

Existing Evidence Thresholds for Systemic Liability

Courts don't require certainty. They require standards of proof. Below are the actual thresholds already in use across jurisdictions.

1. Foreseeability of Harm

Threshold:

The harm was known or should reasonably have been known.

What counts as evidence

- Prior incidents or statistics
- Internal reports, audits, warnings
- Expert consensus
- Repeated complaints
- Patterns over time

Used in:

- State liability (ECHR)
- Corporate negligence
- Mental health & suicide cases
- Environmental harm

Key point:

You do not need to prove intent — only that harm was foreseeable.

2. Duty of Care

Threshold:

The defendant owed a duty to protect, prevent, or mitigate harm.

How duty is established

- Statutory obligations
- Regulatory mandates
- Assumed responsibility
- Control over conditions

- Power imbalance

Used in:

- Healthcare systems
- Prisons
- Foster care
- Education systems
- Housing authorities

Systems are liable when they design, regulate, or control environments affecting lives.

3. Breach of Duty (Systemic Failure)

Threshold:

The system failed to act to the standard reasonably expected.

Evidence includes:

- Underfunding despite known need
- Lack of access to services
- Policy gaps
- Deliberate delays
- Conflicting incentives
- Failure to update frameworks despite evidence

This is where policy itself becomes evidence.

4. Causation (Contribution, Not Exclusivity)

Threshold:

The system materially contributed to the harm.

Important:

Courts do not require the system to be the sole cause.

Accepted causation models:

- “Material contribution”
- “Significant factor”
- “Increased risk”
- “Loss of chance”

Used in:

- Medical negligence

- Toxic exposure
- Mental health harm
- Workplace injury

Suicide cases already accept systemic contribution, not personal blame alone.

5. Pattern Evidence

Threshold:

Repeated similar outcomes indicate structural causation.

Evidence types:

- Statistical clustering
- Epidemiological data
- Longitudinal studies
- Repeated complaints dismissed
- Identical failures across locations

One case = accident

Hundreds = design

6. Failure to Prevent (Positive Obligation)

Threshold:

The defendant failed to take reasonable steps to prevent harm.

This is crucial.

Courts increasingly impose positive duties, meaning:

- You can be liable for inaction
- Silence counts
- Delay counts
- Procedural avoidance counts

Used in:

- Human rights law
 - Suicide prevention
 - Domestic violence cases
 - Child protection
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7. Knowledge Suppression / Information Failure

Threshold:

Harm was exacerbated by lack of transparency or misinformation.

Evidence:

- Withheld data
- Inaccessible services
- Overly complex systems
- Lack of informed consent
- Education gaps

This is how tobacco, opioid, and environmental cases were won.

8. Disproportionate Impact

Threshold:

Certain groups are harmed at higher rates due to systemic design.

Evidence:

- Demographic disparities
- Socioeconomic data
- Access inequities
- Outcome differences

Courts accept disproportionate impact as evidence even without discriminatory intent.

9. International Standards & Comparative Law

Threshold:

Failure to meet recognised international norms.

Evidence sources:

- WHO guidelines
- UN treaties
- OECD benchmarks
- Comparative country outcomes

Falling behind peers is admissible evidence.

10. Documented Attempts to Seek Remedy

Threshold:

The system was given opportunity to correct and failed.

Evidence:

- Complaints
- Reports
- Legal filings
- Ombudsman findings
- Inquiries ignored

Exhaustion of remedies strengthens systemic claims.

What Is Not Required (Important)

You do not need:

- A single villain
- Proof of malicious intent
- Universal harm
- Moral agreement
- Perfect data

Courts deal in reasonable inference, not philosophical purity.

Why Suicide & Despair Fit These Thresholds

Suicide-related harm already meets:

- Foreseeability
- Duty of care
- Pattern evidence
- Systemic contribution
- Failure to prevent

What's missing historically is consolidation, not evidence.

Bottom Line

The evidentiary bar for systemic accountability already exists.

What has not yet happened is:

- Framing the system itself as the defendant
- Aggregating harms into a single causal architecture
- Naming structural design as the common denominator

That's not radical.

That's overdue.