

Guidance on State Indemnity for Personal Injury and Third Party Property Damage in the Health Service Executive



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1.0 Purpose and Use of Document

1.1 Provision of Guidance to the HSE

This document provides guidance to the Health Service Executive (HSE) on the implications and the application of State indemnity for personal injury and third party property damage and the role of the State Claims Agency (SCA) in this process. The guidance is aimed at Health Service Executive (HSE) management, including hospital managers, service managers, estates, insurance managers and risk managers.

This guidance is comprised of the following sections:

- **Section 2.0: Essential Terms**
- **Section 3.0: Setting out State Indemnity for Personal Injury and Third Party Property Damage** - This section provides guidance on the background, scope and implications of State indemnity on the HSE.
- **Section 4.0: SCA Risk and Claims Management Role** – This section provides clarity on the role and function of the SCA and how the SCA may assist and work with the HSE.
- **Section 5.0: Application of State Indemnity** - It is intended that the information contained in this section would assist in answering many common queries on State indemnity and its application to particular scenarios with the aim of containing the HSE's risk exposure to a minimum level.

In 2003, the SCA was delegated the management of clinical claims against the HSE, these claims are managed by the SCA under the Clinical Indemnity Scheme (CIS). This document does not provide guidance on those claims managed under the CIS.

1.2 Confirmation of State Indemnity to Third Parties

A third party may require formal confirmation that the HSE will be indemnified by the State in respect of any claims for personal injury or third party property damage arising from the negligence of the HSE. Such requests may be made in respect of students on work placement, use of local halls, community facilities etc.

To assist in this regard a *Confirmation Statement* setting out briefly the scope of State indemnity is available upon request from HSE Insurance Managers. This can be used to provide confirmation of State indemnity in lieu of an insurance policy. State indemnity is enshrined in legislation and as such there is no requirement to re-issue the Confirmation Statement on, for example, an annual basis.

The *Confirmation Statement* should only be issued by personnel at an appropriate level within the HSE as authorised by the Assistant National Director of Finance, HSE, and must be used in conjunction with this guidance document.

Prior to issuing the *Confirmation Statement* the HSE must be satisfied, in reference to the contents of this guidance document that State indemnity does apply in the circumstance in question. In particular, State indemnity in respect of personal injury and third party property damage applies to HSE enterprises/activities that are directly controlled, fully funded and wholly managed by the HSE. State indemnity does not extend to voluntary bodies, including voluntary hospitals.

State indemnity is provided by the Minister under legislation and the HSE does not have authority to extend this indemnity to cover the risk(s) of other organisations.

Those authorised to issue the *Confirmation Statement* must record all instances where the *Confirmation Statement* is issued and retain on file for inspection by the SCA should the need arise.

2.0 Essential Terms

i. Claim

A claim refers to notification of intention to seek compensation for personal injury and/or property damage where it is alleged the State was negligent. The application may be in the form of a letter of claim, an InjuriesBoard.ie application, or a written/oral request.

ii. Contractors Providing Services (including clinical services)

Commercial organisations or professional individuals engaged by the HSE to provide services, for example carers, transportation of goods or people, maintenance contractors etc.

iii. Common Law

Common Law refers to the body of law based on decisions made by Judges in courts as opposed to Statute (written law enacted by legislative body such as the Dail).

iv. Confirmation Statement

A document setting out briefly the scope of State indemnity for use when providing confirmation of State indemnity to third parties in lieu of an insurance policy (see Section 1.2 Confirmation of State Indemnity to Third Parties for further information on the issuance of the *Confirmation Statement*).

v. Damages

Damages refer to monies paid to a claimant to compensate for injury, loss etc.

vi. Employee

Please note that this definition is for the purposes of identifying and complying with civil law duty of care and statutory obligations under health and safety legislation only.

An employee is a person who has entered into or works under (or, where the employment had ceased, entered into or worked under) a contract of employment / service. This includes:

- payroll staff ;
- fixed term employee and temporary employee;
- office holders;
- agency workers;
- individuals provided with training for employment or receiving work experiences;

- individuals engaged as independent contractors, including self employed persons, integrated into the host organisation;
- others.

The key element is one of control exercised by the employer over the individual, the employer would have authority to exercise control over their employees work and not simply request work to be completed e.g. hiring of maintenance contractor.

vii. Employers Liability

The HSE may be liable for personal injury (which includes death, illness or disease) sustained by an employee or damage/loss caused to their property due to a common law duty or under Statute (e.g. under the terms of the Safety, Health and Welfare at Work Act, 2005). To receive any compensation the employee must prove that the HSE was negligent in some way. The injury or loss sustained must have been sustained in the course of the employment.

viii. Estimated Liability

The SCA's best current estimate of the ultimate cost of resolving each claim, it includes all foreseeable costs such as settlement amounts, plaintiff legal costs and defence costs such as fees payable to counsel, consultants etc. Estimated liability may be revised on a regular basis in light of any new information received.

ix. Health Service Executive (HSE)

In the context of this document reference to the HSE includes enterprises and activities that are directly controlled, fully funded and wholly managed by the HSE.

x. Incidents

Incidents are unplanned or uncontrolled occurrences or sequence of occurrences that have the potential to cause injury, ill-health or damage.

xi. Injuriesboard.ie

InjuriesBoard.ie is the independent State body which assesses, on consent, the amount of compensation due to a person who has suffered a personal injury arising from motor accidents, accidents in the workplace and claims involving public liability. It does not assess personal injury claims that are the result of medical negligence.¹

¹Injuriesboard.ie: <http://www.injuriesboard.ie/eng/FAQ/#1>

The respondent / defendant can reject Injuriesboard.ie assessing quantum in any case if liability is disputed. Either party involved can reject the assessment / award made by the InjuriesBoard.ie, the case would then proceed through normal claims/ legal process.

xii. Liability

Liability refers to being legally obliged or responsible. In the context of State indemnity, where negligence on the part of the HSE can be proven, the HSE would be liable for personal injury (sustained by employee or members of the public) and third party property damage.

xiii. Negligence

The general definition of negligence is that it is either an omission to do something which a reasonable person would do, or doing something which a prudent or reasonable person would not do. Negligence consists of four elements:

- the HSE must owe a duty of care to the individual;
- a breach of this duty must have occurred, where the actions/omissions fall below a certain 'standard of care' either by reference to common law or Statute;
- damage, the person initiating the claim for compensation must have suffered loss or injury;
- causation, there must be a connection between the breach of duty (the way the person acted) and the damage suffered by the person seeking compensation.

xiv. Occupier

Under the Occupiers' Liability Act, 1995 an occupier is classed as any person/organisation exercising control over the state or condition of a premise, including buildings and land. Occupiers owe a duty of care to entrants on their premises e.g. visitors, recreational users and trespassers.

xv. Personal Injury

Personal injury refers to bodily injury sustained (which includes death, illness or disease).

xvi. Public Liability

The HSE may be liable for a personal injury (which includes death, illness or disease) sustained by a member of the public or damage/loss caused to their property due to a common law duty or under Statute (e.g. Occupiers Liability Act, 1995). To receive any compensation it must be

proven that the State was negligent in some way. Members of the public includes patients, visitors, clients, service users, service providers etc

xvii. Professional Indemnity

Refers to protection for a professional person against claims, which might be made, alleging injury or loss resulted from the professional services including actions and advice provided.

xviii. Property Damage

Physical damage to or loss of material property including buildings, contents, vehicles and personal property.

xix. Servants and/or Agents

Servants and agents are persons who perform tasks on behalf of the HSE. Agents and servants are usually, but not necessarily, bound by a contract of employment to the person for whom they perform that task.

xx. State Claims Agency

Under the National Treasury Management Agency (Amendment) Act, 2000 the management of personal injury and third party property damage claims against the State and of the underlying risks was delegated to the National Treasury Management Agency (NTMA). When performing these functions the NTMA is known as the State Claims Agency.

xxi. State Indemnity

Indemnity is a protection against possible damage or loss, typically a promise of payment should damage or loss occur. In this document reference to State indemnity can be taken to refer to the State indemnity set out in legislation for personal injury (not clinically related) and third party property damage. Where State indemnity applies the State makes a commitment to protect against losses where the State was negligent. Negligence on the part of the State must be proven.

xxii. Third Party

Bodies or individuals other than the HSE.

xxiii. Vicarious Liability

This is where the HSE is responsible for the acts or omissions of an employee during the course of their employment, whether it is at their place of employment or elsewhere e.g. working in the

community. The essential element is one of control, at the time of the act or omission, the employee must have been working within the scope of their duties. In effect this means in civil cases the HSE is the party liable for actions/omissions of employees when an injury or illness is caused by their actions or omissions while at work.

3.0 State Indemnity for Personal Injury and Third Party Property Damage

3.1 Background

Public Financial Procedures, Department of Finance, 2008 defines indemnities as “*agreements to compensate bodies or individuals for loss or damage arising*” and states that:

“The general rule is that no insurance should be effected against the risk of any loss which, if it arose, would fall wholly and directly on public funds. This is based on the understanding that the risks for which the Government is liable are innumerable and widely distributed, and that losses maturing in any one year are never so large as to materially disturb the financial position of the year, so that it is cheaper in the long term for the Exchequer to ‘carry its own insurance’ ”.

Where a State indemnity applies, i.e. the State bears its own insurance, a commitment is made to protect against losses should any loss or damage arise where the State was negligent. Typically a particular indemnity is enacted through an instrument of legislation.

State indemnity for personal injury and third party property damage is set out in the National Treasury Management Agency (Amendment) Act, 2000 where the management of personal injury and third party property damage claims against certain State authorities, and underlying risks, was delegated to the National Treasury Management Agency (NTMA). When performing these functions, the NTMA is known as the State Claims Agency (SCA).

On the 1st January 2010 the management of the Health Service Executive (HSE) personal injury and third party property damage claims was delegated to the SCA under the National Treasury Management Agency (State Authority) Order 2009

A key feature of State indemnity is that the injury or damage must have been caused by the negligence of the HSE its servants and / or agents The general definition of negligence is that it is either an omission to do something which a reasonable person would do, or an act which a prudent or reasonable person would not do.

3.2 Implications of State Indemnity

- The HSE no longer purchases insurance for personal injury (employer's and public liability) and third party property damage and as such will not have to bear associated premium costs. Indemnity works on a pay as you go basis so that all costs associated with personal injury and third party property damage claims will be paid directly from the HSE budget through a reimbursement system operated by the SCA.
- Claims associated with personal injury and third party property damage shall now be handled by the SCA claims management team.
- The SCA also has an associated risk management function and the risk management team shall be available to provide ongoing advice and assistance to the HSE in this respect.
- To assist the SCA in the identification of potential future claims and potential litigation risks the HSE is legally obliged to report adverse events relating to personal injury and third party property damage to the SCA (for further information on the role of the SCA and event reporting see Section 4.0 and for guidance on reporting incidents to the SCA see Section 4.4).
- The HSE now operates on a policy of risk retention in relation to personal injury and third party property damage where the risk is not transferred to a conventional insurance company. Compliance with common law duty of care, statutory requirements, including health and safety legislation, and the implementation of best practice in terms of risk management systems shall assist in the reduction of incidents and associated costs including those relating to the settlement of claims (for further advice on risk retention and management see Section 5.0).

3.3 Scope of State Indemnity

State indemnity in respect of personal injury and third party property damage applies to HSE enterprises/activities that are directly controlled, fully funded and wholly managed by the HSE. State indemnity does not extend to voluntary sector bodies, including voluntary hospitals. It should be noted that separate arrangements apply to the Clinical Indemnity Scheme also managed by the SCA.

The HSE is now vicariously liable for the negligent acts or omissions of its servants and/or agents in HSE enterprises that meet the criteria above i.e. directly controlled, fully funded and wholly managed by the HSE. The essential element is one of control, and, at the time of the negligent act or omission, the person must have been working within the scope of their duties as assigned by the HSE.

State indemnity is provided by the Minister under legislation and the HSE does not have authority to extend this indemnity to cover the risk/s of other organisations, for example third party charity events on HSE premises or through partnership arrangements where the HSE is one of a number of stakeholders. The purpose of State indemnity is to indemnify the HSE in respect of its core activity i.e. the delivery of multiple healthcare services. The HSE cannot be held liable for the negligent acts or omissions of those who are not considered servants and/or agents of the HSE.

It is important to ensure that no “contractual arrangements” are entered into where the HSE assumes liability for potential loss of a third party. The third party should bear responsibility for their potential loss.

3.4 Inclusions Under State Indemnity

Where the HSE, its servants and / or agents, are negligent State indemnity provides protection for possible damage or loss associated with the following:

3.4.1 Personal Injury:

Injury to Employees (Employers Liability)

This refers to bodily injury sustained (which includes death, illness or disease) to an employee of the HSE. Employees who sustain such a personal injury as a result of the negligence of the HSE may be entitled to be compensated for any loss suffered.

Injury to a Member of the Public (Public Liability)

This refers to bodily injury sustained (which includes death, illness or disease) to a member of the public. Members of the public include patients, visitors, clients, service users, contractors etc. Members of the public who sustain a personal injury as a result of the negligence of the HSE may be entitled to be compensated for any loss suffered.

3.4.2 Third Party Property Damage

This refers to physical damage sustained to the property of a third party or loss of a third party's material property. Property includes buildings, contents, vehicles and personal property. Third parties who suffer damage or loss of their property as a result of the negligence of the HSE may be entitled to be compensated for that loss or damage.

Accidental damage or loss to third party property is not covered under this State indemnity (see Section 3.6)

3.5 Common Practices Covered Under State Indemnity

3.5.1 Work Placements / Work Experience / Volunteers (see section 5.2 for further information)

- Third level students on work placements who have some expertise or experience in the area they shall be working (see section 5.2.1).
- Second level students or others on work experience (see section 5.2.2).
- HSE clients / service users undertaking work placements / experience in third party organisations (see section 5.2.3)
- Volunteers engaged on a non-professional basis (see section 5.2.4).
- Professional volunteers who have expertise / qualifications in the area they shall be working in (see section 5.2.5).

3.5.2 HSE Premises (see section 5.3 for further information)

- All classes of entrants including visitors, recreational users and trespassers (see section 5.3.1).
- Third party organisations renting / leasing / licensing HSE premises (see section 5.3.2).

3.5.3 Third Party Premises (see section 5.4 for further information)

- This refers to instances where the HSE is using third party premises e.g. renting of building on ongoing basis, or hiring of a conference room in a hotel (see section 5.4.1).

3.5.4 HSE Vehicles (see section 5.5 for further information)

- Use of HSE vehicles on HSE business by authorised HSE staff (5.5.1).

3.5.5 Lease/Hire of Third Party Vehicles for HSE Business (see section 5.6 for further information)

- Lease / hire of third party vehicles driven by HSE staff on HSE business, for example replacement/hire cars where approved by local HSE management.

3.5.6 Contractors Providing Services - including clinical services (see section 5.8 for further information)

- Third parties who are providing services to the HSE e.g. carers, transportation of clients, maintenance contractors, caterers, cleaners, couriers, etc (see section 5.8.1).

3.5.7 Property (see section 5.9 for further information)

- Damage caused to third party property arising from the negligence of HSE, its servants and/or agents (see section 5.9.1).

3.5.8 Inspections by Third Party Organisations (see section 5.10 for further information)

- For example the Health and Information Quality Authority, The Mental Health Commission, The Irish National Accreditation Board.

3.6 Exclusions

The following classes of claim are expressly excluded from the SCA's remit under the enacting legislation:

- claims involving a question as to the validity of any law having regard to the provisions of the Constitution;
- claims made in respect of infection, directly or indirectly, with Hepatitis C or the human immunodeficiency virus (HIV), or both, through the administration of blood or blood products or in respect of related matters;
- claims in which torts other than negligence are pleaded.

Other insurable risks which are not covered by State indemnity:

- HSE property, including building, contents and HSE vehicles; personal accident insurance;
- theft / criminal damage to third party property;
- accidental damage / loss to third party property;
- business interruption;
- professional indemnity not involving personal injury or property damage (HSE professionals will be covered in respect of clinical negligence under the Clinical Indemnity Scheme);
- defamation;
- marine;
- computer engineering insurance for plant and statutorily required inspections;
- overseas travel on HSE business;
- directors and officers liability, administrative negligence etc;
- crime/fidelity guarantee insurance - embezzlement, fraud, theft, involving HSE staff and/or others;
- other matters not coming under the remit of State indemnity as defined by the SCA.

The Personal Accident scheme for nurses in the psychiatric services and the Hepatitis C scheme continue to operate.

4.0 State Claims Agency Risk and Claims Management Role

4.1 Services Provided by the SCA

Under the provisions of the National Treasury Management Agency (Amendment) Act, 2000, the management of personal injury and third party property damage claims against the State was delegated to the State Claims Agency (SCA). The SCA's mandate includes a statutory brief to provide a risk management advisory service with the aim of minimising future litigation.

The National Treasury Management Agency (Amendment) Act, 2000 sets out two objectives for the SCA:

- To manage claims so as to ensure that the State's liability and associated legal and other expenses are contained at the lowest achievable level;
- To provide risk advisory services to State authorities, including the HSE, with the aim of reducing over time the frequency and severity of claims.

4.2 SCA Risk Management

The SCA's risk management objective is to advise and assist State authorities on measures to be taken to prevent the occurrence, or to reduce the incidence, of acts or omissions that may give rise to claims.

The risk management process incorporates the following:

- identifying litigation risks with a particular attention to high risk activities and possible mass action claims. The identification of risks will be conducted through analysis of claims' data, reviews of occupational risks, safety audits and site inspections;
- assessing the adequacy of measures already in place to counter such risks including the extent to which each authority fulfils its common law and statutory duties;
- providing risk advice and assistance, including training, so as to ensure that the HSE is fully aware of the measures necessary to address any risks highlighted.

4.3 SCA Claims Management Process

The SCA's claims management objective in relation to personal injury and third party property damage is that claims should be managed so as to minimise the State's liability. This has the following practical implications:

- in cases where the State is considered liable or which involve an apportionment of liability as between the State and the claimant, the SCA's approach is to settle such claims expeditiously in so far as it is possible to do so on reasonable terms;
- in cases where liability is fully disputed by the State, all necessary resources are applied to defending such claims robustly.

On receipt of the initial papers the SCA evaluates the claim to determine if State indemnity applies.

When doing this the SCA considers the following:

- Is the organisation covered under State indemnity?
- Does the loss relate to personal injury, either employees or a member of the public, or third party property damage matters?
- Is the HSE the negligent party, was negligence due to an act or omission of the HSE its servants and/or agents?

The SCA manages a claim from the point of claims notification through to final resolution. Claims are investigated in a thorough and timely fashion in order to facilitate early decision-making in relation to liability and strategy. The SCA uses panels of service providers, such as solicitors, medical consultants and engineers to provide expert advice on the State's behalf.

Each claim is allocated a notional estimated liability and this is updated as new medical and other expert information becomes available. The SCA then decides, in relation to each claim, whether it should be contested in the courts or whether settlement negotiations should begin.

Should a notification of a claim from Injuriesboard.ie, a solicitor, or other means, be received the correspondence should be forward to the SCA, with the relevant STARs reference number for personal injury incidents, as soon as possible. There is no requirement to seek legal advice or take any other action other than forwarding the correspondence to the SCA.

4.4 Reporting Events to the SCA

Under the National Treasury Management Agency (Amendment) Act 2000 State authorities are obliged to report adverse incidents promptly to the SCA and to facilitate any subsequent investigation. This allows the SCA, in conjunction with State authorities, to be in a position to identify and analyse developing trends and patterns and assists with claims investigation and management should the incident progress into a claim.

4.4.1 What to Report to the SCA

The following are guidelines as to the types of events that should be reported to the SCA:

- injuries requiring medical attention by a doctor or attendance at a hospital; involving staff, contractors, patients, clients, service users, members of the public etc;
- where an employee is absent from work for any period of time (including incidents where less than 3 days were lost) and the absence is directly attributable to a work-related activity/environment (this includes circumstances where the absence occurs some time after the incident);
- no days lost, however an injury was sustained by an employee, member of the public, client, service user etc, which could be attributed to a work related activity/environment;
- where an employee, ex-employee or a client, service user has requested health screening arising from alleged exposure to work environments e.g. asbestos, noise, dust, fumes, biological or chemical agents;
- where the HSE becomes aware of an incident (involving personal injury) on its premises involving a visitor, recreational user or trespasser;
- where a vehicle that is hired or belonging to the HSE is involved in a road traffic accident;
- where the property of a third party has been damaged as a result of the activities of the HSE.

The SCA should be notified immediately by phone in the event of a fatality or a serious injury, which include amputations, injury to an eye, serious burns or other injuries leading to resuscitation.

4.4.2 How to Report Events to the SCA

Adverse events relating to personal injury in the HSE can be reported by means of a confidential, highly secure, web-based IT system, known as STARSWeb, that links hospitals and other healthcare enterprises to a core database. Each enterprise has access only to its own data but the SCA can access all data in order to identify emerging trends across the HSE.

For events relating to third party property damage a hardcopy of the incident report form should be forwarded to the SCA (Treasury Building, Lower Grand Canal Street, Dublin 2) and it will be recorded on the STARSWeb database by SCA personnel. There is currently no access available to HSE personnel to allow property damage events to be logged within the HSE, however once entered by SCA personnel the events are available on STARSWeb for viewing and analysis within the HSE.

4.5 Queries

Queries not addressed within this document relating to personal injury and third party property damage liabilities and associated risk management issues should be forwarded as indicated below:

- insurance or liability queries – these queries should be addressed to the HSE Regional Insurance Manager in the first instance who may then forward the query to the SCA if required;
- queries related to the management of a specific claim – contact a member of the SCA Claims Management Team;
- risk management queries – contact local HSE Risk Manager in the first instance;
- STARSWeb - for advice or technical support on STARSWeb please contact the SCA STARSWeb Systems Administration Team.

The SCA can be contacted on 01-6640900 or by email at stateclaimsqueries@ntma.ie

5.0 Application of State Indemnity in the HSE

5.1 Introduction

This section aims to provide advice on the application of State indemnity and risk management requirements for various activities and practices commonly encountered within the HSE. It is hoped this will provide an “at a glance” answer to many of the common queries the SCA receives and assist with practical day-to-day risk management within the HSE.

Please note that in all cases the advice provided in this section relates only to personal injury (employees and members of the public) and third party property damage. There may be other issues that need to be addressed in a particular situation, such as data protection, freedom of information etc.

Please note where indemnity limits are specified in this document the requirement is that the limits apply to any one claim or series of claims arising out of a single occurrence and the policies are not subject to any financial restrictions per insurance year. This is standard in private insurance.

In all cases HSE policies should be adhered to and local HSE management approval confirmed as appropriate. Local HSE risk management personnel should be consulted on any risk management queries where necessary.

5.1.1 Risk Retention

The HSE is no longer transferring the risk associated with personal injury and third party property damage to a conventional insurance company. The cost of claims arising from personal injury or third party property damage is now paid directly from the HSE budget.

Compliance with common law duty of care, statutory requirements, including health and safety legislation, and the implementation of best practice in terms of risk management systems shall assist in the reduction of incidents and associated costs including those relating to the settlement of claims.

5.1.2 Verification of Third Party Insurance Arrangements

State indemnity covers only the negligence of the HSE and does not extend to cover the negligence of a third party. The HSE must formally ensure that third party organisations have adequate insurance in place to cover losses associated with the negligence of the third party.

Situations where the HSE must ascertain if a third party has adequate insurance in place to cover personal injury or third party property damage claims are outlined in Table 1 below.

Please note where indemnity limits are specified in this document the requirement is that the limits apply to any one claim or series of claims arising out of a single occurrence and the policies are not subject to any financial restrictions per insurance year. This is standard in private insurance.

Table 1: Requirements for Verification of Third Party Insurance Arrangements

Issue	Third Party Insurance Required
Work placements for third level students (see section 5.2.1)	The HSE must formally ensure that the third party, i.e. university etc, in question has adequate public liability insurance in place to cover potential losses associated with their (university) negligence. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million. For work placements coming from outside the Republic of Ireland insurance cover must be valid for the Republic of Ireland.
Work placements for second level students (see section 5.2.2)	The HSE must formally ensure that the third party i.e. the school, university etc, in question has adequate public liability insurance in place to cover potential losses associated with their (third party) negligence. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million.
HSE clients / service users undertaking work placement / work experience in third party organisations (see section 5.2.3)	The HSE must formally ensure that the third party providing the work placement / experience in question has adequate public liability and employer's liability insurance in place to cover potential losses associated with their negligence. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million and the minimum acceptable indemnity limits for employers liability cover would normally be €12.7 million.

<p>HSE Premises</p> <ul style="list-style-type: none"> • Third parties renting/ leasing/ licensing HSE premises (see section 5.3.2) ▪ Third parties holding events on HSE premises (see section 5.3.3) 	<p>The HSE must formally ensure that the third party in question has adequate public liability and employer’s liability insurance in place to cover potential losses associated with their (third party) negligence. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million and the minimum acceptable indemnity limits for employers liability cover would normally be €12.7 million. The third party should insure its own equipment on an all risks basis.</p>
<p>Third Party Premises</p> <ul style="list-style-type: none"> • Renting/ leasing/licensing of third party premises for HSE business (see section 5.4.1) • Use of third party premises for events e.g. seminars, information stands at conferences. (see section 5.4.1) 	<p>The HSE must formally ensure that the third party, i.e. the occupier, in question has adequate public liability insurance in place to cover potential losses associated with their (third party) negligence. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million.</p>
<p>HSE staff using their own vehicles for work purposes e.g. community nurse etc. (see section 5.7.1)</p>	<p>It should be ensured that the HSE staff member contact their conventional insurance company and inform them that they will be driving for work purposes. They should indicate the extent to which they will be using their vehicle for work and whether they will be carrying goods as part of their work. This may affect their insurance policy arrangements.</p> <p>The HSE requires all staff using their own vehicles for work purposes to indemnify the HSE against any claims from the employee for any loss or damage occurred during the use of the vehicle on official business (see HSE National Financial Regulation, Travel and Subsistence, NFR 5, Section 5.8.8, available on HSE intranet under finance).</p> <p>This may affect their insurance policy arrangements and an extra premium may be charged for this. Under Financial Regulations 5 the HSE may reimburse an employee for the additional cost of the insurance premium in these circumstances but the employees must produce evidence of this i.e. insurance policy or letter from insurance company.</p>

<p>Contractors Providing Services (including clinical services)</p> <ul style="list-style-type: none"> • third party agencies or organisations contractors to provide services to HSE (see section 5.8.1); • third parties providing services to clients / service users within the HSE (see section 5.8.2). 	<p>The HSE must formally ensure that the third party in question has adequate public liability and employer’s liability insurance in place to cover potential losses associated with their (third party) negligence. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million and €12.7 million for employer’s liability. Please note employers liability is not required of self employed personnel as they cannot obtain such a policy.</p> <p>Professional indemnity insurance is required for third parties providing professional services such as hairdressers, drivers, consultants etc. When checking these policies the HSE should consider the potential financial loss arising from a breach of professional duty on the part of the contractor. Minimum acceptable indemnity limits for professional indemnity cover are as follows:</p> <table border="1" data-bbox="547 949 1453 1406"> <tr> <td data-bbox="547 949 842 1099">Low Risk</td> <td data-bbox="842 949 1129 1099">€2.5m</td> <td data-bbox="1129 949 1453 1099">Non Invasive Therapies e.g. massage aromatherapy.</td> </tr> <tr> <td data-bbox="547 1099 842 1205">Medium Risk</td> <td data-bbox="842 1099 1129 1205">€6.5m</td> <td data-bbox="1129 1099 1453 1205">Invasive Therapies e.g. acupuncture</td> </tr> <tr> <td data-bbox="547 1205 842 1406">High Risk</td> <td data-bbox="842 1205 1129 1406">€10m or more</td> <td data-bbox="1129 1205 1453 1406">IT consultants, engineers, architects dependant on the nature of the project</td> </tr> </table> <p>Depending on the service being provided cover in respect of medical negligence may be required.</p>	Low Risk	€2.5m	Non Invasive Therapies e.g. massage aromatherapy.	Medium Risk	€6.5m	Invasive Therapies e.g. acupuncture	High Risk	€10m or more	IT consultants, engineers, architects dependant on the nature of the project
Low Risk	€2.5m	Non Invasive Therapies e.g. massage aromatherapy.								
Medium Risk	€6.5m	Invasive Therapies e.g. acupuncture								
High Risk	€10m or more	IT consultants, engineers, architects dependant on the nature of the project								

5.2 Work Placements / Work Experience / Volunteers

5.2.1 Work Placement (Third Level Students)

This relates to individuals undertaking work placements with the HSE as part of third level educational programme. These individuals would have some prior expertise or experience, typically as a result of studies undertaken, in the area they shall be working in. For example this would include occupational therapy students in third year of a university course seeking a work placement to fulfil requirements of their course and gain a relevant qualification.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of third level students on work placement with the HSE. This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The HSE must formally ensure that the third party in question has adequate public liability insurance in place to cover potential losses associated with the negligence of the third party in question. The minimum acceptable indemnity limits for public liability cover would normally be €5.5 million. For work placements coming from outside of the Republic of Ireland insurance cover must be valid for the Republic of Ireland.

Third level students who are on clinical placement will be covered in respect of clinical negligence under the Clinical Indemnity Scheme, managed by the SCA, provided that they are supervised in respect of their clinical duties.

HSE Risk Management Considerations

- All activities/programmes third level students are involved in should be formally approved by local HSE management.
- Those on work placements should be engaged on the basis of an agreed HSE protocol. This should include:
 - **Terms and conditions of the engagement**, for example working hours, duties, reporting structure etc.
 - **Garda clearance / vetting**, references and proof of qualifications where necessary- those on work placements will need to undergo Garda clearance / vetting and provide valid references and qualifications.
 - **Risk assessment** - as with any activity a risk assessment must be completed prior to engagement of the individual and identified control measures implemented. Risk control measures for engagements of those on work placement should be directly related to the individual's level of competence and the activities they shall undertake.
 - **Supervision** - requirements in relation to supervision should be clearly set out. Those on work placements should be appropriately supervised at all times.
 - **Training requirements** - all those on work placements must receive, at minimum, appropriate induction training. Should a person on a work placement require additional training, such as manual handling and/or people handling training, arrangements should be made for the provision of same before they are engaged by the HSE.
- Individuals on a work placement should not drive their own private vehicles or HSE vehicles on HSE business.
- All placements should be conducted in accordance with terms and conditions of any contracts agreed with the third party organisation i.e. the university / college.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.2.2 Work Experience (Second Level Students)

This relates to individuals undertaking work experience with the HSE as part of a second level education or other programme, e.g. second level students completing transition year. These individuals would not have any prior expertise or experience in the area where they shall be participating / observing.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of second level students on work experience in the HSE. This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The HSE must formally ensure that the school in question has adequate public liability insurance in place to cover potential losses associated with the negligence of the school or other third party in question. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million.

HSE Risk Management Considerations

- Work experience programmes should be formally approved by local HSE management.
- Those engaged in work experience should not have an independent role in an enterprise, be given responsibility for the care of patients or participate in clinical related activities.
- Those on work experience should be engaged on the basis of an agreed HSE protocol, which should include:
 - **Terms and conditions of the engagement**, for example working hours and ensuring compliance with the Protection of Young Persons (Employment) Act, 1996², duties, reporting structure etc.
 - **Risk assessment**- as with any activity a risk assessment must be completed prior to engagement of the individual and identified control measures implemented. Risk control

² Further information on the requirements of this Act is available in “*Protection of Young Persons (Employment) Act, 1996, Guide for Employers and Employees*”

measures should be directly related to the individual's level of competence and activities they shall undertake.

- **Supervision** - requirements in relation to supervision should be clearly set out. Those on work experience should be appropriately supervised at all times.
 - **Training requirements**- all those on work experience must receive, at minimum, appropriate induction training. Those on work experience should not be permitted to complete any activity which requires additional training, for example manual handling or people handling.
- Those on work experience should not be permitted to drive HSE vehicles or required to drive their own private vehicles on HSE business.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.2.3 HSE Clients / Service Users Undertaking Work Placements / Work Experience in Third Party Organisations

This refers to HSE clients or service users who are availing of work experience or placement programmes organised by the HSE in a third party organisation, for example HSE service users working in a hotel or supermarket.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of clients and service users on work placement/experience programmes organised by the HSE as part of clients / service users care programme.

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The HSE must formally ensure that the third party organisations in question has adequate public liability and employer's liability insurance in place to cover potential losses associated with the negligence of the third party in question. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million and the minimum acceptable indemnity limits for employers liability cover would normally be €12.7 million.

HSE Risk Management Considerations

- Work experience / placement programmes for HSE service users should be formally approved by local HSE management.
- A formal agreement should be implemented between the third party organisation and the HSE. This should include:
 - **Terms and conditions of the engagement**, for example working hours, duties, reporting structure etc.
 - **Risk assessment** - risk assessment should be completed by the HSE, in the first instance, ascertaining the suitability of the client / service user for work placement or work experience

programmes generally and identifying suitable employment opportunities. The HSE should ensure appropriate risk assessments are also completed by the third party organisations and control measures implemented for each placement in line with the terms and conditions of the employment contract / agreement.

- **Supervision** - requirements in relation to supervision should be clearly set out.
 - **Training requirements** - training requirements and responsibility for delivery of these must be identified prior to placement.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.2.4 Volunteers (excluding professional volunteers)

This section deals with individuals undertaking voluntary work with the HSE on a non-professional basis, for example social interaction such as walking, listening, reading etc.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of volunteers engaged by the HSE. This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

HSE Risk Management Considerations

- All volunteers and activities / programmes they are involved in should be formally approved by local HSE management.
- Volunteers should be engaged in addition to HSE staff and should not have an independent role in a HSE enterprise, be given responsibility for the care of patients or participate in clinical related activities / services.
- Volunteers should be engaged on the basis of an agreed HSE protocol, which should include:
 - **Terms and conditions of the engagement**, for example working hours, duties, reporting structure etc.
 - **Garda clearance / vetting** - volunteers must undergo Garda clearance / vetting.
 - **Risk assessment** - as with any activity a risk assessment must be completed prior to engagement of the volunteer and identified control measures implemented. Risk control measures for engagements of volunteers should be directly related to the individual's level of competence and activities they shall undertake.
 - **Supervision** - requirements in relation to supervision should be clearly set out. Volunteers should be appropriately supervised at all times.
 - **Training requirements** - all volunteers must receive, at minimum, appropriate induction training. Volunteers should not be permitted to complete any activity which requires additional training, for example manual handling or people handling.

- Volunteers should not drive their own private vehicles or HSE vehicles on HSE business.

- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.2.5 Professional Volunteers

This section deals with individuals undertaking voluntary work in the HSE related to their professional qualifications. These volunteers would have a level of expertise and/or experience in the area they shall be working in, for example a recently qualified social worker volunteering in the HSE on an unpaid basis in their chosen field.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of professional volunteers working with the HSE. This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

In relation to their volunteer capacity, they will be treated effectively as an employee for the purposes of employer's liability cover.

A professional volunteer will be covered in respect of clinical negligence under the Clinical Indemnity Scheme, managed by the SCA, provided that they are supervised in respect of their clinical duties.

HSE Risk Management Responsibilities

- All professional volunteers and activities/programmes they are involved in should be formally approved by local HSE management.
- Professional volunteers should be engaged on the basis of an agreed HSE protocol formally signed by both parties. This should include:
 - **Terms and conditions of the engagement**, for example working hours, duties, reporting structure etc.
 - **Garda clearance / vetting, references and proof of qualifications** - professional volunteers must undergo Garda clearance / vetting, and provide valid references and qualifications.
 - **Risk assessment** - as with any activity a risk assessment must be completed prior to engagement of the professional volunteer and identified control measures implemented. Risk control measures for the engagement of professional volunteers should be directly related to the individual's level of

competence and activities they shall undertake.

- **Supervision** - requirements in relation to supervision should be clearly set out. Professional volunteers should be appropriately supervised at all times.

 - **Training requirements** - all professional volunteers must receive, at minimum, appropriate induction training. Should a professional volunteer require additional training, such as manual handling and/or people handling training, arrangements should be made for the provision of same before they are engaged
- Professional volunteers should not drive their own private vehicles or HSE vehicles on HSE business.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.3 HSE Premises

5.3.1 Members of the Public on HSE premises

This section relates to entrants on HSE premises who would be considered general members of the public, who are not employed by the HSE. Such entrants may be on HSE premises for personal reasons, such as visiting service users, or for business reasons, for example to attend meetings, seminars etc.

Does State indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of members of the public on HSE premises (for both business and personal reasons).

State indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to the Statute or at Common Law.

HSE Risk Management Considerations

- As an occupier the HSE owes a duty of care to those entering HSE premises and at a minimum should maintain properties, and in particular, access and egress routes, in good condition.
- As appropriate entrants should be made aware of emergency evacuation procedures and relevant safety information through signage, briefings, etc and should be supervised as necessary.
- Local HSE management should consider the need to restrict access in certain higher risk areas.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise as part of a risk review or in the event of a claim.

5.3.2 Third Party Organisations Renting/Leasing/Licensing HSE Premises

This section deals with HSE premises rented, leased or licensed by third parties for example a local community group using HSE premises for group meetings.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of the use of HSE premises by third parties.

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The HSE must formally ensure that the third party in question has adequate public liability and employer's liability insurance in place to cover potential losses associated with the negligence of the third party in question. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million and the minimum acceptable indemnity limits for employers liability cover would normally be €12.7 million. The third party should insure its own equipment on an all risks basis.

HSE Risk Management Considerations

- Local HSE management should be informed of and approve the activities of third parties renting, leasing or licensing HSE premises.
- Formal Agreements, signed by both parties, should be put in place, clearly setting out the responsibilities of both parties in terms of estate management. These agreements should include insurance and indemnity clauses. HSE legal advisors and estates management may need to be consulted on queries in relation to leases or other formal agreements.
- As an occupier the HSE owes a duty of care to those entering HSE premises and at a minimum should maintain properties, and in particular, access and egress routes, in good condition.
- Local HSE management should consider the need to restrict access in certain higher risk areas

- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.3.3 Third Party Organisations Holding Events on HSE premises

Third party organisations may request the use of HSE premises to hold an event, for example fun days organised by a third party or fundraising events such as a sponsored run or collection in HSE car parks.

The SCA would strongly advise against allowing third parties to hold events on HSE premises. The third parties insurances would typically only cover the liabilities arising from the negligence of the third party, its servants and/or agents, which occur as a direct result of the activities of the third party.

The HSE would still be responsible for the state of the premises and it would be likely that the types of claims for personal injury of third party property damage that would arise would not be proper to the third party organisation and costs as a result would fall to the HSE.

For such events the management and control of associated risks can be more difficult e.g. access, numbers attending etc. Often the premises are not suitable for such purposes and the activities could cause an unnecessary impact on HSE business.

5.4 Third Party Premises

5.4.1 HSE Using Third Party Premises

This refers to instances where the HSE is using third party premises e.g. rental of a building on ongoing basis, or hiring of a conference room in a hotel.

Does State indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of the use of third party premises by the HSE for HSE business related activities.

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The HSE must formally ensure that the third party in question has adequate public liability insurance in place to cover potential losses associated with the negligence of the third party in question. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million.

The third party may request confirmation from the HSE of State indemnity for personal injury and third party property damage. In this event a copy of the *Confirmation Statement*, should be provided by authorised personnel (HSE Insurance Manager) in lieu of an insurance policy (see Section 1.2 Confirmation of State Indemnity to Third Parties for further information on the issuance of the *Confirmation Statement*).

HSE Risk Management Considerations

When using third party premises the HSE should consider the following:

- The use of third party premises should be formally approved by local HSE management.

- Formal agreements signed by both parties, should be put in place clearly setting out the responsibilities of both parties in terms of estate management. These agreements should include insurance and indemnity clauses. HSE legal advisors and estates management may need to be

consulted on queries in relation to leases or other formal agreements.

- A formal written risk assessment should be carried out to identify control measures that may be required for any activity being undertaken by the HSE on third party premises to ensure the safety of staff of the HSE and others that may be impacted by work or activity. The risk assessment should be proportionate to the level of risk involved. This risk assessment should consider:
 - the suitability of the premises for the intended purpose, for example if the HSE is providing an activity based exercise class ensuring the size of room is adequate etc;
 - potential conflict with other uses of room/ users of the premises e.g. if private consultation is required, is the room suitable?
 - physical aspects of the premises/venue i.e. lighting, ventilation, heating;
 - access to suitable facilities e.g. power supply and toilet facilities;
 - suitable and safe access and egress for employees and others including consideration of those with disabilities, night time use and external lighting etc;
 - fire safety – the premises should have a fire and emergency evacuation plan in place etc.

- The HSE risk assessment is not intended to replace the need for the third party to conduct a full risk assessment of their premises.

- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.5 HSE Vehicles

5.5.1 State Indemnity for Vehicles

Under State indemnity HSE vehicles are not required to carry an insurance disc as issued by conventional insurance companies. The HSE Assistant National Director of Finance issues certificates of State indemnity for HSE vehicles which can be requested through Regional HSE Insurance Managers. The certificates should be carried in the HSE vehicle for use as confirmation of indemnity, in lieu of insurance, in the event of an accident or if required by a member of An Garda Síochána.

Only vehicles that are registered in the name of the HSE, i.e. where the HSE is named on the vehicle registration certificate, can be issued with such a certificate of State indemnity. State indemnity is provided by the Minister under legislation and the HSE does not have authority to extend this indemnity to cover vehicles not registered under the name of the HSE, for example vehicles owned by voluntary bodies, clubs, associations etc.

For further information or to request insurance certificates contact your Regional HSE Insurance Manager.

5.5.2 Use of HSE Vehicles on HSE Business by Authorised HSE Staff

This section covers vehicles that are registered in the name of the HSE and driven by authorised HSE staff on HSE business.

Does State indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of the use of HSE vehicles on HSE business by authorised HSE staff.

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

As discussed in Section 5.5.1 the HSE Assistant National Director of Finance issues certificates of State indemnity for HSE vehicles which can be requested through Regional HSE Insurance Managers. The certificates should be carried in the HSE vehicle for use as confirmation of indemnity, in lieu of insurance, in the event of an accident or if required by a member of An Garda Síochána.

HSE Risk Management Considerations

- As appropriate, driving arrangements should be formally approved by local HSE management.
- The HSE should ensure policies are in place to guarantee only competent and appropriate personnel are allowed to drive HSE vehicles, this should include criteria for driver selection (such as restricting younger drivers) and ensuring that drivers have the correct licence for the vehicle being driven. It is a contravention of the Road Traffic Act, 1961 to drive a vehicle with the wrong category of licence.
- A formal written risk assessment should be carried out to identify control measures that may be required for driving activities, controls may include:
 - implementing purchasing controls to ensure that the vehicles fit for purpose;
 - regular inspection, servicing and maintenance of HSE vehicles (records should be maintained);
 - providing instruction, training and information such as a driver's handbook;

- ensuring drivers of certain categories of vehicles have obtained a Driver Certificate of Professional Competence;
 - providing appropriate safety and personal protective equipment;
 - promoting good driver behaviour amongst staff;
 - safe scheduling and planning of journeys;
 - the carriage of certain goods are governed by the “European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR)”. The local HSE Dangerous Good Advisor should be contacted to provide further guidance on this matter.
- Please note where HSE drivers are transporting service users it may be appropriate to have additional staff present depending on the level of risk. It is the responsibility of local HSE management to assess the risk in each situation.
- Situations may arise where staff are parking HSE vehicles at their own home. The decision to allow this rests with local HSE management and should only be considered based on the additional level of risk being taken on by the HSE. The vehicles should be locked and kept in a secure location. It should be made clear to staff that the vehicles may only be used for authorised HSE business and not for private purposes.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.6 Lease / Hire of Third Party Vehicles for HSE Business

This refers to vehicles that are leased / hired by the HSE from a reputable vehicle supplier and driven by authorised HSE staff for HSE business, e.g. courtesy cars, short-term hire, hiring a bus to transport clients/service users.

Does State Indemnity Apply?

If the HSE require this service and operates on this basis the State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents arising from HSE staff driving leased / hired vehicles on HSE business.

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The third party organisation may request confirmation from the HSE of State indemnity for personal injury and third party property damage. In this event a copy of the *Confirmation Statement*, should be provided by authorised personnel (HSE Insurance Manager) in lieu of an insurance policy (see Section 1.2 Confirmation of State Indemnity to Third Parties for further information on the issuance of the *Confirmation Statement*).

HSE Risk Management Considerations

- Where HSE staff are driving lease / hire vehicles this must be formally approved by local HSE management.
- A formal agreement should be put in place with the vehicle provider and the HSE. As a minimum the vehicle supplied must be fit for purpose and of road worthy condition. This agreement should include the following:
 - maintenance and servicing terms and conditions;
 - certificates of State indemnity to be issued for the purposes of temporary additions/substitutions to the motor fleet to meet the exigencies of the service. Templates of these can be obtained from the Assistant National Director of Finance;

- only an appropriate named person should be authorised to issue the letter of indemnity for these purposes;
 - time and date the indemnity will be in effect should be formally recorded;
 - a system should be in place to cancel the indemnity where the period of hire/use is shortened;
 - a system should be in place where the indemnity needs be extended i.e. who can authorise an extension, under what circumstances etc;
 - for long term commercial hire, a reasonable review date should be in place e.g. monthly.
- A register of hired vehicles must be maintained by the HSE with the following details in respect of each hire:
- make, model and registration number of vehicle;
 - name(s) of authorised driver(s);
 - time and date on and off lease /hire ;
 - normal place at which vehicle will be kept ;
 - use for which vehicle is intended ;
 - reason for hire (e.g. repair of owned vehicle) ;
 - particulars (including registration number) of vehicle it is replacing ;
 - reference number of indemnity letter (to correspond with template);
- A formal written risk assessment should be carried out to identify control measures that may be required for driving activities. Such controls may include:
- providing instruction, training and information such as a driver’s handbook;
 - ensuring drivers of certain categories of vehicles have obtained a Driver Certificate of Professional Competence;
 - providing safety and personal protective equipment
 - promoting good driver behaviour amongst staff and safe scheduling and planning of journeys;
 - the carriage of certain goods are governed by the “European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR)”. The local HSE Dangerous Goods Advisor should be contacted to provide further guidance on this matter.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.7 Authorised HSE Staff Using Own Private Vehicles on HSE Business

This section deals with authorised HSE staff using own private vehicles on HSE business, for example public health nurses using their own car.

Does State Indemnity Apply?

No, in the case of HSE staff using private vehicles on HSE business State indemnity does not apply in respect of any claims for personal injury and third party property damage. Should a claim arise while a staff member is driving his / her private vehicle on HSE business it must be dealt with under the driver's own private motor insurance policy.

Staff members using privately owned vehicles on HSE business should contact their private motor insurance company and inform them that they will be driving for work purposes. They should indicate the extent to which they will be using their vehicle for work and whether they will be carrying goods as part of their work.

The HSE requires all staff using their own vehicles for work purposes to indemnify the HSE against any claims from the employee for any loss or damage occurred during the use of the vehicle on official business (see HSE National Financial Regulation, Travel and Subsistence, NFR - 5 Section 5.8.8 , available on HSE intranet under finance).

This may affect their insurance policy arrangements and an extra premium may be charged for this. Under NFR - 5 the HSE may reimburse an employee for the additional cost of the insurance premium in these circumstances but the employees must produce evidence of this i.e. insurance policy or letter from insurance company.

HSE Risk Management Considerations

- Where HSE staff are driving private vehicles on HSE business this must be formally approved by local HSE management.

- Formal arrangements must be put in place to verify that staff members have adequate insurance in place to allow them to drive for work in compliance with HSE National Financial Regulation, Travel and Subsistence, NFR - 5.

- A formal written risk assessment should be carried out to identify control measures that may be required for these driving activities. Such controls may include:
 - providing instruction, training and information such as a driver's handbook;
 - providing safety and personal protective equipment;
 - promoting good driver behaviour amongst staff and safe scheduling and planning of journeys;
 - the carriage of certain goods are governed by the "European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR)". The local HSE Dangerous Goods Advisor should be contacted to provide further guidance on this matter.

- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.8 Contractors Providing Services (including clinical services)

5.8.1 Contractors Providing Services (including clinical services) to the HSE

This refers to third parties who are providing services to the HSE e.g. drivers, maintenance contractors, caterers, agency care workers, cleaners couriers etc.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of activities carried out by contractors providing services (including clinical services) .

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The HSE must formally ensure that the third party in question have adequate insurance in place to cover potential losses associated with the negligence of the contractor providing services. The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million and €12.7 million for employer's liability. Please note employers liability is not required of self employed personnel as they cannot obtain such a policy.

Professional indemnity insurance is required for third parties providing professional services such as agency staff, drivers, consultants, trainers etc. When checking these policies the HSE should consider the potential financial loss arising from a breach of professional duty on the part of the contractors providing services. Minimum acceptable indemnity limits for professional indemnity cover are as follows:

Low Risk	€2.5m	Non Invasive Therapies e.g. massage aromatherapy.
Medium Risk	€6.5m	Invasive Therapies e.g. acupuncture
High Risk	€10m or more	IT consultants, engineers, architects dependant on the nature of the project

HSE Risk Management Considerations

- All services provided by third parties should be formally approved by local HSE management.
- Formal service level agreements and contracts should be drawn up between the HSE and the contractors providing services. These should include:
 - **Insurance and indemnity clauses.**
 - **Risk assessment and control** - risk management controls to be put in place by the third party and complimentary controls the HSE must implement should be specified.
 - **Terms and conditions of the engagement**, for example where staff are being provided by the third party the working hours, duties, reporting structure, requirement to drive, supervision, training requirements etc.
 - **Garda clearance / vetting and necessary competence, skills and qualifications** - contractors providing services should assume responsibility for ensuring staff engaged to fulfil the requirements of the contract have the necessary competence, skills and qualifications for the position, and that staff provided have undergone appropriate Garda clearance / vetting.
 - **Supervision** – requirements in relation to supervision should be clearly set out.
 - **Induction / Training** – all staff provided by a third party contractor must, as a minimum, receive an induction. Should third party agency staff require additional training, such as manual handling and/or people handling training, arrangements should be made for the provision of same must be made before the individual is engaged by the HSE.
 - **Driving** – staff engaged through a third party should not participate in driving activities unless this is specified in the terms and conditions of the engagement.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.8.2 Contractors Providing Services to HSE Clients / Service Users not Related to HSE Business

This refers to instances where HSE clients / service users engage contractors to provide services while on HSE premises for personal purposes, which is not related to HSE business, for example hairdressers, acupuncturists, massage therapist.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents in respect of activities carried out by contractors providing services to clients/service users not related to HSE business.

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The HSE must formally ensure that the third party in question has adequate public liability, and if necessary professional indemnity, in place to cover potential losses associated with the negligence of the third party in question.

The minimum acceptable indemnity limits for public liability cover would normally be €6.5 million and the minimum acceptable indemnity limits for professional indemnity cover are as follows:

Low Risk	€2.5m	Non Invasive Therapies e.g. massage aromatherapy.
Medium Risk	€6.5m	Invasive Therapies e.g. acupuncture

HSE Risk Management Considerations

- Local HSE management should formally approve the service in question
- Clients / service users who engage contractors to provide services (for personal use) not related to HSE business should inform local HSE management of such an engagement.
- These services must be carefully considered and must not compromise the care and treatment of the service user / client and in some cases should not involve any invasive treatments for example acupuncture. Consultation with assigned medical professionals should be sought as necessary.
- Risk assessments on all activities the third party shall be engaged must be completed to include use of equipment (third parties own), facilities and products (the SCA would not recommend the use of chemicals such as hair dye or high risk equipment). This should be discussed and agreed with the third party prior to engagement and appropriate control measures identified must be implemented and adhered to.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.

5.8.3 Agencies in Receipt of Funding / Grants from the HSE

It is important to note the difference between organisations/agencies that are in receipt of funding or grants from the HSE and contractors providing services to the HSE.

Agencies who receive funding or grants are normally controlled and managed independently of the HSE. While they may deal in the main with HSE clients, the HSE's relationship with these organisations/agencies is one only of financial assistance/support.

Capital contributions, grants or funding provided by the HSE to a third party organisation does not normally make the HSE liable for the insurance arrangements of the third party organisation or associated activities e.g. building projects.

The terms and conditions of such contribution / funding typically states that the third party organisation in question must have appropriate insurance provisions in place to cover losses associated with the third parties negligence.

5.9 Property

5.9.1 Third Party Property Damage / Loss

This refers to damage or loss sustained to third party personal property while it was on HSE premises or caused by HSE related activities e.g. staff member on home visit unintentionally damages property of home owner.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents.

State indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to the Statute or at Common Law.

Damage to or loss of third party property is only covered under State indemnity where the HSE was negligent.

In those specific circumstances, the employee/patient who suffered such a loss are entitled to pursue a claim in negligence against the HSE and those claims will be handled by the State Claims Agency.

If the damage or loss was not due to the negligence of the HSE this shall not be covered under State indemnity, for example accidental or criminal damage.

The HSE may wish to consider alternative arrangements for covering loss or damage to a patient's private property where the HSE is not negligent

5.9.2 Third Party Individuals or Organisations Using HSE Medical Equipment (excluding HSE vehicles)

This refers to instances where HSE equipment is used by third party organisations, for example loaning equipment for external medical research projects.

Does State Indemnity Apply?

The SCA would advise that unless absolutely necessary, and approved by local management, HSE equipment should not be used by third party organisations. This places additional risks on the HSE and local HSE staff would be required to inspect the equipment and ensure it is in safe working order pre and post third party use.

However it is acknowledged there is specific equipment owned by HSE that may benefit a third party and healthcare generally, for example a medical research project. The practice should only occur in exceptional circumstances and should not be accepted practice. It should be ensured that the intended use of the equipment by the third party shall not in any way compromise the primary clinical purpose of the equipment.

In such circumstances the State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents.

State indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to the Statute or at Common Law.

Should the circumstance described above arise the SCA should be contacted through the Regional Insurance Manager to provide further advice and assistance, specifically in relation to insurance requirements for the third party.

HSE Risk Management Considerations

- Local HSE management should formally approve the practice.
- Where HSE equipment is provided to third party organisations formal agreements must be put in place and the HSE must ensure the equipment is of good condition and fit for purpose.
- Appropriate instruction, and if necessary, training, should be provided to the intended user and a record of this retained.
- All relevant documentation and records should be retained on file and be available for inspection by the SCA should the need arise.
- The SCA can be contacted through the Regional Insurance Manager to provide further advice and assistance on this matter.

5.10 Inspections by Third Party Organisations

This refers to instances where third parties perform inspection on HSE premises, for example The Mental Health Commission, the Health Information and Quality Authority and the Irish National Accreditation Board.

Does State Indemnity Apply?

The State Claims Agency (SCA) confirms that the Health Service Executive (HSE), its servants and/or agents, will be indemnified by the State in respect of any claims for personal injury and third party property damage, arising from the negligence of the HSE, its servants and/or agents arising from inspections by third party organisations.

This indemnity extends to cover only the negligence of the HSE, its servants and/or agents, and does not extend to indemnify any third party, its servants and/or agents concerning any negligent act or omission by the latter by reference to Statute or at Common Law.

The third party inspection authority may request confirmation from the HSE of State indemnity for personal injury and third party property damage. In this event a copy of the *Confirmation Statement*, should be provided by authorised personnel (HSE Insurance Manager) in lieu of an insurance policy (see Section 1.2 Confirmation of State Indemnity to Third Parties for further information on the issuance of the *Confirmation Statement*).

