



Claims

Annual Report

2013/2014

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Section One

Introduction

Organisation

1.1 Claims brought against the Ministry of Defence for compensation at common law (other than those arising out of contract disputes) are dealt with by the Claims Unit within the Department's Directorate of Judicial Engagement Policy, or by contractors operating in accordance with instructions provided by the Claims Unit. . Details of the staffing and work of the Claims Unit are at Annex A.

Responsibilities

1.2 In addition to being responsible for processing common law compensation claims, the Claims Unit also has a number of other responsibilities such as providing claims policy advice, handling claims against foreign forces based in the UK and providing advice on insurance and indemnities. .

1.3 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 the Claims Unit.

Policy and Procedures

1.4 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. .The Department is not empowered to make ex gratia payments where it does not consider that a court would consider it liable: it may do so only with Treasury authorisation, and this is very rare. The only major exceptions to this rule relate, as explained below, to claims arising from low flying and to certain claims settled in theatre by Area Claims Officers.

1.5 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. Advice is sought where necessary from Treasury Solicitor's Department, and the Department's 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. Counsel are also consulted on high profile or complex cases or where a point of law needs to be explored. The majority of cases are settled through negotiation without claimants having to take the Ministry of Defence to court.

Periodic Payments

1.6 The usual method of payment following settlement of a compensation claim is by the payment of a single lump sum. A periodic payment, by contrast, is a regular payment made on a monthly, quarterly or annual basis, often in addition to a conventional lump sum. 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. The Courts now have the power to impose periodic payment settlements and must consider in every case involving future pecuniary loss whether periodic payments are a suitable means to pay all or part of the damages

	2011/12	2012/13	2013/14
Total number of cases in which periodic payments are made	42	41	42
Total payments each year	£2,416,117	£2,406,279	£2,930,000

Third Party Accident Scheme (ToPaS)

1.7 If Ministry of Defence employees 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 their 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 the Department, but this does not apply to service personnel or to civil servants injured in other circumstances.

1.8 In order to alleviate the problems to which this gives rise, a scheme called ToPaS (Third Party Accident Scheme) 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

Section Two

Public Liability Claims

2.1 The majority of claims submitted to the Claims Unit's Public Liability Team (PLT) are for personal injury or property damage. Most personal injury claims come from civilians, either in the UK or in countries where UK armed forces operate or have operated, since members of the armed forces themselves are compensated for injuries under the Armed Forces Compensation Scheme without needing to take legal action.

2.2 Property damage claims usually come from personnel working and living in service accommodation who have had their belongings damaged, for example, by poor maintenance of their accommodation (mould and damp) or by poor maintenance of infrastructure (potholes on MOD establishments).

2.3 Public liability claims have risen rapidly in recent years because of the large numbers of claims submitted by Iraqi nationals.

	2011/12	2012/13	2013/2014
Number of PL Claims Received	416	334	1013
Number of PL Claims Settled	251	393	270
Amount Paid (£)	£9.0M	£23.7M	£10M

Iraq

2.4 The MOD is currently dealing with 617 claims of abuse by Iraqi nationals arising from the years between 2003 and 2009. 71 further such claims have now (December 2014) been settled, at a total value of £2.3M. Many of these claims are for compensation for unlawful detention. UK forces believed that their UN mandate entitled them to detain Iraqi nationals where this was required for

security purposes, but subsequent decisions of the European Court of Human Rights have established that this was not necessarily the case and that such detainees may be entitled to compensation. In such cases compensation is offered on a “tariff” basis, with the sum to be paid determined primarily by the length of detention, ranging from £1,500 for a few hours to £115,000 for 3 years or more.

2.5 Many such claims further allege that the claimant suffered ill-treatment while being detained. Where these claims are proven or at least credible, the claimant will be paid additional compensation. Such claims have been or are being investigated by the service police and the Iraq Historic Allegations Team with a view to bringing any personnel found to have been responsible for mistreatment to account.

Afghanistan

2.6 MOD is currently dealing with 72 claims of abuse of Afghan nationals. These claims relate to Afghan detainees who are seeking damages for alleged unlawful detention by UK Forces during the period from July 2006 onwards. As with the Iraq claims being dealt with by the MoD, a number of the Afghanistan claims contain allegations of mistreatment and once again, where these allegations are found to be true or credible, they will be subject to investigation by the service police who have been tasked to do so. Proceedings in these claims have been stayed for an agreed period of time to allow investigation of the circumstances surrounding the individual claims and to assess the impact of forthcoming judgments which are likely to affect their outcomes.

The civil secretary in Afghanistan continues to handle claims locally. Details are provided in Section Seven – Area Claims Offices.

Maritime Claims

2.7 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.

	2011/12	2012/13	2013/14
Number of property claims received	9	21	17
Number of property claims settled	5	13	8

Amount paid	£23,783	£83,234	£45,763
Number of salvage claims received	1	0	2
Number of salvage claims settled	0	1	2
Amount paid	£8,600	£17,991	£3,611

2.8 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 salvaged, 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 of successful recovery of MOD assets.

	2011/12	2012/13	2013/14
Number of maritime recovery and salvage claims initiated	3	0	1
Number of maritime recovery and salvage claims settled	0	1	0
Amount recovered	£0	£91,144	£0

2.9 In addition to the work undertaken by the Claims Unit, the Flag Officer Scotland, Northern England and Northern Ireland (FOSNNI) and the 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.

	2011/2012	2012/2013	2013/14
Number of claims settled by FOSNNI	6	12	6
Amount paid by FOSNNI	£12,132	£26,937	£8812
Number of claims settled by FOST	5	13	10
Amount paid by FOST	£12,725	£25,979	£17,351
Total amount paid	£24,857	£52,916	£26,163

Low Flying Military Aircraft Claims

2.10 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, because under the Royal Prerogative the Crown has an absolute right to undertake all military flying activity, and an injured party has no legal rights of redress for compensation¹. They are however investigated in the same way as if the principles of common law legal liability applied and *ex gratia* payments made where appropriate, as the government undertook to do in a Lords Written Answer on 22 November 1971 (Official Report column 888)..

2.11 A procedure has been in place since 1994, following consultation with farming unions and landowners' associations, for dealing with claims relating to death or injury to livestock. 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.

2.12 The increase in expenditure during 2013/14 reflects two high value cases which began in earlier years and were settled in this period.

	2011/12	2012/13	2013/14
Number of claims received	130	85	130
Number of claims settled	88	82	70
Amount paid	£0.46M	£0.68M	£1.1M

Visiting Forces Claims

2.13 The Claims Unit handles third party claims 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 made on behalf of any of the states which are signatories to the agreement or 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%.

2.14 In order for the UK to comply more fully with its obligations under the NATO SOFA, the Visiting Forces Act 1952 has been amended to allow the transfer of liability from the Visiting Force to the UK MOD in appropriate claims. Once legal proceedings have been issued, and at the request of the Visiting Force, the Secretary of State for Defence may make a declaration that liability in the particular claim is transferred. The new arrangements came into force on 6 April 2013.

	2011/12	2012/13	2013/14
Number of visiting forces claims received	26	26	39
Number of visiting forces claims settled	26	28	28
Compensation paid	£508,195	£588,008	£229,000

Financial Recoveries

2.15 Where the Ministry of Defence sustains loss or damage to equipment or property which has been caused by a third party, the Claims Unit will seek to recover those losses from the person responsible. The main causes for action against third parties are damage to Ministry of Defence static property by vehicles, fire, water or the negligent actions of a contractor.

	2011/12	2012/13	2013/14
Number of claims notified	12	14	12
Number of successful recoveries	3	7	4
Amount recovered	£35,258	£24,064	£5,420

Section Three

Service Personnel Employer's Liability Claims

3.1 Since 1987 Service personnel have, like any other employee, been entitled to sue the Ministry of Defence for compensation where they have suffered harm as a result of the Department's negligence occurring after that date. Claims cannot however be made for alleged negligence which occurred before 1987.

3.2 It is important to be clear that service personnel or their families do not have to go to law to obtain recompense for injuries or death suffered during military service. The Armed Forces Compensation Scheme (AFCS) is a compensation package for members of the Armed Forces which provides modern, fair and simple arrangements with more generous benefits for the more severely disabled. It provides compensation for significant injuries, illness and death which occur in the course of military service. The AFCS is designed to provide compensation, irrespective of who may have been at fault, across the full range of circumstances in which illness, injury or death may arise as a result of service. The AFCS does not however 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 have already been made or awarded, common law damages will be reduced by the appropriate amount. .

3.3 The handling of routine personal injury claims is managed by Gallagher Bassett International Limited, the MOD's claims handler. Claims that are contentious or are of a political or sensitive nature are handled in house by the Claims Unit.

	2011/12	2012/13	2013/14
Number of claims received	3535	2793	2435
Number of claims settled	2495	2517	2345
Amount paid	£46.3M	£51.3M	£45.1m

Combat Immunity

3.4 Among the more difficult such claims are many which relate to operational service in Afghanistan and Iraq. Depending on the circumstances, it may be necessary for the Ministry of Defence to argue that it was not negligent in those claims where the injury was sustained engaging the enemy in the course of hostilities (the doctrine of "combat immunity"), or in operational circumstances where it is unreasonable to expect that the same standard of safety will apply as would be expected under normal circumstances. .

3.5 The Department is facing a significant number of personal injury claims arising from deaths and injuries in Iraq and Afghanistan. Some of these claims have been brought on dual grounds, with claims based both on common law and the European Convention on Human Rights. The claims in negligence are typically based on:

- 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.

3.6 The Supreme Court upheld the doctrine of combat immunity in an important judgment in June 2013 (*Smith and others v The Ministry of Defence*, [2013] UKSC 41) but limited its sphere of application. The specific claims which were at issue remain to be determined by the lower courts.

Radiation Compensation Scheme

3.7 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.

3.8 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.

3.9 The Scheme provides for payments to be made for lower levels of causation probability than would be required by the Courts for a finding of legal liability: "full" payment of compensation may be made at a level of 50% causation probability and lesser payments down to a level of 20% causation probability.

3.10 The MOD handles claims on behalf of the Atomic Weapons Establishment and recovers expenditure from them

3.11 During financial year 2013/14, the Scheme received seven new claims from former Ministry of Defence employees who believed their illnesses to be

associated with exposure to occupational ionising radiation. Two claims were settled in this period and £29,500 compensation was paid.

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.

	2011/12	2012/13	2013/14
Number of claims received	666	645	657
Number of claims settled	551	724	599
Amount paid	£15.7M	£18.2M	£13M

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.

	2011/12	2012/13	2013/14
Number of claims received	1674	1829	1574
Number of claims settled	1946	1825	1715
Amount paid	£6.7M	£4.8M	£6.1M

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

5.2 Claims arising from non-UK based vehicles overseas are handled by the appropriate Area Claims Office (ACO) or, where the geographical area is not covered by one of the ACOs, by the Claims Unit

	2011/12	2012/13	2013/14
Number of claims received	17	14	10
Number of claims settled	11	13	8
Amount paid	£16,459	£7,378	£24,011

Uninsured Loss Recovery

5.3 With effect from 1 May 2007 Gallagher Bassett has been responsible for recovery, on behalf of the Ministry of Defence, of 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.

	2011/12	2012/13	2013/14
Number of recoveries	655	729	556

Amount recovered	£433,384	£506,445	£182,041
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Section Six

Clinical Negligence Claims

6.1 The Claims Unit 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.

	2011/12	2012/13	2013/14
Number of claims received	62	65	85
Number of claims settled	18	17	25
Amount paid	£6.7M	£7.1M	£5.8M

Section Seven

Area Claims Offices

Area Claims Office Afghanistan

7.1 2013-2014 saw a significant reduction in claims received by the Area Claims Office in Afghanistan. 399 claims were received, as opposed to the 838 claims received for the corresponding period the previous year, reflecting the continuing reduction in the number of active operations and the transition of UK forces to a mentoring role. They included 217 crop damage claims, 141 property damage claims and 24 claims arising from road traffic incidents. Claims arising from incidents resulting in fatalities and woundings of civilians have been mercifully low, again reflecting the reduced activity of ISAF forces.

7.2 Of these 399 claims 180 were settled, at a total of £232,146. 187 claims were rejected during the year. Comparative figures are shown below:

	2011/12	2012/13	2013/14
Number of claims received	650	838	399
Number of claims settled	545	616	187
Amount paid	£748,421	£690,700	£240,282

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

7.3 ACO(NWE) is part of G8, Headquarters British Forces Germany (HQ BFG), currently located in Bielefeld Germany. It is 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 Road Traffic Accidents, Training and Manoeuvre Damage, Public Liability and Loss of Service.

7.4 ACO(NWE) continues to recover significant sums for the public purse, this year amounting to £191,779. The sums recovered come mainly from the pursuit of claims under German law for MoD incurred expenses where members of the force and/or their dependants have sustained injury as a result of third party liability in road accidents. The heads of claim which typically contribute to these recoveries are loss of earnings and medical and related expenses, such as medical treatment costs, ambulance fees and physiotherapy and rehabilitation costs.

	2011/2012	2012/2013	2013/14
Number of claims received	351	298	215
Number of Claims settled	401	369	177
Total Paid	£1,267,645	£613,462	£709,219
Total Recovered	£535,573	£280,038	£191,779

Area Claims Office Cyprus

7.5 Based at Episkopi Garrison in the Western Sovereign Base Area, the Area Claims Office Cyprus, 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.

7.9 .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. 90% of all claims received were related to training and manoeuvres and were predominantly for crop damage or loss of livestock.

	2011/12	2012/13	2013/14
Number of claims received	429	343	435
Number of claims settled	334	368	430
Amount paid	£491,602	£400,973	£584,615
Amount recovered	£12,481	£24,773	£6,020

Area Claims Office South Atlantic Islands

7.10 The ACO in the Falkland Islands is responsible for collating all claims for approval or passing claims over the value of £5,000 to the Claims Unit. Five new claims were received.

	2011/12	2012/13	2013/14
Number of claims received	4	3	5
Number of claims settled	2	2	6
Amount paid	£3,654.00	£550.00	£9,403
Amount Recovered	Nil	Nil	Nil

Section Eight

Insurance and Indemnities

Insurance

8.1 The Claims Unit is the policy lead on all Ministry of Defence non-contractual insurance issues, and it encourages MOD units and establishments to transfer risks arising from non-core activities away from the Department.

8.2 Willis Ltd (Aerospace) provides insurance, the cost of which is recovered from the beneficiaries of the activities concerned, 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

8.3 The Claims Unit is responsible for all non-contractual indemnity matters, ranging from issuing indemnities to land owners who allow the Armed Forces use their land for exercises, to advising on the liability aspects of Defence Infrastructure Organisation licences, indemnity provisions within Memoranda of Understanding (MOU) and other international agreements.

8.4 The Ministry of Defence always seeks an indemnity against claims arising from repayment activities or events that do not directly further the military tasks 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 do not support military tasks. 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, because of the principle of indivisibility of the Crown.

8.5 Indemnities that arise from the Department's contractual business are the responsibility of the appropriate Contracting Authority, with policy guidance provided by Defence Equipment Support Commercial as appropriate.

Income Generation

8.6 Income generation activity under the Government's initiative for 'Selling Government Services into Wider Markets' is an exception to the rule that the Ministry of Defence does not purchase insurance. Because of the unusual and hazardous nature of many of the activities the Ministry of Defence undertakes, however, commercial insurance may not always be available to cover these activities, or may not be cost-effective. Customers may therefore as an alternative pay a charge under the Departmental Insurance Scheme and any claims for compensation which may arise will then be settled by the Claims Unit.

10 Highest Value Cases Settled in 2013/14

Claimant	Type of Injury/Loss	Compensation (including claimant's legal costs)
Service	Injured as a result of negligent discharge of weapon	£4,184,026
Service	Post Traumatic Stress Disorder	£1,438,300
Service	Run Over by JCB	£830,694
Service	Psychological injuries caused by bullying and harassment	£709,348
Service	Fatal accident during live firing exercise	£676,244
Civilian	Asbestos related disease	£552,964
Service	Fell from height	£517,773
Civilian	Asbestos related disease	£470,305
Service	Fatal accident during boating accident	£456,438
Service	Psychological injuries caused by bullying and harassment	£411,246

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