



Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta
National Treasury Management Agency

6th December 2021

Ms Sarah Cremin,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2

RE: S0644 PAC33

Dear Ms Cremin,

I refer to your letter of 22nd November seeking information on a number of matters arising from the correspondence from the National Treasury Management Agency (NTMA) to the Committee, dated 1st November 2021. The information, as requested in your letter, is set out below.

1. Clarification regarding the outstanding liability in respect in cell sanitation claims and how many of these claims are from staff working in the Prison Service;

Of the 2,399 active claims against the Irish Prison Service at end 2020, 1,852 claims were lack of in-cell sanitation claims. All of the lack of in-cell sanitation claims are from current or former prisoners. No lack of in-cell sanitation claims have been received from prison officers/former prison officers. A breakdown of the 2,399 claims is set out below.

Irish Prison Service Active Claims at end-2020

Who Was Involved	Number of Active Claims
Prisoner*	2,197
Staff Member	150
Member of Public	47
Property Damage	5

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Total	2,399
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*The 2,197 prisoner claims include 1,852 lack of in-cell sanitation claims

2. Further details regarding the outstanding liability in respect of An Garda Síochána active claims, specifically whether the number of claims relates only to members of the force or if it includes members of the public;

The 728 active claims against An Garda Síochána at end-2020 comprise personal injury claims (both by members and civilian employees of An Garda Síochána) and third-party property damage claims (including claims resulting from accidents involving Garda vehicles). Personal injury claim by members of An Garda Síochána exclude claims under the Garda Compensation Scheme, which are not managed by the State Claims Agency. Claims under the Garda Compensation Scheme relate to the malicious infliction of personal injuries upon members of An Garda Síochána. A breakdown of the 728 claims is set out below.

An Garda Síochána Active Claims at end-2020

Who Was Involved	Number of Active Claims
Member of Public	308
Staff Member	170
Prisoner	10
Property Damage	240
Total	728

3. An information note providing details regarding arrangements for annualised payments and periodic payments in respect of settlement of claim;

Statutory Periodic Payment Orders (PPOs) are provided for under Part 2 of the Civil Liability (Amendment) Act 2017, which commenced in October 2018. This empowers the courts, as an alternative to lump sum awards of damages, to make consensual and non-consensual PPOs to compensate injured victims in cases of catastrophic injury where long-term permanent care is required. The Harmonised Index of Consumer Prices (HICP) is the index used for the purpose of calculating increases in annual PPO payments. The adequacy of this indexation provision was considered during a directions' hearing in a catastrophic injury case during 2019. The High Court found that the index used in the legislation would not meet the cost of future care needs of catastrophically injured people.

In light of this, barring a change to the index, it is expected that most claims will be settled on a lump-sum or interim payment order basis. In 2020 and 2021 (to date), no statutory PPOs

were made (compared with six in 2019). The Department of Justice is proposing to reconvene the Working Group, which it established to examine the technical aspects of PPOs prior to the passage of the enabling legislation, in order to examine the implications of the High Court decision with respect to the indexation of PPOs and to make recommendations to the Minister on resolving the matter. The SCA will be represented on the Working Group.

In 2010, the SCA, assisted by the High Court, pioneered interim payment orders as a means of compensating plaintiffs in catastrophic injury cases. Interim payment orders were introduced in the absence of statutory PPOs to address the investment risk to the plaintiff associated with a lump-sum settlement. Under these orders, certain heads of damages are resolved on a full and final basis (e.g. general damages, loss of earnings, past care). Ongoing care requirements are dealt with by means of interim High Court orders which allow for part-payment of future care requirements for a specified time-period. When this time period has elapsed, the plaintiff may revert to the High Court to seek another interim order or full and final settlement of the claim.

4. A progress update on open disclosure and what engagement the State Claims agency is having with the legal profession to encourage mediated settlements as opposed to court settlements.

The SCA strongly promotes mediation, where possible, as an alternative to the formal court process. It has found mediation to be of particular benefit in the resolution of complex clinical claims. Its policy is to offer mediation to plaintiffs' legal representatives in all suitable cases. During the pandemic the SCA took the lead in offering mediation as a means of resolving claims in circumstances where few other modes of resolution were available, due to the courts being closed. The SCA has noted an increased willingness by plaintiffs' legal representatives to consider mediation in these circumstances. The SCA will continue its policy of engaging with plaintiffs' legal representatives to promote mediation as an alternative to the formal court process.

It should also be noted the SCA has established a Scheme of Settlement for claims related to the H1N1 flu vaccination based on a mediation process. The Scheme itself was established following the resolution of one of these cases through mediation on terms similar to those agreed in that case. Each of the individual claims under the Scheme is being resolved through mediation with over 100 plaintiffs having, so far, entered into the Scheme.

Please do not hesitate to contact me if you require any further information in relation to the above.

Yours sincerely,

Martin Whelan

p.p.

Head of Public Affairs and Communications