

# State Claims Agency

*“PTSD Litigation Risk:  
The Need for Policies, Procedures and Systems”*

Presentation by :  
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## Content:

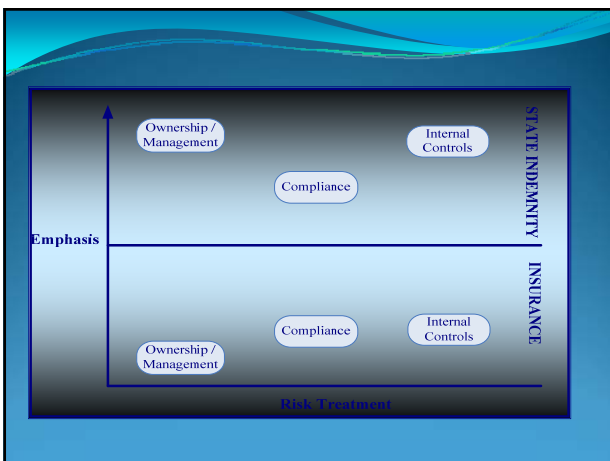
- State Claims Agency (SCA)
- Review of statutory and civil law – lessons learned
- An analysis of PTSD Claims taken against the State
- As assessment of the State’s PTSD Litigation Risk
- Systems for risk prevention and control

## Insurance

- Why buy insurance....
  - Organisations may be too small to absorb losses
  - Do not have claims management skill set
- Legal requirement – third party motor
- Cost of insurance based on...
  - Risk being covered
  - Administration
  - Profit

## State Indemnity

- When a state indemnity applies a commitment is made to protect against losses should the state be negligent;
- State indemnity is equivalent to self-insurance - not unique to state;
- Outlined in Public Financial Procedures;
- Risks are uninsurable in some cases;
- State can absorb losses;
- Cost effective.



## Background to SCA

- Concept was originally mooted in the mid 1990’s;
- National Treasury Management Agency (Amendment) Act 2000;
- NTMA known as the State Claims Agency (SCA);
- Management of delegated personal injury and 3<sup>rd</sup> party property damage claims:
  - Employers liability (EL)
  - Public liability (incl. alleged medical negligence) (PL)
  - 3<sup>rd</sup> Party Property Damage (PD).

## State Authorities

- The State, Ministers e.g. Agriculture, Defence, Education etc;
- Health Service Executive (including Clinical Negligence);
- Boards of management of Community and Comprehensive schools;
- Attorney General;
- Bodies listed in schedule to the Act e.g. OPW;
- Garda Commissioner, Prison Governors ;
- Since 2005 hearing loss and child abuse;
- Since 2010/11 bullying and harassment;
- Additional torts and bodies.

## SCA Mandate

### Management of Claims

- To manage claims so as to ensure that the State's liability in relation to such claims is contained at the lowest achievable level.

### Risk Management

- Advise and assist State authorities on measures to be taken to prevent the occurrence, or to reduce the incidence, of claims.
- Ensure that State authorities are fully aware of the measures necessary to address any risks highlighted by their claims' records and by risk evaluations /audits.

## Main finding of SCA PTSD Review

*'As a litigation risk, PTSD – type claims resulting from critical incidents is controllable. Pre and post event interventions such as those provided through Critical Incident Stress Management (CISM) programmes can be used to prevent and successfully defend PTSD –type personal injury claims'*

## Statute Law

- Safety, Health and Welfare at Work Act, 2005:
  - Psychosocial risk;
  - Employers must identify, assess, controls, record;
  - Provide information, training and supervision.

## Civil Law

- Courts lagging the advancements in the fields of psychiatry and psychology;
- Use the phrase 'nervous shock' or 'psychiatric injury';
- Scottish Law Commission '*Report on damages for psychiatric injury*';
- UK Court of Appeal '*The 16 Hatton Guidelines*';
- Reports deal with non-PTSD cases but looked at factors necessary for awards for psychiatric or psychological injury.

## Learning from Scottish Report

- For a claimant to be successful he/she must satisfy four criteria:
  - *Establish a duty of care;*
  - *Provide evidence that they have suffered a psychiatric injury as a result of a shock;*
  - *Provide evidence that the event(s) occurred during the course of their employment;*
  - *Prove that the event(s) leading to the psychiatric injury were foreseeable.*

## The key Hatton Guidelines

1. Ordinary principles of employers liability apply to claims for psychiatric illness.
2. Foreseeable – injury to health attributable to stress at work.
3. Foreseeability depends on what employer ought to know or reasonably know about an individual employee.
4. No occupations should be regarded as intrinsically dangerous.
5. Guideline on factors for assessment.

## And more Hatton

Additional Six Guidelines:

6. Employer entitled to take employee at face value.
7. Signs of work related stress must be plain to trigger action.
8. Reasonable action only is required.
9. An employer who offers a confidential service, with referral to appropriate counselling or treatment services is unlikely to be found in breach of duty.
10. If show steps employer should have taken will identify breach or otherwise of duty of care.

## What about Irish Law?

- McHugh vs. Minister for Defence (1999) – Award IRE218k;
- Murtagh vs. Minister for Defence (2008) - Award €300k;
- Knowles vs. Minister for Defence (2002) – Successfully defended;
- Corbett vs. Trintech (2004) – Failed on stress induced injury;
- Lyndon vs. Iarnrod Eireann (2008) – Successfully defended.

## Lessons learned from case law

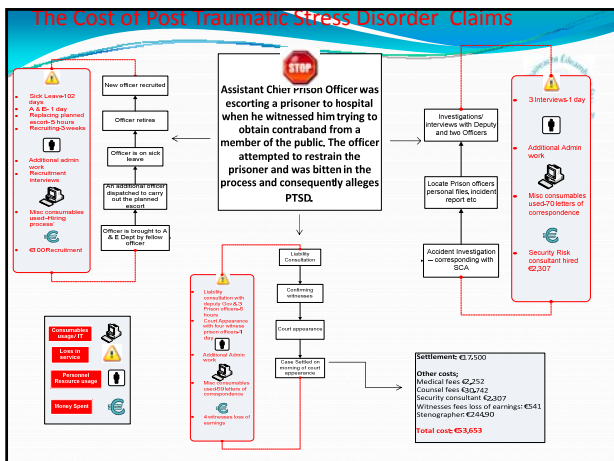
- Where sources of stress are not reasonably foreseeable the employer is not likely to be found negligent ;
- Where an employee presents PTSD symptoms, where the source of the PTSD is possibly work related then the employer must intervene;
- Where an employee is provided with appropriate interventions (contemporary knowledge) the courts are likely to rule in favour of the employee;
- Failure in statute law erodes your ability to defend claims;
- Hatton guidelines affirmed by Irish courts.

## Analysis of claims against State

- Type of event which triggered claims:
  - Exposure to violent episode (weapon discharge, assault);
  - RTC's and other accidents;
  - False detention;
  - Exposure to biological hazard (needle stick, brucellosis);
  - Rescue and recovery;
  - Witness death;
  - Wrongful accusations.

## Number and cost

- 323 claims where PTSD in statement of claim;
- On detailed review down to 77 since 2001 with total cost €5m – SCA;
- GSCS total of 277 PTSD claims;
- Defence Forces outside of State 50 claims;
- CICT (IPS) 19 claims;
- Difficult to compare – no fault schemes;
- Awards are similar or inflated;
- Estimated €27m direct cost.



### What you need

- Policy – signed and supported by Senior Management (18001 OHSAS);
- Identify and assess activities and at risk groups;
- Put in controls to minimise critical incidents occurring – not possible to completely eliminate as integral part of some jobs;
- CISM – pre and post event interventions;
- Peer support;
- Training for senior ranks/managers /supervisors;
- Information available and debriefed.

### More of what you need

- Pre employment/assignment assessments (Hatton guidelines) of the individual;
- Monitoring of individuals in high risk activities;
- Monitoring of high risk individuals;
- Special arrangements for senior ranks/managers;
- Competent persons (counsellors, doctors, etc.);
- Monitoring and review of system;
- Annual report ;
  - Ensure active not in theory;
  - Contemporaneous.

