

National Treasury Management Agency

# Annual Report & Financial Statements 2019



Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta  
National Treasury Management Agency

---

**THE NTMA IS A STATE BODY WHICH PROVIDES ASSET AND LIABILITY MANAGEMENT SERVICES TO GOVERNMENT. ITS PURPOSE IS TO MANAGE PUBLIC ASSETS AND LIABILITIES COMMERCIALY AND PRUDENTLY.**



# CONTENTS

## INTRODUCTION

Chairperson's Statement	4
Chief Executive's Review	6

## BUSINESS REVIEW

Funding and Debt Management	8
Ireland Strategic Investment Fund	20
National Development Finance Agency	30
NewERA	38
State Claims Agency	48

## GOVERNANCE AND CORPORATE INFORMATION

Agency Members	60
Governance Statement and Agency Members' Report	62
Committee Reports	68
Risk Management	71
Management Team	75

FINANCIAL STATEMENTS	79
----------------------	----

PORTFOLIO OF INVESTMENTS – ISIF	209
---------------------------------	-----



### EXPLORE ONLINE

Visit our website to find out more: [www.ntma.ie](http://www.ntma.ie)



### SOCIAL MEDIA

Follow us and join the conversation

# NTMA AT A GLANCE 2019

## FUNDING AND DEBT MANAGEMENT

The NTMA is responsible for borrowing on behalf of the Government and managing the National Debt in order to ensure liquidity for the Exchequer and to optimise debt service costs over the medium term.

### Long-Term Issuance

# €15BN

€14.4bn of benchmark bond issuance at a weighted average yield of 0.9% and a weighted average maturity of 16.4 years. The balance was in private placements - two 100-year notes and a new inflation linked bond maturing in 2045.

### Syndicated Tap of Ireland's First Sovereign Green Bond

# €2BN

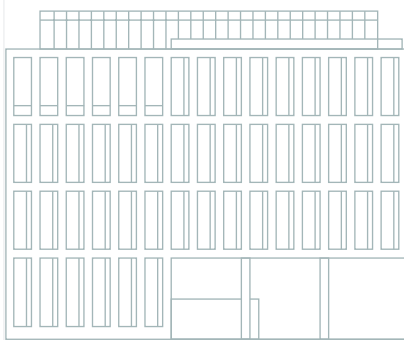
raised at a yield of 0.229%. The transaction saw demand from more than 130 individual accounts.

### Falling Debt Service Costs

# €5.0BN

was the cash interest cost of the National Debt in 2019, a decline of almost 13% compared to 2018 and more than 30% below the 2014 peak.

 Read more **page 8**



## IRELAND STRATEGIC INVESTMENT FUND

The NTMA controls and manages the Ireland Strategic Investment Fund (ISIF) which has a statutory mandate to invest on a commercial basis in a manner designed to support economic activity and employment in the State.

### Investment Performance

# €1BN

accumulated returns since inception by end-2019, investment returns of +5.1% in 2019.

### Investing in Ireland

# €13BN

the total commitment to Ireland including co-investment by private sector partners. ISIF committed €442m in 2019 across 21 investments bringing the total ISIF commitment to €4.6bn.

### Economic Impact Responding to the housing crisis

# 3,000 NEW HOMES

sold by end-2019, 6,500 new homes under construction and funding advanced for a further 5,500.

 Read more **page 20**





# NATIONAL DEVELOPMENT FINANCE AGENCY

Acting as the National Development Finance Agency (NDFA), the NTMA provides financial advisory, procurement and project delivery services to State authorities on public infrastructure projects.

## Delivering Projects

**€1.3BN**

the estimated total capital value of a range of education and housing projects being delivered by the NDFA.

## Providing Financial Advice

**€5.7BN**

providing financial advice on PPP (procurement, construction and operations) and other infrastructure projects in different sectors including housing, climate action, transport and education with an estimated capital value of €5.7bn.

## Social Housing PPP

**1,500**

new social homes will be delivered by the State through the Social Housing PPP Programme. The delivery is divided into three distinct project bundles with construction of homes nationwide.

 Read more **page 30**

# NewERA

Through NewERA, the NTMA provides a dedicated centre of corporate finance expertise to Government, providing financial advice to Ministers regarding their shareholdings in major commercial State bodies.

## Growth in Activity

**138**

the number of Portfolio company assignments on which NewERA provided financial analysis and, where appropriate, recommendations to Government Ministers.

## Dividends

**€261M**

in combined dividends were received by the Exchequer from bodies within NewERA's remit in 2018/19.

## Advice – Capital Expenditure

**€2.2BN**

of capital investment spend in 2018/19, more than three quarters of which related to the energy and water sector companies.

 Read more **page 38**

# STATE CLAIMS AGENCY

Acting as the State Claims Agency (SCA), the NTMA manages personal injury and property damage claims against the State and State authorities and provides related risk management services. It also manages claims for legal costs against the State and State authorities, however so incurred.

## Estimated Outstanding Liability

**€3.6BN**

the State Claims Agency was managing 11,580 active claims with an estimated outstanding liability of €3.6bn at end-2019.

## Settling Claims

**54%**

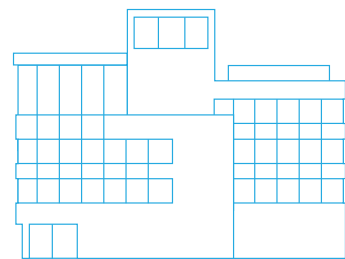
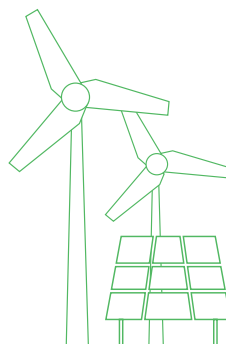
over half of cases resolved by the State Claims Agency in 2019 were resolved without court proceedings being served.

## Reducing Legal Costs

**39%**

the State Claims Agency settled 830 bills of costs received from third parties for €68m – a reduction of 39% on the amount claimed.

 Read more **page 48**



# CHAIRPERSON'S STATEMENT



Our Annual Report this year is published at a time of unprecedented challenge. COVID-19 has taken lives, placed an enormous burden on our health system and wider society, and triggered an economic shock with far-reaching consequences for jobs, livelihoods, employers and the State.

The people who are charged with managing this public health emergency deserve great credit. I want to express the NTMA's appreciation for the work being done throughout the country by healthcare workers, the emergency services, community groups, volunteers and everyone who has played a part in addressing the challenge we share.

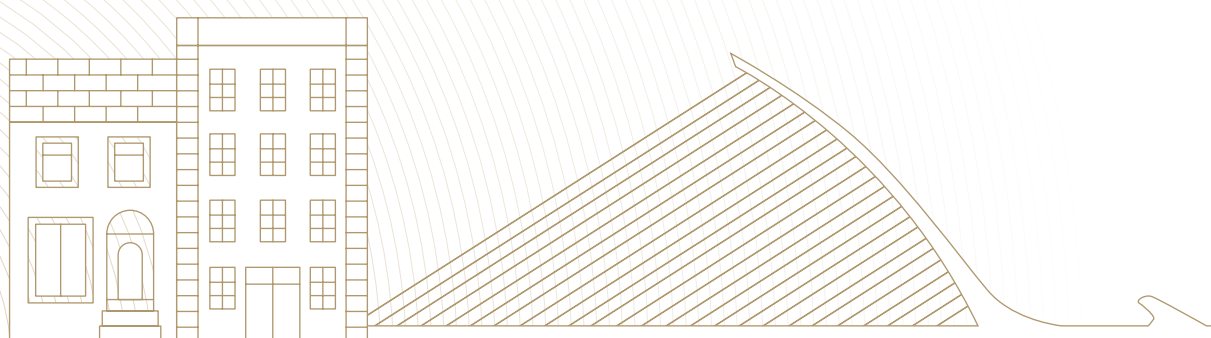
I also want to acknowledge the efforts being made throughout the NTMA – by the Board, the Management Team and by our colleagues at every level in the Agency – to ensure all aspects of the Agency's critical work on behalf of the State and citizens continue uninterrupted in what I know are exceptionally difficult circumstances.

The NTMA has always recognised the importance of contingency planning; of investment in robust technology and operational platforms; and of investing in our people and their continuous learning. The value and importance of these priorities is clearer than ever today as the Agency, along with every individual and every organisation in the State deals with the challenges posed by the COVID-19 crisis.

The Agency has a strong track record in creating value for the State, during both good times and bad. The challenge which the organisation faces today is to continue to do so, in the most extraordinary environment the Agency has yet faced.

The investment in technology has proved invaluable in the current crisis as the Agency's remote working infrastructure is tested in an unprecedented manner.

All of the Board members and I have huge admiration for the manner in which everyone across the organisation has responded to the crisis and continued to be so productive despite the challenging environment.



Our systems and processes have been stress tested in real time and the fact that the Agency has continued to deliver across all its mandates is a testament to the investment in people and processes.

Our 2019 Annual Report sets out the progress the Agency made during the year in delivering on its wide variety of mandates: Funding and Debt Management, Ireland Strategic Investment Fund (ISIF), NewERA, the National Development Finance Agency (NDFA) and the State Claims Agency (SCA). The Board and I will do all we can to provide leadership, guidance, challenge and support to the Chief Executive and Management Team in their efforts to continue the progress outlined in this Report.

My assurance to all our stakeholders is that the NTMA will continue to tackle every challenge that comes our way with commitment, innovation and a strong desire to provide long-term value for Irish citizens. We recognise that the NTMA, thanks to its range of mandates and expertise, is in a unique position to support Ireland's recovery efforts and all our energy and efforts will be deployed with this goal at the heart of everything we do.

Of course, we also remain mindful of the many significant challenges that existed before the emergence of COVID-19 and which will continue to require effective management. These include the challenges posed by climate change, the transition to a low-carbon economy, Brexit, housing and infrastructure deficits.

Given the particular long-term importance of climate change, I am pleased to say that the NTMA has continued to make significant progress in supporting measures to address climate change across a range of our business units.

Funding and Debt Management continued to build its green credentials with fresh issuance of Irish Sovereign Green Bonds during 2019, building on the success of the inaugural issuance in 2018.

ISIF increased its green investment commitments, taking the total amount committed to €349m by the end of 2019.

NewERA continued to play a leading role in driving climate action and facilitating the sharing of best practice in climate measures throughout its portfolio companies and semi-State bodies, while the NDFA successfully implemented major climate-friendly initiatives in projects in which it had a procurement or advisory role.

I will conclude by drawing attention to the NTMA's formal reporting on the Agency's gender pay gap for the second year. While the data we report this year highlight the extent of the challenge we face in closing the gender pay gap, they also serve to demonstrate our commitment to improvement.

The Board and Management Team are excited about the Agency's Inclusion and Diversity programme, and are committed to greater equality throughout the organisation and, while we recognise that the steps we take to achieve this will take some time to deliver results, we will not use time as an excuse. The task is urgent and we want our improvements to be meaningful, tangible and implemented quickly.

On behalf of the Board, I thank Mary Walsh, who retired from the Board in December 2019, for her significant contribution and wise counsel to the Board over the past five years. 2019 also saw the appointment of two new Board members, Brian O'Kelly and Rachael Ingle and I wish to take the opportunity to formally welcome them both to the Board.

Finally, I would like to express my appreciation to my fellow Board members, the Chief Executive and the Management Team, and everyone throughout the NTMA for their hard work and for the diligence, skill and innovation that they bring to the Agency every day.

**MAEVE CARTON**

Chairperson | May 2020

# CHIEF EXECUTIVE'S REVIEW



In recent months, Ireland has experienced a major economic shock but it is in a strong position to manage it and recover from it.

While our stock of debt remains high and is set to grow further, the risk this presents to our economy has diminished in recent years.

This is down to a range of supportive factors, which include an unprecedented low interest rate environment that is underpinned by an accommodative ECB monetary policy; economic policies that have resulted in a marked improvement in our national finances and material upgrades to our sovereign credit ratings; and a series of measures to enhance our debt sustainability.

The extent of the challenge is significant but our room to manoeuvre has been greatly enhanced by these factors.

Our average cost of debt is less than 2% – down from almost 4% as recently as five years ago. Our annual debt interest bill is heading close to €4bn in 2020 – down from more than €7.5bn five years ago. And we have the benefit of a smooth maturity profile in the years ahead and one of the longest average maturities in Europe.

And while our focus in this time of great uncertainty is to look ahead and plan for the future, the publication of our Annual Report is also a time to reflect on the progress that we have made.

One of the most important milestones from a funding and debt management perspective has been the virtual elimination of the refinancing “chimneys” – unusually large debt redemptions – which were an unwanted legacy of the 2008 financial crisis.

For the four year period 2017 to 2020, debt redemptions amounting to €70bn had to be financed, including €19bn in 2020 alone. The strategy to pre-fund the financing of this debt has proved prescient and allows the Agency to enter the current crisis with these significant obligations behind it. The next four years see a much lower level of





redemptions totalling €27bn, with no bonds falling due for repayment in 2021. This technical position combined with our improved credit standing and the accommodative monetary policy environment mean we approach this unprecedented COVID-19 crisis from a position of strength.

With the elimination of the chimneys, our maturity profile will be smoother than any time in our history.

Standard & Poor's upgrade of Ireland's long-term rating to AA- in November returned our rating to the AA category for the first time since the crisis.

The Funding and Debt Management unit also built on the success of our first-ever issuance of Irish Sovereign Green Bonds in 2018 with a fresh syndication in October 2019. This cemented our commitment to this innovative form of issuance and positioned us well in a sector where investor demand is growing strongly.

The Ireland Strategic Investment Fund (ISIF) delivered another strong investment performance with a gain of 5.1% during 2019, bringing total investment gains since inception above €1bn for the first time. However, the market declines and volatility in 2020 year to date seem certain to eradicate some of this gain despite a conservative and low risk portfolio.

The Fund had committed over €4.6bn to investments in Ireland by the end of 2019, continuing its phased transition from a Global Portfolio to an Irish Portfolio. To deal with the economic impact of COVID-19 and to immediately assist in the economic recovery the Fund has revised its strategy. A new €2bn Pandemic Stabilisation and Recovery Fund has been established: this Fund will be used specifically to invest in medium and large companies affected by the pandemic.

2019 also saw the National Development Finance Agency (NDFA) build on its role as a centre of excellence for advising on and procuring major capital investment and infrastructure projects. This role will become even more important in facilitating economic recovery and ensuring both value for money and additional benefits for the State in the form of significant risk transfer in the delivery of these projects.

NewERA saw further extensions to its mandate during 2019, adding to the range of Government departments, commercial semi-States and other State bodies within its remit.

The unit continued to enhance its reputation for providing financial advice, with a particular contribution in climate action, renewable energy and the transition to a low-carbon and climate resilient society. Many of these commercial semi-States will need additional support as a result of COVID-19 and the NewERA team are actively involved in advising departments across Government to establish a suitable and speedy path to recovery.

2019 was also a year in which the value of the risk and liability management work carried out by the State Claims Agency (SCA) was clear. The complexity of the SCA's work requires it to strike an appropriate balance between managing claims in accordance with its statutory mandate while ensuring that claims are handled sensitively and to the highest professional standards.

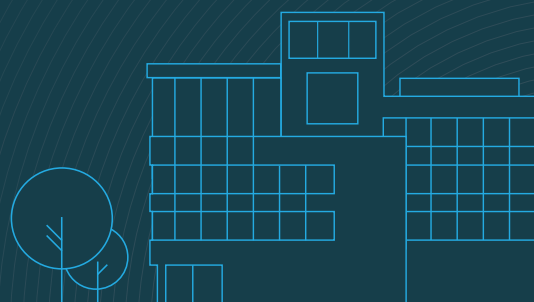
To conclude, I thank the Chairperson, the Board and committee members for the invaluable guidance, support and challenge that they bring to the Agency's activities.

I also thank my colleagues throughout the organisation for the professionalism, commitment and skills that they bring to their roles and for their collective efforts every day to deliver long-term value for the State and its citizens.

**CONOR O'KELLY**

Chief Executive | May 2020

# STATE CLAIMS AGENCY



## SCA MANDATE AND OBJECTIVES

The NTMA is known as the State Claims Agency (SCA) when managing personal injury and 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 so incurred.



### Claims Management

While acting fairly and ethically in dealing with people who have suffered injuries and/or damage, and their families, manage claims taken against the State so that the liability of the State is contained at the lowest achievable level.



### Risk Management

Advise and assist State authorities on the management of litigation risks to a best practice standard, in order to enhance the safety of employees, service users/patients and other third parties and minimise the incidence of claims and the liabilities of the State.



### Legal Costs Management

Manage third-party claims for costs arising from all categories of claims taken against the State so that such claims for costs are contained at the lowest achievable level.



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 “risk universe” 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 remit of the General Indemnity Scheme was extended during 2019 with the inclusion of claims against foster parents and former foster carers carrying out functions under the Child Care Act 1991.

## Business Review

### STATE CLAIMS AGENCY (CONTINUED)

#### CLAIMS RECEIVED

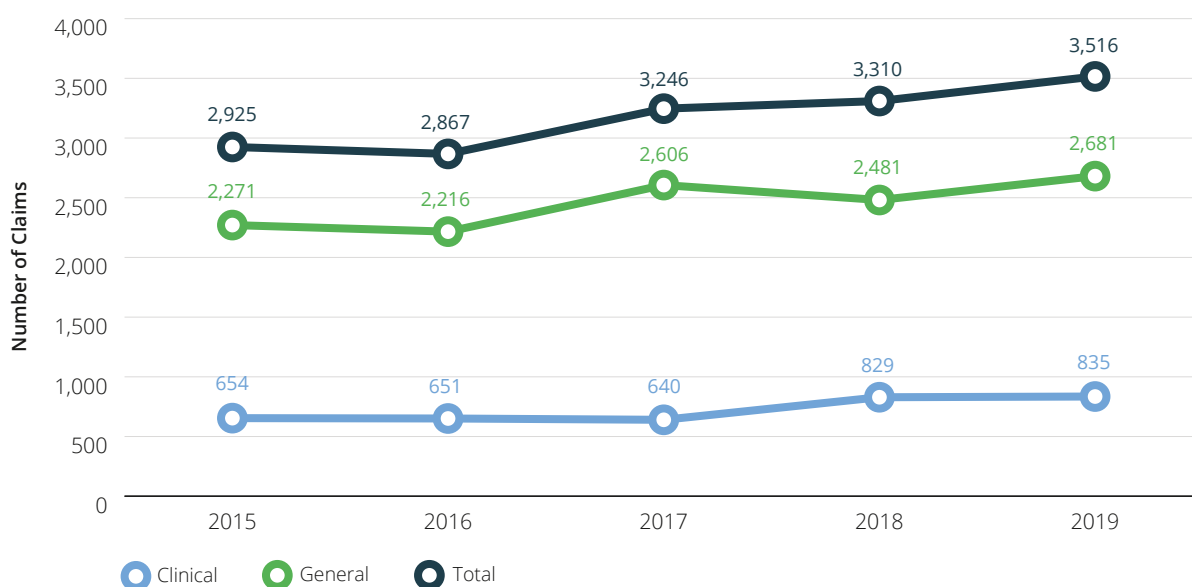
The SCA received 3,516 new claims and resolved 2,704 cases in 2019. The ratio of claims resolved to claims received (excluding mass action claims) in 2019 was 0.81, the 2018 equivalent was 0.77. The SCA was managing 11,580 active claims at end-2019.

The number of clinical claims received annually remained broadly stable from 2015 to 2017, but has increased in 2018 and 2019. While mass action claims in respect of the CervicalCheck screening service and transvaginal implants are a factor here, the underlying trend still shows an increase with the number of claims (excluding mass actions) increasing from some 630 each year in the period 2015 to 2017 to

740 in 2018 and 765 in 2019. This is primarily driven by an increase in the number of claims in the €100,000 to €500,000 estimated liability range.

The pattern of general claims received is more volatile, and is strongly influenced by the number of mass action claims received each year. Factoring out mass action claims, the number of claims received annually has increased by 30% from 1,834 in 2015 to 2,391 in 2019. It should be noted that there were a number of extensions to the remit of the General Indemnity Scheme between 2014 and 2017 including higher-risk bodies such as the voluntary hospital sector and a number of voluntary organisations in the disability sector.

#### CLAIMS RECEIVED 2015-2019





## RESOLUTION OF CLAIMS

The SCA seeks to act fairly and ethically in dealing with people who have suffered injuries and/or damage, and their families, in the resolution of claims. In cases where the SCA investigation concludes that the relevant State authority bears some or all liability, it 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.

Just over half of cases resolved by the SCA in 2019 were resolved without court proceedings being served, as was the position in 2018. The SCA paid damages in 58% of all cases resolved in 2019, again similar to the 2018 figure of 57%.

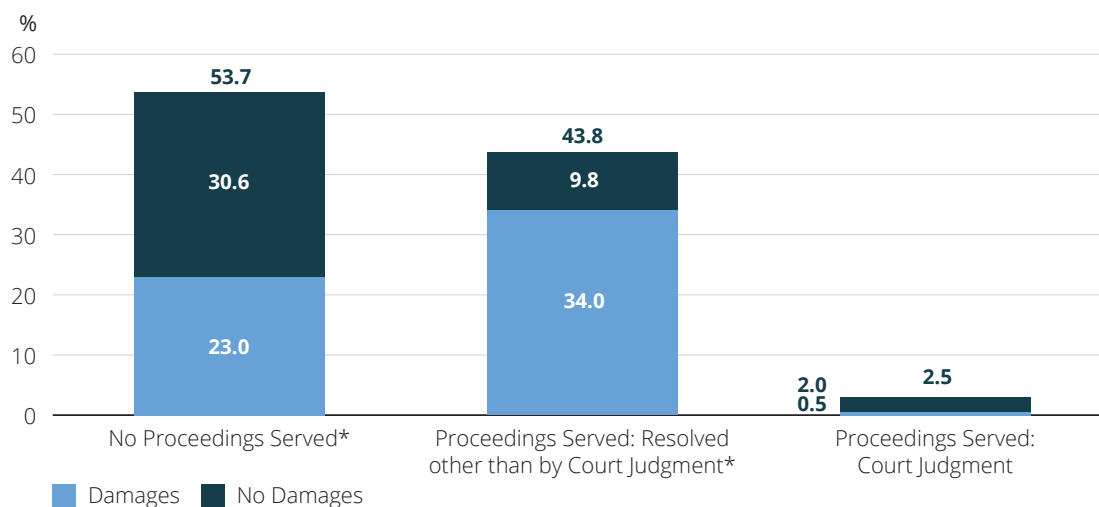
Six catastrophic injury<sup>5</sup> cases resolved in 2019 were resolved by means of Periodic Payment Orders (PPOs). PPOs transfer mortality and investment risk from the plaintiff to the State and are provided for under Part 2 of the *Civil Liability (Amendment) Act 2017*, which commenced in October 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 introduction of PPOs guarantees that catastrophically injured victims will receive annual fixed payments in respect of treatment, care, and aids and appliances, thereby removing their families' worries associated with the investment of a lump-sum that might run out prior to the plaintiff's estimated life.

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. The Department of Justice and Equality 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, with a view to exploring available legislative and administrative options and to make recommendations to the Minister for Justice and Equality on resolving the matter. The SCA will be represented on the Working Group.

### Interim Payment Orders

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 for another interim order or seek full and final settlement of the claim.

## HOW CLAIMS RESOLVED 2019



\* includes cases settled, cases discontinued or claim statute barred, and indemnity received. Figures may not total due to rounding.

<sup>5</sup> Catastrophic injuries are personal injuries of such severity that they result in a permanent disability to the person requiring the person to receive life-long care and assistance in all activities of daily living or a substantial part thereof. Catastrophic injury claims include cerebral palsy cases.

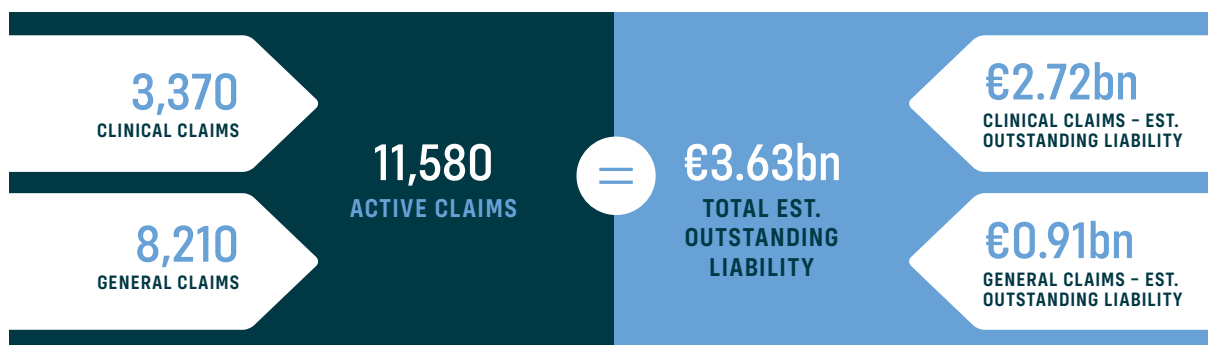
## Business Review

### STATE CLAIMS AGENCY (CONTINUED)

#### ESTIMATED OUTSTANDING LIABILITY

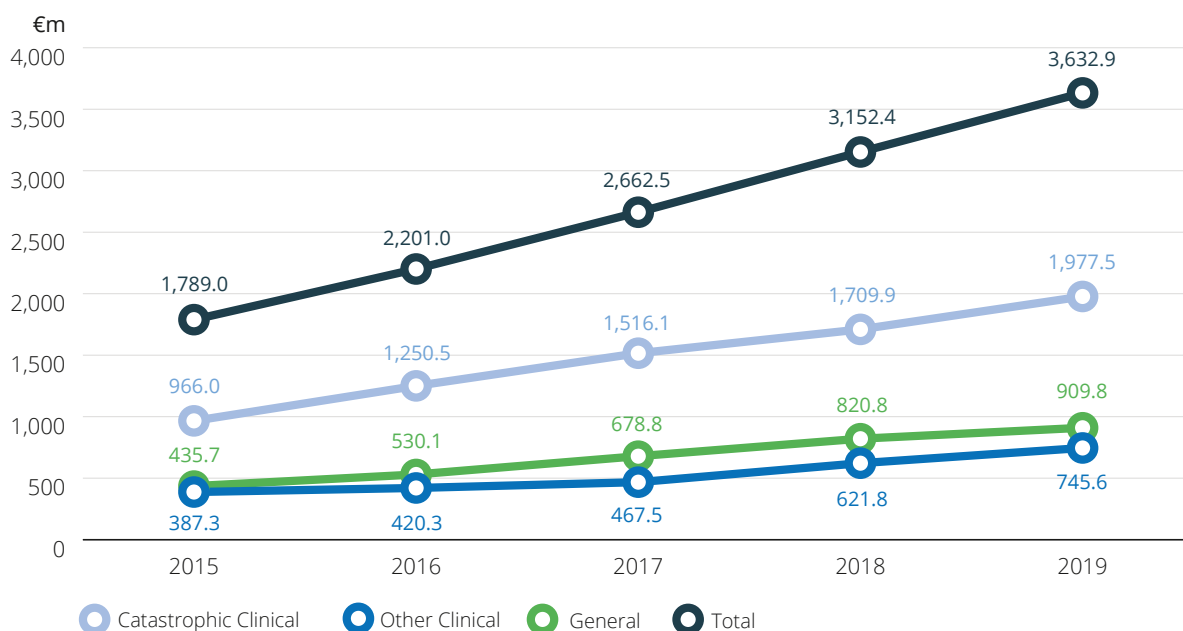
The total estimated outstanding liability associated with the SCA's claims portfolio at end-2019 was €3.63bn. Although clinical claims comprise only 29% of the overall number of active claims at end-2019, at €2.72bn they comprise 75% of the overall estimated outstanding liability.

#### CLAIMS PORTFOLIO AT END-2019



The estimated outstanding liability has risen sharply over the period since 2015. In addition to an increased number of claims, this growth is also due to the allocation of higher estimated liabilities reflecting anticipated levels of damages and costs and the effect of the reduction of the Real Rate of Return (RRR) by the Court of Appeal Decision in *Gill Russell v HSE*<sup>6</sup> on case reserves in catastrophic injury cases and cases involving a significant loss of earnings. With regard to catastrophic injuries, increased life expectancy due to improved medical care is also a factor in the increasing cost of claims.

#### ESTIMATED OUTSTANDING LIABILITY 2015-2019



Figures may not total due to rounding.

<sup>6</sup> The Court of Appeal held that the RRR in respect of the calculation of future care-related special damages should be 1%. It also held that the RRR in respect of all pecuniary losses should be 1.5%. The RRR used previously to calculate the estimated outstanding liability was 3%.

The estimated outstanding liability associated with active catastrophic injury claims has increased by 105% over the period 2015 to 2019. As noted previously, due to the high value of catastrophic injury claims, this is the principal driver of the overall estimated outstanding liability. The number of active catastrophic injury claims has increased by 42% over the period 2015 to 2019 (214 to 304). However, it should be noted that the increase in both the estimated outstanding liability and the number of active claims includes claims which have been settled on an interim payment order or PPO basis, and in respect of which the State's liability will be discharged over time. When these claims are excluded the increase in active catastrophic injury claims over the period is 33% (180 to 240). Catastrophic injury claims can take some time to resolve because of their complexity, in particular the number of independent expert reports required to be commissioned in respect of liability, causation and quantum.

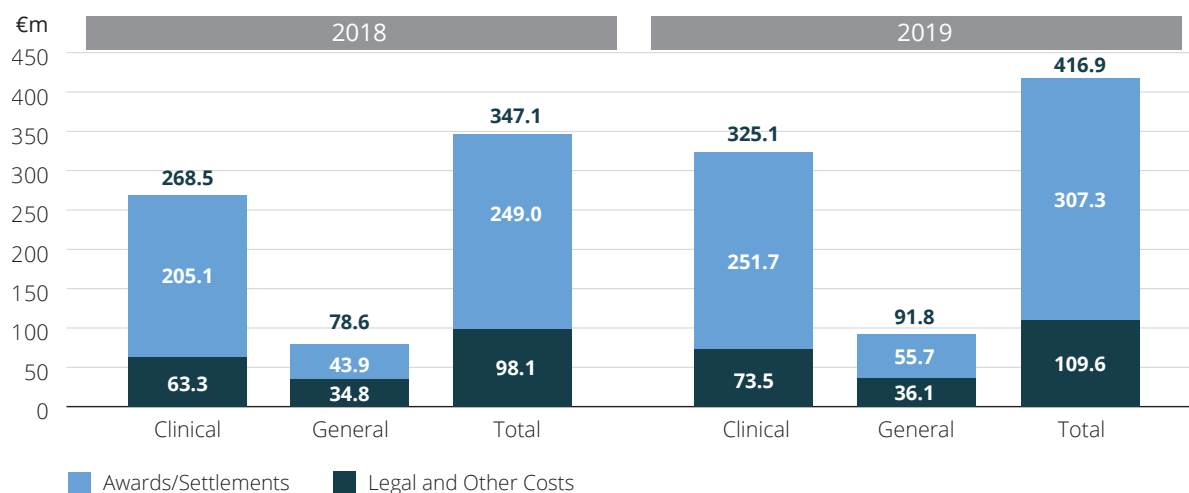
The estimated outstanding liability associated with other clinical claims has increased by 93% over the period 2015 to 2019, despite a much smaller rise in the number of active claims of 10% (from 2,786 to 3,066). This increase is primarily driven by claims in the €100,000 to €500,000 estimated liability range.

The estimated outstanding liability associated with general claims has increased by 109% over the period, while the number of active claims has increased by 56% (from 5,275 to 8,210). As previously noted, there were a number of extensions to the remit of the General Indemnity Scheme between 2014 and 2017 including higher risk areas such as the voluntary hospital sector and a number of voluntary organisations in the disability sector. The health sector (including the voluntary hospitals and other organisations more recently included in the GIS) constituted 69% of the increase in the estimated outstanding liability over the period and 54% of the increase in active claims. At end-2019, the health sector (€521.1m) comprised 57% of the total estimated outstanding liability associated with general claims.

## COST OF CLAIMS

The costs incurred in 2019 in resolving and managing ongoing active claims was €416.9m, an increase of 20% on the 2018 out-turn of €347.1m.

### COSTS OF RESOLVING AND MANAGING ONGOING ACTIVE CLAIMS



Figures may not total due to rounding.

The increase of €58.3m in awards/settlements between 2018 and 2019 is primarily due to increased lump-sum payments and conversion of interim payment orders, at the plaintiffs' request, into lump-sum settlements in catastrophic clinical claims. An increase in payments in health sector general claims is also a contributory factor.

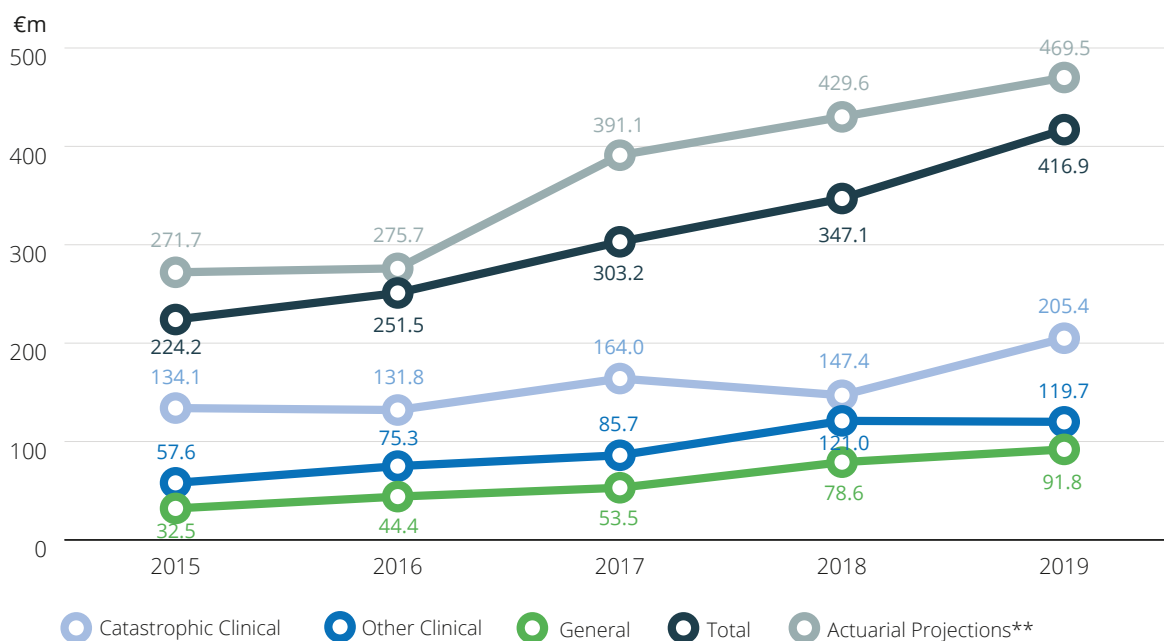
The increase of €11.5m in legal and other costs between 2018 and 2019 (including both the SCA's own costs and plaintiffs' costs) is primarily due to increased legal costs associated with clinical claims. These arise from the increase in awards/settlements in these cases, given the inter-relationship between the two, and also an increase in the number of claims concerned, combined with higher levels of professional fees.

## Business Review

### STATE CLAIMS AGENCY (CONTINUED)

More generally, similar to the estimated outstanding liability, there has been a very significant increase in the costs of resolving and managing claims over the period since 2015.

#### COSTS OF RESOLVING AND MANAGING ONGOING ACTIVE CLAIMS 2015-2019\*



\*Includes damages and legal and expert witness costs.

\*\*Each year the SCA's independent actuarial advisors make a projection of the cash amount likely to be required to settle and manage ongoing claims.

Figures may not total due to rounding.

In monetary terms, the increase in annual costs between 2015 and 2019 of €192.7m is distributed across catastrophic clinical claims (€71.3m), other clinical claims (€62.1m) and general claims (€59.3m). In percentage terms, the largest increase is general claims (182%), followed by other clinical claims (108%) and catastrophic injury claims (53%).

Payments in catastrophic injury claims do not simply comprise lump-sum payments, but also payments under interim payment orders and, since 2019, periodic payment orders. The amount paid out each year in relation to catastrophic injury payments is subject to considerable volatility depending on the number of settlements, given the very large size of individual awards/settlements, and whether awards/settlements are on a lump-sum, interim payment order or PPO basis. Conversion at the plaintiff's request, of interim payment orders to lump-sum payments has been a significant driver of costs over the five year period ranging from a low of €28.9m in 2018 to a high of €70.0m in 2019.

The independent actuarial projection for payments in respect of all general and clinical claims in 2020 is €523.3m. However, this is based on certain assumptions as to the number of catastrophic injury claims settled during the year and whether these claims are settled on a lump-sum, interim payment order or PPO basis. Should all catastrophic injury claims be settled on a lump-sum basis, the costs of claims in 2020 are likely to greatly exceed the actuarial projection. It should be stressed that the point at issue here is the cash flow of payments, rather than the overall liability in respect of catastrophic injuries, which should be broadly similar, regardless of whether they are resolved on a lump-sum, interim payment order or PPO basis.



## MASS ACTION CLAIMS

The SCA is managing a number of different mass actions against the State. Of the total 11,580 active claims at end-2019, 2,472 (21%) were in relation to mass actions. The majority of these claims (1,562) are lack of in-cell sanitation claims taken by current and former prisoners against the Irish Prison Service. The estimated outstanding liability associated with mass action claims at end-2019 was €332.7m, 9% of the total estimated outstanding liability of €3,632.9m.

A summary of developments in 2019 in relation to particular mass action claims, other than the CervicalCheck claims which are discussed separately, is set out below:

Mass Action	Active End-2019	Received 2019	Resolved 2019	Total Resolved
<b>GENERAL INDEMNITY SCHEME</b>				
<b>Historical Day School and Residential Institution Abuse</b> These are cases taken by persons who allege they were physically and/or sexually abused by persons whilst at school.	117	15	24	712
<b>Lack of In-Cell Sanitation</b> These are cases taken by prisoners (current and former) against the Irish Prison Service alleging, <i>inter alia</i> , breach of their constitutional rights due to lack of in-cell sanitation.  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 plaintiffs 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. The Supreme Court found that the plaintiff should be paid compensatory damages of €7,500. Arising from this judgment, the SCA has devised a scheme of settlement under which offers of damages and measured legal costs are being made to qualifying plaintiffs.	1,562	66	84	627
<b>Lariam</b> 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.  Of the 216 active claims at end-2019, legal proceedings had been served in 88 cases.	216	61	8	22
<b>Mother and Baby Homes</b> These claims arise from ex-residents of various mother and baby homes who are suing the Department of Education, Tusla, 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 natural rights were affected due to allegedly false birth certificates being issued. Claims also arise from mothers allegedly being given the wrong child at birth, this having been established by DNA testing with the now adult child.	45	13	0	0

## Business Review

### STATE CLAIMS AGENCY (CONTINUED)

Mass Action	Active End-2019	Received 2019	Resolved 2019	Total Resolved
<b>Pandemrix/Narcolepsy</b> These are cases taken by mostly children plaintiffs alleging the development of narcolepsy and cataplexy following vaccination against the H1N1 flu virus.  The lead case, Aoife Bennett v the Minister for Health, the HSE, GSK and the Health Products Regulatory Authority commenced in the High Court in October 2019 and was settled through mediation in November.	122	38	1	2
<b>Prison-Based TB</b> These are cases taken by current and former prisoners and prison officers alleging testing positive for and/or contracting TB. The SCA has reached an apportionment agreement with a medical defence organisation under which that organisation has agreed to contribute 60% of the plaintiffs' settlements and costs in the majority of cases.	23	0	22	76
<b>Thalidomide</b> These are cases taken by persons born with physical disabilities whose mothers had ingested the Thalidomide preparation during pregnancy. The cases, which are at discovery stage, are being case-managed by a judge of the High Court.	36	0	0	0
<b>CLINICAL INDEMNITY SCHEME</b>				
<b>Symphysiotomy</b> These are cases taken by women who had a surgical, obstetrical procedure to widen their pelvis.  A number of plaintiffs have opted not to avail of the <i>ex-gratia</i> scheme established by the Government in 2014 to compensate women who were found to have undergone the procedure and three applications have been received by the European Court of Human Rights for consideration.	35	0	0	115
<b>Transvaginal Implants</b> These cases arise in circumstances where women have had a mesh implant inserted to address urinary stress incontinence and allege personal injury as a result.	41	27	0	0

### NATIONAL SCREENING SERVICES: CERVICAL CANCER LITIGATION

Resolution of the very tragic cases that have arisen in relation to the HSE's CervicalCheck screening service remained a focus of the SCA during 2019. These claims primarily relate to the reading of smear tests by the independent laboratories providing such laboratory 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 are two defendants: the laboratories themselves regarding the reading of the smear tests, and which are contractually obliged to provide an indemnity to the State in relation to the reading of the tests, and the HSE (represented by the SCA) regarding the non-disclosure of the audit results. 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).

Of the 221 CervicalCheck cases identified by the HSE as cases where a screening test could have provided a different result, or a warning of increased risk or evidence of developing cancer, the SCA had received notification of 134 claims at end-2019. This includes 18 psychological injury claims from members of the families of the women concerned. Seven cases were settled during the year. The total number of cases settled as at end-2019 was 10.

The CervicalCheck Tribunal Act 2019 provides for the establishment of a statutory Tribunal as an alternative system to the courts for CervicalCheck claims. The formal establishment of the Tribunal has been delayed due to the COVID-19 situation. Given the uncertainty as to how long social distancing and other restrictions may last, the Tribunal has sought observations from interested parties as to how, once established, the Tribunal will be in a position to operate in an efficient manner whilst complying fully with such medical advice and safety precautions as may be in place at any given time.

The Government's *ex-gratia* compensatory scheme to deal with any non-disclosure to the original cohort of 221 women and their families was established in June 2019. An independent panel established to determine the amount to be paid by the scheme in respect of the non-disclosure of the audit results found that a sum of €20,000 should be paid in such cases.

## RISK MANAGEMENT

The SCA's risk management objective is to advise and assist State authorities on the management of litigation risks to a best practice standard, in order to enhance the safety of employees, service users/patients and other third parties and minimise the incidence of claims and the liabilities of the State. 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 develop their work programmes by 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 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 - and from claims analysis.



Córas Náisiúnta um Bainistíocht Teagmhais  
National Incident Management System

### NATIONAL INCIDENT MANAGEMENT SYSTEM

NIMS is a confidential, highly secure web-based 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 complex 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. In this regard, the SCA held the inaugural NIMS Summit in September 2019 to showcase and promote the use of NIMS. Some 300 delegates across the range of the SCA's State authorities attended the Summit including senior management, risk management/health and safety/estates and maintenance specialists, quality improvement and patient safety specialists, and claims/insurance specialists. The Summit consisted of a series of presentations, workshops, exhibition stands, helpdesks and technology hubs.

### STATE CLAIMS AGENCY (CONTINUED)

The SCA's clinical risk management programme focuses on working with risk managers and other personnel in health and social enterprises at a local level, as well as with national stakeholders, to mitigate risks and support patient safety. The programme places an emphasis on identification of trends and risks at national level and relevant risk mitigation; on health and social care enterprises and issues with the highest risk profile; and on measures which seek to bring about system-wide change. In addition to claims analysis, provision of specific risk management advice and collaboration with the HSE on clinical risk issues, the development and delivery of a suite of education and training activities in relation to patient safety and clinical risk management forms a key part of the programme.

The SCA works closely with the Department of Health and the HSE in the delivery of its clinical risk management programme. It is represented on a number of committees including the HSE Board's Safety and Quality Committee, the Independent Patient Safety Council and the National Clinical Effectiveness Committee.

#### National Neonatal Encephalopathy Action Group

Cerebral palsy claims, while low in number in absolute terms, represent a significant portion of the State's overall claims liability given the very high costs of settling such claims due to the ongoing care needs through their lives of persons who suffer brain injuries at birth. Some cases of cerebral palsy arise as a consequence of preventable birth injuries suffered during labour, although in other cases different factors may contribute to the outcome.

The SCA is seeking to reduce the risk of the occurrence of cerebral palsy through support and sponsorship of the National Neonatal Encephalopathy Action Group. Neonatal encephalopathy is the brain injury which precedes the development of cerebral palsy, and can occur as a consequence of a birth injury. The Group was established in 2019 by the SCA in partnership with the National Women and Infant's Health Programme (NWIHP) and the Department of Health. The Group is a formal partnership arrangement between key stakeholders to deal with issues related to the occurrence of neonatal encephalopathy in Irish maternity units and hospitals. Its purpose is to identify, learn from, and implement strategies to mitigate risk relating to avoidable incidents of neonatal encephalopathy.

The SCA's enterprise management programme focuses on prioritising those State authorities and hazards most likely to lead to significant claims against the State. It is developed through assessment of historical and emerging claims, potential mass actions, and risks that impact across a number of State authorities, among other factors. 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.

Risk audits are an invaluable tool in developing relationships with senior managers and risk professionals, testing their governance, structures, processes and procedures and, in some cases, reviewing specific risks. They provide valuable intelligence as to those risk elements that are not captured on NIMS or in claims received. Client specific projects are designed to assist State authorities better manage risk governance and organisation or to address a specific risk issue. Through analysis of claims received and incidents reported, the SCA follows up with State authorities where opportunities are identified to mitigate risk exposures and provides formal guidance to State authorities in respect of key indemnity and risk issues.

#### Risk Research Report 01: Slips, Trips and Falls

The provision of valuable benchmarks, trend analysis and lessons learned from incidents and claims to State authorities has always been a core part of the SCA's risk management strategy.

During 2019, the SCA conducted a deep dive into Slips, Trips and Falls (STF) incidents and claims and published *Risk Research Report 01: Slips, Trips and Falls - A 5-year review of incidents and claims across the State sector (2014-2018)*.

The Report provides State authorities with up to date information on STF incidents and claims trends happening across the State sector. The analysis provides learning to assist State authorities with the prevention of their own STF incidents and associated claims.

This is the first report of its kind to be published resulting from the richer data set and more powerful reporting tools now available on NIMS. It is intended that this Research Report will form part of a series of Risk Research Reports to be published by the SCA.

The Report is available at [www.stateclaims.ie](http://www.stateclaims.ie).



## LEGAL COSTS MANAGEMENT

The SCA's Legal Costs Unit (LCU) deals with third-party legal costs of the State and State authorities as delegated to it, however so 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 plaintiffs' 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.

In 2019, the SCA settled 830 bills of costs. The total amount claimed was €112.0m. These bills were settled for €68.2m - a reduction of 39% on the amount claimed.

## 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 liquidator<sup>7</sup> 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 High Court for disbursements from the Insurance Compensation Fund were successfully made during 2019 in respect of Setanta Insurance Company Ltd (in liquidation) authorised in Malta (€15.2m) and Enterprise Insurance Company plc (in liquidation) authorised in Gibraltar (€4.8m) and dispatched to some 780 applicants. This follows the release of €20.6m to some 1,300 applicants in respect of Setanta during 2018.

### LEGAL COST CLAIMS SETTLED 2019

	Number of Cost Claims Negotiated	Amount Claimed €m	Cost of Claims Agreed €m	Legal Cost Saving %
SCA Clinical	208	55.4	35.1	37
SCA General	123	7.1	5.0	30
Tribunals of Inquiry	19	7.7	2.8	63
Other*	480	41.7	25.4	39
<b>Total</b>	<b>830</b>	<b>112.0</b>	<b>68.2</b>	<b>39</b>

\*Primarily third-party legal costs in non-personal injury cases referred to the SCA by the Office of the Chief State Solicitor or the HSE's Office of Legal Services.  
Figures may not total due to rounding.

<sup>7</sup> 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.

**National Treasury Management Agency**

Treasury Dock, North Wall Quay,  
Dublin 1, D01 A9T8

**T** +353 1 238 4000

**W** [www.ntma.ie](http://www.ntma.ie)

 Follow us on Twitter @NTMA\_IE