



Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta
National Treasury Management Agency

An Ghníomhaireacht um Éilimh ar an Stát
State Claims Agency

Defending visitor claims on State Properties using VSG principles

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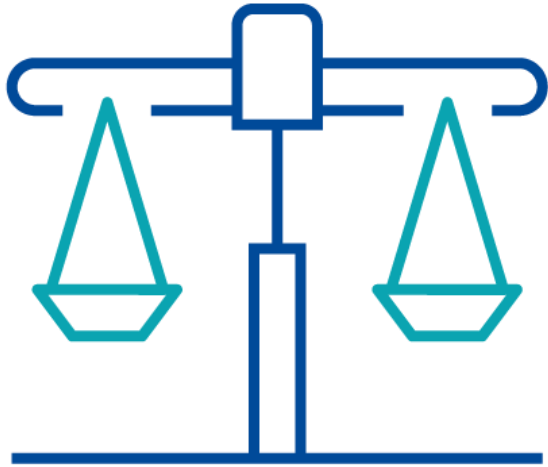
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State Indemnity



Role of the State Claims Agency



Set out in legislation

National Treasury Management Agency
(Amendment) Act 2000 (as amended)

National Treasury Management Agency
(Amendment) Act 2014

Insurance (Amendment) Act 2018

SCA Mandate

To contain the State's liabilities in respect of personal injury and property damage claims.

Manage the associated risks to enhance safety in the State sector and prevent claims happening in the future.

Manage third party legal cost claims in respect of all claims made against the state.

State Indemnity

State indemnity, as operated by State Claims Agency, is extended to a specified range of State Authorities for personal injury and third-party property damage liabilities.

Indemnities are agreements to compensate bodies or individuals for loss

When a State indemnity applies, a commitment is made to protect against losses should the State be negligent

State indemnity extends to all business activities of State Authorities

Visit our website <https://stateclaims.ie> for more information



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Occupiers' Liability - current position



Occupiers' Liability Act 1995 - amended by the Courts and Civil Law (Miscellaneous Provisions) Act 2023

- Signed into law on 31 July 2023
- Introduced to help to address claims arising from personal injuries to visitors, recreational users and trespassers
- Amendments update the duty of care
- Strengthens the position of occupiers seeking to limit their liability
- A welcome change

Categories of Entrants in Irish Occupiers' Liability Law

Visitor

Common duty of care – save for where the Occupier restricts this.

2023 amendment list the *factors to be considered*

Recreational user

Duty - *not to intentionally injure or act with reckless disregard.*

2023 amendment list the *factors to be considered* for reckless disregard

Trespasser

Who enters *with intention to commit an offence.*

2023 amendment occupier is not liable unless decided otherwise in *'exceptional circumstances'*

Reflects developments in the common law

- Lavin v DAA – Court of Appeal 01/10/2016
- Wall v National Parks and Wildlife - High Court White J 17/02/2017
- Byrne v Ardenheath - Court of Appeal Irvine J 09/11/2017
- Mulcahy v Cork Co Co - High Court Humphries J 21/10/2020

Changes to 1995 Act

Section 3

amended - Duty
of Care to Visitors

Section 4

amended – Duty of
care to
Recreational Users
& Trespassers

Section 5

amended –
Voluntary
Assumption of risk



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SCA Case Studies



Stairway at Kilkenny Castle



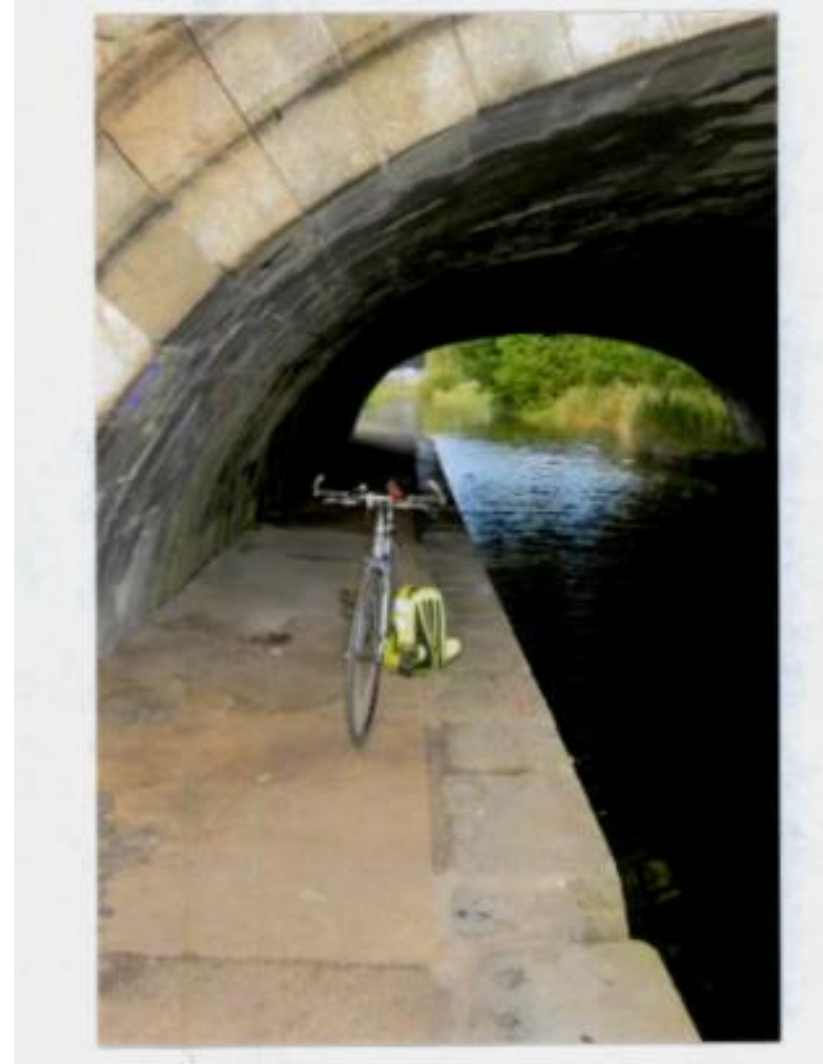
Fall in Kilkenny Castle – settled mid Hearing on 19/01/2018

- 20/02/2010 73-year-old lady who had visited the Castle with her son and his family
- She did not pay an admission fee but opted to sit in the lobby while her family visited the castle. She asked to use the toilet and was led to a shortcut and directed up a flight of stairs
- She said she missed the last step and fell to the ground and was lying on the floor for 10 – 15 minutes

VSG Principles:

- Responsibility – reasonable to expect the plaintiff to exercise care for herself

Clarke's Bridge



Stop Log Slots on the Grand Canal



Cyclist entered the Canal – dismissed by Linnane J

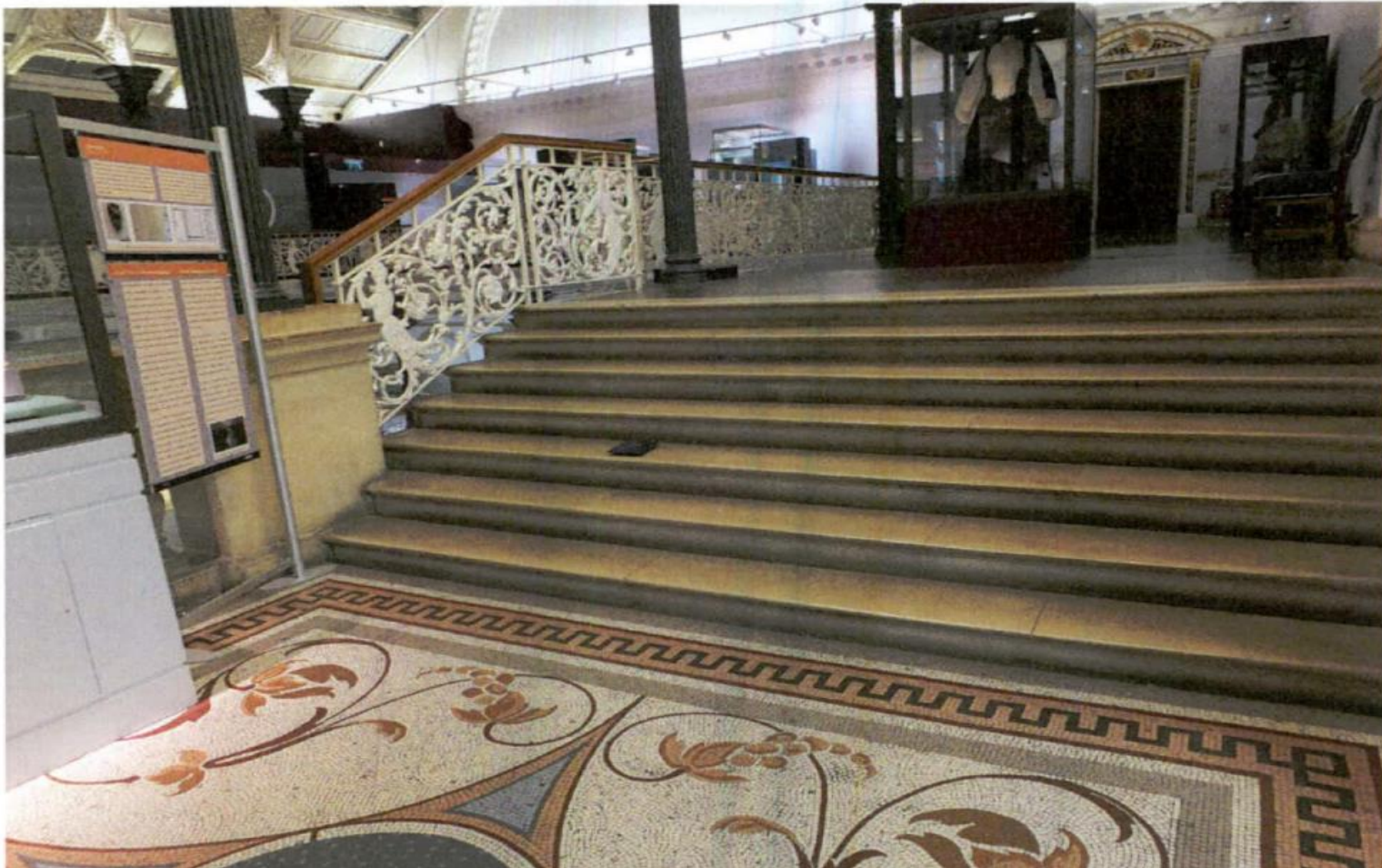
Circuit Court 02/05/2019

- 29 May 2015 plaintiff was cycling along tow path at the Royal Canal – approaching Clarke's bridge
- The plaintiff entered the water at a stop log gap
- This was not a designated cycle path – no signs were put up – Waterways Ireland were aware that cyclists used the paths
- The Judge found that the Plaintiff was the author of his own misfortune – he had acted carelessly in cycling so close to the edge

VSG Principles:

- Fundamentals – conservation of design feature dating to 1790, scale of work to rectify 400km+ of canal if stop logs deemed to be a hazard
- Responsibility – reasonable to expect the plaintiff to exercise care for himself

Staircase in the National Museum



Baldwin v National Museum of Ireland 26/07/2019

HC O'Hanlon J

- Australian tourist descending the main balcony stairway 05/06/2016 slipped on the second or third last stair and fell injuring his leg
- Wide staircase – in a modern build there would have been multiple handrails
- Court was critical of the Defendants failure to preserve CCTV of the incident which they had viewed
- Also drew adverse inferences from the defendant's lack of evidence of any assessment or decision not to assess the issue of a handrail

VSG Principles:

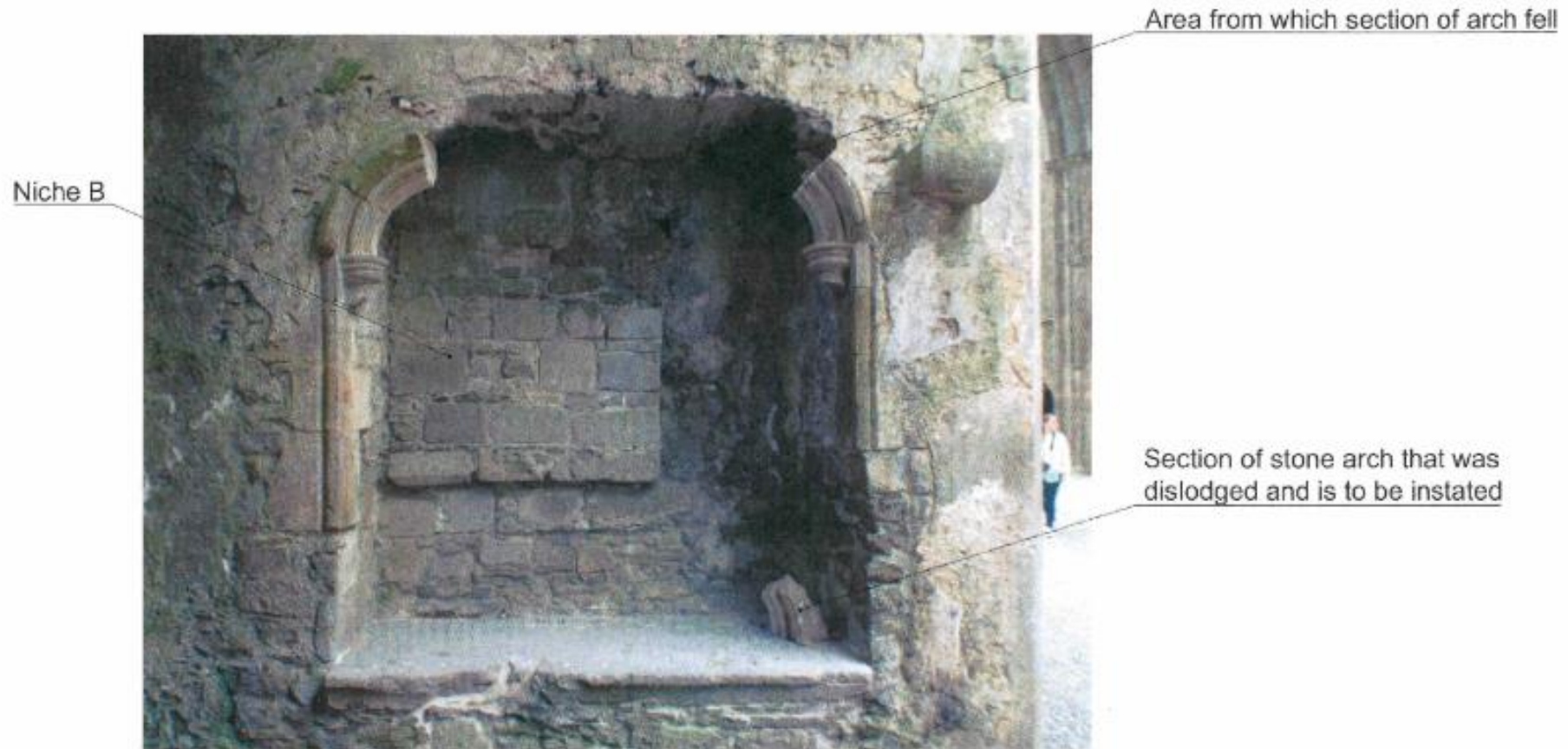
- Risk control - assess risks and develop safety plans



Location of
Niche

Location of
Safety Signage

Accident at Rock of Cashel 04/06/2017



Accident at Rock of Cashel 04/06/2017



Accident at Rock of Cashel 04/06/2017

Duty owed 3.—(1) An occupier of premises owes a duty of care (“the common duty of care”) towards a visitor thereto except in so far as the occupier extends, to visitors, restricts, modifies or excludes that duty in accordance with [section 5](#).

(2) In this section “the common duty of care” means a duty to take such care as is reasonable in all the circumstances (having regard to the care which a visitor may reasonably be expected to take for his or her own safety and, if the visitor is on the premises in the company of another person, the extent of the supervision and control the latter person may reasonably be expected to exercise over the visitor's activities) to ensure that a visitor to the premises does not suffer injury or damage by reason of any danger existing thereon.

“This is a national monument please be advised of the following: uneven ground, low doorways, can be slippery at times depending on the weather, climbing and sitting on any part of the monument is prohibited.”

Accident at Rock of Cashel 04/06/2017



TÁ AN TICÉAD SEO NEAMH-INAISTRITHE

Ní bheidh aon dliteanas ar Oifig na nOibreacha Poiblí ná ar an Stát as díobháil, gortú nó caillteanas ar bith a tharlaíonn don duine nó do shealúchas daoine a thugann cuairt ar an láithreán seo, beag beann ar an gcaoi ar tharla sé.

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www.heritageireland.ie



Accident at Rock of Cashel 04/06/2017

- Still an active burial ground and monastic site
- 04/06/2017 visitor to Rock of Cashel, paid group entry fee
- Safety briefing provided to group leader. Specific instruction to leader– no climbing within the National Heritage site
- The Plaintiff injured himself while he was in the process of climbing a National Monument, which is contrary to Section 14(1)(a) of the National Monuments Act 1930
- Fracture to lower leg while taking a selfie, stood on 13th century seat, to one side of the north transept altar
- Leaned on carved stone, forming an arch over the altar seat
- Stone from arch collapsed, landing on his foot

Accident at Rock of Cashel 04/06/2017

- Full defence delivered with counterclaim for €2,968.63

Defence points:

- Failing to take reasonable care for own safety
- Failing to follow instructions
- Failing to observe signage
- Engaging in inappropriate behaviour
- Being the author of his own misfortune
- Breaching Section 14(1)(a) National Monuments Act 1930

Accident at Rock of Cashel 04/06/2017

- The perfect defence case!
- Incident report form and contemporaneous statements
- Copy of relevant signage
- Copy staff log for 04/06/2017.
- Copy guide manual for 2017
- Visitors book/group sales receipts for 04/06/2017
- All witnesses still available

Accident at Rock of Cashel 04/10/2023

VSG Principles:

- Fundamentals - taking into account conservation, landscaping
- Awareness - signage in place – personal responsibility – duty to keep a look out
- Partnership - risk control, no previous incidents, level of visitors' skill assessed as *'Minor to Minimal'*
- Risk Control - level of Visitor Use – *'Moderate to Heavily Visited'* - 3,500 visitors per day
- Case withdrawn the day before the hearing

Locus - bridge at Socrates statue, National Botanic Gardens



Accident at the National Botanic Gardens

16/01/2025 Dublin District Court, Halpin J

- Litigation under the old legislation
- Injury on a step in the Botanic Gardens 24/07/2021. Step dates to 1960s
- Plaintiff claimed he was a visitor. Defence argued he was a recreational user
- Full defence delivered
- He was a recreational user rather than a visitor therefore the duty owed was pursuant to section 4(1) of the 1995 Act, not to cause injury intentionally or to act with reckless disregard for his person

Accident at the National Botanic Gardens

16/01/2025 Dublin District Court, Halpin J

VSG Principles:

- Taking into account conservation, landscaping – recreational user, some rustic features in the gardens – there since 1795. Alterations to the step would interfere with trees at the locus
- Awareness and responsibility – duty to keep a look out
- Risk control: 600,00 visitors per year – no previous incidents
Witness gave evidence of safety statement and assessments of risks which the court found impressive
- Case dismissed

Criteria for successfully defending a claim

- Record information contemporaneously on NIMS/ARF/IRF
- Secure contemporaneous witness statements & contact details
- Take lots of photographs – locus and signage
- Retain staff roster/rota
- Retain cleaning schedules (if relevant – slip/trip)
- Check and record condition of locus – is it wet? Uneven?
- Secure and retain CCTV footage
- Keep proof of ticket purchase if available
- Retain copy of relevant risk assessment & safety statement/report recording the condition of the locus



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What next?



Are changes afoot? Too early to say?

- Can take 2 years to make application to IRB and then up to another year for proceedings to issue
- Courts appear to be applying legislation to render users responsible for their own safety
- Courts taking a pragmatic approach
- Case law under new Section 5A (willing acceptance of risk) and Section 4(3) (occupier not liable to trespasser except in exceptional circumstances) will be interesting
- *'The defendant was entitled to assume that trespassers to the premises would take all reasonable care for their own safety; adults can normally look after their own welfare; and that an adult exercising reasonable care would avoid attempting the manoeuvre which the plaintiff attempted to perform'*
 - Egan J, High Court - O'Driscoll v Irish Province of Bon Secours Sis 31/7/2024



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Thank you

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