

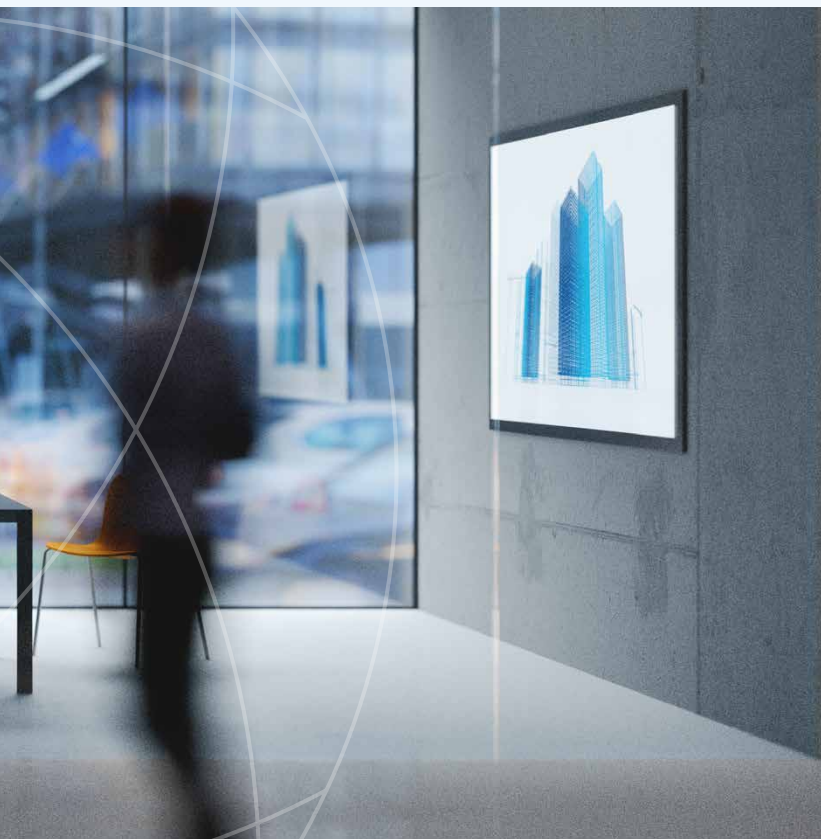


The NTMA is known as the State Claims Agency (SCA) when managing personal injury and third-party property damage claims against the State and State authorities, as delegated to it, and in providing related risk management services. As the SCA, the NTMA also manages claims for legal costs against the State and State authorities, as delegated to it, however such costs are incurred.

State Claims Agency

The SCA is obliged by statute to manage delegated claims and counterclaims in such manner as to ensure that the liability of the State authorities is contained at the lowest achievable level. In performing this function, the SCA seeks to act fairly, ethically and sensitively in dealing with people who have suffered injuries and/or damage, and their families. In cases where the SCA investigation concludes that the relevant State authority bears some or all liability, the SCA seeks to settle claims expeditiously and on fair and reasonable terms.

If it considers, in individual claims or classes of claim, that the State is not liable or that the amount sought in compensation is excessive, the SCA's policy is to contest the claim or level of claim.



The SCA provides claims and risk management services through two State indemnity schemes:



Clinical Indemnity Scheme

Under the Clinical Indemnity Scheme, the SCA manages clinical negligence claims taken against healthcare enterprises, hospitals, and clinical, nursing and allied healthcare practitioners covered by the scheme.



General Indemnity Scheme

Under the General Indemnity Scheme, the SCA manages personal injury and third-party property damage claims taken against State bodies covered by the scheme.

The range of risks indemnified by the State through these schemes is extensive. It includes over 200,000 State employees and all public healthcare service users. It includes public services that, by their nature, constitute higher-risk activities such as the provision of clinical care in hospitals, Defence Forces personnel on operations overseas, members of An Garda Síochána on operational duty, customs inspections, emergency response services and custody of prisoners.

The SCA was managing 11,204 claims at end-2022. The total estimated outstanding liability associated with the SCA's claims portfolio at end-2022 was €4.96bn.

Claims Portfolio at End-2022



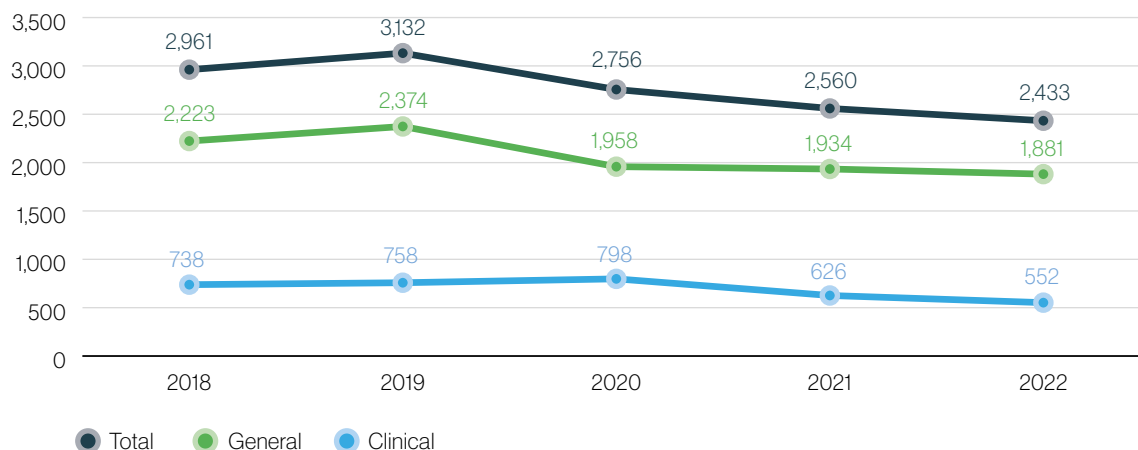
Although clinical claims comprised only 35% of the overall number of active claims at end-2022, they comprise 78% of the overall estimated outstanding liability. This is primarily due to the higher levels of settlements and awards associated with clinical negligence claims when compared with general claims and, in particular, the very high level of settlements in the resolution of infant cerebral palsy and other catastrophic injury claims.

State Claims Agency (continued)

Claims Received and Resolved

The SCA received 2,699 claims and resolved 3,082 claims in 2022. Headline numbers with regard to active claims can be volatile and may be strongly influenced by the number of mass action claims received and resolved each year. While the number of claims resolved in 2022 is lower than in 2021, it is worth noting that headline figures in 2021 had been particularly affected by the Scheme of Settlement put in place to resolve the lack of in-cell sanitation mass action (further information on this Scheme of Settlement is set out in the Mass Actions section of this Report on page 51). The number of claims received each year excluding mass actions claims gives a better indication of the overall trend.

Claims Received 2018-2022 (Excluding Mass Action Claims)



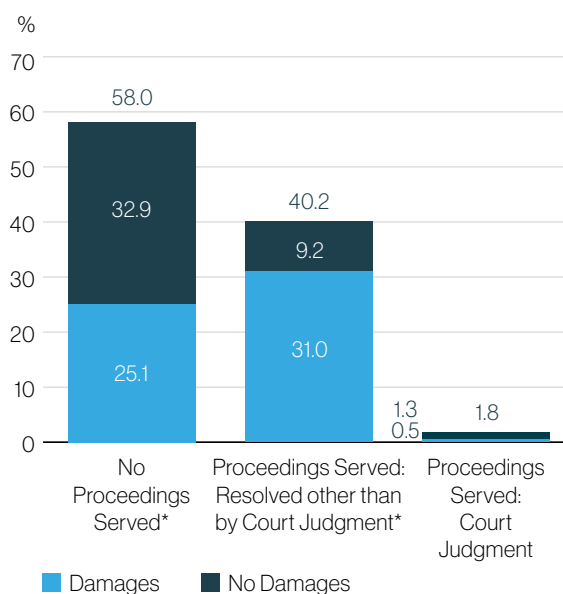
The number of general claims (excluding mass actions) received annually increased from 2,223 in 2018 to 2,374 in 2019 before falling back to 1,934 in 2021 and remaining at similar levels in 2022. The fall in the period from 2020 to 2022 is most likely due to a general decrease in activity in State authorities as a result of COVID-19 restrictions.

The number of clinical claims (excluding mass actions) received annually increased from 738 to 798 between 2018 and 2020 before falling back to 626 claims received in 2021 and 552 claims received in 2022. This may reflect less clinical activity between 2020 to 2022 due to COVID-19. As noted in the NTMA Annual Report 2021, such a delayed impact would be expected, given the typically longer time between the occurrence of an incident and the making of a claim in clinical claims compared with general claims.

The ratio of claims resolved to claims received (excluding mass action claims) in 2022 was 1.06 similar to the performance achieved in 2021.

Fifty-eight per cent of claims resolved by the SCA in 2022 were resolved without court proceedings being served, compared with 59% in 2021. The SCA paid damages in 57% of all cases resolved in 2022, compared with 58% in 2021. Just under 2% of cases resolved by the SCA in 2022 were the subject of a court judgment.

How Claims Resolved 2022



*Claims with a Case Outcome of 'Outside SCA Remit' have been excluded

The SCA strongly favours mediation, where possible, as an alternative to the formal court process. Mediation is particularly suitable for complex clinical claims. Thirty-four per cent of claims concluded by the clinical claims team in 2022 and where damages were paid involved a mediation process¹⁷, compared with 37% in 2021 and 25% in 2020. Mediation also forms an integral part of the Scheme of Settlement put in place by the SCA to resolve H1N1 flu vaccination claims (for further information on this Scheme of Settlement see the Mass Actions section of this Report on page 51).

¹⁷ Concluded claims are claims where damages, if any, have been agreed, whether through settlement discussions or court award, but where costs may still be outstanding.

Mass Action Claims

The SCA is managing a number of different mass actions against the State. Of the total 11,204 active claims at end-2022, 1,795 (16%) were in relation to mass actions.

A summary of the position in relation to particular mass action claims is set out in the table below. Claims in relation to CervicalCheck are discussed separately.

Mass Action	Active End-2022	Active End-2021
General Indemnity Scheme		
<p>H1N1 Flu Vaccination</p> <p>These are cases taken by child and adult plaintiffs primarily alleging the development of narcolepsy and cataplexy following vaccination against the H1N1 flu virus. Following the settlement of a precedent case through mediation in November 2020, the SCA established a Scheme of Settlement for the other claims on similar terms to those agreed in that case.</p> <p>Settlement of claims under the Scheme, through mediation in each case, progressed well through 2022 with 115 plaintiffs having entered into the Scheme by end-year. Sixty-four claims were concluded in relation to apportionment of liability and quantum by end-2022 whilst 70 claims were settled in respect of the apportionment of liability.</p>	140	137
<p>Historical Day School and Residential Institution Abuse</p> <p>These are cases taken by persons who allege they were physically and/or sexually abused by persons whilst at school or in residential institutions.</p> <p>In July 2021, the Government established a revised ex-gratia scheme for certain persons who had made day school sexual abuse claims against the State, to implement the European Court of Human Rights Judgment in O’Keeffe v Ireland. Successful applicants receive a payment of €84,000 plus costs, as agreed. The State Claims Agency is administering the Scheme.</p>	73	99
<p>Lack of In-Cell Sanitation</p> <p>These are cases taken in 2014 and subsequently by prisoners (current and former) against the Irish Prison Service alleging, inter alia, breach of their constitutional rights due to lack of in-cell sanitation.</p> <p>The Supreme Court judgment in the lead case, Gary Simpson v the Governor of Mountjoy Prison & Others, was delivered on 14 November 2019. The case was originally heard in the High Court, which held that the State breached the plaintiff’s constitutional right to privacy/dignity. No award of damages was made to the plaintiff, notwithstanding the Court finding in his favour on the privacy issue. On appeal, the Supreme Court found that the plaintiff should be paid compensatory damages of €7,500. Arising from this judgment, the SCA put in place a Scheme of Settlement under which offers of damages and measured legal costs are being made to qualifying claimants/plaintiffs.</p> <p>The Scheme of Settlement continued to make progress through 2022. As of end-2022, 2,786 claims associated with the Simpson case had been received and, of these, 79% had been settled, discontinued or otherwise concluded, while 21% remained open and ongoing.</p>	575	934
<p>Lariam</p> <p>These are cases taken by current and former members of the Defence Forces, alleging various physical and psychological symptoms, following their ingestion of Lariam, an anti-malarial prophylactic drug prescribed for their use whilst on duty in sub-Saharan Africa. There were 11 Lariam claims finalised in 2022, ten of which were discontinued/statute barred and one which was dismissed (pre-trial).</p>	150	158

State Claims Agency (continued)

Mass Action	Active End-2022	Active End-2021
General Indemnity Scheme		
<p>Mother and Baby Institutions</p> <p>These claims arise from ex-residents of various mother and baby institutions who have sued the Department of Education, Túsla, the HSE, the Department of Foreign Affairs and other non-State defendants as a result of their time spent in institutional care settings over various periods from the 1940s to the 1980s. They allege physical, verbal and emotional abuse and breaches of their constitutional rights for adoption or fostering and, also, that their natural rights were affected due to allegedly false birth certificates having issued. A claim also arises from a mother who alleged she was given the wrong child at birth, this having been established following DNA testing of the now adult child. Claims have also been received from persons who allege that the then Adoption Board was negligent in the oversight of various adoption societies which allegedly facilitated the illegal registration of their births.</p> <p>In November 2021, the Government announced that it had agreed a Mother and Baby Institutions Payment Scheme to compensate former residents of mother and baby and county home institutions.</p> <p>Following the publication of the Report of the Commission of Investigation into Mother and Baby Institutions, an Inter-Departmental Group on Restorative Recognition for former residents of Mother and Baby Institutions was established to consider, inter alia, proposals for a financial redress scheme of restorative recognition payments which take account of the recommendations of the Commission relating to redress (but which may not be solely limited to those recommendations).</p> <p>The Mother and Baby Institutions Payment Scheme Bill 2022 is being progressed by Government.</p>	150	136
<p>Prison-Based TB (Shelton Abbey)</p> <p>These are cases taken by current and former prisoners and prison officers in Shelton Abbey prison and members of their families who tested positive for latent TB, subsequent to a delay in diagnosis of a suspected case of TB by Irish Prison Service medical staff in 2018.</p>	27	27
<p>Thalidomide</p> <p>These are cases taken by persons born with physical disabilities whose mothers had ingested the thalidomide preparation during pregnancy. In addition to cases being case-managed by a judge of the High Court, which are at discovery stage, there are also a number of cases being taken by persons not officially acknowledged by the Contergan Foundation, Germany as suffering from a thalidomide-related injury.¹⁸</p>	37	37
Clinical Indemnity Scheme		
<p>Symphiotomy</p> <p>These are cases taken by women who had a surgical, obstetrical procedure to widen their pelvis.</p> <p>A number of plaintiffs opted not to avail of the ex-gratia scheme established by the Government in 2014 to compensate women who were found to have undergone the procedure and three applications were received by the European Court of Human Rights (ECHR) for consideration. On 10 December 2020, the ECHR declared each of the three applications to be inadmissible.</p>	33	33
<p>Epilim (Valproate)</p> <p>These cases relate to the prescription of Epilim, a drug used to treat Epilepsy. The SCA is currently managing a number of claims in which it is alleged that the plaintiffs were wrongfully exposed to the drug in their mothers' wombs and suffered damage, in the form of birth defects, as a result. The incidents range in date from 1995 to 2013.</p> <p>The SCA is also managing a further group of claims relating to alleged sodium valproate toxicity in adults.</p>	13	13
<p>Transvaginal Implants</p> <p>These cases arise in circumstances where some women who had a mesh implant inserted to address urinary stress incontinence allege personal injury as a result.</p>	67	61

¹⁸ The Contergan Foundation, which is established under German legislation, provides financial support to persons for thalidomide-related injury, following assessment of their disability as being attributable to thalidomide.

National Screening Services: Cervical Cancer Litigation

The SCA had received notification of 379 claims against CervicalCheck at end-2022 (compared with 340 claims at end-2021). This includes 78 psychological injury claims from members of the families of the women concerned. The claims primarily relate to the reading of smear tests by the independent laboratories providing services to the HSE and to non-disclosure by the HSE of the results of a clinical audit of smear tests. The cases are complicated by the fact that there can be multiple defendants: the laboratories themselves regarding the reading of the smear tests, which are contractually obliged to provide an indemnity to the State in relation to the reading of the tests, the HSE (represented by the SCA) regarding the non-disclosure of the audit results and, on occasion, a third party such as a treating doctor. In these cases, the SCA is committed to working with the laboratories and the third parties to resolve the cases through mediation, to the greatest possible extent. In a small number of cases, the HSE is the defendant in relation to the reading of the smear test (where the test was read in a hospital laboratory). The claims include both those arising from the internal audit carried out by CervicalCheck and from the Independent Expert Panel Review of Cervical Screening by the Royal College of Obstetrics and Gynaecology, and also claims where the smear test was not subject to a review or audit.

The total number of claims concluded as at end-2022 was 168, with 103 concluded during 2022.

The CervicalCheck Tribunal which provided an alternative system to the courts for claims arising from the internal audit carried out by CervicalCheck and from the Independent Expert Panel Review of Cervical Screening by the Royal College of Obstetrics and Gynaecology closed for applications on 26 July 2022 with a total of 25 cases accepted by the Tribunal.

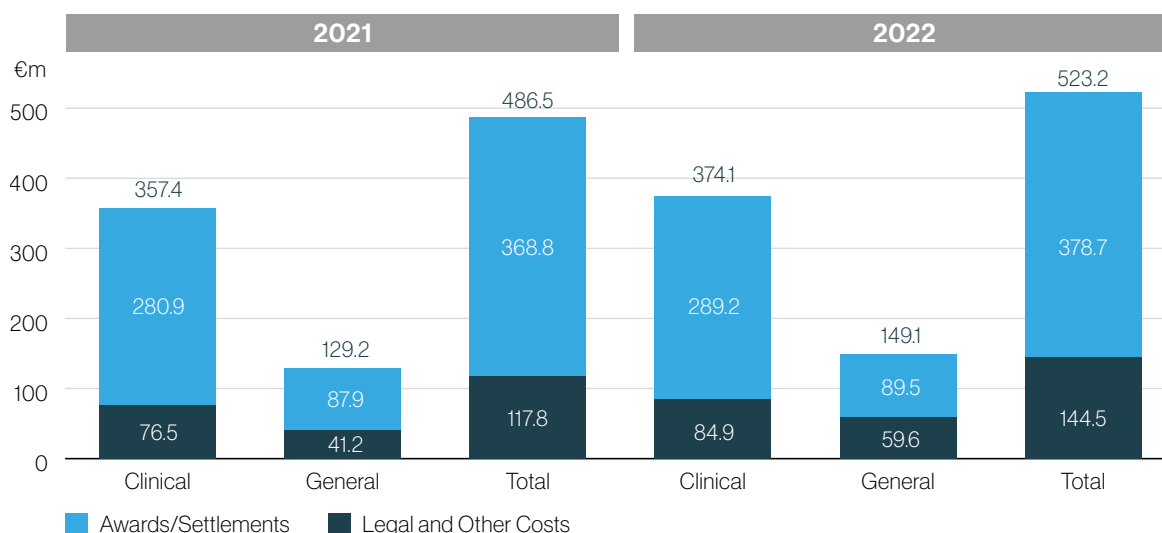
South Kerry Child and Adolescent Mental Health Services

The Kerry CAMHS Compensation Scheme was announced by Government in April 2022. The Scheme was established to address the findings of the look back review into Child and Adolescent Mental Health Services in South Kerry, which examined the treatment of more than 1,300 young people by a Non-Consultant Hospital Doctor in South Kerry Mental Health Service. The Scheme, founded upon a mediation process, is designed to provide full compensation but without the stress for families of court proceedings. As of year-end 2022, the SCA had received 148 expressions of interest under the Scheme and initial payments had been made to 125 verified applicants. Under the Scheme, liability is not being contested by the State.

Cost of Claims

The costs incurred in 2022 in resolving and managing ongoing active claims were €523.2m, an increase of 7.5% on the 2021 out-turn of €486.5m.

Costs of Resolving and Managing Ongoing Active Claims



Figures may not total due to rounding.

State Claims Agency (continued)

Awards/settlements increased by €9.9m in 2022 compared with 2021 (€8.3m in respect of clinical claims and €1.6m in respect of general claims).

Legal and other costs (including both the SCA's own costs and plaintiffs' costs) increased by €26.7m from €117.8m in 2021 to €144.5m in 2022. This is driven largely by plaintiff legal costs which increased by €23.45m in the year. Legal and other costs increased by €8.4m in respect of clinical claims and €18.3m in respect of general claims.

Plaintiffs' legal and other costs in 2022 (€90.42m) comprised 63% of overall legal and other costs and 17% of total costs incurred. In 2021, plaintiffs' legal and other costs (€66.97m) comprised 57% of overall legal and other costs and 14% of total costs incurred.

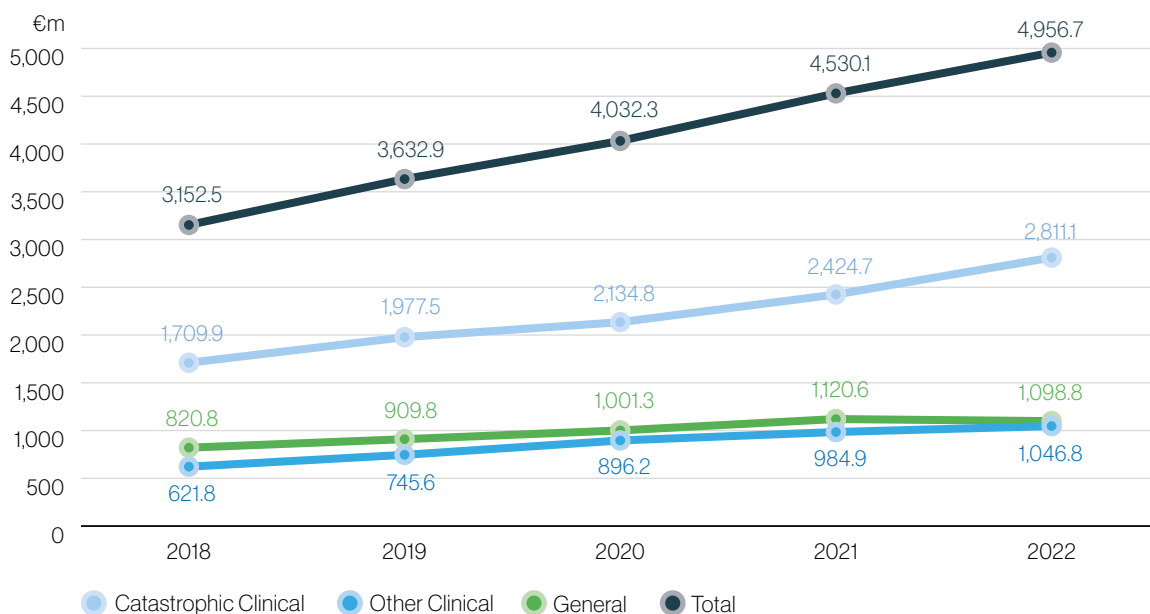
Breakdown of Legal and Other Costs 2021-2022

	Clinical		General		Total	
	2021 €m	2022 €m	2021 €m	2022 €m	2021 €m	2022 €m
SCA Legal and Other Costs						
H1N1 Claims	0	0	3.90	7.99	3.90	7.99
Other Claims	32.33	30.98	14.57	15.08	46.90	46.07
Total SCA Legal and Other Costs	32.33	30.98	18.47	23.07	50.80	54.05
Plaintiff Legal Costs						
H1N1 Claims	0	0	3.18	12.72	3.18	12.72
Other Claims	44.20	53.93	19.59	23.77	63.79	77.70
Total Plaintiff Legal Costs	44.20	53.93	22.76	36.50	66.97	90.42
Total Legal and Other Costs	76.53	84.91	41.23	59.56	117.76	144.48

Estimated Outstanding Liability

The total estimated outstanding liability associated with the SCA's claims portfolio at end-2022 was €4.96bn. As noted in previous annual reports, the estimated outstanding liability continues to increase significantly year on year.

Estimated Outstanding Liability 2018-2022



Figures may not total due to rounding.

While the number of active claims being managed by the SCA has increased by 5% over the last five years – from 10,658 at end-2018 to 11,204 at end-2022, the increase in the estimated outstanding liability over the same period is much higher at 57%. As noted in previous annual reports, catastrophic injury claims, due to their high value, are the main driver behind this increase in volume terms. Other factors contributing to the increase in estimated outstanding liability are the increase in claims numbers and general claims inflation, the effect of significant mass actions, the reduction in the Real Rate of Return¹⁹ which affects most clinical claims and, in relation to catastrophic injuries, increased life expectancy as a result of improved medical and pharmacological care.

Personal Injury Guidelines

The Personal Injury Guidelines were adopted by the Judicial Council in March 2021 and commenced by the Minister for Justice in April 2021. The Guidelines set out the levels of damages that may be awarded in personal injury actions and replace the Book of Quantum previously drawn up and used by the Personal Injuries Assessment Board (PIAB) to determine compensation in claims. The Guidelines also apply to the courts and where a court departs from the Guidelines, it is required to state the reasons for such departure in giving its decision.

The Guidelines have reduced award levels for most categories of personal injury. They deal with a wide range of injuries in terms of general damages, but do not affect special damages (e.g. ongoing medical or care expenses or compensation for loss of income).

Risk Management

The SCA advises and assists State authorities on the management of litigation risks in order to enhance the safety of employees, service users/patients and other third parties and minimise the incidence of claims. Responsibility for managing risk and setting risk management priorities remains in all cases a matter for the State authority concerned and the SCA's risk management role is an advisory one.

The SCA implements its risk mandate through two specialist risk units: the Clinical Risk Unit and the Enterprise Risk Unit. Both risk units' work programmes involve drawing on data analysis and evidence to identify emerging trends and issues in order to categorise and prioritise risk initiatives. This information is primarily obtained from claims analysis and from data reported on the National Incident Management System (NIMS) - the end-to-end risk management tool developed by the SCA that allows the SCA and State authorities to manage incidents throughout the incident lifecycle.



Córas Náisiúnta um Bainistíocht Teagmhais
National Incident Management System

National Incident Management System (NIMS)

NIMS is a confidential end-to-end risk management tool developed by the SCA that allows the SCA and State authorities to manage incidents throughout the incident lifecycle.

State authorities are required to use NIMS to fulfil their statutory requirement to report incidents to the SCA, and may also use the system for their own risk management purposes.

NIMS provides State authorities' risk managers and the SCA's own risk teams with rich adverse incident data analysis and reporting capabilities. This enables risk management and mitigation responses that will help to improve the safety of State employees, patients, and service users, and minimise the cost of claims against the State in the future.

The accurate reporting of incidents on NIMS is critical to the SCA's risk management function and the SCA works actively with State authorities on an ongoing basis to improve the level and quality of reporting.

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 programme is concentrated on audit and review of risk governance, provision of risk guidance, and client-specific initiatives. Close interaction with State authorities through education, training and client networks and events is an integral part of the programme. Specific activities in 2022 included:

- ongoing review of incidents and claims in order to identify opportunities for risk management enhancement, and follow-up with State authorities as required;
- completion of an audit programme of State authorities;
- publication of a Risk Research Report on Violence, Harassment and Aggression in the State Sector; and
- publication of a suite of updated guidance in relation to motor indemnity.

¹⁹ Real Rate of Return (RRR) by the Court of Appeal Decision in Gill Russell v HSE.

State Claims Agency (continued)

Clinical Risk Management

The Clinical Risk Management Unit provides clinical risk management advice and assistance to State authorities to assist them in limiting their claims exposures under the Clinical Indemnity Scheme. The SCA's clinical risk management programme focuses on working with clinical staff, senior managers, risk managers and other personnel in health and social enterprises at national and local level to mitigate clinical risks and enhance patient safety.

The programme places an emphasis on the identification of trends and risks at national and local level; on engaging with the HSE and individual health and social care enterprises in relation to risk mitigation activities; and on measures which seek to bring about system-wide change. The delivery of education and training activities in relation to patient safety and clinical risk management forms a key part of the programme. Specific activities in 2022 included:

- engagement with the HSE at national level and directly with health and social care enterprises on lessons learned from the analysis of clinical claims;
- ongoing work with the National Neonatal Encephalopathy Action Group²⁰ which seeks to identify, learn from, and implement strategies to mitigate risk relating to avoidable incidents of neonatal encephalopathy - the brain injury which precedes the development of cerebral palsy - in those cases which are caused by birth injury continued;
- a jointly hosted online event with the HSE to mark World Patient Safety Day on the theme of 'Medication Without Harm' attended by health and social care professionals; and
- provision of advice at national level through membership of number of fora including the Independent Patient Safety Council, the National Clinical Effectiveness Committee and the Safety and Quality Committee of the HSE Board.

Legal Costs Management

The SCA's statutory legal costs management mandate is to manage claims for legal costs in such a manner as to ensure that the liability of the State authorities is contained at the lowest achievable level. The SCA's legal costs management is delivered by the Legal Costs Unit (LCU), which deals with third-party legal costs of the State and State authorities as delegated to it, however such costs are incurred.

This means that the LCU deals with third-party legal costs in relation to these State authorities, whether they arise in the course of the SCA's own claims management work or in respect of other legal costs incurred by the State authority concerned.

The level of legal costs paid to claimants' legal representatives is carefully examined and, wherever possible and by means of negotiations, the SCA seeks to achieve the maximum possible reduction in legal costs to be paid by the State. If the SCA cannot successfully agree the level of legal costs to be paid to plaintiffs' legal representatives, the matter is determined by the Office of the Legal Costs Adjudicator, subject to a right of appeal to the High Court.

The LCU settled 1,225 bills of costs in 2022. The total amount claimed was €166.4m. These bills were settled for €97.9m – a reduction of 41% on the amount claimed.

Legal Cost Unit Claims Settled 2022

	Number of Cost Claims Negotiated	Amount Claimed €m	Cost of Claims Agreed €m	Legal Cost Saving %
SCA Clinical	215	58.2	35.6	38.8
SCA General	188	36.0	22.2	38.5
Tribunals of Inquiry	26	19.7	9.3	52.7
Other	796	52.5	30.8	41.3
Total	1,225	166.4	97.9	41.2

Figures may not total due to rounding.

²⁰ NNEAG was established in 2019 by the National Women and Infants Health Programme in partnership with the SCA and the Department of Health.

Insurance Compensation Fund (ICF)

Under the *Insurance (Amendment) Act 2018*, in the event of the liquidation of an insurance company requiring a draw on the ICF, the SCA makes applications to the High Court, on behalf of the liquidator²¹ to approve payments from the ICF, on completion of a due diligence examination of the relevant claims.

In respect of insurance companies authorised in an EU Member State other than Ireland, the SCA also distributes sums released from the ICF to claimants.

Applications to the President of the High Court for disbursements from the ICF were successfully made during 2022 in respect of Setanta Insurance Company Ltd (in liquidation), authorised in Malta, (€3.3m), Enterprise Insurance Company plc (in liquidation), authorised in Gibraltar, (€0.4m) and Gable Insurance AG (in liquidation) authorised in Liechtenstein (€1.0m).

²¹ In the case of an insolvent insurer authorised in another EU Member State, the person who performs the equivalent functions to a liquidator in the Member State concerned.