



NATIONAL TREASURY MANAGEMENT AGENCY

ANNUAL REPORT & ACCOUNTS 2018



Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta
National Treasury Management Agency

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PORTFOLIO OF INVESTMENTS – ISIF



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NTMA at a Glance 2018

The NTMA is a State body which provides asset and liability management services to Government. Its purpose is to manage public assets and liabilities commercially and prudently. The NTMA operates across five separate business units:

- Funding and Debt Management
- Ireland Strategic Investment Fund
- National Development Finance Agency
- NewERA
- State Claims Agency

BUSINESS UNIT

DESCRIPTION

KEY FIGURES

Funding and Debt Management

 Read more **page 6**

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.

IRELAND'S FIRST SOVEREIGN GREEN BOND

€3bn

raised through the syndicated sale of a 12-year Irish Sovereign Green Bond.

Ireland Strategic Investment Fund

 Read more **page 16**

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 STRATEGY

5 Priority Themes

of Regional Development, Housing, Indigenous Businesses, Climate Change and sectors adversely affected by Brexit, guided by the objectives of Project Ireland 2040.

National Development Finance Agency

 Read more **page 28**

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

€1.7bn

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

NewERA

 Read more **page 34**

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

132

the number of Portfolio company assignments on which NewERA provided financial analysis and, where appropriate, recommendations to Government Ministers (2017: 81).

State Claims Agency

 Read more **page 40**

Acting as the State Claims Agency (SCA), the NTMA manages claims brought against 146 State authorities, including the State itself. It also provides risk management services, advising and assisting State authorities in minimising their claims exposures.

ESTIMATED OUTSTANDING LIABILITY

€3.15bn

the State Claims Agency was managing 10,658 active claims with an estimated outstanding liability of €3.15bn at end-2018.

BOND ISSUANCE

€17.6bn

total bond issuance during 2018. This funding had a weighted average yield of 1.08% and a weighted average maturity of 12 years.

FALLING DEBT SERVICE COSTS

€5.8bn

was the cash interest cost of the National Debt in 2018, a decline of almost 5% compared to 2017 and over 20% on the 2014 peak.

IRELAND APPLE ESCROW FUND

>€14bn

transferred to the Escrow Fund and invested through the appointed investment managers in relation to the recovery process from Apple of the alleged State aid.

INVESTING IN IRELAND

€773m

committed during 2018 across 21 investments, bringing the total ISIF commitment to €4.1bn.

CO-INVESTMENT

€11.6bn

the total committed to Ireland including co-investment by private sector partners – a multiple of 2.8 times the ISIF commitment.

INVESTMENT RETURN AND ECONOMIC IMPACT

+1.9% p.a.

annualised investment gain since inception, adding €584m to the total value of the Fund and with ISIF capital supporting 2,204 Irish based companies/projects and, directly and indirectly, 32,000 jobs.

PROVIDING FINANCIAL ADVICE

€6bn

providing financial advice on infrastructure projects, including PPPs and non-PPP procured projects, in areas including housing, transport and education with a capital value of €6bn.

SOCIAL HOUSING PPP

1,500

new social homes divided into three bundles. Social Housing PPP Bundle 1 (534 homes) selected a Preferred Tenderer in Q3 2018 and Financial Close was achieved in March 2019.

DIVIDENDS

€324m

in combined dividends were received by the Exchequer from bodies within NewERA's remit in 2017/18¹.

¹ The bodies within NewERA's remit have varied financial reporting schedules that span two calendar years.

ADVICE – CAPITAL EXPENDITURE

€3.2bn

the value of capital expenditure requests from bodies within NewERA's remit on which it provided financial analysis and recommendations in 2018 (2017: €2.1bn).

ADVICE – DEBT FINANCING

€2.7bn

the value of debt financing-related requests from bodies within NewERA's remit on which it provided financial analysis and recommendations in 2018 (2017: €1.9bn).

SETTLING CLAIMS

54%

over half of cases resolved by the State Claims Agency in 2018 were resolved without court proceedings being served.

REDUCING LEGAL COSTS


€36.9m

the State Claims Agency settled bills of costs received from third parties for €53.7m – a saving of 41% or €36.9m on the amount claimed.



CHAIRPERSON'S STATEMENT

It was my great honour to be appointed Chairperson of the NTMA by the Minister for Finance and Public Expenditure and Reform with effect from January 1 2019.



I am the second person to hold the position since the Agency's corporate governance arrangements were enhanced with the establishment of the NTMA Board in 2014 and I thank my predecessor, Willie Walsh, for the leadership, expertise and insight he demonstrated throughout his term.

In the four years I spent on the NTMA Board prior to becoming Chairperson, it has always been clear to me that the Agency is an organisation that creates significant value for the State and its citizens. It does this by bringing great care, skill and expertise to the challenge of delivering on the wide range of specialist mandates entrusted to it by the Government.

During my term as Chairperson I hope to maintain and further enhance the NTMA's strong reputation for delivering effectively. My fellow Board members and I will do all we can to ensure that the Agency remains a focused, efficient and effective vehicle for managing assets and liabilities on behalf of the State in a commercial and prudent manner.

The NTMA's work in 2018 offered many examples of successfully delivering on its mandates.

The **Funding and Debt Management** unit continued what has been a very effective strategy of locking in the benefits of the current low interest rate environment for the long term. In 2018, €17.6bn of long-term debt with an average maturity of 12 years was issued at an average yield of 1.08%. Our strategy has delivered a smoother, more stable schedule of future redemptions.



The **Ireland Strategic Investment Fund** continued its rigorous approach to investing on a commercial basis in support of economic activity and employment in Ireland. In a year when global markets demonstrated volatility with declines across almost all major asset classes, the Fund's conservative investment strategy of protecting State capital delivered a resilient investment performance.

The **State Claims Agency (SCA)** continued the complex work of managing claims against the State and enhancing risk management practices throughout State organisations to reduce the incidence of future claims. By the end of 2018 the estimated outstanding liability from claims under management rose to €3.15bn across the SCA's remit. The SCA Strategy Committee, which includes four external members, with extensive expertise at senior level in clinical practice, law, risk management and the public service, continues to provide valuable advice and guidance to both the Board and NTMA management on strategic and policy issues for this unit, helping to inform the SCA's approach as the demands of its mandate continue to evolve.

The **National Development Finance Agency** continued to provide specialist procurement and financial advisory skills to State bodies on major infrastructure programmes that will help to deliver high-quality public buildings, educational facilities, healthcare projects and social housing in a manner that represents value for money for the State.

NewERA continued to perform in its role as a valuable centre of corporate finance expertise for the State by advising on an increasing number of assignments to relevant Government Ministers and Departments in relation to major commercial State bodies.

The publication of our 2018 Annual Report offers both an opportunity to reflect on the work the NTMA has done and an occasion to consider the challenges of the future and how well the Agency is prepared to meet these challenges.

As volatility increases in financial markets and investors are concerned by the uncertainty created by Brexit, the Board continues to look to mitigate risk and support management in continuing to create long-term value for the State.

I thank my fellow Board members, together with the members of the committees that help to inform the Board's work, for the contribution they make to the Agency's performance.

Finally, on behalf of the Board, I thank the management team, headed by the Chief Executive, Conor O'Kelly, and staff at every level of the organisation, for the hard work, commitment and professionalism that they bring to their work at the NTMA.

MAEVE CARTON

Chairperson | 7 May 2019



CHIEF EXECUTIVE'S REVIEW

2018 was a torrid year for financial markets – and a historic one. 90% of all asset classes finished in negative territory – the worst year for broad asset returns since 1901.



While this made the environment difficult for investors, the volatility in global equity markets was a significant factor in keeping monetary policy loose and interest rates low.

That was good news in light of the significant amount of issuance the NTMA had scheduled for the year. We issued a total of €17.6bn in 2018 at an average yield of 1.08%.

Over the four-year period 2015-2018, we issued over €56bn of long-term debt with an average maturity of over 13.5 years. This means that almost 50% of Ireland's total outstanding marketable debt has been refinanced in the past four years, taking advantage of these very low rates. The interest bill on the National Debt in 2018 was €5.8bn, down from €6.1bn in 2017. We expect the interest bill to fall below €5bn next year, well over one third below its 2014 peak level of €7.5bn.

In addition, the strategy adopted by the debt management team has led to a smoothening and lengthening in Ireland's maturity profile which will significantly reduce future funding risks. We continue to advocate a prudent approach to Ireland's funding requirements. As Ireland is still a highly indebted country which depends largely on foreign investors to fund our borrowing needs we have put in place what we describe as a 'permanent contingency plan'. This means that, irrespective of events such as Brexit, the ending of QE, or uncertainty in European debt markets we can be fully confident of our ability to fund our borrowing requirements effectively and efficiently.

In October 2018 we issued Ireland's first Sovereign Green Bond. In doing so we became just the fourth EU sovereign issuer to use this instrument, which is designed to allow Ireland to borrow with the intention that amounts raised are used for projects that are environmentally sustainable.

This was a landmark transaction that raised €3bn but, just as importantly, helps diversify and broaden our investor base further mitigating future funding risks.

The support we received from the Minister for Finance and Public Expenditure and Reform and his Departmental colleagues was crucial in highlighting the Government's strong backing for this instrument and contributed significantly to the success of the transaction. We are very grateful for this support.

A separate environmental related development was the enactment of the Fossil Fuel Divestment Act, last December, which was followed by ISIF's divestment from 38 global fossil fuel undertakings, making the Fund one of the first sovereign wealth funds globally to implement a fossil fuel divestment strategy.

ISIF and the wider NTMA continue to show leadership in the environmental sector in other ways. ISIF is actively looking for more projects and opportunities to build on its existing exposure to investments that are related to addressing climate change, which includes a range of renewable energy investments. Through our NewERA unit, the NTMA is actively involved in providing financial and commercial advice to Government Ministers and Departments in relation to a number of commercial State bodies that have a significant role to play in contributing to the transition to a low-carbon and climate resilient society.

We continue to contribute to the long-term development of the Irish economy through the ISIF, following another year of significant investment in 2018 in projects and businesses that support economic activity and employment in Ireland while generating a commercial return.

During 2018, ISIF committed a further €773m, attracted additional private sector co-investment of €1.8bn and generated significant economic impact. That brings the total ISIF capital committed in Ireland to €4.1bn, catalysing additional private sector co-investment in ISIF-backed investments in Ireland of €7.5bn.

The volatility in global equity markets highlighted the benefits of the Fund's conservative strategy for investing in global assets as it sought to protect capital. This resulted in the Fund recording an overall investment return of -1.0% during 2018, with a positive return in its Irish Portfolio partially offsetting a decline in its Global Portfolio. The Fund has recorded a positive annual return of +1.9% since inception adding €584m in investment returns.

The Ireland Strategic Investment Fund was recently given a new focus by the Minister for Finance and Public Expenditure and Reform which will see it concentrate future investments in five priority areas for the Irish economy: Regional Development, Housing, Indigenous Businesses, Climate Change and sectors affected by Brexit.

Elsewhere within the NTMA, 2018 was a year in which the complexity of the State Claims Agency's work was highlighted, as it sought to expedite the resolution of cases relating to the National Cancer Screening Services taken by women who have been diagnosed with cervical cancer. In carrying out its statutory mandate the SCA places a high priority on managing these cases in a sensitive manner and on treating the people affected, and their families, with dignity and compassion.

2018 also saw the work of the National Development Finance Agency (NDFA) achieve prominence as the robustness of its PPP contracts was tested by the liquidation of a key counterparty to the PPP Schools Bundle 5 project. It is a testament to the quality of the NDFA's work and the PPP financing model that this project is being delivered while ensuring that the State and the taxpayer have been fully protected from financial risk.

Finally, I would like to acknowledge the NTMA's role in putting in place the necessary arrangements, working closely with the Department of Finance, to establish and manage the escrow fund used in relation to the recovery process of the alleged State aid from Apple. This was complex, critical work on behalf of the State and I was pleased that the Agency was in a position to perform this role using its existing skill base and infrastructure, avoiding the substantial costs that would have arisen if alternative avenues involving the private sector had been used.

To conclude, I thank the Chairperson, the Board and committee members for the hugely valuable 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 | 7 May 2019



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 and in providing related risk management services. As the SCA, the NTMA also manages claims for legal costs against the State and State authorities, arising from all categories of claims.



CLAIMS MANAGEMENT

While acting in the best interest of the State in matters of personal injury and property damage litigation, to act fairly and ethically in dealing with people who have suffered injuries and/or damage, and their families, and who take legal actions against the State.



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 and patients (public healthcare has approximately seven million contacts with members of the public per annum). It also 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.

STATE CLAIMS AGENCY (CONTINUED)

CLAIMS MANAGEMENT

Claims Portfolio

The SCA was managing 10,658 active claims at end-2018, an increase of 7% on active claims at end-2017.

The SCA received 3,319 new claims and resolved 2,623 cases in 2018. The ratio of claims resolved to claims received in 2018 was 0.79 compared with a ratio of 0.69 in 2017. As the claims portfolio matures, the SCA's objective is to work towards a position where the number of claims resolved substantially equals the number of claims received over the medium term: mass actions, delegations of new classes of claims to the SCA and the circumstances of particular cases will inevitably lead to fluctuations on a year-to-year basis.

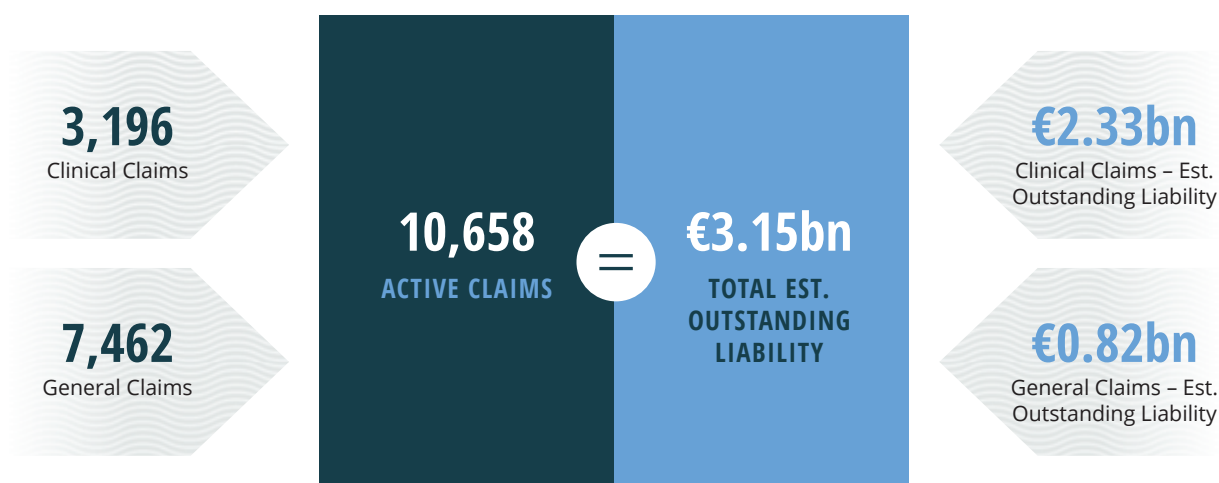
The total estimated outstanding liability at end-2018 of €3.15bn represents an 18% increase on the equivalent end-2017 figure of €2.66bn. As well as the increase in the number of claims, this growth is also due to the allocation of higher reserves for damages and costs. These higher reserves reflect, in the main, an increased level of court and Injuries Board awards, and the effect of the reduction of the Real Rate of Return (RRR) by the Court of Appeal Decision in *Gill Russell v HSE*⁵ on new case reserves in catastrophic injury cases and cases involving a significant loss of earnings.

Although clinical claims comprise only 30% of the overall number of active claims at end-2018, they comprise 74% of the overall estimated outstanding liability. This is primarily due to the high estimated liability associated with maternity services claims, particularly those arising from the high cost of settling catastrophic brain-injury infant cases.

PERIODIC PAYMENT ORDERS

The SCA is strongly supportive of Periodic Payment Orders (PPOs) which transfer mortality and investment risk from the plaintiff to the State. The commencement of Part 2 of the *Civil Liability (Amendment) Act 2017* in October 2018, which provides for the introduction of PPOs, marks a significant development in the statutory framework for compensation of persons who have suffered catastrophic injuries. It 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 the investment risk associated with a lump-sum payment.

CLAIMS PORTFOLIO AT END-2018



⁵ 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%.

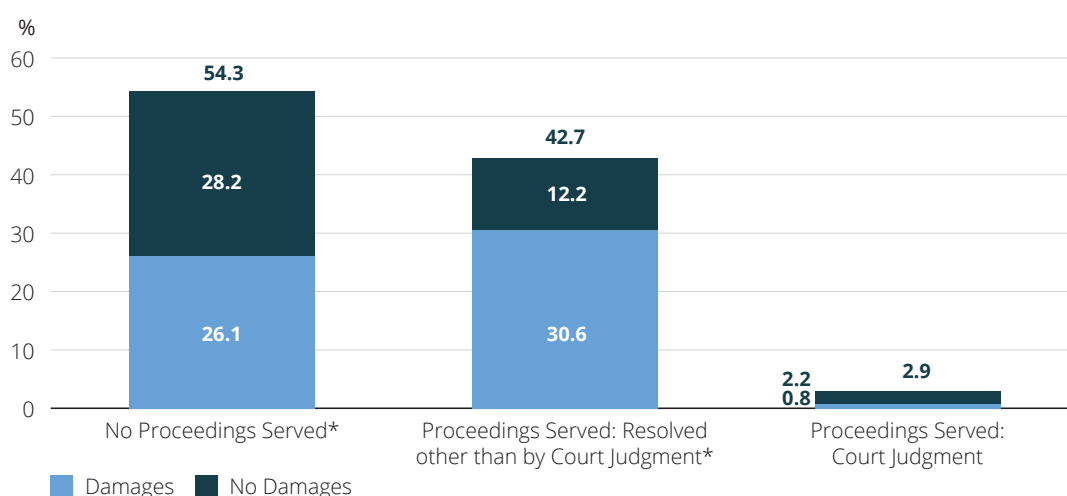
Claims Resolution

The SCA's claims management objective is, while acting in the best interest of the State in matters of personal injury and property damage litigation, to act fairly and ethically in dealing with people who have suffered injuries and/or damage, and their families, and who take legal actions against the State. 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 2018 were resolved without court proceedings being served. The SCA paid damages in 57% of all cases resolved in 2018.

CLAIMS RESOLVED 2018



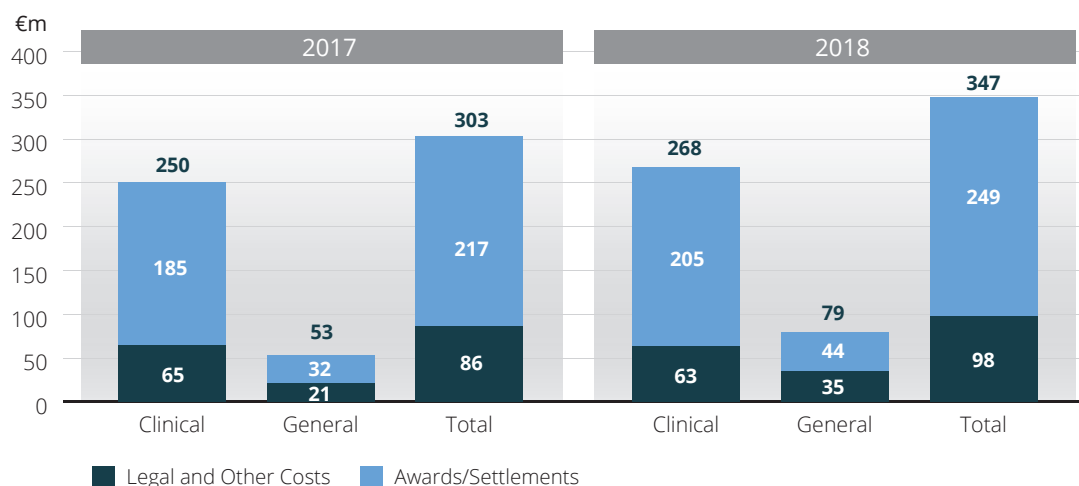
*includes cases settled, cases discontinued or claim statute barred, and indemnity received.

Figures may not total due to rounding.

Costs of Claims

The costs incurred in 2018 in resolving and managing ongoing active claims was €347m, an increase of 15% on the 2017 out-turn of €303m.

COSTS OF RESOLVING AND MANAGING ONGOING ACTIVE CLAIMS



Figures may not total due to rounding.

STATE CLAIMS AGENCY (CONTINUED)

ATTRIBUTION OF INCREASE IN COSTS 2017 TO 2018

Clinical Indemnity Scheme	2017 €m	2018 €m	Change €m
Awards/Settlements			
<i>Payments under Interim Payment Orders</i>	25.2	34.4	9.2
<i>Conversion of Interim Payment Orders to Lump Sums</i>	19.4	25.5	6.1
<i>Gill Russell Uplifts</i>	24.6	8.0	-16.6
<i>Other Clinical Claims</i>	115.5	137.2	21.6
Total Awards/Settlements	184.8	205.1	20.4
Legal and Other Costs	65.0	63.3	-1.7
Total	249.8	268.5	18.7

General Indemnity Scheme	2017 €m	2018 €m	Change €m
Awards/Settlements			
<i>Mass Action Claims</i>	0.9	0.8	-0.1
<i>Other Claims</i>	31.2	43.1	11.9
Total Awards/Settlements	32.1	43.9	11.8
Legal and Other Costs	21.4	34.8	13.4
Total	53.5	78.6	25.2

Figures may not total due to rounding.

Clinical Indemnity Scheme payments are mainly driven by a relatively small number of catastrophic injury claims. The increasing cost of these claims reflects an increase in the number of claims as the scheme matures (there can be long timeframes for reporting of catastrophic injury claims, especially cerebral palsy claims) and the impact of claims inflation. Payments on claims that previously settled by interim Payment Orders but were converted to lump-sums at the request of the plaintiff were also a factor in the year-on-year increase, while there was a fall in the value of uplifts required to be paid on claims which had previously settled on the basis of a higher RRR prior to the Gill Russell decision.

The growth in payments on the General Indemnity Scheme primarily reflects increasing payments in respect of the healthcare part of the scheme, due to its being at an earlier stage of its development cycle relative to the overall scheme. Payments in respect of the non-healthcare part of the scheme also continue to grow, but at a lower rate.

Full costs of claims resolved in 2018 compared with 2017 are set out in the tables below. It should be noted that claims are not recorded as resolved until all costs, including legal costs, have been agreed. The cost of claims in any given year, therefore, includes costs incurred over a number of years and is not equivalent to costs incurred in resolving and managing ongoing active claims during 2017 or 2018.

COSTS OF CLINICAL CLAIMS RESOLVED

	2017 €	2018 €	Change %
Awards/Settlements	87,984,249	179,906,664	104
Legal Fees – Plaintiffs	28,007,666	41,197,915	47
Legal Fees – SCA	15,634,410	21,725,989	39
Other	2,887,984	4,068,869	41
Total	134,514,309	246,899,438	84

AWARDS/SETTLEMENTS FOR CLINICAL CLAIMS RESOLVED BY VALUE BAND

2017					
	Up to €25,000	€25,000 to €250,000	€250,000 to €1,000,000	Over €1,000,000	Total
Number of Claims	54	231	42	11	338
Awards/Settlements	€686,628	€20,750,281	€20,124,164	€46,423,176	€87,984,249
2018					
	Up to €25,000	€25,000 to €250,000	€250,000 to €1,000,000	Over €1,000,000	Total
Number of Claims	45	272	78	24	419
Awards/Settlements	€656,424	€22,327,627	€34,916,336	€122,006,277	€179,906,664

ATTRIBUTION OF INCREASE IN AWARDS/SETTLEMENTS FOR CLINICAL CLAIMS RESOLVED: 2017 TO 2018

	2017 €m	2018 €m	Change €m
Gill Russell Uplift or Conversion from Interim Payment Order to Lump-Sum	27	65	38
Net Awards/Settlements over €1m*	20	56	37
Other Awards/Settlements	42	59	17
Total	88	180	92

* Excluding Gill Russell Uplift or Conversion from Interim Payment Order to Lump-Sum
Figures may not total due to rounding.

There was a significant increase in the number of very high-value catastrophic injury cases resolved in 2018 compared with 2017. However, it should be noted that a number of these settlements were in respect of the final resolution of claims, which had previously settled on the basis of a higher RRR prior to the Gill Russell decision, where an uplift was required to be paid or were in respect of cases which previously settled by interim Payment Orders converting to lump-sum settlements.

COSTS OF GENERAL CLAIMS RESOLVED

	2017 €	2018 €	Change %
General Claims			
Awards/Settlements	24,322,085	36,743,808	51
Legal Fees – Plaintiffs	8,914,665	14,213,665	59
Legal Fees – SCA	4,704,704	7,135,855	52
Other	1,296,392	2,139,151	65
Total	39,237,846	60,232,479	54

AWARDS/SETTLEMENTS FOR GENERAL CLAIMS RESOLVED BY VALUE BAND

2017					
	Up to €25,000	€25,000 to €250,000	€250,000 to €1,000,000	Over €1,000,000	Total
Number of Claims	619	285	8	0	912
Awards/Settlements	€4,501,424	€17,001,274	€2,819,386	€0	€24,322,085
2018					
	Up to €25,000	€25,000 to €250,000	€250,000 to €1,000,000	Over €1,000,000	Total
Number of Claims	646	384	17	1	1,048
Awards/Settlements	€4,558,478	€25,020,330	€6,162,000	€1,003,000	€36,743,808

STATE CLAIMS AGENCY (CONTINUED)

The increase in awards/settlements in respect of general claims resolved in 2018 compared with 2017 is due to an increase in the number of medium and high-value claims resolved, principally in respect of the healthcare part of the scheme due to its being at an earlier stage of its development cycle relative to the overall scheme.

National Screening Services: Cervical Cancer Litigation

During 2018, very tragic cases arose in relation to the HSE's CervicalCheck screening service. The resultant claims 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, which are contractually obliged to provide an indemnity to the State in the case of misreading; and the HSE (represented by the SCA) regarding the non-disclosure of the audit results.

The SCA is committed to the expeditious resolution of cervical cancer cases in a sensitive manner, working co-operatively with the co-defendant laboratories, utilising mediation whenever possible and placing a high priority on treating those who have made claims and their families with dignity and compassion.

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 90 claims at end-2018. Three cases were settled during the year, one of which was finalised, that is costs have been agreed and paid.

Arising from Mr. Justice Meenan's report on an alternative system for dealing with claims arising from CervicalCheck, the Government has announced it will establish a Tribunal to hear and determine claims arising from CervicalCheck. The Tribunal will adopt pre-hearing protocols and case management procedures specifically to deal efficiently and effectively with claims arising. Hearings will be in private and a right of appeal to the High Court will remain. An ex-gratia compensatory scheme will also be established to deal with non-disclosure by the State to the original cohort of 221 women and their families.

Mass Actions

The SCA is managing a number of different mass actions against the State. Of the total 10,658 active claims at end-2018, 2,267 (21%) were in relation to mass actions. The majority of these claims (1,580) are lack of in-cell sanitation claims taken by current and former prisoners against the Irish Prison Service.

A summary of developments in 2018 in relation to particular mass action claims, other than National Screening Services: Cervical Cancer Litigation discussed above, is set out below:

Mass Action	Active End-2018	Received 2018	Resolved 2018
GENERAL INDEMNITY SCHEME			
Lack of In-Cell Sanitation 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 lead case, <i>G.S. v The Governor of Mountjoy Prison & Others</i> , was originally heard in the High Court. That Court 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. Subsequently, the plaintiff appealed the High Court's judgment not to award him damages and costs. The Supreme Court heard the Appeal in December 2018 and reserved its judgment. This judgment will have a very significant bearing on the remaining claims.	1,580	21	77
Lariam These are cases taken by current and former members of the Defence Forces, alleging 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. The first Lariam-related claim went to trial in the High Court in November 2017. A settlement was made in view of the particular circumstances which pertained in this case. This, in turn, has led to a significant increase in new Lariam-related claims.	163	119	5

Mass Action	Active End-2018	Received 2018	Resolved 2018
Mother and Baby Homes These claims are from ex-residents of various mother and baby homes who are suing the Department of Education/Tusla/HSE as a result of their time spent in institutional care settings over various periods from the 1940s-80s. They allege physical, verbal and emotional abuse and breaches of their constitutional rights pertaining to adoption or fostering. They also allege that their natural rights were affected due to false birth certificates being issued.	32	31	0
Pandemrix/Narcolepsy These are cases taken by mostly infant plaintiffs alleging the development of narcolepsy and cataplexy following vaccination against the H1N1 flu virus. The cases, which are at discovery stage, are being case-managed by a judge of the High Court.	85	15	0
Prison-Based TB These are cases taken by current and former prisoners and prison officers and some of their families 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.	45	3	21
Shine Abuse These claims are from persons who allege they were sexually abused by Michael Shine (Consultant Surgeon at Our Lady of Lourdes Hospital, Drogheda, Co. Louth from the 1960s up to 1995). The SCA has reached agreement, in principle, with its co-defendant (Allianz/Medical Missionaries of Mary), whereby they will fully indemnify the State in relation to all Shine abuse claims, present and future, in consideration for which the State will bear its own legal costs incurred to date.	1	19	110
Thalidomide These are cases taken by persons born with physical disabilities whose mothers had ingested the Thalidomide preparation during pregnancy. The cases are being managed by a judge of the High Court and are at exchange of discovery stage.	36	2	0
CLINICAL INDEMNITY SCHEME			
Symphysiotomy These are cases taken by women who had a surgical, obstetrical procedure to widen their pelvis during childbirth between 1945 and 1982. The women's claims allege that the symphysiotomies were wrongfully carried out and/or were carried out without proper consent and have led to long-term side effects. In 2014, the Government established a Scheme to compensate patients who had undergone surgical symphysiotomy. The remaining cases relate to claimants who elected not to avail of the Scheme.	34	0	1

STATE CLAIMS AGENCY (CONTINUED)

INSURANCE COMPENSATION FUND (ICF)

The *Insurance Amendment Act 2018* sets out the separate roles of the SCA and the Central Bank of Ireland (CBI) in the event of an insurance company liquidation or receivership.

The Act provides that in the event of the liquidation of an insurance company authorised in Ireland requiring a draw on the ICF, the SCA will make an application to the High Court, on behalf of the liquidator, to approve payments from the ICF, on completion of a due diligence examination of the relevant claims. On High Court approval, the CBI, as administrator of the ICF, will pay the specified amount to the liquidator for distribution to the claimants.

In the event of the liquidation of an insurance company authorised in an EU Member State other than Ireland requiring a draw on the ICF, the SCA will also make an application to the High Court, on behalf of the liquidator, to approve payments from the ICF, on completion of a due diligence examination of the relevant claims. On High Court approval, the CBI will pay the specified amount to the SCA for distribution to the claimants.

The Act provides for an amendment to Part 2 of the *NTMA (Amendment) Act, 2000*, in order to give the SCA the additional functions described above.

The SCA made its first application to the High Court in respect of the release of monies from the ICF in November 2018. The application sought the release of €20.6m arising from the liquidation of Setanta Insurance Company, authorised in Malta. Following the making of the relevant High Court order, these monies were received by the SCA from the ICF and dispatched to some 1,300 claimants.

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 a Taxing Master, subject to a right of appeal to the High Court.

In 2018, the SCA settled 556 bills of costs. The total amount claimed was €90.6m. These bills were settled for €53.7m – a reduction of 41% on the amount claimed. A notable feature was the particularly high reductions achieved on the high-value bills of costs arising from the Mahon, Moriarty and Smithwick Tribunals (58%).

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.

The SCA implements its risk mandate through two specialist risk units: the **Clinical Risk Unit** and the **Enterprise Risk Unit**. Clinical risk professionals are drawn from the healthcare sector, being specialists in areas such as medicine, nursing, midwifery, pharmacy and physiotherapy.

Enterprise risk professionals are drawn from science or engineering backgrounds and have a range of expertise in areas such as occupational health and safety, public safety, corporate governance, training and education, occupational hygiene, fire safety, insurance and indemnity.

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. The accurate reporting of incidents to NIMS is critical to the SCA's risk management function and the SCA

LEGAL COST MANAGEMENT

The Legal Costs Unit (LCU) was established within the SCA, initially to deal with third-party costs arising from certain Tribunals of Inquiry (the Mahon, Moriarty, Morris and Smithwick Tribunals). Its remit has since been extended to include 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

LEGAL COST CLAIMS SETTLED 2018

	Number of Cost Claims Negotiated	Amount Claimed €m	Cost of Claims Agreed €m	Legal Cost Saving %
SCA Clinical	187	47.4	29.8	37
SCA General	138	9.3	6.2	34
Tribunals of Inquiry	38	13.3	5.6	58
Other	193	20.6	12.0	42
Total	556	90.6	53.7	41

Figures may not total due to rounding.

works actively with State authorities on an ongoing basis to improve the level and quality of reporting.

The SCA's clinical risk management programme focuses on collaboration with risk managers and other personnel in health and social care 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.

OPEN DISCLOSURE

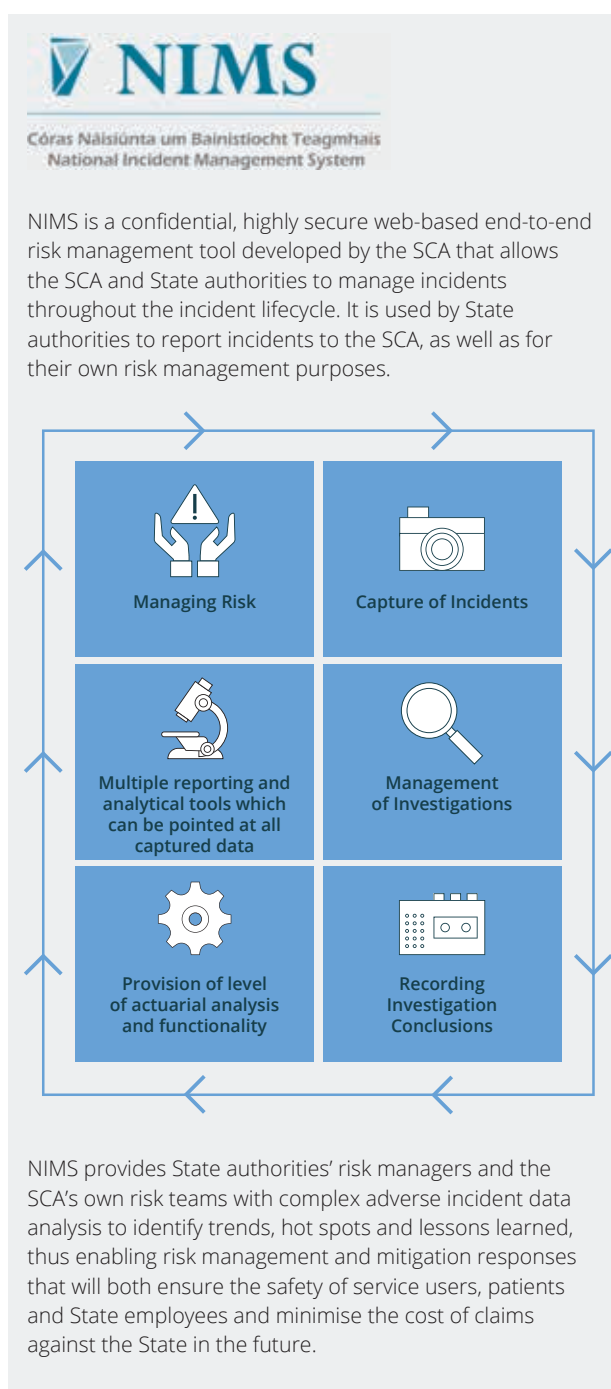
The SCA has, since 2010, collaborated with the HSE in developing and piloting Open Disclosure. Open Disclosure represents an open, consistent approach to communicating with patients when things go wrong in healthcare. This includes expressing regret for what has happened, keeping the patient informed, and providing feedback on investigations and the steps taken to prevent a recurrence of the adverse event.

The Scoping Inquiry into the CervicalCheck Screening Programme (the "Sccally Report"), published in September 2018, made a number of recommendations with regard to Open Disclosure. The *Civil Liability (Amendment) Act 2017* was commenced in September 2018 and provides legal protection for clinicians undertaking Open Disclosure while the Patient Safety Bill will, when enacted, provide a legislative framework for mandatory Open Disclosure of certain patient safety incidents.

The SCA assisted the HSE in the process of establishing a National Office for Open Disclosure and in the development of an e-learning module. It accepted invitations from the HSE to participate in a number of groups addressing Open Disclosure and the recommendations of the Scally report, including a group developing a Communications and Open Disclosure training programme for doctors. The SCA has now wound down its involvement in the operational aspects of Open Disclosure and, in future, its involvement will be in the oversight of Open Disclosure at a strategic level.

The SCA's enterprise management programme focuses on prioritising those State authorities and hazards most likely to lead to significant claims against the State and is centred on a "follow the money" principle. 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, specific operational activities and key risks.

Risk audits are an important 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 or to address a specific risk issue. Through analysis of key risks and risk queries received, 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.



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