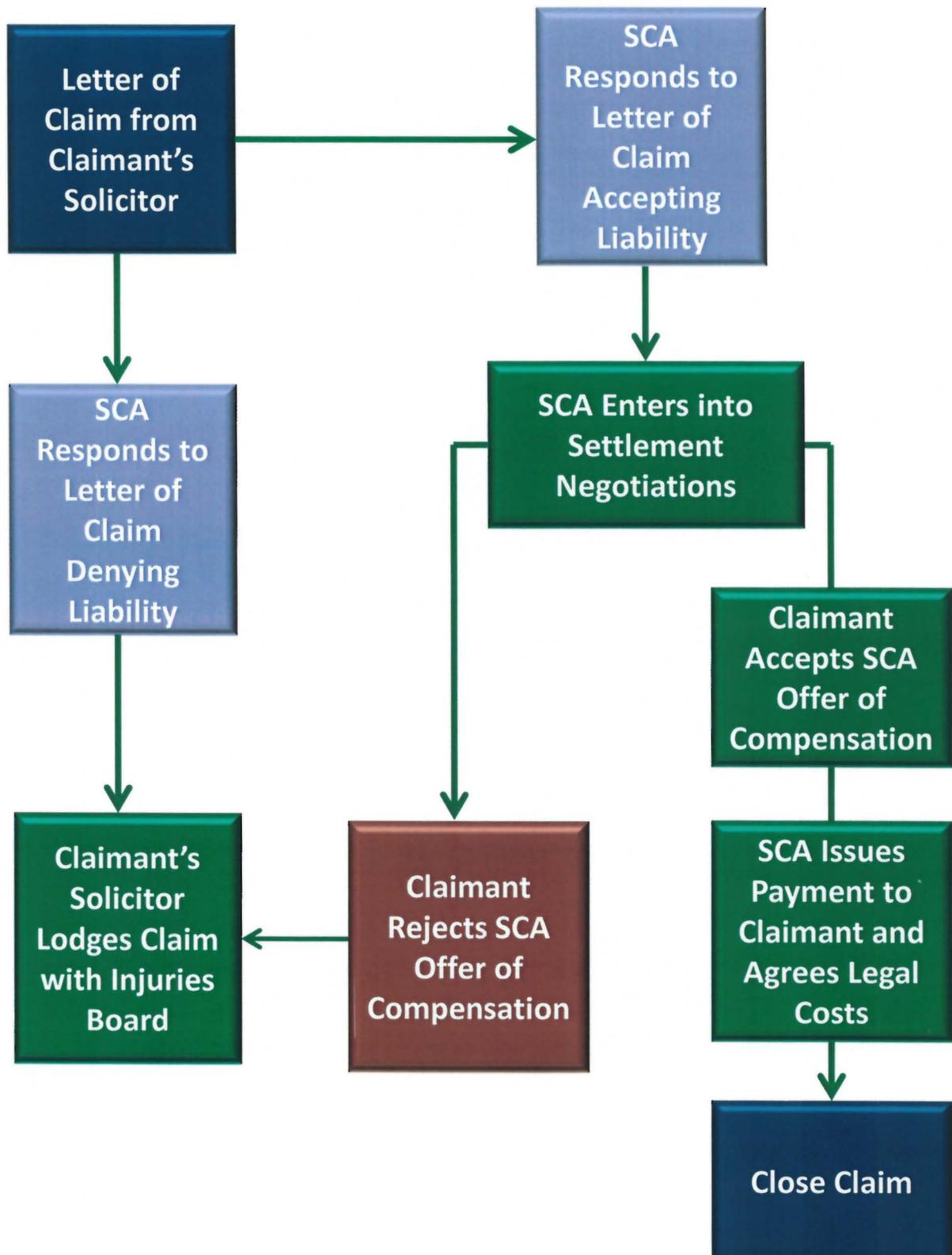
NON-CLINICAL CLAIMS' PROCEDURE PRE AND POST INJURIES BOARD



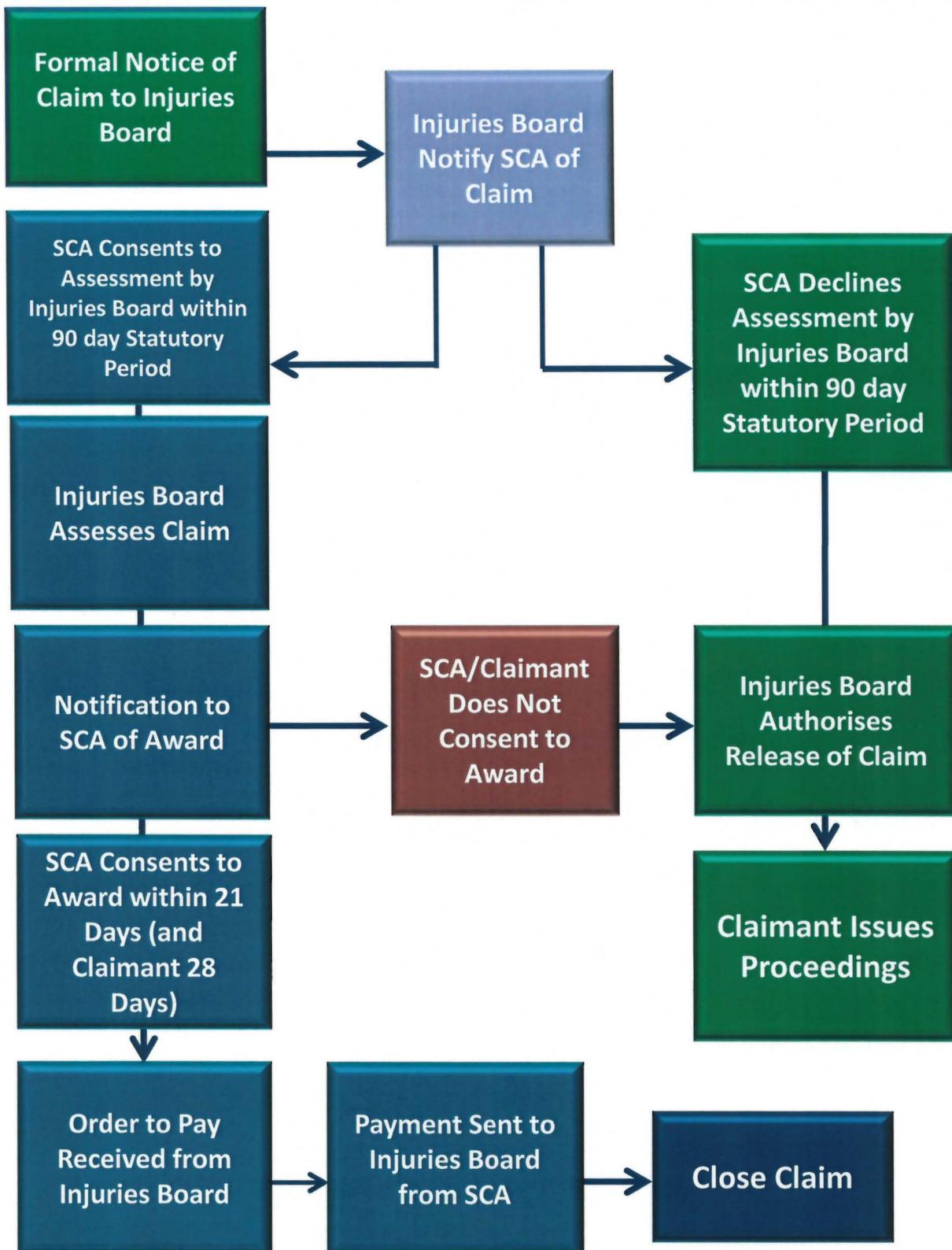
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Letter of Claim Pre-Injuries Board Application



Post Injuries Board Application



CLINICAL CLAIMS PROCEDURE

Clinical Claims

