
**OPENING STATEMENT BY PAT KIRWAN, DEPUTY DIRECTOR,
STATE CLAIMS AGENCY TO THE JOINT COMMITTEE ON
RURAL AND COMMUNITY DEVELOPMENT
15th MAY 2019**

**INDEMNITY AND PARTICIPANTS (INCLUDING VOLUNTEERS) IN VARIOUS STATE AND EU
FUNDED SCHEMES**

Chairman and Members of the Committee,

I would like, at the outset, to thank the Chairman and the Committee for this opportunity to address you today in relation to the State Claims Agency's consideration of Indemnity and participants (including volunteers) in various State and EU funded schemes.

I will keep my opening statement as brief as is possible and I will be happy, later, to reply to any questions and comments. I am joined by my colleague, Brian Larkin, Senior Enterprise Risk Manager, State Claims Agency.

The NTMA is designated as the State Claims Agency (SCA) when performing the claims and risk management functions delegated to it under the "*National Treasury Management Agency (Amendment) Act, 2000*".

The SCA's principal objectives are:

- Whilst acting in the best interests of tax payers, to act fairly and ethically in its dealings with people who have suffered injuries and who take legal actions against the State or State Bodies, and the families of those people; and
- To implement targeted personal injury and property damage risk work programmes to mitigate litigation risk in State Authorities and Healthcare Enterprises, in order to reduce the costs of future litigation against the State.

On the SCA's establishment, 700 claims were transferred to it and 22 bodies came within its remit. A major expansion came in 2003 when the management of clinical claims (claims in respect of medical negligence against the public healthcare system) was delegated to the SCA. In the years since its establishment, the range and volume of SCA activities has expanded significantly, particularly in recent years. There are now 146 bodies within the SCA's remit and we are managing over 10,600 active claims.

State indemnity is provided to Delegated State Authorities (DSAs) who are formally delegated under the National Treasury Management Agency (Amendment) Act 2000. The SCA's remit covers personal injury and third-party property damage risks and claims relating to certain State Authorities, including the State itself, Government Ministers, their Departments and delegated agencies under the aegis of those Departments, the Attorney General, the Health Service Executive, the Voluntary Healthcare Sector

(including Section 38 Disability Sector), An Garda Síochána, the Irish Prison Service, the Defence Forces and Community and Comprehensive Schools. State indemnity extends to all business activities of a DSA.

The increase in the volume of claims and risk management activity in recent years is due both to additional State bodies coming within the SCA's remit (particularly the HSE and the Section 38 voluntary acute and community and disability sector) and the SCA also being given responsibility for additional classes of claims, for example. personal injury related to bullying/harassment, members of the Defence Forces and An Garda Síochána while serving abroad, prisoner in-cell sanitation claims etc.

A Legal Costs Units was also established within the SCA, initially to manage third party legal costs associated with certain Tribunals of Inquiry and later extended to the management of all legal costs claims, howsoever, arising, against the State.

The SCA also has a statutory remit in respect of the Insurance Compensation Fund following the passing into law of the recent Insurance (Amendment) Act, 2018.

There are two main State indemnity schemes operated by the SCA namely:

- Clinical Indemnity Scheme (CIS) – Covers personal injury risks and subsequent claims/liabilities arising from the negligent act or omission associated with the provision of, or failure to provide professional medical services on the part of the DSA.
- General Indemnity Scheme (GIS) – Covers personal injury and third party property damage risk and subsequent claims/liabilities arising from the negligent act or omission on the part of the DSA.

In the context of my address to this Committee, our understanding is that we have been invited here to discuss indemnity and insurance related to the Programmes and Schemes under the aegis of this Committee. The SCA's activity under the GIS is of most relevance when discussing these matters.

As I stated above, currently State indemnity applies to Government Departments, certain agencies under the aegis of those Departments, the Health Service Executive and the Voluntary Healthcare Sector and others. Typically Delegated State Authorities (DSAs) are organisations that are wholly or substantially funded by the State and their:

- (a) employees are civil/public servants, and
- (b) activities related to the provision of services on behalf of the State.

Risk management is also an important pillar of the State indemnity under the GIS. The SCA has a statutory mandate to advise and assist DSAs on the management of risk to prevent the occurrence of accidents leading to claims. DSAs are required to engage proactively and this ensures that the cost associated with State Indemnity is controlled. The activities of the DSAs covered under the GIS are directly managed and controlled by the DSA, its management and its employees. This is an important element in ensuring that appropriate risk management controls are applied.

State Indemnity does not apply to Local Authorities or to any of the above Rural and Community Development Programmes and Schemes. While funding and some policy arrangements may derive from central Government unless a programme or scheme is being directly managed by a delegated body, State indemnity does not apply. This, for example, is the case with Tidy Towns.

The decision to statutorily delegate a body or activity under State indemnity in respect of that body's personal injury-related liability is a decision for the relevant Government Department in conjunction with the Department of Public Expenditure and Reform and the Department of Finance.

Normally third party liabilities such as those that would currently arise in some of the Programmes and Schemes, are not covered under State Indemnity. However, certain exceptional circumstances have

arisen where third party liabilities have been delegated to the GIS. For example, it was agreed by Government that the SCA would manage personal injury and/or third party liabilities arising from certain State funded events such as the 2003 Special Olympics World Summer Games, the 1916 Centenary celebrations in 2016 and the Papal Visit in 2018.

Where Departments are considering that State indemnity might offer a solution to substitute for commercial insurance or provide an indemnity where a risk arises, the SCA has been asked to report on issues that would arise in the event of extending the GIS.

In 2015, the SCA prepared a report for the Department of Environment, Community and Local Government concerning the Rural Access Indemnity Scheme: A proposed National Indemnity Scheme for Landowners. The report concluded that there was a strong case for establishing a Rural Access National Indemnity Scheme on a pilot basis, initially. It acknowledged that the State, by establishing such an indemnity scheme, would be taking on the risk of litigation against landowners under the scheme. However, the law in relation to 'recreational users', the Occupiers Liability Act, 1995, and its subsequent interpretation by the courts means that the risk of litigation is low and is proportionate having regard to the overall potential economic dividend to the State (estimated at 660m euro annually by research carried out on behalf of Fáilte Ireland and Tourism Ireland, 2013).

The SCA noted that establishing a Rural Access National Indemnity Scheme for landowners would remove the single largest obstacle to unlocking the tourism development potential of mountain access schemes. The Agency recommended that a scheme should be established in a number of designated areas and should be piloted over a 5 year period. This would allow a comparison of the cost of litigation over that time against the overall economic dividend to the State as a result a result of better developed and increased tourism.

The SCA was represented on the Cost of Insurance Working Group and the Personal Injury Commission. The work, findings and recommendations of the Working Group have been widely reported on. The SCA endorses the recommendations of the Working Group's report and believes that, when implemented, the Group's recommendations will have a significant and positive impact for all stakeholders in the area of personal injury litigation and insurance/indemnity costs.

I hope this gives the Committee a sense of various factors and considerations at play. Perhaps, it is useful to again explain that the delegation of personal injury-related liabilities under State indemnity is not one for the SCA, but rather it is a decision for Government. Where such a scenario arises the SCA manages claims and the associated risk management issues arising in accordance with our statutory remit.
