Ministry of Defence
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# Claims

## Annual Report 2011/2012

## Contents

# Introduction by the Head of Common Law Claims & Policy

An unprecedented year of activity that included the management of a large number of high profile and complex cases undertaken by a slimmer CLC&P team. Overall payments were £87.8 million and £468,642 was recovered.

The first Claims Annual Report was issued in 1997/1998 to provide a factual account of the overall number of claims received the number and overall value of those paid and how the Department handles such claims. It has been issued every year since then. The primary rationale remains the same today as it was then, which is to heighten awareness in all areas of the Department, both civilian and members of HM Forces, of the importance of sound risk management. Not only does this reduce the number of incidents that give rise to compensation claims, it also reduces the less quantifiable indirect or hidden costs of incidents such as loss of personnel and equipment. We firmly believe that the Claims Annual Report has helped steady the claims expenditure year on year.

The 15 May 2012 marked the 25th anniversary of the repeal of Section 10 of the Crown Proceedings Act. You may recall that prior to 15 May 1987 Service personnel were prevented by Section 10 from pursuing claims for compensation from the Ministry of Defence. This point of law applies to all Service personnel and has no bearing on rank, status or place of employment. However, Section 10 was repealed by The Crown Proceedings (Armed Forces) Act 1987. Since the change in the law, which was not made retrospective, Service personnel who suffer loss or injury as a result of negligence by the MOD have been entitled to make common law claims for compensation. Details of the case can be found in Section 3.

I have previously mentioned the impact on the defence budget because of the indirect or hidden costs of a compensation claim and it is worth drawing attention again to such matters. These costs are paid by the relevant TLB not the centrally funded claims budget:

- Damage to equipment and materials
- Interruption to training exercise immediately after the accident
- Investigating the accident
- Lost man-days
- Loss of experience and skills
- Recruitment and training costs for replacement staff
- Reduced capability of injured Service personnel
- Reputational risk
- Stress
- Morale
- Dealing with third parties
- Costs associated with a Crown censure

The hidden cost of an accident (i.e. non-compensation costs) is estimated to be at least six times the value of the compensation paid. At the highest level it can be thirty times the value e.g. loss of a fighter aircraft, etc.

On 14 March 2012 the Supreme Court ruled on a majority decision that the claims brought by Nuclear Test Veterans were time barred and were not prepared to apply discretion to allow late claims to proceed to a full liability trial. Perhaps of more significance all seven justices that heard the case said that the claims in terms of proving a causal link between illness and attendance at the tests were doomed to fail and had no prospect of success. Lord Brown noted "these appeals now provide the court with the opportunity…. once and for all to end, the false hopes on which these claims have for so long rested". Details of the case can be found in Section 3.

As reported in last year's Claims Annual Report, Lord Justice Jackson's review of civil litigation costs was published in 2010 and it is hoped that the recommendations will be implemented in April 2013. We understand that the proposals will require primary or secondary legislation whilst other changes will require an amendment to the Civil Procedure Rules.

The MOD led some very interesting Government cross cutting work that resulted in the first ever contract for a joint claims handling contract, which was won following a fierce competition by Gallagher Bassett International. The National Offenders Management Service of the Ministry of Justice and the Department for Communities and Local Government are parties to the contract, but the contract allows other Government Departments to use the service. The contract offers better value for money across government by improved economies of scale and ensures a consistent approach to claims handling.

Finally, I should like you to keep in mind the following quote when reading this report. A Judge complained that he was no wiser at the end of the case than at the start. Counsel responded, "*Possibly not my Lord, but far better informed"*

Additional hard copies of this report are available from CLC&P, Floor 1, Zone I, MOD Main Building, Whitehall, London SW1A 2HB. The report can also be found on the Defence Intranet.

Jef Mitchell
Head of Common Law Claims & Policy July 2012

# Executive Summary

1. Total CLC&P cash payments in the year 2011/2012 were £87.8 million. Over the same period recoveries totalling £468,642 were achieved.

2. The highest value claim settled in year was £1,678,411.

3. The total number of new claims brought against MOD was 6,548

4. 2,495 Service Personnel Employer's liability claims were settled at a total cost of £46.3 million.

5. 551 Civilian Employer's liability claims were settled at a total cost of £15.7 million.

6. 382 Public Liability claims were settled at a total cost of £10 million.

7. 1,946 Third Party motor claims in the UK were settled at a total cost of £6.7 million.

8. 18 Clinical Negligence claims were settled at a total cost of £6.7 million.

9. ACO Afghanistan settled 545 cases at a total cost of £748,421.

10. ACO North West Europe settled 401 cases at a total cost of £1.26 million.

11. ACO Cyprus settled 334 cases at a total cost of £491,602.

12. ACO South Atlantic Islands settled 2 cases at a total cost of £3,654.

# Section One

## Introduction

### Organisation

1.1 Common Law Claims and Policy (CLC&P) is a stand alone Division headed by a 1* and is part of the 2* Directorate of Business Resilience.

1.2 CLC&P is primarily responsible for processing common-law, non-contractual compensation claims against and on behalf of the Ministry of Defence at home and abroad. It is not responsible for contractual, quasi-contractual, maladministration, sales or estates matters. Details of the staffing and work of CLC&P are at Annex A.

### Responsibilities

1.3 In addition to being responsible for processing common law compensation claims, CLC&P also has a number of other important responsibilities such as providing claims policy advice, handling claims against foreign forces based in the UK and providing advice on insurance and indemnities. It undertakes a variety of secretariat tasks and during the period of this report continued to deal with a large number of Parliamentary Questions, Ministerial Correspondence, Treat Official Correspondence and Freedom of Information requests.

1.4 Area Claims Officers (ACOs) and their staff are located in areas where there is a sizeable defence presence – Afghanistan, Cyprus, North West Europe, and the South Atlantic Islands. ACOs are accountable to the appropriate Civil Secretary, but have a professional responsibility to the Head of CLC&P.

### Policy and Procedures

1.5 When compensation claims are received they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid. To deal with cases on any basis other than legal liability requires difficult subjective judgments to be made that would undoubtedly lead to inconsistency and unfairness.

1.6 The amount of compensation paid is determined by common law principles which, broadly, take account, as appropriate, of an individual's pain and suffering, degree of injury, property losses, past and future financial losses and level of care required. Levels of compensation including these elements can

vary greatly depending on an individual's circumstances. Advice is sought where necessary from Treasury Solicitor's Department, and our commercial claims handlers' panel solicitors for cases brought in England and Wales; the Crown Solicitor in Northern Ireland; and Morton Fraser Solicitors, the Department's legal adviser in Scotland. Queen's Counsel and junior barristers are also consulted on high profile or complex cases or where a point of law needs to be explored. The overwhelming majority of cases are settled through amicable negotiation without claimants having to take the Ministry of Defence to court.

# Section Two

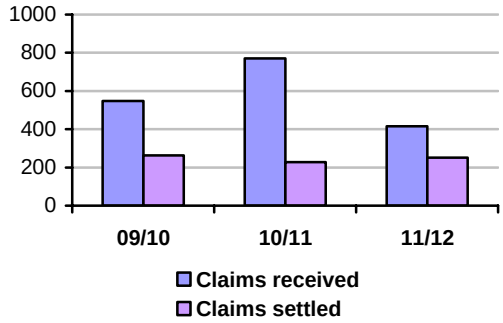
## Public Liability Claims

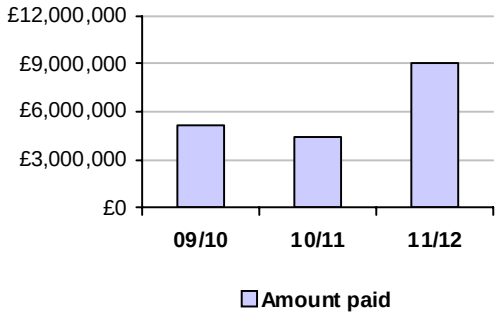
2.1 The majority of claims submitted to the Public Liability Team (PLT) are for personal injury or property damage from members of the public who have either been injured on Ministry of Defence property or have sustained injuries whilst taking part in the various external events run by the three Services e.g. injuries sustained on assault courses.

2.2 Property damage claims usually emanate from personnel working and living in service accommodation who, for example, have had their belongings damaged.

2.3 The increase in expenditure during 2011/2012 is largely because of claims arising as a result of incidents in Iraq.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of PL Claims Received | 548 | 771 | 416 |
| Number of PL Claims Settled | 263 | 227 | 251 |
| **Amount Paid (£)** | **£5.2M** | **£4.4M** | **£9.0M** |




### Iraq

2.4 The European Court considers that United Nations Security Council Resolution 1546 authorised the United Kingdom to take measures to contribute to the maintenance of security and stability in Iraq. However, neither Resolution 1546 nor any other United Nations Security Council Resolution explicitly or implicitly required the United Kingdom to place an individual whom its authorities considered to constitute a risk to the security of Iraq into indefinite detention without charge. As a result PLT continues to handle claims from Iraqi citizens who were detained some of whom claim to be the victims of alleged abuse whilst held.

2.5 UK based solicitors brought compensation claims against MOD, FCO and DFID on behalf of former Iraqi Locally Engaged Civilians (LECs) or their dependants who were engaged primarily as interpreters by the British Government in Basra during the period 2003 to 2008. It is alleged that they were threatened, kidnapped, tortured, shot and/or killed as a result of their employment by HMG which in some cases meant fleeing Iraq with consequential financial loss. Although brought against three Defendants the majority of the claims were against MOD.

2.6 When first intimated there were 180 claimants. Over time a number of claimants withdrew their claims and this saw the total number reduce to 56.

2.7 Ministerial approval was obtained in all three Departments to hold a settlement meeting with the claimants' legal representatives to discuss a cost effective compromise of the claims that would be capable of being recommended to respective Ministers as an acceptable settlement. This meeting took place on 12 October 2011 and a compromise agreement reached without admission of liability; this was fully endorsed by Ministers in MOD, FCO and DFID. The terms of the settlement remain confidential to the parties.

**Afghanistan**

2.8 ACO Lashkar Gah continues to handle claims locally in Afghanistan.

**Kosovo**

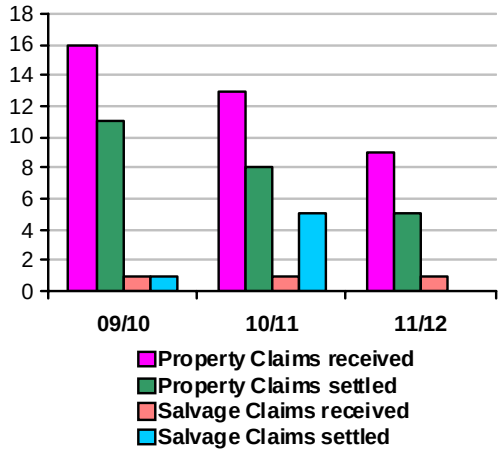
2.9 PLT is also responsible for handling a small number of residual claims resulting from the closure of the ACO Kosovo office which are awaiting adjudication by the Claims Commission or Arbitration Tribunal in Sarajevo.

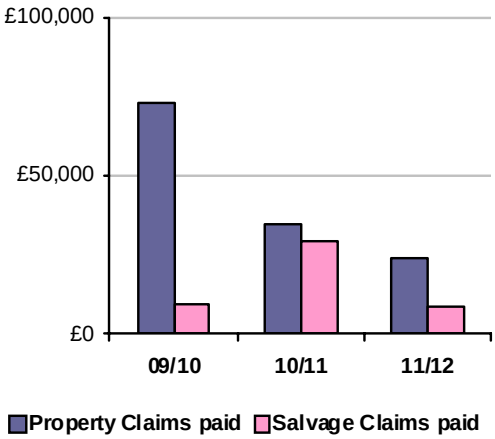
## Maritime Claims

2.10 Maritime claims by and against the Ministry of Defence result mainly from collisions, oil spillage, gunnery/missile firing accidents, damage to static property, wash damage, fishing gear damage and the salvage and recovery of Ministry of Defence property. Maritime law is complex and much of the legislation dealing with the law of the sea was enacted more than a century ago.

| | **2009/10** | **2010/11** | **2011/12** |
|---|---|---|---|
| Number of property claims received | 16 | 13 | 9 |
| Number of property claims settled | 11 | 8 | 5 |
| **Amount paid (£)** | **£72,736** | **£34,050** | **£23,783** |

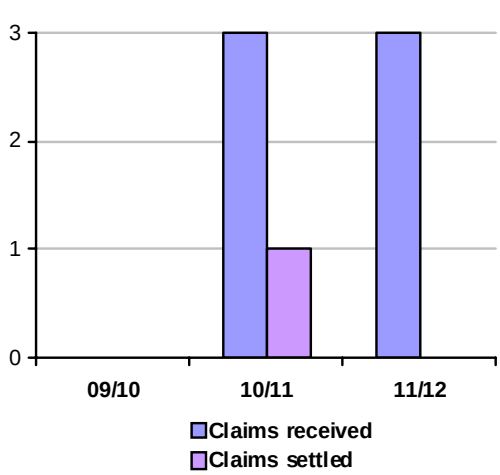
| | | | |
|---|---|---|---|
| Number of salvage claims received | 1 | 1 | 1 |
| Number of salvage claims settled | 1 | 5 | 0 |
| **Amount paid (£)** | **£8,879** | **£29,042** | **£8,600** |

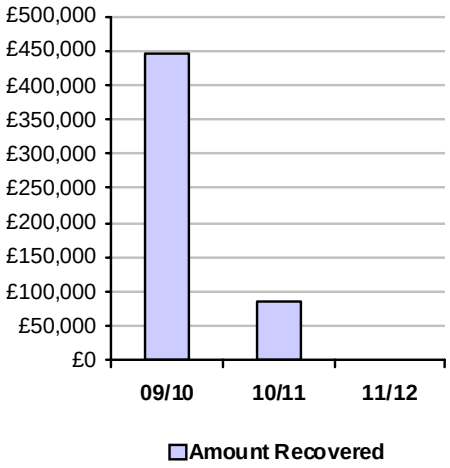



2.11 The Ministry of Defence provides assistance to ships in distress in UK waters and regularly helps in other parts of the world. If as the result of the assistance given a vessel is salved, the Department is entitled to claim salvage based on the value of the ship and its cargo. Part of the amount in salvage is paid to the crew of the assisting ship or aircraft in accordance with the Merchant Shipping Act 1864. It is Ministry of Defence policy not to claim salvage when life saving has been the main aim of the assistance given. Although uncommon, salvage claims by members of the public for the successful recovery of our property can likewise be made against the Department. The figures for salvage claims reflect the net effect of salvage claims paid by Ministry of Defence and a successful recovery.

| | **2009/10** | **2010/11** | **2011/12** |
|---|---|---|---|
| Number of maritime recovery and salvage claims initiated | 0 | 3 | 3 |
| Number of maritime recovery and salvage claims settled | 0 | 1 | 0 |
| **Amount recovered (£)** | **£444,282** | **£85,596** | **£0** |




2.12 For clarification, during 2009/2010 the Department made several recoveries but the cases were not deemed "settled" in year as there was requirement to pay salvage awards to the individuals involved in the incident leading to the claim. This can be a lengthy process and only at the conclusion will be case be formally closed.

2.13 In addition to the work undertaken by CLC&P, Flag Officer Scotland, Northern England and Northern Ireland (FOSNNI) and Flag Officer Sea Training (FOST) have delegated authority to settle claims of up to £8,000 per fishing gear claim, £5,000 per collision claim and £1,000 per oil spillage claim.

| | **2009/10** | **2010/11** | **2011/12** |
|---|---|---|---|
| Number of claims settled by FOSNNI | 12 | 14 | 6 |
| **Amount paid by FOSNNI** | **£29,939** | **£23,660** | **£12,132** |
| Number of claims settled by FOST | 19 | 15 | 5 |
| **Amount paid by FOST** | **£31,447** | **£36,595** | **£12,725** |
| **Total amount paid** | **£61,386** | **£60,255** | **£24,857** |

## Low Flying Military Aircraft Claims

2.14 The activities of low flying military aircraft can give rise to claims for compensation from members of the public. The most common claims are those involving injury to, or death of, livestock and/or damage to property although

claims are sometimes received for personal injury. Many of the claims are for relatively small amounts. Such claims are handled on an *ex-gratia* basis, but are investigated in the same way as if the principles of common law legal liability applied. The foundation of this approach is the Royal Prerogative, which gives an absolute right for all military flying activity, and, therefore, an injured party has no legal rights of redress for compensation. Lord Drumalbyn set out this approach in a Lords Written Answer on 22 November 1971 (Official Report Column 888):

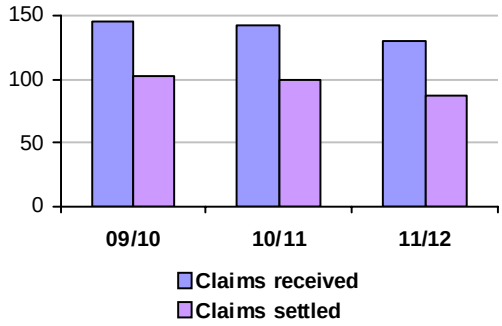
> *"… No remedies exist in law against any military aircraft flying by virtue of the Royal Prerogative for the purpose of the defence of the Realm or of training or of maintaining the efficiency of the Armed Forces of the Crown. The ... Ministry of Defence will, however, pay compensation on an ex gratia basis if satisfied that the damage has been caused by a military aircraft."*

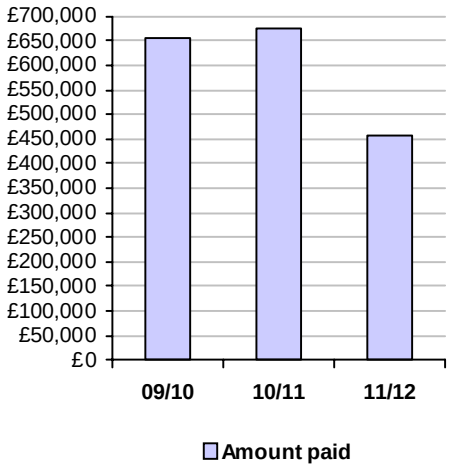
2.15 A procedure has been in place since 1994, following consultation with various farming unions and landowners' associations, for dealing with claims relating to death or injury to livestock. The procedure was most recently updated in December 1999 after a round of consultations with the NFU, Country Landowners' Association and other similar bodies. In accordance with the Livestock and Animal Compensation Claims Guidance the claimant should report the incident promptly, provide veterinary evidence and a fully quantified claim.

2.16 This is a category of work that requires careful monitoring to identify potentially fraudulent claims. Cases are referred to the Ministry of Defence Police if the evidence indicates there is a potential problem.

2.17 The reduction in expenditure in 2011/2012 reflects the slightly lower number of claims received and the fact that there were fewer higher valued claims settled in-year.

| | **2009/10** | **2010/11** | **2011/12** |
|---|---|---|---|
| Number of claims received | 146 | 143 | 130 |
| Number of claims settled | 103 | 99 | 88 |
| **Amount paid (£)** | **£0.65M** | **£0.67M** | **£0.46M** |

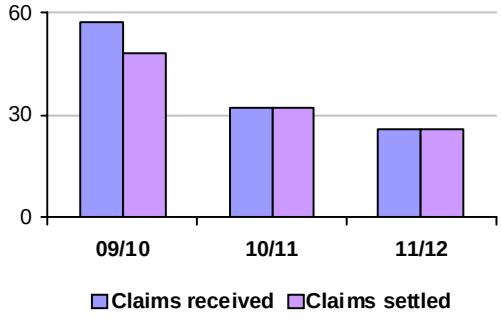


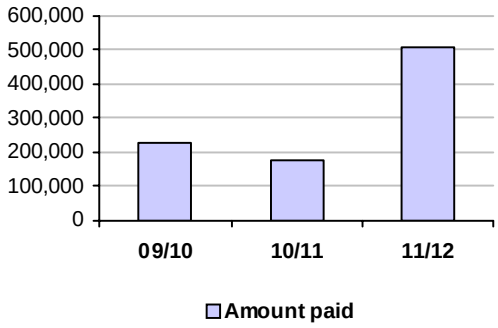




## Visiting Forces Claims

2.18 PLT handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII of the NATO Status of Forces Agreement (SOFA) and Section 9 of the Visiting Forces Act 1952. Such claims could be on behalf of any of the states who are signatories to the agreement or who are invited to train in the UK, but primarily involve the USA, the Netherlands, Belgium and Germany. Claims are investigated and handled in exactly the same way as if British Forces were involved and, if satisfied that the Visiting Force is liable, the Ministry of Defence pays compensation on its behalf. In the case of NATO countries, the Sending State is billed for 75% of the amount paid, the United Kingdom paying the other 25%.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of visiting forces claims received | 57 | 32 | 26 |
| Number of visiting forces claims settled | 48 | 32 | 26 |
| **Compensation paid (£)** | **£226,594** | **£173,044** | **£508,195** |




Visiting forces breakdown

| 2011/12 | Low Flying | Property Damage | Personal Injury | RTAs | Total |
|---|---|---|---|---|---|
| Claims Received | 1 | 2 | 6 | 17 | 26 |
| Claims Settled | 1 | 3 | 11 | 11 | 26 |
| **Compensation Paid (£)** | **£674** | **£4,730** | **£334,291** | **£16,309** | **£508,195** |

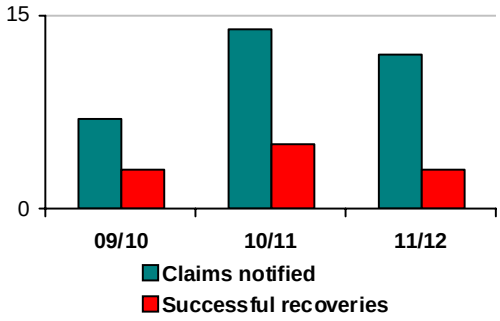
## Financial Recoveries

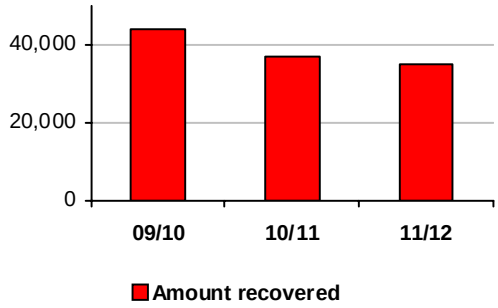
2.19 Where the Ministry of Defence sustains loss or damage to equipment, or property, which has been caused by a third party, PLT will seek to recover those losses from the third party. The main causes for taking action against third parties are occasions where Ministry of Defence static property has been damaged by vehicles, fire, water or the negligent actions of a contractor.

2.20 Less often, PLT will seek to recover compensation from third parties overseas following road traffic accidents and will also assist visiting forces to make recoveries in the UK if requested to do so.

2.21 The number of recoveries processed by PLT in each of the last three financial years is shown in the table below.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of claims notified | 7 | 14 | 12 |
| Number of successful recoveries | 3 | 5 | 3 |
| **Amount recovered (£)** | **£44,137** | **£37,061** | **£35,258** |


15
0
09/10
10/11
11/12
Claims notified
Successful recoveries


40,000
20,000
0
09/10
10/11
11/12
Amount recovered

# Section Three

## Service Personnel Employer's Liability Claims

3.1 Prior to 1948, it was not possible for any individual to sue the Crown. This was because of the long held principle that "the Crown could do no wrong". However, in 1947, legislation was passed enabling the Crown to be sued for acts of negligence. Section 10 of that legislation, The Crown Proceedings Act 1947, prevented Service personnel who were on duty or on any land, premises, ship, etc. being used for the purposes of the Armed Forces, from suing for compensation. This position remained until 15 May 1987 when The Crown Proceedings (Armed Forces) Act 1987 repealed Section 10 of The Crown Proceedings Act 1947. Since then Service personnel have, like any other employee, been entitled to sue the Ministry of Defence for compensation where they have suffered as a result of the Department's negligence. The repeal of Section 10 was not made retrospective.

3.2 At the time of the passage of the 1987 Bill, the question of retrospection was debated and motions to allow members of the Armed Forces, past and present, to pursue claims for injury or death suffered in incidents since 1947, were mooted. They were however defeated or withdrawn. The view that prevailed at the time was that there would have been no logical point at which to draw a line, short of trying to cover all incidents and all types of injury going back to 1947 and that to make the Act retrospective would create many new examples of unfairness and injustice.

3.3 Mr Matthews, an ex-serviceman suffering from an asbestos-related disease, challenged this position on the basis that Section 10 of the Crown Proceedings Act 1947 is incompatible with the European Convention on Human Rights. Mr Matthews alleged a breach of Article 2 (right to life) and Article 6 (due process rights) of the Human Rights Act. The case under Article 2 was that by exposing him to asbestos dust the Crown was in breach of its obligation to take positive steps to safeguard his health. The case under Article 6 was that Section 10 of the Crown Proceedings Act is a 'blanket' immunity which deprives him of his right of access to the Court. The matter was heard in the High Court in December 2001 and judgment handed down by Mr Justice Keith on 22 January 2002 in favour of the claimant. The Department, however, secured leave to take this matter expeditiously to the Court of Appeal and the hearing took place in April 2002. The Court of Appeal overturned Mr Justice Keith's decision on 29 May 2002, but granted leave for Mr Matthews to take this matter to the House of Lords. Their Lordships considered this matter in January 2003 and handed down a unanimous judgment on 13 February in favour of the Ministry of Defence. The five Law Lords agreed that there had never been the right in national law that Mr Matthews sought to assert i.e. that a member of the Armed Forces could sue the Crown in tort, and that he has no "civil right" that Article 6 of the European Convention on Human Rights can operate to protect.

3.4 The Armed Forces Compensation Scheme (AFCS) is a compensation package for members of the Armed Forces that became effective on 6 April 2005. The legislation replaces the previous arrangements under the War Pensions Scheme and is administered and paid by the Service Personnel & Veterans Agency. The scheme covers all Regular (including Gurkhas) and Reserve personnel whose injury, ill health or death is caused by service on or after 6 April 2005. Ex-members of the Armed Forces who served prior to this date, or who are receiving a current War Disablement Pension or War Widows' Pension, are not affected by the new scheme. They will continue to receive their War Pension or War Widows' pension and any associated benefits in the normal way.

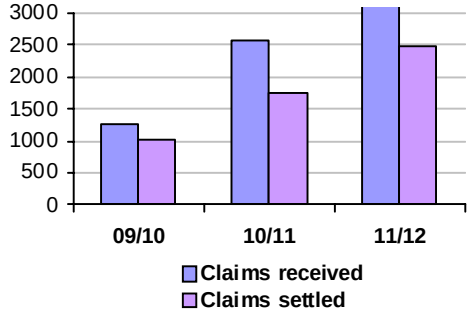
3.5 The AFCS provides modern, fair and simple arrangements with more generous benefits for the more severely disabled. It provides compensation for significant injuries, illness and death that are caused by service including when they result from warlike incidents or terrorism. The AFCS is designed to provide compensation, irrespective of fault, across the full range of circumstances in which illness, injury or death may arise as a result of service. The AFCS does not seek to affect a person's right to make a civil claim if the illness, injury or death was caused by the Department's negligence. In cases where payments from the AFCS are already in place, common law damages will be abated. However, in the unlikely event that payments from the AFCS are not in place at the time of settling common law damages, the damages figure will be passed to the Service Personnel & Veterans Agency (SPVA) who will abate the AFCS as appropriate

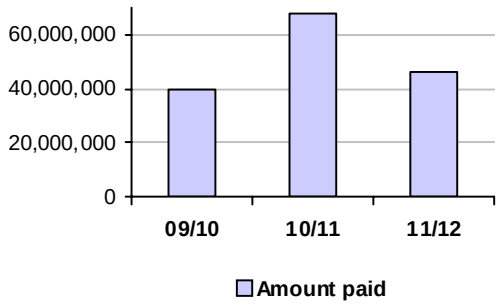
3.6 Under the terms of the Scheme a lump sum is payable to Service or ex-Service personnel based on a 15-level tariff graduated according to the seriousness of the condition. A graduated Guaranteed Income Payment (GIP), payable for life, will also be paid to those who could be expected to experience a significant loss of earning capacity. A GIP can also be paid to surviving partners (including unmarried and same sex partners) where the service person's death was caused by service.

3.7 The handling of routine personal injury claims from Service and ex-Service personnel has been contracted out since 1 July 1996. Royal & Sun Alliance held the contract until 30 April 2007. Since that time Gallagher Bassett International Limited have handled such claims following competitive tender exercises. Claims that are contentious or are of a political or sensitive nature are handled in house by CLC&P.

3.8 The number of claims and amounts paid are shown below:

| | **2009/10** | **2010/11** | **2011/12** |
|---|---|---|---|
| Number of claims received | 1115 | 2583 | 3535 |
| Number of claims settled | 872 | 1745 | 2495 |
| **Amount paid (£)** | **£39.8M** | **£67.3M** | **£46.3M** |




3.9 As forecast the expenditure in 2011/2012 is lower than the previous year which had included settlement of the high value claims associated with the Hercules and Nimrod crashes of 2005 and 2006 respectively. Large numbers of Noise Induced Hearing Loss claims relating to Army service in Northern Ireland have continued to be received and settled where appropriate.

## Combat Immunity

3.10 Among the claims being handled in-house are those which relate to operational service in Afghanistan and Iraq. It is open to the Ministry of Defence to plead a defence of combat immunity in those claims where the injury was sustained engaging the enemy in the course of hostilities. The Court of Appeal handed down this ruling on 21 February 1996 in *Mulcahy - v- MOD* when it was held:

*"One soldier did not owe to another a duty of care in tort when engaging the enemy in the course of hostilities. Furthermore there was no duty on the Ministry of Defence to maintain a safe system of work in battle conditions. Accordingly, a soldier who was injured in battle conditions did not have a cause of action in negligence against the Ministry."*

3.11 The *Mulcahy* judgment was clear, but this ruling was expanded in *Bell & Others -v- MOD* (the PTSD Group Action) when Owen J ruled:

*"Does the immunity apply to anti-terrorist, policing and peace keeping operations of the kind in which British forces were engaged in Northern Ireland and in Bosnia? In my judgment it will apply to operations in which service personnel come under attack or the threat of attack.*

*[Furthermore] the term combat has an extended meaning in that*

*a. the immunity is not limited to the presence of the enemy or the occasions when contact with the enemy has been established. It extends to all active operations against the enemy in which service personnel are exposed to attack or the threat of attack. It covers attack and resistance, advance and retreat, pursuit and avoidance, reconnaissance and engagement.*

*b. the immunity extends to the planning of and preparation for operations in which the armed forces may come under attack or meet armed resistance.*

*c. the immunity will apply to peace-keeping/policing operations in which service personnel are exposed to attack or the threat of attack".*

3.12 In *Bici -v- MOD,* Elias J narrowed the judgment in *Bell & Others* by stating:

"*But any such threat must in my view be imminent and serious".*

3.13 The Department is facing a significant number of personal injury claims emanating from deaths and injuries in Iraq and Afghanistan. Some of these claims have been brought on dual grounds, with claims based on:

(i) Article 2 (the right to life) of the European Convention on Human Rights, alleging that the MOD failed to take all reasonable steps to minimise the risk to life before committing troops to operations; and

(ii) Common law negligence, alleging that MOD failed in its duty of care to Service personnel on operations.

3.14 The majority of these cases were stayed behind *Smith v MOD* in which the Supreme Court held that servicemen on active service overseas (who are not within a UK military base or hospital) are not within jurisdiction for the purposes of the ECHR. Pte Smith was a reservist who died of hyperthermia while based at a British camp in southern Iraq in 2003.

3.15 The claims in negligence are typically based on the following:

a. Allegations that a commander on the ground was negligent in his actions or made decisions that were wrong

b. Allegations that equipment provided by MOD was inadequate;

c. Allegations that pre-deployment training provided by MOD was inadequate.

3.16 Following the decision in *Smith*, MOD argued that the claims in respect of breach of Article 2 were doomed to fail and the judge duly struck out the Article 2 claims. That position will only change if there is a further ruling from the European Court of Human Rights in Strasbourg in relation to the extra-territorial application of ECHR to members of the armed forces, which is considered unlikely.

3.17 The judge was prepared to strike out/give summary judgment in respect of the operational decisions made by commanders on the additional ground that these did not come within Article 2. He held that "there is no sound

basis for extending the scope of the implied positive obligations under Article 2 so as to cover decisions made in the course of military operations".

3.18 This left the negligence claims:

a. Allegations that equipment provided by MOD was inadequate;

b. Allegations that pre-deployment training provided by MOD was inadequate

3.19 The judge ruled that although the equipment claims might give rise to complex and difficult questions of an essentially political nature or to decisions in relation to which a wide discretion must be exercised when considering whether it would fair, just and reasonable to impose a duty of care, it did not demonstrate "conclusively" that it would not be fair, just and reasonable to impose duties of care. He was not persuaded that there should be a blanket exclusion of liability and therefore refused to strike out/give summary judgment on the common law equipment claims.

3.20 The judge also refused to strike out the training claims. He drew a distinction between pre-deployment training and in-theatre training. In principle the latter falls squarely within combat immunity and although he considered that on the face of it the allegations fell within combat immunity, he thought this issue was better resolved at a full blown High Court trial.

3.21 MOD decided to appeal the decision that there should not be a blanket exclusion of liability on claims against the Department on injuries incurred due to equipment provided by the MOD.

3.22 The Judge refused both MOD's application and the claimants' application (relating to the Article 2 claims) to appeal his judgment. The parties therefore submitted an Application for Permission to Appeal direct to the Court of Appeal. Permission was granted and the Appeal will be heard for three days commencing 25 June 2012.

## Summary of "Group Actions"

### Nuclear Test Veterans

3.23 This and previous Governments' frequently stated position has been that there is no evidence of excess illness or mortality amongst the veterans as a group which could be linked to their participation in the tests or to exposure to radiation as a result of that participation. Formal and well-documented procedures were in place to ensure the health and safety of those participating in the tests. Personnel Safety Plans were prepared and used for each operation and environmental monitoring was undertaken. Personal monitoring and protective clothing was used where appropriate for each trial. The effectiveness

of these procedures is demonstrated by the fact that the majority of participants received little or no additional radiation exposure as a result of participation.

3.24 This is borne out by three studies into cancer incidence and mortality amongst nuclear test participants conducted by the independent National Radiological Protection Board (NRPB). The latest Report NRPB-W27 entitled "Mortality and Cancer Incidence 1952-1998 in UK Participants in the UK Atmospheric Nuclear Weapons Tests and Experimental Programmes" published in 2003 concluded that overall levels of mortality and cancer incidence in the nuclear weapons test participants have continued to be similar to those in a matched control group, and for overall mortality to be lower than expected from national rates. The Department's consistent line has been that we have every confidence in the independent studies, and there are no grounds for compensation to be paid to British nuclear test veterans.

3.25 However, where individual veterans are able to produce reliable evidence to raise a reasonable doubt that their illness is related to their service, they are entitled to a War Pension. The War Pension Scheme provides a framework for assessing and paying no-fault compensation for injury or death due to Service, and the burden of proof is light: applicants have only to raise a "reasonable doubt" that their loss was caused by Service to qualify. An applicant unhappy with the outcome of their claim can pursue the matter by way of the Pensions Appeal Tribunal, and beyond that to the Social Security Commissioners if necessary. A number of such pensions are in payment to NTVs and to their widows.

3.26 In July 2002 the MOD learned that two firms of solicitors, Alexander Harris and Clarke Willmott, had been granted Legal Services Commission funding to explore the feasibility of bringing claims against MOD on behalf of NTVs. Legal action began when Alexander Harris Solicitors sent a Letter of Claim dated 15 November 2004 which indicated that they and Clarke Willmott Solicitors were instructed by nearly 1,000 British, Fijian and New Zealand Claimants. Some Claimants were beneficiaries of veteran servicemen rather than the servicemen themselves. It was alleged that the servicemen were not appropriately or adequately warned, advised or cautioned of the risks to their health likely to result from their participation in the various testing programmes.

3.27 Legal proceedings were served upon MOD in April 2005 on behalf of 655 British, 130 Fijian and 213 New Zealand nuclear test veterans. The Legal Services Commission funding to pursue the litigation was however subsequently withdrawn and the two original firms of solicitors are no longer involved in the case. Since April 2006, the litigation has been handled with a new firm of solicitors, Rosenblatt of London.

3.28 Particulars of Claim were served on 29 December 2006, around a week before the claim would otherwise have lapsed. The MOD served a Summary Defence on 21 January 2008 and a High Court trial was held between 21 January and 6 February 2009 to rule on limitation only; whether the MOD is prejudiced by the delay in bringing the claims given that many of its key witnesses are no longer alive, or able due to age, infirmity or loss of memory to

give evidence. MOD, working closely with the Atomic Weapons Establishment at Aldermaston, disclosed a list of 12,295 documents in June 2008 that are considered relevant to the proceedings and the parties identified five lead cases each which they considered representative of the entire claimant cohort.

3.29 Mr Justice Foskett handed down his judgment on limitation on 5 June 2009 and the main findings were as follows:

- He found 5 of the lead cases to be time-barred and 5 were not time-barred. Importantly, in the 5 cases found to be time barred he exercised the Court's discretion to permit an out of time case to proceed to trial (the section 33 Limitation Act 1980 discretion). This means that if not successfully appealed or not otherwise summarily disposed of or discontinued, all 10 lead cases and indeed the Group Action of 1,011 cases may now proceed to a trial on causation and breach of duty.

- He did not find that MOD (or any other public body) concealed any evidence from the veterans or their representatives. Neither did he criticise MOD for the way in which it disclosed documents in these proceedings nor the way in which it released material to the National Archives. There was no criticism of the War Pension Scheme.

- He expressed concern about whether or not the Claimants can prove their case, particularly whether any of them can prove that they have a condition caused by exposure to ionising radiation at the tests. He said that he did not want the Claimants to be misled by his judgment into thinking that they will be successful at trial, which he refers to as a 'false dawn'.

- He essentially declined to express a conclusion on whether or not the Claimants are unable to prove causation based upon the current applicable legal test, considering the matter best dealt with at trial and believing that the Claimants need to adduce more expert evidence in order to have a hope of success. He acknowledged that the case law as it stands and if strictly read poses a potential problem for the Claimants, but considers that the law is in flux on this point and may be developed to assist the Claimants in the future.

- He appeared to accept the premise that the Rowland report may provide the Claimants with at least an arguable starting point for their case on causation but acknowledged that the Claimants will need more evidence to succeed at trial. He "assumes Rowland will withstand scrutiny".

- He was of the view that the case can be fairly tried on the documentary evidence available and that the absence of many key live witnesses would not be unfair or prejudice the MOD's case.

- He concluded that it would be "a very regrettable consequence" if it was necessary to decide that some cases could go forward to trial and that others could not. In handing down the judgment he says that a layman

would say that to be fair to the claimants the case should proceed to a causation trial.

- He acknowledged that it may be an injustice to MOD if it had to pay the Claimant's costs of the case because it was successful at the limitation hearing but it is later discontinued because it is without merit in relation to causation or breach of duty. He invited submissions as to how the Court might obviate that potential injustice.

- He invited the parties to negotiate a settlement via mediation.

3.30 Following submissions on 18 June 2009, Mr Justice Foskett granted MOD leave to appeal his decision on the limitation issue. In accordance with the Judge's wishes, meetings were the claimants' legal representatives to establish the boundaries of a possible economic and efficient settlement without incurring substantial further legal costs in taking these cases to a full trial on causation. No agreement was reached.

3.31 In order to protect the Ministry's position, grounds for appeal were lodged at the Court of Appeal on 12 October 2009. The Appeal was heard by Lady Justice Smith, Lord Justice Leveson and Sir Mark Waller between 7 and 14 May 2010. The Court of Appeal overturned the High Court ruling in all respects save one case in a judgment dated 22 November 2010, which MOD did not appeal in relation to the Limitation Act but did mention to the court that the case was very weak on causation. The Court fully examined whether the claims were brought within the period allowed by the Limitation Act and if it should apply discretion to allow late claims to proceed to a full liability trial. In arriving at its judgment the Court, to some extent, considered the merit of the claims in terms of causation and concluded that the general merits of the claims were extremely weak. The Court supported the approach the MOD took to in relation to the extensive disclosure of relevant documents.

3.32 The Veterans subsequently filed an Application with the Supreme Court and on 28 July 2011 was granted Permission to Appeal. In granting permission Lord Philips said:

> *"Might I just emphasise this is only an application for permission to appeal. The court would not wish to raise false optimism in what are obviously some very difficult cases."*

3.33 The appeal to the Supreme Court was heard for 4 days commencing 14 November 2011 before seven Justices - Philips, Brown, Hale, Walker, Mance, Wilson and Kerr. They handed down their decision on 14 March 2012, ruling in favour of MOD that the claims brought by Nuclear Test Veterans were time barred and declined to allow the claims to proceed under the statutory discretion.

3.34 Perhaps of greater significance is that all the Justices recognised that the veterans would face great difficulty proving a causal link between illnesses suffered and attendance at the tests. The Supreme Court described the claims as having no reasonable prospect of success and that they were doomed to fail.

Lord Brown said *"these appeals now provide the court with the opportunity….. once and for all to end the false hopes on which these claims have so far rested".*

## Radiation Compensation Scheme

3.35 The Ministry of Defence is a member of the nuclear industry's Compensation Scheme for Radiation Linked Diseases. This is a no-fault scheme where there is no requirement for claimants to prove negligence on the part of the Department in order to receive compensation. The Scheme, which the Ministry of Defence joined in 1994, was set up and is run jointly, by the participating employers and Trade Unions and does not affect a claimant's right to seek legal redress.

3.36 The Scheme provides for the assessment of a case, on an agreed technical basis, in order to determine the probability that a cancer contracted by a worker could have been caused by occupational radiation exposure. The amount of compensation payable in a successful case is determined by negotiation between the solicitors representing the parties based upon the same guidelines that would apply if the case had proceeded to Court.

3.37 The Scheme provides for payments to be made for lower levels of causation probability than would be allowed by the Courts. In addition the Scheme provides "full" payment of compensation at a level of 50% causation probability and lesser payments down to a level of 20% causation probability. In this way the assessment of a case recognises that even below the balance of probability there is a chance that exposure to occupational ionising radiation played a role in the disease.

3.38 During financial year 2011/2012, the Scheme received 13 new claims from former Ministry of Defence employees who believe their illness is associated with exposure to occupational ionising radiation. No compensation was paid during this period – but some minor payments, totalling £3,043, were made in respect of legal fees on ongoing cases.

## Asbestos Claims

3.39 Prior to May 1987, Service personnel were prevented by law from pursuing claims for compensation from the Ministry of Defence by Section 10 of The Crown Proceedings Act 1947 (Crown Immunity prevented claims from being made prior to 1947). This point of law applies to all Service personnel and has no bearing on rank, status or place of employment. However, Section 10 was repealed by The Crown Proceedings (Armed Forces) Act 1987. Since the change in the law, which was not made retrospective, Service personnel who suffer loss or injury as a result of negligence by the Ministry of Defence have

been entitled to make common law claims for compensation. When compensation claims are submitted, they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a legal liability to pay compensation we do so.

3.40 In the case of members of the Armed Forces being exposed to asbestos dust and fibre during service before 15 May 1987, they are prevented by law from receiving compensation from the Ministry of Defence. The legal position is that even if an ex-Serviceman only now discovers he has an asbestos related disease, he cannot sue for compensation if exposure was before the repeal of Section 10 of The Crown Proceedings Act 1947. Given that controls over the use of asbestos were introduced in 1970, this is, and will be, the case for the vast majority of ex-Service claimants (the time between exposure to asbestos dust and fibre and the first signs of disease is typically between 15 and 40+ years).

3.41 When Parliament debated the repeal of Section 10, the question of retrospection was considered and motions to allow all past and present members of HM Forces or their dependants to pursue compensation claims for injury or death were moved. They were defeated or withdrawn. The view then, as it is now, was that there is no logical point at which to draw a line, short of trying to cover all types of injury, and this would create more examples of unfairness and injustice. The Government, therefore, has no plans to introduce legislation to allow ex-Service personnel suffering illness or injury before 1987 to be paid common law compensation.

3.42 Compensation in the form of a War Pension is available, however, to all former members of HM Forces suffering from Service attributable illness or injury. War Pensions are paid by the Service Personnel Veterans Agency, are non-discretionary, not means-tested and are made on a no-fault and retrospective basis. They are up-rated annually and are tax-free. The Service Personnel Veterans Agency also makes provision for the widows of Service and ex-Service personnel whose death is attributable to service in the form of a War Widows Pension.

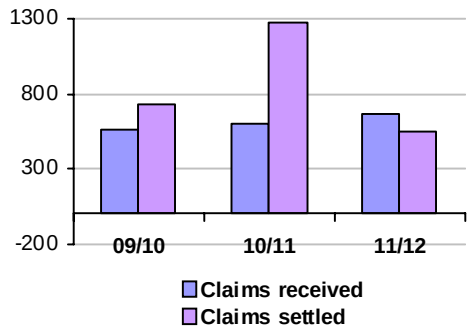
3.43 Former civilian employees, who are not bound by the provisions of Section 10 of the Crown Proceedings Act 1947, are, of course, able to pursue common law claims for compensation.

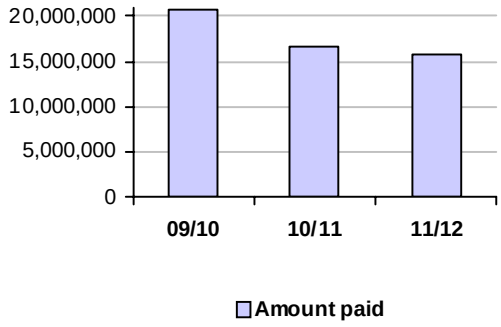
# Section Four

## Civilian Staff Employer's Liability Claims

4.1 Since 1982, the Ministry of Defence has contracted out the handling of its civilian employee Employer's Liability claims. Gallagher Bassett International Limited is the current contractor and was awarded a new four-year contract to handle all newly notified civilian Employer's Liability claims from 1 May 2012. Many of the claims relate to asbestos related illnesses and Noise Induced Hearing Loss.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of claims received | 560 | 599 | 666 |
| Number of claims settled | 732 | 1269 | 551 |
| **Amount paid (£)** | **£20.8M** | **£16.6M** | **£15.7M** |



# Section Five

## Motor Claims

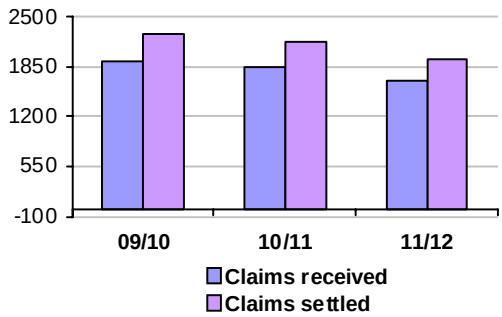
### Third Party Motor Claims - UK

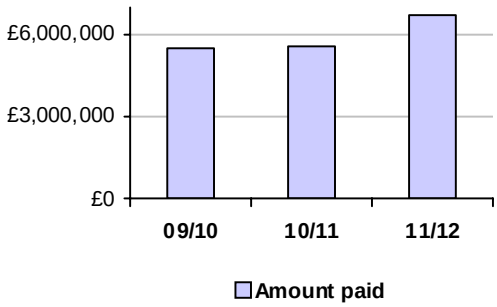
5.1 Since 1982 the Ministry of Defence has contracted out the handling of claims made against the Department by other road users. Gallagher Bassett International Limited is the current contractor and was awarded a new four-year contract to handle all newly notified third party motor claims from 1 May 2012.

5.2 CLC&P works closely with the Defence Road Safety Officer to reduce the number of road traffic accidents involving Ministry of Defence employees by raising awareness of the human and financial costs of accidents. To this end CLC&P provides close support to the Defence Motor Transport Policy Group and attends the Defence Road Transport Regulation Working Group and the Defence Motor Transport Sub-Committee.

5.3 Statistics for motor claims over the last three financial years are shown below:

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of claims received | 1923 | 1852 | 1674 |
| Number of claims settled | 2261 | 2168 | 1946 |
| **Amount paid (£)** | **£5.4M** | **£5.6M** | **£6.7M** |



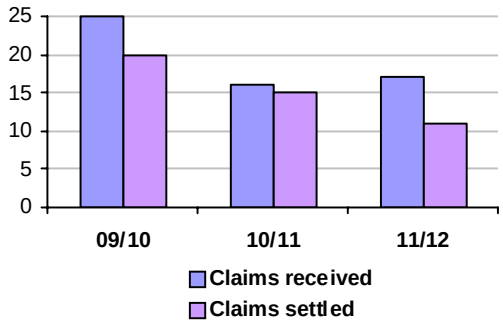



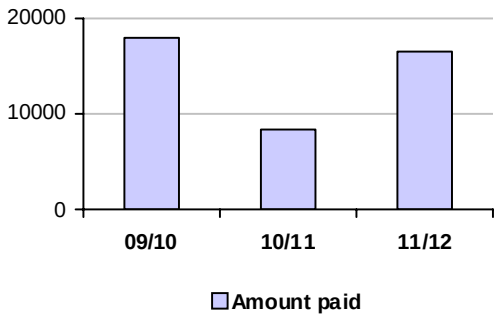
## Third Party Motor Claims - Overseas (not dealt with by ACOs)

5.4 Claims arising from non-UK based vehicles overseas are handled by the appropriate ACO or, where the geographical area is not covered by one of the ACOs, by PLT

5.5 Claims managers are required to establish that an authorised driver was driving the Ministry of Defence vehicle on an authorised journey and route. If these criteria are met and all the evidence suggests that the Ministry of Defence driver was liable for the accident, then compensation will be paid. Statistics for overseas motor claims for the last three financial years are shown in the table below:

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of claims received | 25 | 16 | 17 |
| Number of claims settled | 20 | 15 | 11 |
| **Amount paid (£)** | **£17,884** | **£8,440** | **£16,459** |

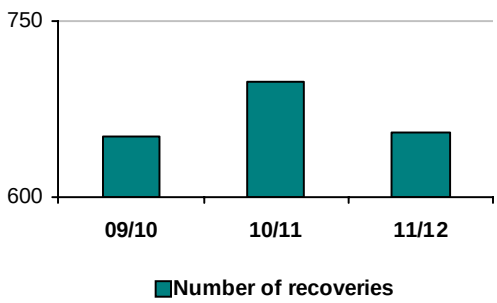


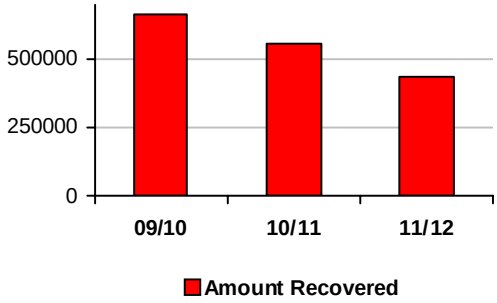




## Uninsured Loss Recovery

5.6 With effect from 1 May 2007 Gallagher Bassett has recovered, on behalf of the Ministry of Defence, the cost of damage caused to its vehicles in accidents that are the fault of a third party. The number of recoveries made and the amounts received are shown below.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of recoveries | 652 | 698 | 655 |
| **Amount recovered (£)** | **£660,607** | **£555,617** | **£433,384** |


750
600
09/10
10/11
11/12
Number of recoveries


500000
250000
0
09/10
10/11
11/12
Amount Recovered

# Section Six

## Clinical Negligence Claims

6.1 CLC&P handles clinical negligence claims brought by current or former members of HM Armed Forces and the small number of claims brought by their dependants treated in MOD medical facilities. The number of new claims received during 2011/2012 was comparable with the number received in recent years.

6.2 For a claimant to bring a successful clinical negligence case he or she must prove a causal link to the injury or illness suffered as well as proving negligence. It is not sufficient to prove negligence alone.

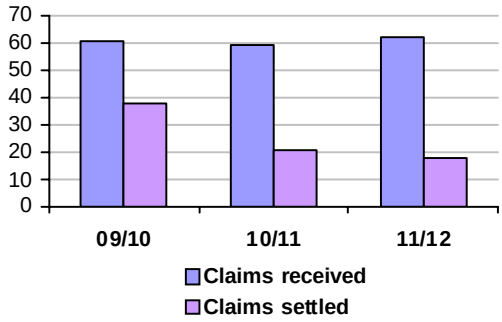
6.3 As observed in previous reports, clinical negligence claims can be very time consuming, complex and expensive to settle. Experts in a number of different fields may need to be instructed by both parties to provide advice on liability, causation and quantum. Finding suitable experts willing to provide opinions in such cases within fairly short timescales remains an ongoing problem.

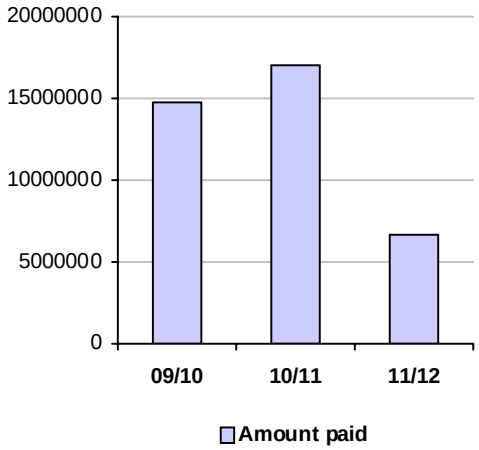
6.4 Following on from the significant progress made in the last year or so, a further number of long running claims, were successfully resolved during 2011/12.

6.5 Details of expenditure on clinical negligence cases over the past three years are shown below. These figures include cases where allegations have been made relating to the failure to recognise, diagnose and treat Post Traumatic Stress Disorder (PTSD) from current or former Service personnel.

| | **2009/10** | **2010/11** | **2011/12** |
|---|---|---|---|
| Number of claims received | 61 | 59 | 62 |
| Number of claims settled | 38 | 21 | 18 |
| **Compensation plus cost of claims settled (£)** | **£14.7M** | **£17.0M** | **£6.7M*** |

* The overall settlement figure was £8.2M but was reduced to £6.7M to take into account £1.5M received from separate NHS Trusts as a contribution towards settlement/legal costs.




6.6 In addition to the number of formal claims received, the Clinical Negligence Team dealt with a number of requests from solicitors for disclosure of medical records and other documentation, in anticipation of future clinical negligence claims against the Department being submitted.

# Section Seven

## Area Claims Offices

### Area Claims Office Afghanistan

7.1 The Area Claims Office (ACO) is located in Lashkar Gah, the capital of Helmand Province, at the Main Operating Base Lashkar Gah alongside HQ Task Force Helmand and the FCO Provincial Reconstruction Team. When the security situation permits the ACO will visit Forward Operating Bases (FOBs) to assist the Military Stabilisation Support Teams (MSST) in their understanding of Claims procedures. MSSTs give vital on the ground assistance to the ACO in areas where it is difficult for Afghan citizens to travel to Lashkar Gar, due to inherent security issues or the distance that they would be required to travel, by taking receipt of claims. They also provide assistance with gathering information and forwarding the paperwork to Lashkar Gar for the ACO to assess.

7.2 The level of claims received this year has reduced compared to that of previous years. This is an indication of transition as more military operations are led by the Afghan National Security Forces with UK troops now acting as mentors and advisers. Consequently, the ACO has recently reduced from 3 to 2 civilian staff (the team now comprises 1 x Band C2 MOD Civil Servant and 1 x Locally Engaged Interpreter).

7.3 The types of claims received from Afghan citizens are varied and include fatalities and personal injuries (mainly resulting from civilians being caught in the cross-fire between ISAF and insurgents), property damage caused by munitions, crop damage caused by the movement of military tracked vehicles and a small number of road traffic accidents. There has been a recent increase in claims relating to the removal of crops/trees or buildings to improve security at UK ISAF Check Points and Patrol Bases.

7.4 A total of 650 claims were received of which 545 (including 74 from 10/11) were settled at a total of £748,421. 141 claims were repudiated during FY11/12.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of claims received | 1710 | 1743 | 650 |
| Number of claims settled | 969 | 1242 | 545 |
| **Amount paid** | **£1,142,000** | **£1,440,423** | **£748,421** |

## Area Claims Office (North West Europe) (ACO (NWE))

7.5 ACO(NWE) is part of G8, Headquarters British Forces Germany (HQ BFG), located at Rheindahlen. The ACO has four civilian staff responsible for handling claims by and against the Ministry of Defence in Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Luxembourg, Norway, Poland, The Netherlands and Switzerland. Claims handled include RTAs, Training and Manoeuvre Damage, Public Liability and Loss of Service.

7.6 The vast majority of ACO(NWE) business, approximately 80% of claims received, relates to vehicle movements and is handled in accordance with Article 8.5 of the NATO Status of Forces Agreement (SOFA). Claims processed under Article 8.5 are negotiated by the host Nation, and the costs incurred are apportioned between Ministry of Defence and the Host Nation on a 75%:25% basis. The host Nation therefore has a vested interest in keeping costs as low as possible.

7.7 ACO(NWE) continues to recover significant sums to the public purse, this year it has recovered over £535,000. The sums recovered come mainly from the pursuit of claims under German law for MOD incurred expenses where members of the forces and/or their dependants have sustained injury as a result of third party liability in RTAs. The heads of claim which typically contribute to these recoveries are loss of earnings and medical related expenses, such as medical treatment costs, ambulance fees and physiotherapy and rehabilitation costs.

7.8 The Claims Website for both the intranet and internet use, has enabled the ACO(NWE) customer base to have a better understanding of its role within North West Europe and has ensured that claimants are fully aware of the processes in place to action any claims against/for the MOD. This is updated regularly with customer information and the new and revised DINS.

7.9 ACO(NWE) remains active in promoting the role of the claims office within BFG by raising its profile with a view to reducing the number of claims received and, more importantly, the associated costs incurred to the GOC HQ BFG Budget. ACO action in this area has included briefings and presentations to key stakeholders, such as the Schadensregulierungsstelle des Bundes (SRB) and the Garrison Transport Office representatives. ACO(NWE are also publicising the role of the claims office within the British Forces Germany Newspaper (Sixth Sense) and the various Garrison's Community Bulletins. This is aimed at ensuring the customer base has an understanding of the ACO(NWE) requirement and continuation of the vital information flow and stakeholder support.

| | 2009/2010 | 2010/2011 | 2011/2012 |
|---|---|---|---|
| Number of claims received | 500 | 402 | 351 |
| Number of Claims closed | 550 | 525 | 401 |
| **Total Paid** | **£1,164,711** | **£1,168,176** | **£1,267,645** |
| **Total Recovered** | **£679,192** | **£662,394** | **£535,573** |

## Area Claims Office Cyprus

7.10 Based at Episkopi Garrison in the Western Sovereign Base Area, the Area Claims Office Cyprus, staffed by 1 x UKBC C2 and 1 x LEO, is responsible for handling all third party claims for compensation made by and against British Forces Cyprus, the Sovereign Base Areas and visiting UK forces, which arise out of on-duty military activity in the Sovereign Base areas and the Republic of Cyprus. The types of claims handled include road traffic accidents, training & manoeuvre damage, Public Liability and, for locally employed staff, Employer's Liability.

7.11 The Cypriot climate and terrain continues to provide excellent training opportunities for the British forces, in the air and on land and sea, with most land based training taking place on privately owned land under access rights afforded to the UK by the Cyprus Treaty of Establishment. The majority of the ACO's work continues to involve inspecting and investigating training and manoeuvre damage claims arising from land based exercises and associated helicopter activity. 96% of all claims received in-year (413 out of 429) were training & manoeuvre related and were predominantly for crop damage or loss of livestock.

7.12 There have been a number of units visiting Cyprus to train this year for the first time. They have been able to exploit the training facilities on island, although, inevitably, a greater use of the facilities has meant that the number of claims has increased. ACO Cyprus is looking at ways to minimise the number of claims incurred. It should be noted that the amount paid out for claims during 2011/12 includes the residual claims resulting from the fire on the training area in 2009. This accounts for £82,000 of the amount paid.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of claims received | 172 | 154 | 429 |
| Number of claims settled | 116 | 156 | 334 |
| Number of claims closed | 140 | 179 | 358 |
| **Amount paid** | **£153,422** | **£456,150** | **£491,602** |
| **Amount recovered** | **£13,525** | **£42,852** | **£12,481** |

## Area Claims Office South Atlantic Islands

7.13 The Command Secretariat in the BFSAI has delegated Functional Authority to settle Common Law Claims against the MOD. The ACO in the Falkland Islands is responsible for collating all claims for approval or passing claims over the value of £5,000 to CLC&P.

7.14 During FY2011/2012 a total of four new claims were received.

7.15 The driving conditions in the Falkland Islands are demanding and in an effort to reduce accidents all military Land Rovers have been fitted with engine limiters set at a maximum speed of 40 MPH.

| | 2009/10 | 2010/11 | 2011/12 |
|---|---|---|---|
| Number of claims received | 3 | 2 | 4 |
| Number of claims settled | 2 | 2 | 2 |
| **Amount paid** | **£1,950** | **£646** | **£3,654** |
| **Amount Recovered** | **Nil** | **Nil** | **Nil** |

# Section Eight

# Insurance and Indemnities

## Insurance

8.1 Treasury guidelines generally discourage public bodies from insuring risks unless it can be shown that the potential costs of claims paid, together with the cost of handling such claims, will exceed the cost of purchasing insurance. As the costs of premiums, compared to the amounts paid in compensation, would normally favour insurance companies, the Ministry of Defence self-insures its core business activities.

8.2 CLC&P is the policy lead on all Ministry of Defence non-contractual insurance issues and encourages units and establishments to transfer risks arising from non-core activities away from the Department.

8.3 Willis Ltd (Aerospace) provides insurance, which is self-financing, to protect the Ministry of Defence against claims arising for compensation for five specific non-core aviation risks:

- Military aircraft participation at air displays
- Civilian aircraft use of military airfields
- Search and Rescue training with civilian organisations
- Fare-paying passengers on military aircraft
- Passengers conveyed for Income Generation purposes

## Indemnities

8.4 CLC&P is responsible for all non-contractual indemnity matters, ranging from issuing indemnities to land owners who are letting the Armed Forces use their land for exercises, to commenting on different clauses within Defence Infrastructure Organisation' licenses, indemnity provisions within Memoranda of Understanding (MOU) and other international agreements.

8.5 The Ministry of Defence always seeks an indemnity against claims arising from repayment activities or events that do not further the interests of the Department. Examples include participation by Service personnel or Ministry of Defence civilian staff in non-core fund raising charitable or social activities, or the use of Ministry of Defence personnel or equipment by other organisations for activities, which have no direct benefit to the Ministry of Defence. The Ministry of Defence must seek an indemnity in such instances as there is no financial provision in the Defence budget to meet claims, which are not defence related. Indemnities must be backed by insurance or a guarantee from those companies/organisations that self-insure. The only exception to the requirement for indemnity is when the Ministry of Defence is dealing with other Government Departments. This is because of the principle of indivisibility of the Crown. CLC&P issued about 33 indemnities in Financial Year 2011/12 and commented on 33 MOUs.

8.6 Indemnities that arise from the Department's contractual business are the responsibility of the appropriate Commercial Branch, with policy guidance provided by the Director General Defence Commercial as appropriate.

## Income Generation

8.7 Income generation activity under the Government's initiative for 'Selling Government Services into Wider Markets' is also an exception to the rule that the Ministry of Defence does not purchase insurance. However, because of the unusual and hazardous nature of the activities the Ministry of Defence undertakes, commercial insurance may not always be available to cover these activities, or may not be cost effective. Therefore, alternatively customers may pay a charge under the Departmental Insurance Scheme and any claims for compensation, which may arise, will then be settled by CLC&P.

8.8 Advice about insurance and risk reduction may be obtained from CLC&P and from the Ministry of Defence's insurance brokers, Willis Ltd, in accordance with 2010DIN08-018. Willis has developed a specialised package of insurance policies offering a full range of business insurances for Top Level Budget Holders undertaking income generation activity.

# Section Nine

## Law and Practice

### Civil Justice Procedures

9.1 The greatest upheaval ever in the Civil Litigation process occurred when the Civil Procedure Rules were introduced on 26 April 1999. The Rules, which replaced the existing High Court and County Court Rules, significantly changed the way common law claims are handled, in an attempt to speed up, simplify and make the whole process less expensive. The Rules, which include pre-action protocols, govern the conduct of litigation and encourage the appointment of a single expert to provide an independent opinion. Although these reforms have been in place for some time now, we believe it is important to recapitulate the main aims and procedures, to serve both as a reminder for regular readers of these reports and as a simple digest for those unfamiliar with the subject.

### Aims

9.2 The overriding objective of the rules is to enable the court to deal with cases justly in ways, which are proportionate to the amount of money involved, the importance and complexity of the case, and to the parties' financial position.

- Litigation will be avoided wherever possible
- Litigation will be less adversarial and more co-operative
- Litigation will be less complex
- The timescale of litigation will be shorter and more certain
- Parties will be on a more equal footing
- There will be clear lines of judicial and administrative responsibility for the civil justice system
- The structure of the courts and the deployment of judges will be designed to meet the needs of litigants
- Judges will be employed effectively so that they can manage litigation in accordance with the new rules and protocols
- The civil courts system will be responsive to the needs of litigants

9.3 In keeping with the reforms, the Courts take a proactive approach to case management, setting down directions which decide the order in which issues are to be resolved and fixing timetables to control the progress of the case. In addition, they encourage the parties to co-operate and consider adopting other methods of settlement such as alternative dispute resolution.

9.4 Proportionality plays an important part and the courts will consider whether the potential benefit of taking a particular step justifies the cost.

## Experts

9.5 In the majority of cases a single expert will be instructed and evidence, assuming the case proceeds to court, will normally be in the form of a written report. The defendant and claimant may submit written questions to the expert and both sides will see the expert's response. If the parties to an action cannot agree upon an expert witness they may instruct their own choice of expert but, if the court decides that either party has acted unreasonably, they will not be able to recover the costs of obtaining the expert report.

## Pre Action Protocol

9.6 Lord Woolf in his final 'Access to Justice' report of July 1996 recommended the development of pre-action protocols 'to build on and increase the benefits of early but informed settlement that genuinely satisfy both parties to dispute'. The Lord Chancellor strengthened this message in the Foreword of the New Civil Procedures Rules when he stated '*We must not forget, however, that we should see litigation as the last resort and not the first resort in the attempt to settle the dispute'.*

9.7 A number of pre-action protocols, including ones for personal injury cases and clinical negligence, have been published. Eventually all types of litigation will be categorised and, if appropriate, pre-action protocols developed.

9.8 The aims of the pre-action protocol are to promote more pre-action contact between the parties, better exchange of information, better pre-action investigation and thereby to put the parties in a position to settle cases fairly and early, reducing the need for litigation.

9.9 If defendants are unable to comply with the pre-action protocols the courts will have the power to impose sanctions due to non-compliance when proceedings are commenced. Sanctions will likely include a refusal to grant further extensions of time for serving a defence or evidence and costs penalties.

## Fast-Track and Multi-Track

9.10 Personal injury claims will be assigned to either a fast-track or multi-track. Fast-track cases were limited to a value up to £15,000, but were increased to £25,000 from 6 April 2009 and will proceed to a hearing quickly.

9.11 There will be an automatic timetable for compliance with the various stages of the litigation. The hearings are designed to be relatively short and in the majority of fast-track cases written evidence only from a single expert will be accepted.

9.12 Multi-track cases currently will generally involve claims with a value in excess of £25,000 or which feature complex issues. Case management by the courts will play an important part in setting the timescales for certain stages of the case and defendants may possibly be required to attend a case conference before a judge, when decisions will be made as to the future conduct of the claim.

9.13 The personal injury pre-action protocol sets out the following stages:

## Letter of Claim

9.14 The letter of claim will contain a clear summary of the facts on which the claim is based, including allegations of negligence, and will include details of any injuries suffered or financial losses incurred.

## Defendant's Reply

9.15 The defendant should acknowledge within 21 calendar days of the date of posting of the letter of claim in Personal Injury cases and fourteen calendar days in Clinical Negligence cases.

## Claim Investigation

9.16 The defendant will have a maximum of three months from the date of acknowledgement of the claim to investigate ( four months in the case of Clinical Negligence claims due to their complexity ). No later than at the end of that period the defendant must inform the claimant, or their legal representative, whether liability is admitted in full, is denied, or there is a partial admission. If the defendant denies liability they should enclose with the letter of reply documents material to the issues between the parties, and which would be likely to be ordered to be disclosed by the court. If a defendant is unable to comply with the requirements of the pre-action protocol, the claimant will be able to issue proceedings at the end of the three-month period.

9.17 If the defendant makes a proper denial of liability giving the detailed explanation and documents required under the protocol, many cases will proceed no further. In such cases it will be for the claimant to make a decision whether to proceed with the case.

9.18 Defendants will no longer be able to delay making a decision as to whether to settle or fight and they will no longer be able to make a simple blanket denial of liability without giving reasons.

## Proceedings

9.19 There will be a strict timetable for dealing with the Defence. In the majority of cases the time limit will be 28 days after proceedings are served. One extension of time may be granted, although in circumstances where the defendant has failed to comply with the pre-action protocol, it is very unlikely that any extension will be given.

9.20 The Defence must also fulfil new requirements under the rules. The new requirements are as follows:

- the Defence must state which facts are admitted;
- the Defence must state which facts are denied and provide supporting documentary evidence;
- the Defence must state the defendant's own version of events; and
- the Defence must identify which facts the defendant is unable to admit or deny and which the claimant is required to prove.

## Statement of Truth

9.21 Under the rules a Statement of Truth must verify the Defence. The form of the statement is as follows:

*'The defendant believes that the facts stated in this defence are true.'*

The statement is not sworn, but must be signed by:

- a senior officer of the company, corporation or organisation;
- a partner in control of a business; or
- a legal representative.

9.22 The person signing the statement of truth must identify his or her office or position in the organisation. It follows that the person signing must have authority to sign on behalf of the organisation. If a legal representative signs, he or she is deemed to have explained the consequences to the defendant and the penalties are the same as if the defendant had signed.

9.23 A person who signs without honest belief in the truth of the Defence is guilty of contempt of court. In an extreme case this could result in a fine or even a prison sentence for the person who approved the contents of the Defence and authorised its signature.

9.24 It follows that solicitors will always ask the defendant either to sign the Defence or to approve the contents of the Defence before signing on the defendant's behalf. If the Defence is not signed the court will strike it out and the defendant will lose his or her opportunity to defend the claim.

9.25 Bearing in mind the tight time schedules, the Department needs to be in a position to deal with the Defence quickly. In the case of claims against the Ministry of Defence, the appropriate persons to sign the Statement of Truth or verify the Defence will be the Head of CLC&P or a Senior Claims Officer.

## Disclosure

9.26 The Civil Procedure Rules specify the type of documents, which the defendant must disclose and set time limits for doing so. Many of these documents will have been disclosed under the pre-action protocol: i.e. within the initial three-month period for investigation.

9.27 Under the rule, standard documents to be disclosed include:

- all documents which could adversely affect the case;
- all documents which could adversely affect the other side's case; and
- all documents which could support the other party's case.

9.28 A defendant is required to make a reasonable search for documents depending on:

- the significance of the document;
- the number of documents;
- the complexity of the case; and
- the ease and expense of retrieval.

## Disclosure Statement

9.29 The list of documents which is sent to the other side will include a disclosure statement containing the following information:

- the identity of the person making the statement;
- the extent of the search that has been made to trace documents;

- why the person signing the statement is the appropriate person;
- confirmation that he or she understands the duty to disclose; and
- confirmation that that duty has been carried out to the best of his or her ability.

9.30 There will clearly be an onus on the defendant to make sure that the documents can be obtained quickly and that they are up-to-date. The person who signs the disclosure statement or who authorises the solicitor to sign it on the defendant's behalf, must understand his or her duty and have the appropriate authority within the organisation.

9.31 The implementation of the reforms involved a massive change in working practices. At the outset, and indeed some time before the changes took place, Claims officials undertook additional specialist training to ensure they would comply with the rules. Updating and refresher courses and workshops have been undertaken during the last year. The acquisition of new and specialist skills has been recognised in the CLC&P Functional Competence Framework.

9.32 Units and Establishments have also become far more aware of how the protocols and rules operate. Claims officials will continue to work closely with, and remind, Units and Establishments of their duties to co-operate in supplying information and assisting in defence of claims.

9.33 Accidents must be reported promptly and accurately with improvements made to document handling and availability.

9.34 Witnesses must be identified and made available for interview early in the claims process. Similarly, defendants will need to be able to identify and find relevant documents.

9.35 The courts will not be sympathetic to the Department arguing that there has been insufficient time to investigate a claim. Neither will the courts deem the Department to be a special case because of its size, widespread locations or the deployment of key witnesses overseas.

## Legal Services Commission (Legal Aid)

9.36 It is over 60 years since the Legal Aid and Advice Act was enacted. For the first time, it gave access to justice to a range of people who beforehand could not afford to bring a case in criminal or civil law. Eligibility for legal aid depended on the applicant's disposable income and capital but anecdotal evidence is plentiful about how legal aid was wrongly or rightly distributed and it therefore came as no surprise that Legal Aid for Personal Injury claims was abolished in April 2000. The majority of such claims are now likely to be the subject of a

conditional fee whereby a claimant's solicitor can uplift his normal charging rate by up to 100% if successful.

9.37 Conditional fees can cause problems for Claims officials when trying to estimate the legal costs element of settling a claim. One method of overcoming this problem is to ask the claimant's solicitor to clarify the basis of funding the costs together with an indication of the success fee agreed. However, as the rules stand, solicitors are not obliged to provide this information to the Defendant and to do so might give an indication of the strength of their client's case. In many cases, therefore, the level of the success fee will not be known until after the case has settled.

9.38 In these cases there will be a far greater opportunity to recover our legal costs because as part of the conditional fee arrangements a claimant will likely take out insurance to protect against the risk of losing the action and to provide an indemnity for the defendant's legal costs. It will therefore be our practice, and the practice of our commercial claims handlers, to pursue claimants with conditional fee arrangements for our costs, in the event that we are successful in the defence of the claim

9.39 A small number of claimants still however manage to obtain Legal Aid to pursue their claims. In some cases the claimant may at some point wish to discontinue his/her claim for whatever reason. In these circumstances the Department's legal advisers will always strongly advise against trying to recover costs in the High Court. The Legal Aid Act 1988 governs this area. The Legal Aid Act prevents a defendant from recovering any money against a legally aided person without the leave of the Court. In deciding whether to order payment of costs, the Court will decide whether payment is likely to cause undue "financial hardship" to the legally aided person. The fact that a claimant is in receipt of legal aid, already means they are technically within this category or they would not have qualified for Legal Aid in the first place.

## Dispute Resolution Commitment

9.40 In accordance with a pledge made to the then Lord Chancellor Alternative Dispute Resolution (now rebadged as Dispute Resolution Commitment) is considered in all appropriate cases, usually where there is some evidence to support a claim of negligence. This may take the form of counsel-to-counsel Settlement conference or Mediation (see explanations below). In cases where there is currently no evidence it is not deemed appropriate.

9.41 In financial year 2011/12, there were 103 cases where Dispute Resolution Commitment led to settlement of the claim either directly or indirectly. This resulted in estimated savings to the Department of some £32 Million (£26 Million in respect of the actual claims and estimated savings of £6 million in respect of legal costs).

## Counsel-to-Counsel Settlement Conferences

9.42 In cases where liability is not an issue, counsel-to-counsel settlement conferences are an innovative and financially attractive way of settling cases without going to trial or settling at the courtroom door. A round table consultation is arranged with the Department represented by counsel, the instructing solicitor and either Head of CLC&P, Senior Claims Officer or an appropriate Team Leader.. This method of negotiated settlement has had a significant effect on the way claims are handled due to the claimant and defendant showing an element of goodwill combined with a realistic approach. This has demonstrated that it is possible to agree a settlement without recourse to the courts. An added benefit is that the claimant need not undergo the trauma of a court case to secure compensation for an injury or loss caused by the Department's negligence.

## Mediation

9.43 Mediation is a route strongly favoured as the way forward for civil justice in the UK, for cases where there is some evidence to support a claim. The Department is signed up to mediation as a method of Dispute Resolution Commitment, but as the then Lord Chancellor's Department's Press Notice on the subject made clear, the Dispute Resolution Commitment is not appropriate in every case. Judges are also now directing parties to an action to mediate the case rather than letting it proceed to court.

9.44 The mediation process employs an independent person (the mediator) to facilitate negotiations between parties in a dispute in an effort to reach a mutually accepted resolution. The process is voluntary, flexible, confidential and non-binding, and can be entered into and terminated at the discretion of either party. A number of claims made against the Ministry of Defence have been successfully concluded through the mediation process.

9.45 The Head of CLC&P, Senior Claims Officer (Claims Handling) and Team Leader Clinical Negligence claims are accredited mediators.

## Contributory Negligence

9.46 Where a person suffers an injury, partly as a result of his own fault and partly the fault of another person, any subsequent claim for damages he pursues may be reduced to reflect his contribution to the cause of the loss. This principle is governed by the Law Reform (Contributory Negligence) Act 1945.

9.47 The following are some examples of Contributory Negligence:

- Driver or pedestrian failing to keep a proper lookout

- Claimant failing to turn off a machine before cleaning it
- Failure of motorcyclist to wear a crash helmet
- Failure to wear seat belt while travelling in a vehicle
- Riding in a vehicle as a passenger with a driver who is known to be under the influence of alcohol or drugs.

9.48 The claimant's lack of care must be a contributory factor to his injury. However, some concession is made towards children and towards people suffering from some infirmity or disability who are unable to be held responsible for their own actions.

## Rehabilitation

9.49 Rehabilitation, as a method of assisting injured or ill people back to work, is a matter that is attracting an increasing level of support amongst various bodies in Government, the Judiciary and the legal profession. It is claimed that at present the UK's track record in getting injured or ill people back to work falls well behind that of other Western countries.

9.50 CLC&P aims to utilise rehabilitation where appropriate when compensation claims are made. Rehabilitation is expected to assume far greater prominence in the claims handling process.

## Fraud

9.51 Although the Ministry of Defence self-insures its core risks, and compensation payments are made directly from the Defence budget, the risks posed by fraudulent claimants are as real for the Department as they are for the insurance industry. Claims staff are therefore alert to the possibility of fraud, or grossly exaggerated claims, and, as part of the process of determining liability for the claim, critically assesses the information provided by claimants.

9.52 Surveillance might be undertaken to observe the true extent of a claimant's alleged injuries in cases where there is reasonable suspicion about the veracity of a claim. Claims that are found to be exaggerated are either repudiated or settled at a greatly reduced level of damages in line with the injury suffered and true level of loss incurred by the claimant.

9.53 Cases where investigations suggest that claims are substantially exaggerated, fraudulent throughout, or relate to wholly contrived or fabricated incidents are, as a matter of course, passed to the Ministry of Defence Fraud Squad with a view to proceeding with a criminal prosecution.

## Periodic Payments

9.54 The traditional method of payment following settlement of a compensation claim has been by the payment of a single lump sum. If prudently invested, this would provide a stream of income representing loss of future earnings and/or the need for continued care for the anticipated remainder of the claimant's life.

9.55 A periodic payment normally consists of a conventional lump sum to the claimant together with a regular payment made on a monthly, quarterly or annual basis. The periodic payment can be made by way of an annuity purchased in the marketplace or, in the case of Government Departments and the National Health Service Litigation Authority, on a self-funded basis. There are currently 42 cases where periodic payment arrangements have been put in place.

9.56 With the implementation of the Courts Act on 1 April 2005, the Courts now have the power to impose periodic payment settlements and must consider in every case, involving future pecuniary loss, whether periodical payments are a suitable means to pay all or part of the damages

9.57 The changes have been introduced to ensure a guaranteed income stream for those facing long-term care needs and future loss of earnings. The Court will also have the power to make a variable order to alter the terms of the periodic payment in cases where the claimant suffers some serious deterioration or, indeed, significant improvement. In a landmark case of *Thompstone v Thameside & Glossop Acute Services NHS Trust* the health authorities appealed against the first instance decisions that periodical payments in respect of future care be indexed in accordance with the Annual Survey of Hourly Earnings (ASHE 6115) rather than RPI. The Court of Appeal considered the circumstances in which it would be appropriate to award some part of the damages due to the Claimants on a periodical payments basis and also gave consideration to the appropriate index to be applied if different from RPI. The Court of Appeal ruled that indexation for future care costs on the basis of the ASHE 6115 were appropriate. This ruling will make such payments considerably more expensive for Defendants.

| | **2009/10** | **2010/11** | **2011/12** |
|---|---|---|---|
| Total number of periodic payments | 28 | 35 | 42 |
| **Total payments each year** | **£1,574,188** | **£1,566,674** | **£2,416,117** |

9.58 The rise in payments 2011/12 is largely due to new settlements agreed in year, however it should also be noted that those claims settled using the ASHE index rates to calculate annual adjustments to payments have seen a decrease in their payments this year, as the ASHE rates have unexpectedly decreased from 2010 levels.

## Third Party Accident Scheme (ToPaS)

9.59 If Ministry of Defence Civil Servants or Service Personnel are injured in any type of accident caused by a third party (e.g. a member of the public or a contractor) whilst they are on duty, it is the individual's own responsibility to pursue a common law claim for compensation against that third party without any assistance or involvement by the Department. The reason for this is that the law does not recognise the Department's involvement in such cases and therefore the Ministry of Defence does not have authority to incur expenditure in such circumstances. The only exception to this is that Civil Servants injured in road traffic accidents can have their legal costs underwritten by their TLB but this does not apply to Service Personnel or to Civil Servants injured in other circumstances.

9.60 In order to alleviate these concerns, a scheme called ToPaS (Third Party Accident Scheme) has been in operation since November 2000, which provides legal advice and assistance to Ministry of Defence Civil Servants and Service Personnel who have been injured whilst on duty and who consider the injury to be the fault of a negligent third party. Ralli Solicitors, a firm of solicitors who specialise in personal injury claims, operates the scheme on behalf of the Ministry of Defence. The scheme works on a conditional fee basis (commonly known as "no-win, no-fee"). This means that any legally sustainable claim that Ministry of Defence personnel submit to Ralli will be free of charge to the individual. If the claim is successful, in addition to the compensation that has been paid, all legal costs including any money that has been paid for by Ralli will be recovered separately from the party at fault. If the claim is unsuccessful there will no charge to the Ministry of Defence or to the individual concerned, as the costs will be borne by an insurance policy that is placed and paid for by Ralli.

9.61 Generally, ToPaS will offer free advice and a help line for victims of accidents abroad, who should in the first instance call 0161 8326131. There are many occasions when, although the accident occurred abroad, a claim can still be made within the UK and appropriate compensation can be recovered. On the other hand, Ministry of Defence personnel who suffer injury as a result of the negligence of a foreign national when abroad may need to obtain the services of a local lawyer. ToPaS can assist in locating a suitable legal representative in such circumstances.

9.62 Under the Fifth EU Motor Insurance Directive a claimant who is resident ("domiciled") in England and who has been injured in a road traffic accident in another EU country, may issue court proceedings against the foreign third party in an English County Court or the High Court. Claimants have the choice of issuing court proceedings in their home court or, alternatively, in the country in which the accident occurred.

9.63 Since May 2004 hundreds of unit visits/meetings have been conducted using the opportunity to brief key unit personnel, discuss how to advertise the scheme and hand out ToPaS information packs and posters. Without doubt presentations have been the most effective way of getting this important

message across to all Ministry of Defence personnel, and they have also provided an ideal opportunity for questions and feed back. The response from those units who have made contact has been excellent. Enquiries have come from Canada, the South Atlantic Islands, Germany, Northern Ireland and from across mainland UK. Should you require further information regarding ToPaS, or you would like to arrange either a short briefing or presentation, or you wish to make a claim under the scheme then please contact:

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# Annex A

# Common Law Claims & Policy - Organisation

## Head of CLC&P - SCS 1

## Senior Claims Officer (Claims Handling) - Band B2

Responsible for Employer's Liability Team, Public Liability Team and Clinical Negligence Team.

## *Employer's Liability, Low Flying and Maritime Team*

**Staff:**

| | |
|---|---|
| Team Leader | Band C2 |
| 2 Case Managers | Band D |
| 1 Assistant Case Manager | Band E1 |

**Responsibilities:**

**Service Personnel Employer's Liability Claims**
Handling of novel, contentious, complex or sensitive Service personnel and ex-Service personnel Employer's Liability claims. Managing the claims handling contract with Gallagher Bassett International Ltd.

**Civilian Personnel Employer's Liability Claims**
Managing the claims handling contract with Gallagher Bassett International Ltd.

**Combat Immunity Claims**
Claims relating to service in Iraq and Afghanistan in which it is open to MOD to plead a defence of combat immunity where injury was sustained engaging the enemy in the course of hostilities.

**Nuclear Test Veterans Group Action**
Claims from veterans of the Nuclear Tests undertaken in the 1950s and 1960s in respect of the alleged health problems suffered by them, their children and grandchildren, said to have resulted from their participation in the tests.

**Section 10 claims**
Claims from members of the Armed Forces barred by Section 10 of the Crown Proceedings Act 1947.

**Miscellaneous claims**
Miscellaneous claims from Service and ex-Service personnel including defective enlistment, false prosecution, and unlawful detention.

**Low flying**
Claims relating to military low flying activity in England, Scotland, Wales and Northern Ireland.

**Maritime claims**
Maritime claims including accidents, salvage, collisions and damage to fishing gear.

## *Public Liability Team*

**Staff:**

| | |
|---|---|
| Team Leader | Band C2 |
| 2 Case Managers | Band D |
| 2 Assistant Case Managers | Band E1 |

**Responsibilities:**

**Public Liability Claims**
Public Liability claims, including personal injury, property damage and Iraqi detention cases.

**Visiting Forces**
Claims against visiting forces in the UK (under Section 9 of the Visiting Forces Act 1952 and Article VIII of the NATO Status of Forces Agreement).

**Northern Ireland Claims**
Politically sensitive claims from members of the public arising from the activities of the HM Forces in Northern Ireland.

**Vehicle Claims**
Privately owned vehicle damage claims and road traffic accidents overseas in countries not covered by an ACO.

**Overseas Operations**
Claims policy relating to overseas operations and advice to ACOs in Afghanistan, Cyprus, Iraq, NW Europe, and the South Atlantic Islands.

**Compensation Scheme for Radiation Linked Diseases**

Claims for compensation due to illness alleged to have been caused by exposure to radiation.

**Criminal Injuries Compensation**
Criminal injuries compensation claims from MOD Civil Servants' dependants based overseas.

**Non-Maritime Recoveries**
Recovery of MOD's uninsured financial losses, excluding those arising from traffic accidents in the UK.

## *Clinical Negligence Team*

**Staff:**

| | |
|---|---|
| Team Leader | Band C2 |
| 2 Case Managers | Band D |
| 1 Administrator | Band E2 |

**Responsibilities:**

**Clinical Negligence**
Claims for compensation from Service personnel and their dependants where it is alleged that the MOD has acted negligently.

**Post Traumatic Stress Disorder**
Claims from Service and ex-Service personnel alleging failure of the MOD to recognise, diagnose and treat their PTSD.

**Locally Engaged Civilian Claims**
Claims from Locally Engaged Civilians in Iraq that allege MOD acted negligently as a result of which they suffered harm.

**Human Volunteer No Fault Compensation Scheme**
Ex-gratia payments made under the human volunteer research no-fault compensation scheme.

**Claims Annual Report**
Responsibility for production of the Claims Annual Report.

## Senior Claims Officer (Policy) - Band C1

Responsible for Policy Group

**Staff:**

| | |
|---|---|
| 1 Indemnities & Insurance Adviser | Band D |
| 1 Policy & Contracts Adviser | Band D |
| 1 Finance Officer | Band E1 |

**Responsibilities:**

**Non-contractual Insurance**
Non-contractual insurance (principally non-core aviation risks), including liaison with MOD's insurance brokers, indemnities and the claims aspects of MOUs.

**Third Party Motor Claims**
Policy relating to third party motor claims and liaison with AXA Corporate Solution Services Ltd and Gallagher Bassett International Ltd.

**Contractual Matters**
Liaison with contractors working for CLC&P and the MOD's commercial branch on contractual issues.

**Financial Management**
Bill paying for CLC&P and management of periodic payments

# Annex B

## Top 10 Cases Settled 2011/12

| Claimant | Type of Injury /Loss | Compensation* |
|---|---|---|
| Service | Exposure to Asbestos | **£1,678,411** |
| Service | Clinical Negligence - failure to diagnose and treat tumour | **£1,600,000**** |
| Service | Clinical Negligence – Negligent treatment of high blood pressure | **£1,100,000 000 lump sum plus annual periodical payments**** |
| Service | Clinical Negligence – Negligent treatment of leg injury – leading to amputation | **£1,000,000** |
| Service | Whole body vibration syndrome | **£987,451** |
| Service | Claimant was a passenger in vehicle involved in a Road Traffic Accident | **£880,797** |
| Civilian | Clinical Negligence – Brain Damaged Child. Cerebral Palsy | **£850,000 lump sum plus annual periodical payments** |
| Service | Personal injuries sustained after explosion on Navy vessel | **£845,000** |
| Service | Fatality after helicopter crash | **£600,000** |
| Service | Noise Induced Hearing Loss | **£525,000** |

* Inclusive of claimant's legal costs

** Relevant NHS Trusts also made significant financial contributions(£500K+ in each case) to settlement of these claims

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