
**OPENING STATEMENT BY CIARÁN BREEN, DIRECTOR,
STATE CLAIMS AGENCY,
TO THE PUBLIC ACCOUNTS COMMITTEE
2 MARCH 2023**

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:

- **Report on the Account of the Public Services 2021**
Chapter 20. Management of the Clinical Indemnity Scheme
- **Financial Statements 2021**
State Claims Agency

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 colleagues, Dr. Cathal O’Keeffe, Head of Clinical Risk and Ms. Catherine Tarrant, Executive Head of Claims CIS, in the 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 managing personal injury and property damage claims against the State and State authorities, as delegated to it, and in providing related risk management services. The SCA also manages claims for legal costs against the State and State authorities, as delegated to it, however so incurred.

The SCA’s remit covers personal injury and third-party property damage risks and claims relating to State authorities, including the State itself, Government Ministers, the Attorney General, the Health Service Executive, the Voluntary Healthcare Sector, An Garda Síochána, the Irish Prison Service, the Defence Forces and Community and Comprehensive Schools.

Position as at 31/12/2022

The SCA is currently managing 11,204 claims, comprised as follows:

General Indemnity Scheme (GIS)	7,329
Clinical Indemnity Scheme (CIS)	3,875
Total	11,204

The total estimated liability for both Schemes is €4.96bn, comprised as follows:

General Indemnity Scheme (GIS)	€1.1bn
Clinical Indemnity Scheme (CIS)	€ 3.86bn
Total	€4.96bn

The number of active claims reduced by 2% in 2022 on 2021, this is against the backdrop of an increasing trend in active claims over the last five years, having increased from 10,658 at end-2018 to 11,204 at end-2022.

The estimated outstanding liability has increased over the same period at a higher rate and there are certain contributing factors to this, including the increase in claims numbers and general claims inflation. Other factors are: the effect of significant mass actions, the reduction in the Real Rate of Return which affects most clinical claims, and, in relation to catastrophic injuries, increased life expectancy as a result of improved medical and pharmacological care.

Management of Clinical Indemnity Scheme Claims

When performing its claims management functions, the Agency seeks to act fairly, ethically and sensitively in dealing with people and their families who have suffered injuries and/or incurred damage. The Agency is conscious of the ordeal that individuals, and their families, suffer following a clinical negligence event and it takes every step it can to ensure that the litigation process is handled sensitively and that, wherever possible, such litigation does not add to the existing considerable distress suffered by such individuals.

The SCA is guided by the principle of appropriate compensation, namely, that people who have suffered a personal injury, caused as a result of negligence, must be compensated appropriately and as quickly as the circumstances of their cases allow.

Clinical negligence cases almost always involve complex medical, liability and causation issues and frequently involve considerable trauma to claimants and their families.

Periodic Payment Orders

The SCA, of its own initiative, pioneered the introduction of interim or periodic payments to compensate catastrophically injured victims whose injury resulted from a clinical negligence event. This initiative was commenced to alleviate claimants' families' worries relating to guaranteed payment of claimants' future care and other requirements throughout their lifetime. The SCA welcomed the introduction of Statutory PPOs (Periodic Payment Orders), provided for under Part 2 of the Civil Liability (Amendment) Act 2017, which commenced in October 2018. The adequacy of the Harmonised Index of Consumer Prices (HCPI), the index provision provided for in the Act, was considered during a High Court Directions' Hearing in a catastrophic injury case in November 2019, where the High Court found that the index was not appropriate to meet the cost of the future care needs of catastrophically injured claimants. Since November 2019, no statutory PPOs have been made. However, the Department of Justice has reconvened an Inter-Departmental Working Group to make recommendations to the Minister for Justice concerning an appropriate index.

Pre-Action Protocol

The pre-action protocol is a mechanism to resolve disputes between clinical care providers and care recipients before litigation can be commenced. The legislative basis for the pre-action protocol is to be found in Part 15 of the Legal Services Regulation Act (LSRA) 2015, which inserts new Part 2A of the Civil Liability and Courts Act 2004, providing for a pre-action protocol in Medical Negligence claims.

Issues subsequently arose with regard to legal compatibility between the amendments proposed to the Civil Liability & Courts Act 2004, by way of the LSRA, and the Civil Liability (Amendment) Act 2017. This compatibility issue will be rectified by way of Parts 7 & 8 of the Courts and Civil Law (Miscellaneous Provisions) Bill 2022. This Bill is currently at Dáil Committee Stage. The SCA, a long-time advocate for the introduction of the Protocol, welcomes its legislative progress as there is little doubt that the pre-action protocol, when introduced, will lead to much needed improvement and reform of clinical negligence litigation by reducing the current unacceptable delays and removing the more adversarial elements of the Tort system.

Open Disclosure

Responsibility for the implementation of Open Disclosure lies with the HSE, the SCA continues to support the process of Open Disclosure. The Patient Safety (Notifiable Incidents and Open Disclosure) Bill 2019 provides a legislative framework for, amongst other things, the mandatory open disclosure of certain patient safety incidents, mandatory procedures in respect of clinical audit, and the data obtained in the course of these audits together with the mandatory notification of certain patient safety incidents through the National Incident Management System, managed and hosted by the SCA.

Legal Costs Unit

The SCA's statutory legal costs management mandate is to manage claims for legal costs in such manner as to ensure that the liability of the State authorities is contained at the lowest achievable level. The SCA manages and resolves all categories of third-party legal costs claims, whether they arise in the course of the SCA claims resolution work or separately where the state has been sued. The SCA also provide legal costs advice to State authorities on third-party legal costs claims.

In 2022 the Unit settled 1,225 bills of costs, with a total claimed amount value of €166.4m. These bills were settled at a reduction of 41% of the amount claimed.

Risk

The SCA has a statutory risk management role as set out in Section 8(4) of the NTMA (Amendment) Act 2,000. This requires the SCA to advise and assist a Delegated State Authority (DSA) in relation to the measures to be taken to prevent the occurrence, or to reduce the incidence, of acts, omissions or other matters occasioning, or that may occasion, delegated claims against such a DSA, including measures to identify sources of risk that may occasion such claims.

Responsibility for the identification, management, monitoring and reporting of risk and setting risk management priorities is in all cases a matter for the individual DSAs. The SCA's risk management role is to advise and assist DSAs, as appropriate, with their risk management. The SCA's risk management programs of work are delivered by the Clinical Risk Management Unit and the Enterprise Risk Management Unit.

Clinical Risk Management

The Clinical Risk Management Unit provides risk management advice and assistance to State authorities to assist them in limiting their claims exposures under the Clinical Indemnity Scheme, that is, those risks arising from the provision of professional medical services. Some of the Unit's activities in this area include, reviewing, analysing and extracting learning from incident and claims data and sharing that learning with the individual DSAs and national stakeholders to inform their risk mitigation strategies.

Enterprise Risk Management

The Enterprise Risk Management Unit provides risk management advice and assistance to State authorities to assist them in limiting their claims exposures under the General Indemnity Scheme. The Unit works with risk, safety, facilities, fleet and human resources managers and other personnel in State authorities to help them better understand their litigation risk profile and target their risk management activities to prevent incidents which could lead to claims. The Enterprise Risk Management Unit also advises on risk and corporate governance, indemnity and insurance, health and safety, facilities and fleet management, fire safety and environmental management.

Conclusion

My colleagues and I will be happy to take any questions you may have and will do our very best to answer them.