

Ministry of Defence



Claims

**Annual Report
2001/2002**



**DC&L(F&S)Claims
July 2002**

CLAIMS ANNUAL REPORT 2001/2002

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CLAIMS ANNUAL REPORT 2001/2002

INTRODUCTION BY THE CHIEF CLAIMS OFFICER

[To a judge who complained that he was no wiser at the end of the case than at the start]

“Possibly not, My Lord, but far better informed”

This is the fifth Claims Annual Report. I hope that on reading the report you too will be better informed – and perhaps a little wiser.

Financial year 2001/02 will undoubtedly feature large in any future review of the Claims organisation due to two very high profile High Court cases against the Department. In January 2002 a High Court judge declared an incompatibility between the European Convention of Human Rights and Section 10 of the Crown Proceedings Act (which barred Service personnel from suing the Crown prior to 15 May 1987). The Department secured leave to take the matter to the Court of Appeal which ruled in favour of the MOD. The Claimant, however, secured leave to take the matter to the House of Lords.

This was followed by the commencement on 4 March of the biggest ever trial against the Ministry of Defence to consider allegations that the Department failed to recognise, diagnose and treat about 1,700 former Service personnel allegedly suffering from Post Traumatic Stress Disorder. The trial is scheduled to run until the autumn with judgment likely to be handed down in the new year.

The cost of claims against the MOD continues on an upward path and increased from £88.5 million in 2000/01 to £91.3 million in the last financial year. This increase echoes the uplift in the award of damages experienced by other employers and generally reflects the litigious nature of society. We cannot limit or place restrictions on the amount of damages paid to someone injured as a result the Department's negligence. It is right and proper that cases are settled in line with common law awards of damages, but we must learn how to reduce avoidable accidents by good risk management. Many of the Department's employees undertake inherently hazardous tasks and are necessarily trained to tackle life-threatening events. I am not for one moment suggesting that we will ever eliminate accidents altogether, but, with the support of the Permanent Secretary, the Claims Risk Management Group (RMG) was formed in January 2001 and charged with the responsibility of analysing data, identifying the most common risk areas, and putting forward remedial measures or initiatives to bring about change. It is unlikely that this work will improve matters over night, but it should lay the foundations for greater awareness of the type of risks that cause accidents if left unchecked. I am delighted with the work undertaken by my Risk Management team and the very positive feedback received from staff at all levels.

Claims staff are now better trained than ever before and have acquired a thorough knowledge of the Civil Procedure Rules and the tort of negligence. The Claims and Legal Functional

Competence Framework, which is backed by a broad training package attracting continued professional development accreditation, sets out the basic skills and knowledge required to become an effective member of the Claims team. The first secondment from the MOD Claims organisation to industry was organised during 2001/02 and helped broaden our view of the way commercial claims managers handle claims.

We continue to pursue settlement through Counsel-to-Counsel conferences. In 2001/02 11 such conferences took place involving major cases and the savings in compensation, legal costs and court time were significant.

I make no apology for repeating a theme mentioned in earlier Annual Reports that claims should not be considered simply in the light of their cost. There is very often real human tragedy behind the figures which are perhaps best exemplified by some of the cases mentioned in this year's report. It is extremely difficult for most of us to imagine the suffering caused by a catastrophic injury which happened in a split second and possibly could have been avoided by good risk management.

There have been some organisational changes affecting Claims Branch during the year. Control of the branch at Three-star level and above transferred from the Personnel Director to DCDS(Pers) with effect from 1 October 2001. Within the Branch, a second Senior Claims Officer post was created from 1 February 2002 in view of the increasing workload of major cases.

This report will receive a wide circulation. I should be pleased to respond to any questions on the report and to receive comments or observations on how future reports might be improved or presented.

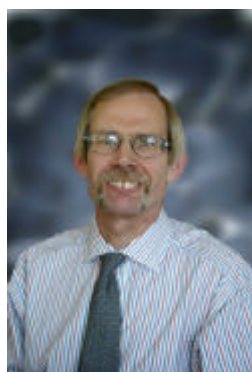
Additional copies are available from the DC&L(F&S) Focal Point, Room 601, St Giles Court, 1-13 St Giles High Street, LONDON WC2H 8LD (Tel no 020 7807 0049/0056 or Fax no 020 7807 0051). Copies can also be e-mailed via CHOTS or supplied on disc.

Some of the Claims management team

Jef Mitchell
Chief Claims Officer



Peter Conliffe
Senior Claims Officer
Policy, Finance & Risk
Management



Robin Bonavia
Senior Claims Officer
Claims Handling



Pauline Chatterley
Team Leader
Public Liability
Group



Ian Eastwell
Team Leader
Clinical Negligence
& Employment
Tribunal Group



Norman McNair
Area Claims Officer
North West Europe



EXECUTIVE SUMMARY

1. Total DC&L(F&S) expenditure in the year 2001/2002 including legal fees of £24.1 million was £104 million of which £91.5 million was claims expenditure including legal costs.
2. 351 Service personnel employer's liability claims were settled at a total cost of £32.3 million.
3. 950 civilian employer's liability claims were settled at a total cost of £12.76 million.
4. 639 public liability claims were settled at a total cost of £13.154 million.
5. 3503 third party motor claims in the UK were settled at a total cost of £11 million.
6. 59 clinical negligence claims were settled at a total cost of £8.9 million.
7. 11 Employment Tribunal cases were settled at a total cost of £215,750
8. ACO North West Europe settled 948 cases at a total cost of £1.8 million.
9. ACO Cyprus settled 388 cases at a total cost of £282,000
10. ACO Northern Ireland settled 538 cases at a total cost of £819,694
11. ACO Balkans settled 336 cases at a total cost of £223,247
12. ACO Falkland Islands settled 6 cases at a total cost of £44,797
13. 2032 intentions to claim are registered for those alleged to be suffering from Gulf War Illnesses.
14. 1700 claims have been received from Service personnel alleging Post-Traumatic Stress Disorder.
15. Highest claim settled in year £3.6 million
16. At 1 April 2002, the total number of claims lodged with DC&L(F&S) Claims or the Department's commercial claims handlers was 9840

SECTION ONE

INTRODUCTION

Organisation

1.1 MOD Claims branch (DC&L(F&S)Claims) 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, sales or estates matters. It is headed by the Chief Claims Officer (Band B1) and two Senior Claims Officers (Band C1). The Chief Claims Officer reports through DC&L(F&S) and DGSP Pol to DCDS(Pers). Details of the staffing and work of the Claims branch is at Annex A.

Responsibilities

1.2 In addition to being responsible for processing common law compensation claims, Claims branch also has a number of other important responsibilities such as providing claims policy advice, handling Service personnel employment tribunal claims, 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 dealt with 129 Ministerial Correspondence, 301 Official Action Letters and 25 Parliamentary Questions.

1.3 Area Claims Officers and their staff are located in areas where there is a sizeable defence presence - Northern Ireland, North West Europe, Cyprus, Bosnia, Kosovo and the Falkland Islands. Area Claims Officers are accountable to their Command Secretary but have a professional responsibility to the Chief Claims Officer.

1.4 It is important that staff at all levels within Claims branch acquire the skills, knowledge and experience needed to enable them to contribute effectively to the goals of the division. Claims staff attend a series of structured specialist training seminars covering all aspects of common law compensation. In recognition of the specialised nature of the work, a functional competence framework has been introduced to focus on the key skills and training required. In addition, staff have studied for common law diplomas and professional insurance examinations.

1.5 As part of our efforts to learn and maintain best practice in claims management, secondments are arranged with industry. This year a member of the Risk Management Group was seconded to one of our commercial claims handlers where she was able to gain wider experience from dealing with claims for other large organisations.

1.6 This year also saw the long awaited introduction of a new claims database for in-house claims under the name of RAPID. This will enable more information to be stored which will assist in the handling of individual claims and permit more detailed analyses to be undertaken for purposes of risk management and financial reporting.

Policy and Procedures

1.7 When compensation claims are submitted from Ministry of Defence civilian and Service employees, former employees and members of the public, 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 judgements to be made that would undoubtedly lead to inconsistency and unfairness.

1.8 The amount of compensation paid is determined by common law principles which, broadly, take account, as appropriate, of the individual's pain and suffering, degree of injury, property losses, past and future financial losses, level of care required, etc. 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 for cases brought in England and Wales; the Crown Solicitor in Northern Ireland; and Robson McLean, the Department's legal advisers in Scotland. Junior and leading 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 amicably one way or the other and most payments of compensation are made without Claimants having to take the Ministry of Defence to court.

1.9 In accordance with Treasury policy, the Ministry of Defence does not normally make ex-gratia compensation payments in respect of occurrences within the UK. There are, however, a small number of exceptions: i.e. claims arising from military low flying aircraft; claims from volunteers who are injured during research work and for certain miscarriages of justice affecting Service personnel. In certain overseas areas, because of the provisions of the NATO Status of Forces Agreement and other international agreements, the Ministry of Defence is obliged to consider making ex-gratia payments following off duty torts. Such claims arise from a wide variety of incidents ranging from minor criminal damage to rape and murder. While there is no legal obligation, each case is decided on its merits. A number of factors are taken into account including: the degree of infamy (the seriousness of the offence), the conduct of the injured party, the practice of the host country in identical circumstances, the degree of financial hardship to the Claimant as a result of the incident, the political implications - locally and nationally - on relations with the host country, and the availability and/or financial ability of the tortfeasor (wrong-doer) to make satisfactory restitution to the Claimant.

1.10 In addition to common law claims, Claims branch also handles claims relating to Employment Tribunal applications brought by current or former Service personnel. These claims typically involve allegations of sexual/racial discrimination or sexual/racial harassment. While the single Service secretariat branches will initially receive and investigate Employment Tribunal applications, they have no delegated financial authority and claims can only be settled by obtaining the agreement of Claims branch which holds funds centrally. The Claims section dealing with these ET cases has this year been heavily involved with the claims for unfair dismissal lodged by former Service personnel discharged by reason of their homosexuality. As a result of a judgment

in the European Court of Human Rights, the Secretary of State for Defence authorised that settlement negotiations be entered into with the individuals concerned who had Employment Tribunal applications already in train and whose account has been accepted as being substantially factually true. We are currently managing 77 alleged homosexual dismissal cases. We are actively seeking to have them struck out by the Employment Tribunal. Settlement offers were previously made in all those cases where the Department felt compensation was warranted, and, to date, 17 individuals have accepted an offer and payments have been made.

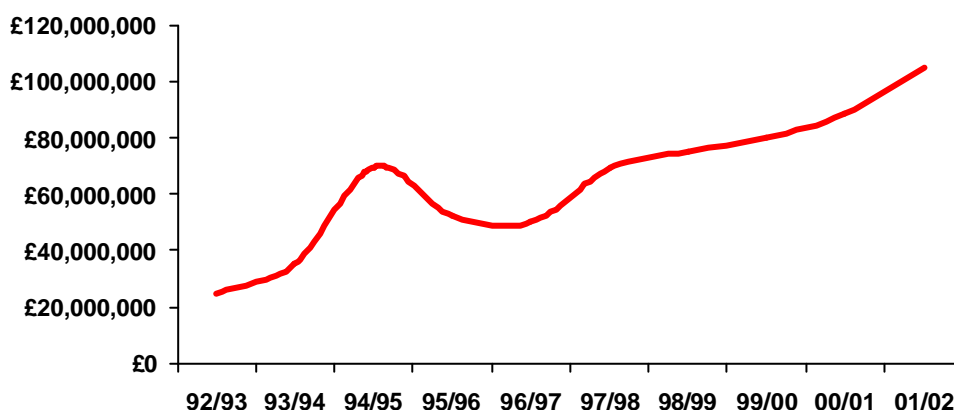
SECTION TWO

RISK MANAGEMENT

“Precaution is better than cure”

Sir Edward Coke

2.1 At the beginning of the Risk Management section in the last Claims Annual Report was the headline ‘All staff can play their part in claims risk management’. This is a message that the RMG has aimed to promote throughout the past year by various means such as presentations, the Claims Newsletter, articles in MOD publications and at meetings. It is a message that has been well received at all levels, especially when people realise how much money compensation claims cost the Department and how much suffering is caused.



2.2 It is important to note that the compensation payment and associated legal costs may not be the only financial consequence for the Department. If an individual is very badly injured and is either medically discharged or unable to carry out the same work as before, MOD may have to recruit and train new staff.

2.3 The most obvious way for an individual to play a part in claims risk management is to take steps to ensure their own physical safety as well as that of their colleagues and members of the public. Risk assessments are now in place for all establishments, but they can only address issues apparent at the time of assessment. For example, after an office reorganisation or the introduction of a new piece of equipment, a new risk assessment should be carried out. In the same way, everyone can take simple and straightforward action to alert the appropriate authority if problems

develop. For example, if a flight of steps become dangerous because of loose tiles or concrete, carpets fray in offices or lights become defective. Too often after an incident people are inclined to say “It was an accident waiting to happen, but I thought somebody else would report it.”

2.4 Our hope is that in the future more people will think “There’s an accident waiting to happen which could be prevented if I were to report it”

2.5 Many claims made against the MOD relate to physical injury, but there are other categories of claim which staff can help eliminate. These include claims arising from racial and sexual discrimination, harassment, failure to follow laid down procedures or providing incorrect advice.

2.6 We of course acknowledge that accidents and incidents giving rise to compensation claims will never be completely eliminated. When such cases arise staff at all levels have a role to play by assisting Claims staff in establishing the facts of the case so that a view on liability is reached as quickly as possible. One issue that the RMG has become involved with over the last year is the retention of records, given the importance of documents such as accident reports, inquiries and personnel files to claims handling. If an accident takes place, it is important that all necessary documentation is completed promptly and accurately. This will allow the handling of any claim made in respect of the incident to be dealt with effectively and efficiently. This is beneficial both to the Claimant and MOD on the grounds that liability is established in a timely manner and the cost of additional investigations is kept to a minimum.

2.7 The list of documents which would prove useful to a claims handler, and the Courts might later require, is predictably extensive. However, the following list includes some of the most frequently required documents:

- Accident Book entry
- Accident report form (MoD Form 2000)
- Complaint records
- First Aider’s report
- Health surveillance records
- Instructions for use of personal protective equipment
- Maintenance and repair records
- Risk assessments
- Training records and syllabuses
- Witness statements

2.8 If all staff were routinely to ensure that the necessary documents are raised and retained, MOD could save money by repudiating claims expeditiously where it can be shown there is no liability or dispense with the need for prolonged and costly investigations where liability is clear. It is conceivable that were MOD unable to disprove allegations of negligence because evidence was not available compensation would have to be paid.

2.9 A major part of the work of the RMG, in order to create a greater awareness of risk management issues, is the provision of statistics to units and establishments about the claims activity relating to their areas of responsibility. This information provides a useful indicator for local management of measures to be taken to reduce risk in areas giving rise to claims. The benefit of such work is twofold in providing an improved working environment and saving money.

2.10 The above gives a flavour of the type of awareness that can reduce accidents and play an important part in driving down the number of compensation claims. Our firm aim is that the statistics compiled in future years will demonstrate that improved risk management awareness has resulted in a safer working place.

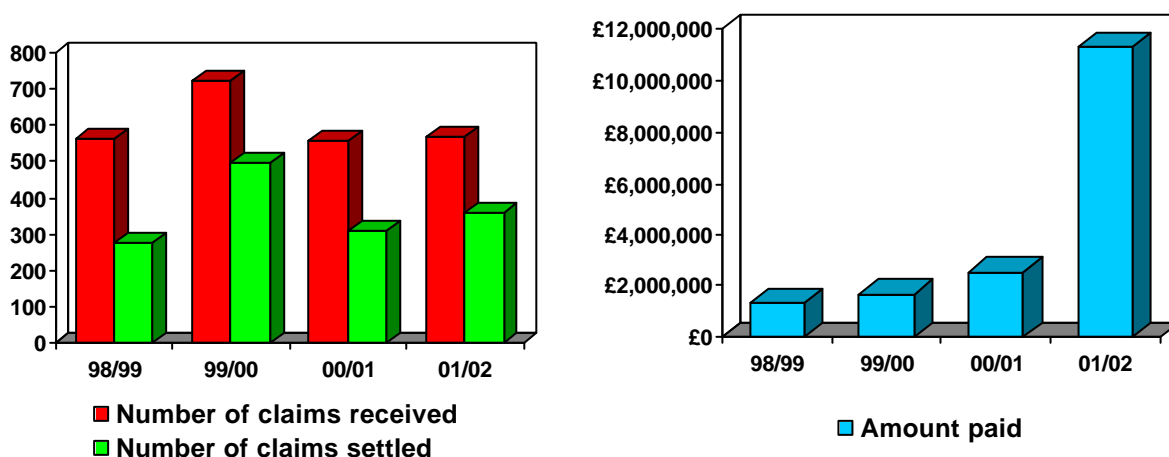
SECTION THREE

PUBLIC LIABILITY CLAIMS

Personal injury and property damage claims

3.1 The majority of claims submitted to the Public Liability Group (PLG) are for personal injury or property damage. Most personal injury claims are from members of the public who have either been injured on MOD property (e.g. trips and slips), or have sustained injuries whilst taking part in the various public relations and recruiting activities run by the three Services (e.g. assault courses).

3.2 Property damage claims usually emanate from personnel working and living in service accommodation who have had their belongings damaged by the poor maintenance of the properties they occupy. In the past year these have included water damage from burst pipes, damp from poor insulation and damage caused by potholes in roads. Interestingly, there have also been a substantial number of claims resulting from the improper operation of security barriers at check points which have resulted in damage to privately owned vehicles. Perhaps the most unusual property damage claims we have received this year resulted from a Chinook helicopter attempting to land in a car park.

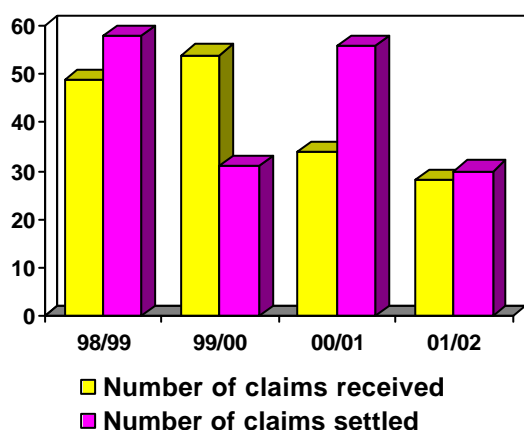


	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	563	722	556	570
Number of claims settled	276	494	310	356
Amount Paid (£)	1,357,000	1,672,000	2,524,000	11,324,000

3.3 Whilst there was a substantial increase in the number of claims submitted in 1999/2000 probably due to a backlog of claims released by solicitors after the new Civil Justice Reforms were introduced on 26 April 1999, public liability claims this year have again increased slightly over last year's figures although not to the 1999/2000 levels. The large increase in the amount of compensation paid out in FY01/02 is due to one personal injury claim which settled for £1.925 million and MOD's contribution to a multi-national settlement of compensation payments made to the families of 24 passengers and crew killed in an accident at Pristina airport in November 1999 involving a civilian aircraft ferrying aid and relief workers

Political or sensitive claims in Northern Ireland

3.4 Claims PLG also deals with public liability claims from Northern Ireland which are of a political and/or sensitive nature. Claims are normally received from members of the public who have had some contretemps with members of the armed forces which are in support of the Police Service for Northern Ireland (PSNI) (formerly the RUC). The majority of claims, therefore, are for alleged assault, harassment or wrongful arrest, quite often at vehicle checkpoints. As can be seen from the table below, the number of claims continues to decrease due to the cease fire in Northern Ireland which has resulted in less military activity in support of the PSNI. There was also a considerable drop in the amount of compensation paid last year (an average of just under £2,500 per claim as opposed to an average of over £5,500 in the previous year and about £6,500 in 1999/2000).



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	49	54	34	28
Number of claims settled	58	31	56	30
Amount paid (£)	243,000	206,000	320,000	74,000

Maritime Claims

“Smooth seas do not make skilful sailors”
African proverb

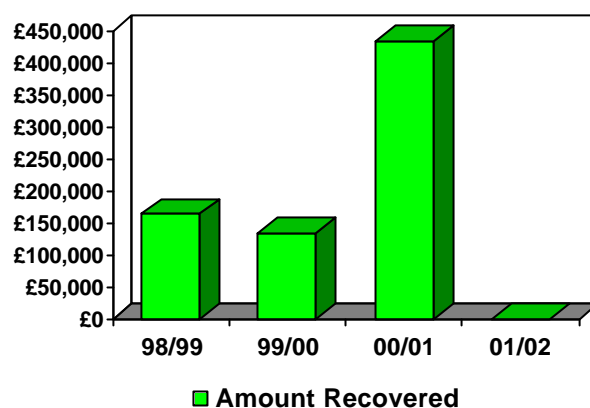
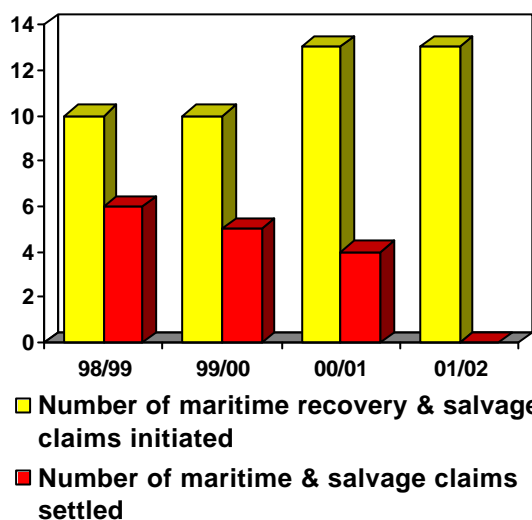
3.5 Maritime claims by and against the MOD result mainly from collisions, oil spillage, gunnery/missile firing incidents, damage to static property, wash damage, fishing gear damage and the salvage and recovery of MOD property. Maritime law is complex and much of the legislation dealing with the law of the sea was enacted more than ninety years ago.

3.6 The MOD 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 MOD 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

	1998/1999	1999/2000	2000/2001	2001/2002
Number of property claims received	159	44	28	30
Number of property claims settled	24	27	23	32
Amount paid (£)	698,934	109,895	165,733	217,830 *
Number of salvage claims received	Included above	Included above	Included above	2
Number of salvage claims settled	Included above	Included above	Included above	3
Amount paid (£)	Included above	Included above	Included above	271,200 #

* Includes payments of £139,106. as a result of an oil spill in Portsmouth harbour in 1997.

Includes £200,000 paid to date towards the salvage of HMS Grafton.



	1998/1999	1999/2000	2000/2001	2001/2002
Number of maritime recovery and salvage claims initiated	10	10	13	13
Number of maritime recovery and salvage claims settled	6	5	4	Nil
Amount recovered (£)	164,804	134,164	434,099	Nil

3.7 In addition to the work undertaken by Claims branch, 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.

	1998/1999	1999/2000	2000/01	2001/20002
Number of claims settled by FOSNNI	59	54	35	43
Amount paid by FOSNNI (£)	81,230	79,394	59,154	55,495
Number of claims settled by FOST	40	51	33	40
Amount paid by FOST (£)	60,859	76,923	60,558	45,900
Total amount paid (£)	142,089	156,317	119,712	101,395

Low Flying Military Aircraft Claims

3.8 The activities of low flying military aircraft can sometimes 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 but low flying military aircraft activity is an emotive issue in some areas of the country. 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

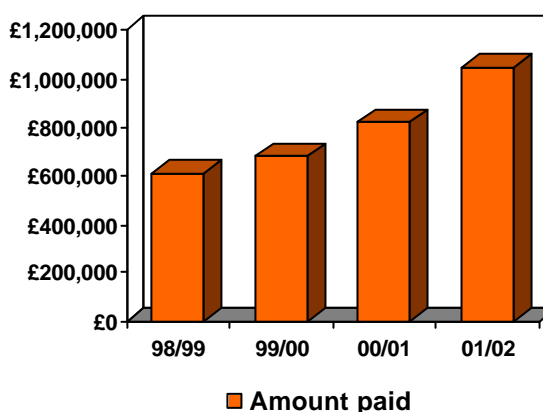
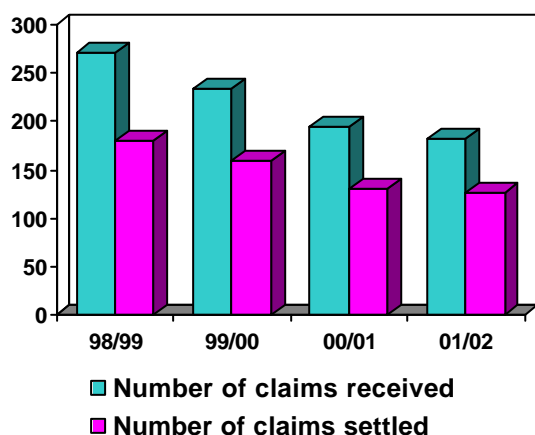
applied. The foundation of this approach is the Royal Prerogative which gives an absolute right for all military flying activity and, therefore, an injured party has no legal rights of redress for compensation. This approach was set out in a Lords Written Answer by Lord Drumalbyn on 22 November 1971 (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."

3.9 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.

3.10 Unfortunately, this is a category of work which requires careful monitoring to identify potentially fraudulent claims. It was necessary to initiate one investigation into fraud during 2001/2002.

3.11 On a local level, where public relations play an important role, RNAS, AAC and RAF Station Commanders have delegated authority to settle straightforward claims up to the value of £200 where the claimant lives within two miles of the airfield. In addition, the Regional Community Relations Officers (RCROs) have been given authority from the Chief Claims Officer to recommend fast track settlements for simple straightforward claims up to £250.

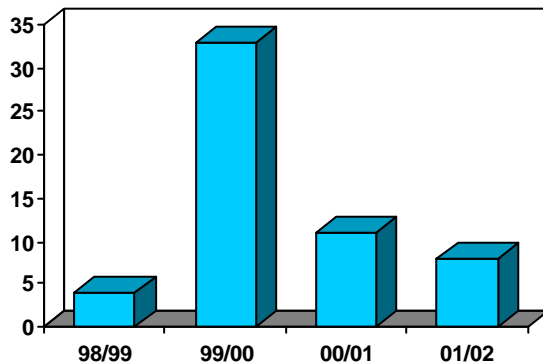


	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	272	233	194	182
Number of claims settled	180	160	131	127
Amount paid (£)	610,000	682,000	822,000	1,046,895

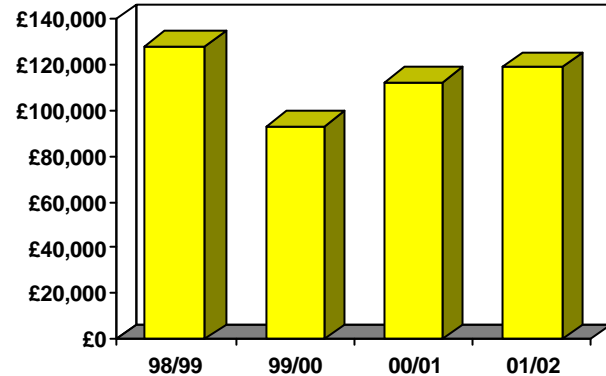
3.12 The slight downward trend in the number of claims received has continued. Once again this is a reflection of the overall general, and continued, reduction in the number of low level sorties over mainland Britain due to operational commitments elsewhere. Whilst the amount of compensation paid has risen to a little over £1 million, nearly 50% of this is attributed to two claims.

Air Crash claims settled by Defence Estates

3.13 The Defence Estates organisation (DE) has delegated authority to settle property damage claims arising from military aircraft crashes in the UK within delegated financial authority of up to £50,000 per claim. DE personnel perform valuable work in the aftermath of an air crash and have the expertise to assess many different types of damage from forestry to buildings. This was well illustrated following a RAF Hawk crash at Shap, Cumbria, in October 1999 where a number of properties were severely affected by debris from the crash. The total amount paid by DE in respect of this crash was in the region of £245,000



■ Number of claims settled by DE



■ Amount paid

	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims settled by DE	4	33	11	8
Amount paid (£)	128,300	93,511	112,458	119,000

Visiting Forces Claims

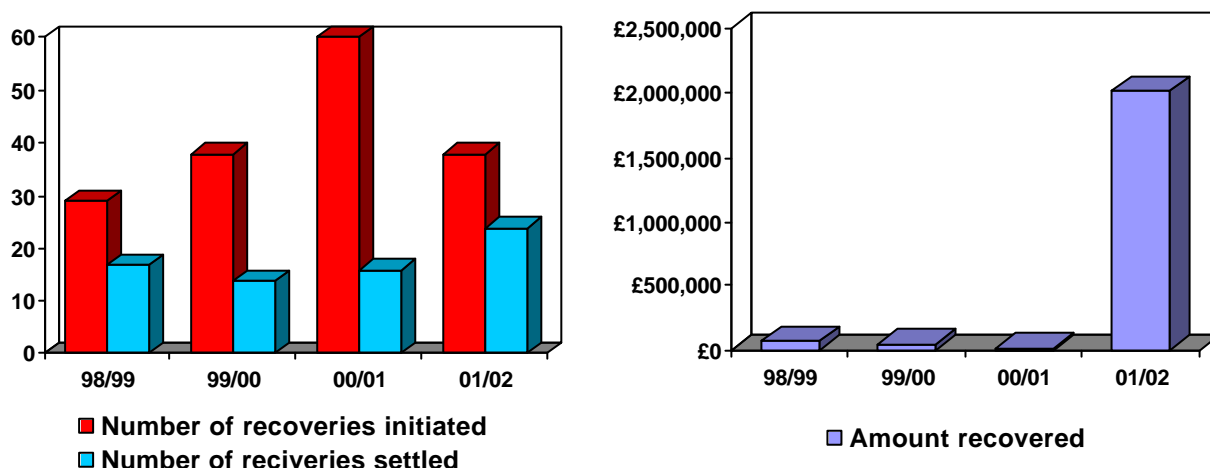
3.14 Claims PLG handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII of NATO SOFA and Section 9 of the Visiting Forces Act 1952. Such claims can be on behalf of any of the states who are signatories to

the agreement or who are invited to train in the UK, but primarily involve the USA, Holland, 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, MOD pays compensation on their behalf. In the case of NATO countries, the Sending State is generally billed for 75% of the amount paid, the United Kingdom paying the other 25%. The vast majority of Visiting Forces cases result from road traffic accidents and statistics are given in Section 6.

Financial Recoveries

3.15 Where MOD sustains loss or damage to equipment or property which has been caused by a third party, Claims PLG will seek to recover those losses from the third party in the UK and overseas. The main causes for taking action against third parties are where MOD static property has been damaged by vehicles, fire, the negligence of a contractor, road traffic accidents overseas and damage to visiting forces' vehicles and static property.

3.16 Claims PLG does not handle recoveries in those countries covered by Area Claims Officers (see Section 9) nor in respect of road traffic accidents in the UK for which recoveries are pursued under contract to MOD by Willis Ltd (see Section 6).



	1998/1999	1999/2000	2000/2001	2001/2002
Number of recoveries initiated	29	38	60	38
Number of recoveries settled	17	14	16	24
Amount recovered (£)	68,000	45,000	13,000	2,016,000

3.17 The large sum recovered in the last financial year is mostly due to £1.8 million recovered on the MOD's behalf by the United Nations Compensation Commission for the compensation paid to members of the British Liaison Team who lost all their personal possessions when Iraq invaded and occupied Kuwait in 1990, and a recovery of £104,000 made following damage to an RAF Tristar aircraft at Ancona Airport when it was hit by motorised passenger steps. The recovery not only included the costs of the damage to the aircraft itself but also the cost of aircrew, fuel,

operating and engine costs incurred in flying the damaged aircraft from Italy to UAE where the repair was carried out. These two recoveries aside, Claims PLG recovered nearly 2.5 times the amount recovered in the previous year.

SECTION FOUR

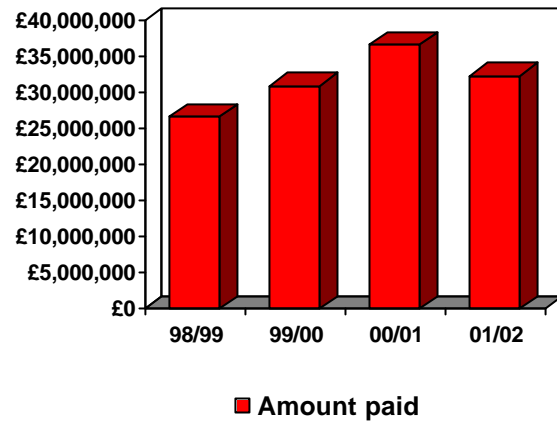
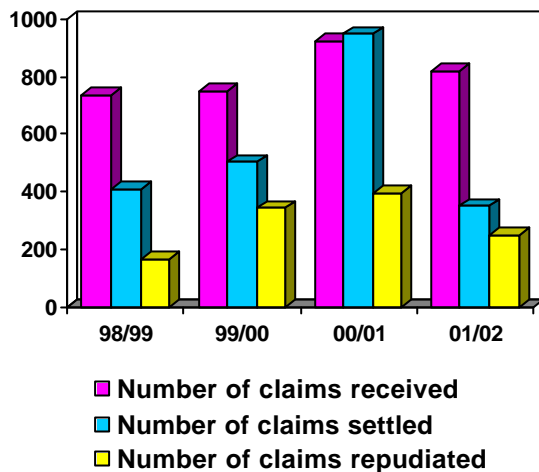
SERVICE PERSONNEL EMPLOYERS LIABILITY CLAIMS

***“Do not needlessly endanger your lives until I give you the signal”
Dwight D Eisenhower***

4.1 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 MOD for compensation where they have suffered as a result of the Department’s negligence. The repeal of Section 10 was not made retrospective.

4.2 Compensation in the form of a war pension and associated benefits is also available to all former members of HM Forces suffering from Service attributable illness or injury. War Pensions are administered and paid by the MOD’s Veterans Agency (formally the War Pensions Agency) and are non-discretionary, not means-tested and are made on a no-fault, tax free and retrospective basis. They are uprated annually. Most pension and related benefit rates vary depending on the degree of physical disability and do not reflect actual financial losses or hardships.

4.3 Royal and SunAlliance plc handle claims from Service and ex Service personnel which were notified after 1 July 1996 on behalf of MOD under contract. Claims notified before that date and some more recent political or sensitive claims are handled by the Claims Service Personnel Employers Liability Group. The number of claims and amounts paid are shown below:-



	1998/99	1999/2000	2000/01	2001/02
Number of claims received	738	752	924	819
Number of claims settled	412	504	948	351
Number of claims repudiated	165	344	397	253
Amount paid (£)	26,700,000	31,000,000	36,600,000	32,312,369

Trends

4.4 The number of registered personal injury claims against MOD from Service and former Service personnel during the period of the report being handled by Royal and Sun Alliance has steadily risen over the last 5 years from 715 in 1997/98 to 797 in 2001/02. The average cost of the claims registered is, however, lower during the reporting period than in the previous 5 years. In certain categories of claim the numbers have diminished, but have increased at the lower end of the scale;

Category	1996	1997	1998	1999	2000	2001
Bullying	21	13	9	12	14	7
Parachuting	0	7	8	5	7	1
Slip/trip	36	62	66	75	80	88

BRIEF SUMMARY OF GROUP ACTIONS

Post Traumatic Stress Disorder (PTSD)

4.5 While recognizing the emotive and sensitive nature of the issues the PTSD group actions raise, it is important that they are set out within a factual context. Stress related medical disorders are recognised by the Armed Forces as potentially serious and disabling conditions. PTSD was not internationally recognised as a medical condition until the 1980s and methods of treatment have subsequently developed in the medical world and in the Armed Forces. The measures now in place to combat PTSD in the Armed Forces have, therefore, evolved and been enhanced over a

number of years to reflect our improving knowledge of the condition, its effects and the best methods of remediation.

4.6 MOD acknowledges that some members of the Armed Forces may, during the course of their careers, be subjected to traumatic experiences and may suffer stress as a result. This does not necessarily mean that the MOD has been negligent. MOD does, however, have a duty to ensure that Service personnel receive proper treatment and where we fail in this respect, and the individual suffers loss or damage as a result, then that individual may be entitled to compensation.

4.7 About 1700 PTSD claims have been received from former members of HM Forces. These claims mainly relate to service during the Falkland conflict, Gulf conflict, in Bosnia, and in Northern Ireland. Because many of the claims contain similar allegations the Lord Chief Justice set up a Group Action in 2000. The allegations in general terms are that the Department was negligent in that it failed to properly recognise, diagnose and treat those said to be suffering from PTSD. The Group Action commenced on 4 March in the High Court and is expected to conclude in November 2002 with judgment to be handed down at some unspecified date. It would therefore be inappropriate to comment further save to say that it is important to emphasise that this litigation is not about the validity of PTSD as a psychiatric disorder, nor is it about soldiers unjustifiably suing for being exposed to traumatic incidents while serving in HM Forces. The Claimants' case is that PTSD is detectable and preventable, and that proper systems would or should have achieved these objectives in the vast majority of cases.

Nuclear Test Veterans

4.8 There have been no significant developments over the period of this report.

Radiation Compensation Scheme

4.9 The MOD 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 MOD joined in 1994, was set up and is run jointly by the participating employers and Trade Unions and does not affect the Claimants' right to seek legal redress. 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. 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.

4.10 During financial year 2001/02, the Scheme received 23 new claims from former MOD employees (military and civilian) who believe their illness is associated with exposure to

occupational ionising radiation. Over the same period 1 claim was settled. (Since 1994 five Ministry of Defence cases have been settled under the Scheme).

Exercise Dynamic Impact

4.11 Exercise Dynamic Impact took place in May 1984. Personnel from 1st Battalion The Parachute Regiment and the Pathfinder Platoon 5 Airborne Brigade were flown from the UK and parachuted from their aircraft, landing on a military drop zone (DZ) in Capo Teulada, Sardinia. UK forces were to act as the 'enemy' in a NATO exercise. A total of 76 of 480 men who parachuted into the DZ sustained injuries, the majority of which were not serious.

4.12 Compensation claims were however, subsequently made against MOD by 20 of the injured parachutists. Following legal advice from Counsel, MOD conceded liability in March 1998, and work began on attempting to settle each of the claims. This year has seen the last of the claims settled. The total amount of compensation paid in damages to those injured was £1.74 million.

Gulf Veterans' Illness

4.13 MOD has still not received any writs or claims of detail stating specific allegations of negligence sufficient to start considering these claims. MOD has not accepted either cause or negligence but has acknowledged less than satisfactory handling of a number of matters, such as the failure to transfer details of vaccination to permanent records, the way in which "informed consent" was implemented and the initial failure to provide information about the use of organophosphates.

4.14 During the period of this report, Claims branch received an additional 60 notifications from Gulf veterans, their families and civilians of an intention to claim compensation. The total number of such notifications as at 31 March 2002 was 2,032, of which 1,929 are deemed to be currently 'active'.

4.15 Further information on Gulf veterans' illnesses issues is available from the MOD's Gulf Veterans Illness Unit web site at: www.mod.uk/issues/gulfwar.

Asbestos Related Diseases

4.16 Prior to May 1987, Service personnel were prevented from pursuing claims for compensation from MOD by Section 10 of The Crown Proceedings Act 1947. (Crown Immunity prevented claims from being made prior to 1947.) 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.

4.17 At the time of the passage of the 1987 Bill, the question of retrospection was debated and motions to allow member of the Armed Forces, past and present, to pursue claims for injury or

death suffered in incidence since 1947 were moved. 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.

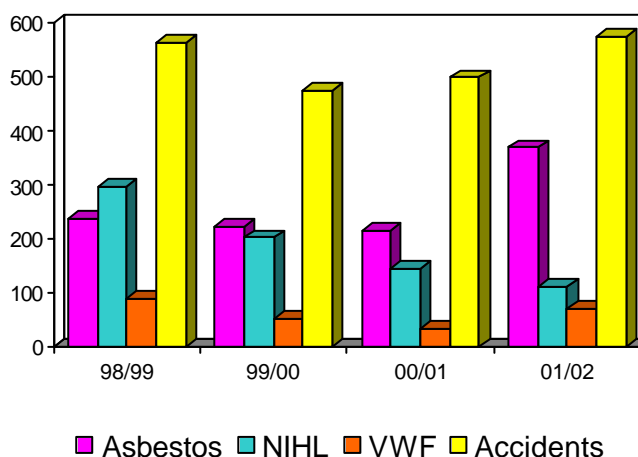
4.18 An ex-serviceman, (Mr Matthews) suffering from an asbestos related disease mounted a legal challenge that Section 10 of the Crown Proceedings Act 1947 is incompatible with the European Convention on Human Rights. Mr Matthews alleged a breach of Article 2 (right to life) and Article 6 (due process 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 Mr Matthews' health. The case under Article 6 was that Section 10 Crown Proceedings Act is a 'blanket' immunity, which deprives Mr Matthews of his right of access to the Court. The matter was heard in the High Court on 10 and 11 December 2001. Mr Justice Keith handed down judgment on 22 January 2002 in favour of the Claimant. The Department secured leave to take this matter expeditiously to the Court of Appeal on the basis that we believed the judgment to be flawed and should therefore be subject to a legal challenge. Lord Phillips, Master of the Rolls, Lord Justice Mummery and Lady Justice Hale heard the Department's appeal on 22 and 23 April. A unanimous judgment was handed down on 29 May in favour of the Department. The Court of Appeal, however, granted leave for the Claimant to take the matter to the House of Lords.

SECTION FIVE

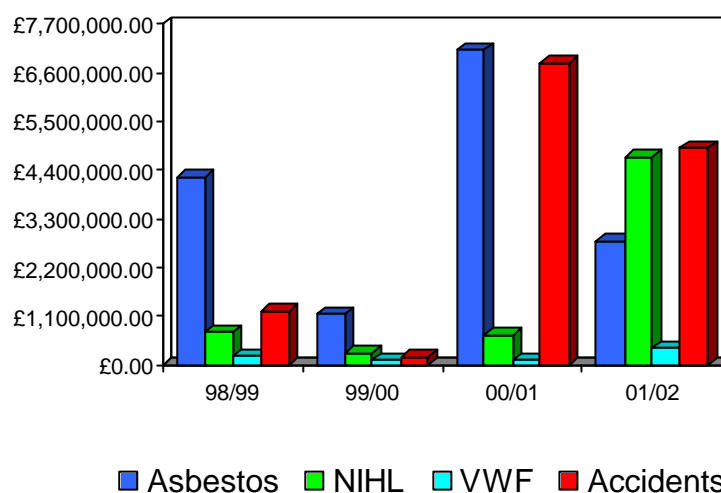
CIVILIAN STAFF EMPLOYER'S LIABILITY CLAIMS

5.1 Since 1982, MOD has contracted out the handling of its civilian employee employer's liability claims. The contract was held by AXA Corporate Solution Services Ltd up to 30 April 2002, but following a competitive tender Royal and SunAlliance plc will handle this work with effect from 1 May 2002 until 30 April 2007.

5.2 MOD civilian employees injured in the course of their official duties may be able to claim compensation. Details on how to submit a claim are contained in Volume 16, Section 7 of the Ministry of Defence Personnel Manual. The main types of claims received in the last three years from current or former Ministry of Defence civilian staff are shown in the charts below.



	1998/99	1999/00	2000/01	2001/02
Asbestos-related disease	237	223	215	368
Noise Induced Hearing Loss	297	202	143	110
Vibration White Finger	90	53	35	70
Accident Injury (Falls/Machinery/Lifting)	562	475	498	573
TOTAL	1186	953	891	1121



	1998/99	1999/00	2000/01	2001/02
Asbestos-related disease (£)	4,247,777	1,151,621	7,115,000	2,803,629
Noise Induced Hearing Loss (£)	748,202	270,979	682,000	4,682,601
Vibration White Finger (£)	197,352	123,376	115,000	378,764
Accident Injury (Falls/Machinery/Lifting) (£)	1,230,780	190,579	6,806,000	4,893,827
Amount paid (£)	6,424,111	1,736,555	14,718,000	12,758,821

SECTION SIX

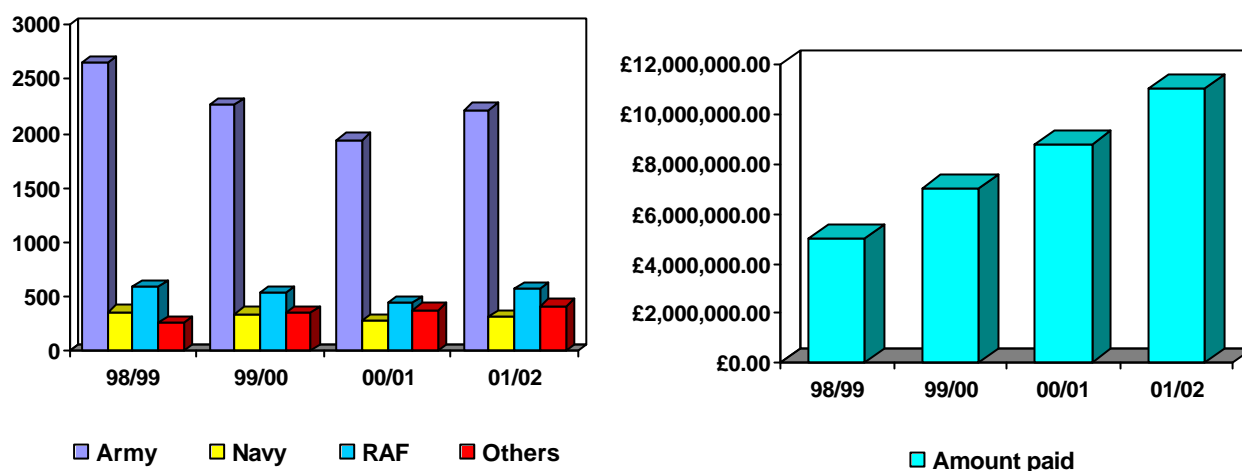
MOTOR CLAIMS

*“Life is too short for traffic”
Dan Bellack*

Third Party Motor Claims - UK

6.1 Since 1982, MOD has contracted out the handling of claims made against the Department by other road users. The contract is held by AXA Corporate Solution Services Ltd who have again won a competitive tender to retain the work until 2007. The majority of motor accidents involving MOD vehicles occur within the UK, although AXA do handle around 40 third party claims each

year from UK based vehicles travelling in mainland Europe. The number of third-party claims handled by AXA is shown in the charts below.



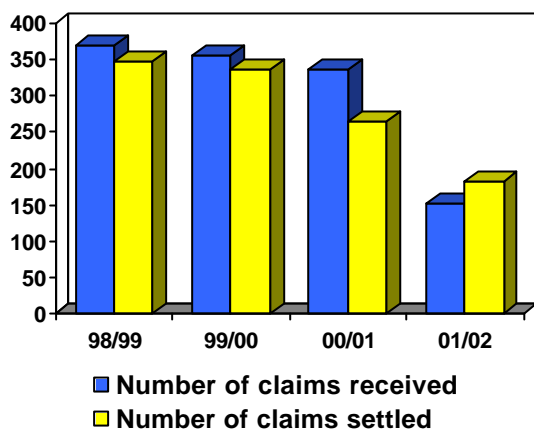
Service	1998/99	1999/00	2000/01	2000/01
Army	2652	2261	1944	1928
Navy	356	337	271	216
RAF	593	537	443	443
Other	258	349	373	916
TOTALS	3589	3484	3031	3503
Amount paid (£)	5,002,245	7,030,000	8,777,000	11,000,300

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

6.2 Claims arising from non-UK based vehicles overseas are handled by the appropriate Area Claims Officers (ACO) or Claims PLG where no ACO exists for that geographical area. The Claims PLG geographical area is so large, it is not unusual to receive claims from anywhere in the world where British Forces are based, on exercise or even when there is a single defence attaché with one car. This year has seen claims from Sierra Leone, Belize, Kenya, Oman and Afghanistan in addition to our more usual “customers” such as Gibraltar. In accordance with JSP 341, units and organisations should send FMT 3-1 (the form submitted by the user unit notifying details of traffic accidents involving Ministry of Defence owned or hired vehicles, and showing that the driver was on duty at the time of the incident) and supporting statements to DC&L(F&S) Claims. Unfortunately, this frequently does not happen and claims managers spend a considerable amount of time locating these essential documents.

6.3 Claims managers are required to establish that an authorised driver was driving the MOD vehicle on an authorised journey and route. If these criteria are met and all the evidence suggests that the MOD driver was liable for the accident, then compensation will be paid. Statistics for motor claims for the last three years are shown in the table below. The number of claims received in financial year 2001/2002 shows the overall trend is still downward, in fact less than half of the

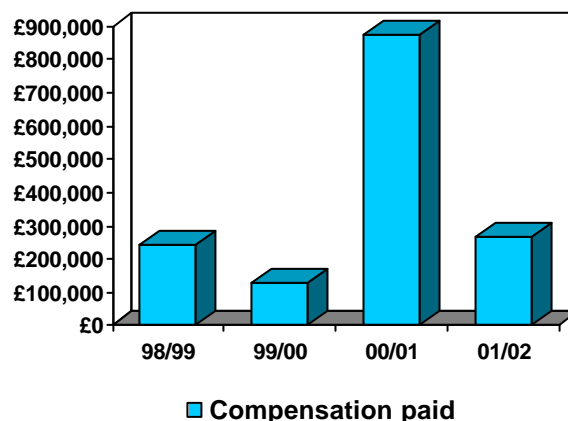
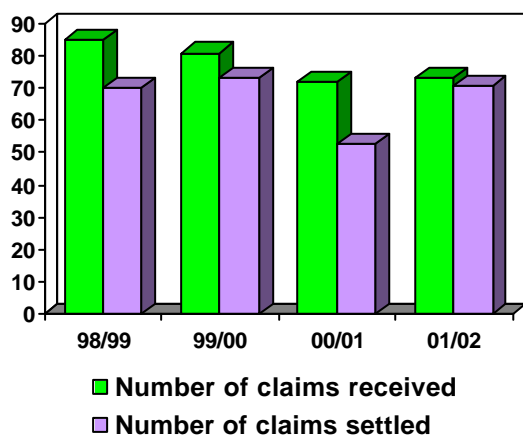
previous year's totals were received. It should be noted, however, that the past year was the first where units were responsible for their own "loss of use" and "write off" claims, although Claims PLG continue to deal with some residual claims resulting from accidents which occurred before 1 April 2001.



	1998/99	1999/2000	2000/01	2001/02
Number of claims received	371	357	336	153
Number of claims settled	347	337	265	181
Amount paid (£)	687,000	613,000	1,076,000	251,000

Visiting Forces Motor Claims

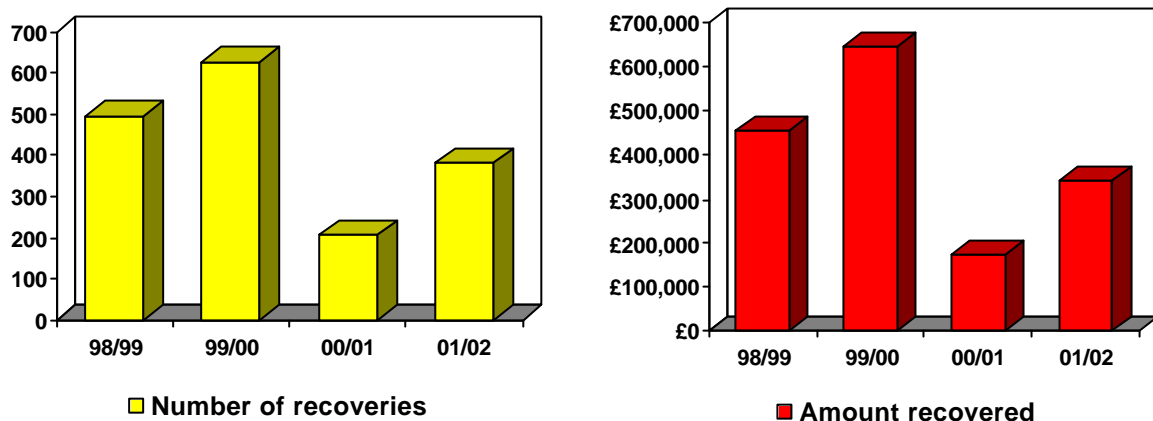
6.4 Claims PLG handles third party claims involving Visiting Forces in the UK, the vast majority of which result from road traffic accidents. Any personal injury element of such claims is handled in exactly the same way as other injury claims, and damage claims are settled on production of a bill or an expert's assessment.



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	85	81	72	73
Number of claims settled	70	73	53	71
Compensation paid (£)	241,000	128,000	875,000	265,000

Uninsured loss recoveries

6.5 Willis Ltd recover on behalf of the Ministry of Defence the cost of damage caused to its vehicles in accidents which are the fault of a third party. The number of recoveries and the amounts received are shown below.



	1998/1999	1999/2000	2000/2001	2001/2002
Number of recoveries	495	626	208	382
Amount recovered (£)	458,000	645,000	173,000	343,300

Cost of Damage to MOD Vehicles

6.6 Claims branch does not pay for damage to Ministry of Defence owned or hired vehicles as this is the responsibility of the unit involved. Similarly, with effect from 1 April 2001 responsibility rests with the unit for any claim resulting from the “loss of use” or “write off” of the vehicle.

SECTION SEVEN

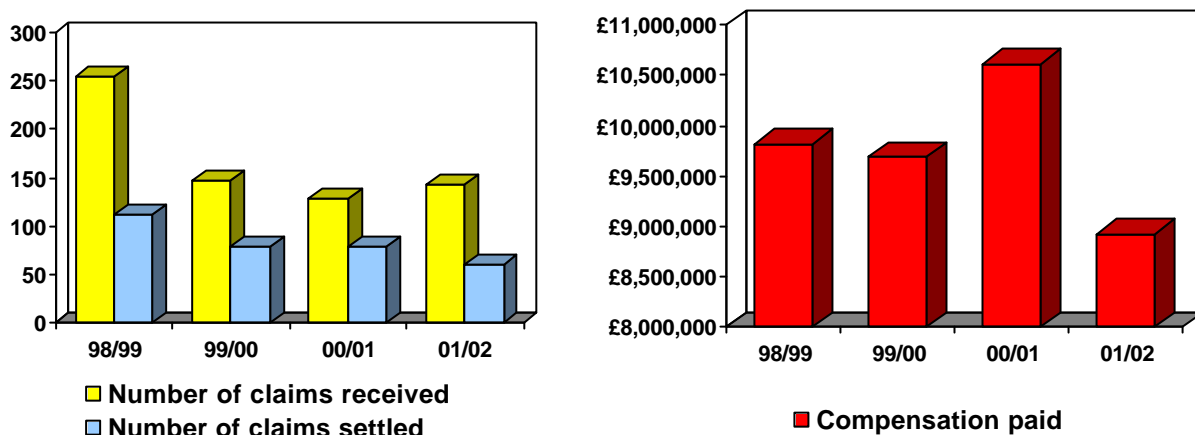
CLINICAL NEGLIGENCE CLAIMS

7.1 Clinical negligence claims arise when a patient considers that the advice and/or treatment received fell below acceptable standards due to the negligence of the medical staff. To succeed in bringing a claim for negligence the Claimant must establish that they were owed a duty of care by the defendant and that there was a negligent breach of that duty resulting in the Claimant suffering damage. Establishing a duty of care is not particularly difficult in clinical negligence cases and

any medical practitioner or hospital can reasonably foresee that any breach of care on their part may cause harm to the patient.

7.2 By their very nature clinical negligence claims can often take a very long time to reach a conclusion. In many cases the Claimant will not wish to agree settlement until the full extent and prognosis of their disablement is known. This is particularly true in claims involving brain damaged children born in Service hospitals, where it may take many years before the full extent of their disablement and life expectancy can properly be assessed by medical experts.

7.3 Clinical negligence claims can be very expensive to settle. One such claim was settled for £3.6 million during financial year 2001/2002. Details covering expenditure over the past three years is shown below.



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	255	147	128	142
Number of claims settled	112	79	79	59
Compensation paid (£)	9,816,803	9,688,420	10,617,263	8,924,255

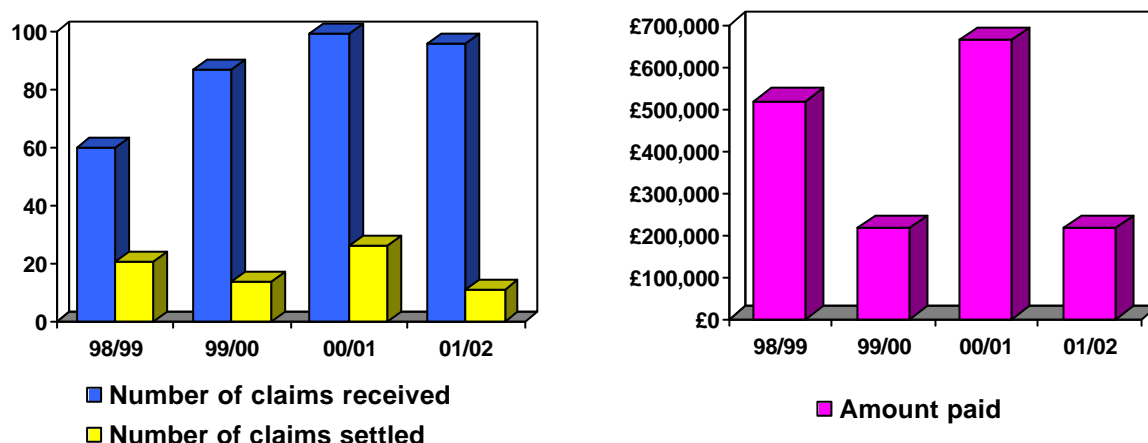
7.4 During the past year MOD has received a small number of claims for compensation from patients who underwent hip replacement surgery at Catterick and Wroughton military hospitals during the early 1990s on the basis that there had been a comparatively high failure rate connected to one type of hip fitted (manufactured by the company 3M). Under the agreed protocol, claims for compensation have been made to the manufactures of the hip. However where there is evidence that the failure was not caused by a technical malfunction in the actual hip, but poor surgical technique by the surgeons concerned, 3M would look to the Department to meet any compensation claim.

SECTION EIGHT

SERVICE PERSONNEL EMPLOYMENT TRIBUNAL CLAIMS

8.1 In addition to common law claims, Claims branch also handles claims relating to Employment Tribunal (ET) applications brought by current or former Service personnel. ET applications made by the Department's civilian employees are handled and settled by the appropriate Civilian Personnel Management Authority. There is no Claims branch involvement with such claims.

8.2 Employment Tribunals provide a forum in which most legal disputes between employer and employee are resolved. They are intended to be relatively simple and informal without the absolute need for lawyers to represent Applicants. Legal Aid is not available for representation at ETs, but some Applicants do receive financial assistance in bringing their claims from organisations such as the Equal Opportunities Commission or the Commission for Racial Equality. The issue of costs is also different from common-law claims. A party cannot normally expect an ET to award costs if they win nor will they generally be ordered to pay the other side's costs if they lose. An ET can exceptionally award costs, if in its opinion, a party (Applicant or respondent) has, in bringing or conducting proceedings, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. Details covering expenditure over the past three years is shown below:



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	60	87	99	96
Number of claims settled	21	14	26	11
Compensation paid (£)	520,063	216,781	666,262	215,750

8.3 During the period covered by this report, amendments were made to the Sex Discrimination Act 1975 which have in effect made it easier for employees to successfully bring claims for discrimination at ETs. In addition, on 12 October 2001, regulations based on the 1998 European directive on the burden of proof in sex discrimination cases came into force. The Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001 provide that, where an Applicant establishes a *prima facie* case of sex discrimination at work, the burden of

proof shifts to the employer to prove that there was no such discrimination. In due course it is felt similar changes are likely to be made to the Race Relations Act 1976 and the Disability Discrimination Act 1995.

8.4 Also during the period covered by this report there have been two significant cases heard at ETs. The first case related to a claim brought by a current Army Officer who alleged that he had been racially discriminated against whilst serving in Cyprus. This case, which was dismissed by the ET on the basis that it had no jurisdiction to consider this matter, raised fundamental issues as to the application of the Race Relations Act 1976 on Service personnel serving overseas. This may be subject to an appeal by the applicant to the Employment Appeals Tribunal. The second case also brought on the basis of racial discrimination, involving an ex-Gurkha soldier, raised major issues relating to the different terms and conditions of service Gurkha soldiers enjoy.

SECTION NINE

AREA CLAIMS OFFICERS

AREA CLAIMS OFFICE NORTH WEST EUROPE

9.1 ACO (NWE), is part of the Civil Secretariat, United Kingdom Support Command (Germany) based at JHQ Rheindahlen. It is responsible for handling claims by and against MOD in Germany, Norway, Holland, Belgium, Luxembourg, France, Austria, Switzerland, Poland, Hungary and the Czech Republic. The Area Claims Officer has 10 civilian staff processing and handling claims.

9.2 Financial year 2001/02 was another busy year for ACO NWE. Despite the number of claims received dropping by around 30%, expenditure increased over 17% during the same period. An explanation for this and a commentary on some of the issues handled are listed below.

Exercise Saif Sareea II

9.3 This large Tri-Service Exercise took place in Oman from September to December 2001 although the planning and Claims activity spanned a much longer period. The ACO (NWE) provided two Claims Officers as part of the Civil Secretariat team deployed during the Exercise with the task of setting up the claims office and procedures at the beginning of the Exercise and then aiming to settle the outstanding Claims at the end of the Exercise.

9.4 From the Claims perspective the exercise was a success. Over 20,000 troops were involved in the exercise although the Claims team were not involved in exercise or training activities but dealt with “real” claims for compensation arising from the movement of troops around Oman.

9.5 The two Claims Officers received considerable pre-deployment briefings and training, including a two-day NBC training course. Operating in temperatures of around 45 to 50 degrees centigrade proved a considerable challenge as well as working and living in tented accommodation. The work involved constant liaison with the British and Omani military contingents and good communications were maintained between all parties during the exercise.

This enabled any claims arising to be settled in a timely fashion and avoided any adverse publicity for the visiting forces or our hosts.

9.6 A Road Safety briefing was given to all British personnel on arrival in theatre and this certainly contributed to the relatively low number of Road Traffic Accidents (RTAs) which occurred. Sadly some deaths did result from these RTAs but thankfully the number was less than predicted at the beginning of the exercise given the scale and hazardous nature of the exercise.

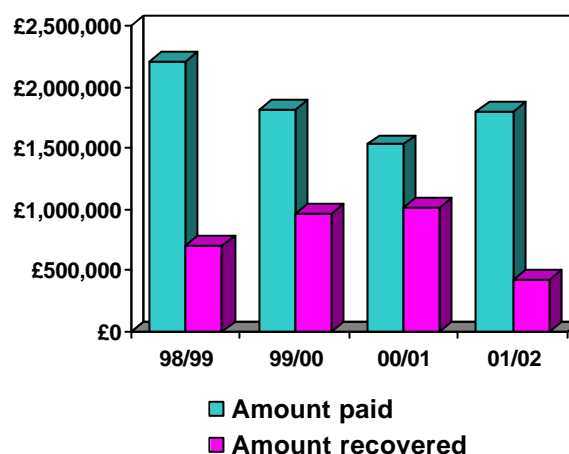
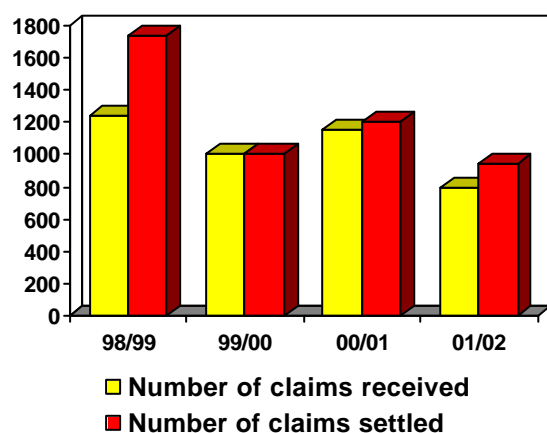
9.7 Following the events of 11th September 2001 the British Forces have maintained a presence in Oman. One of the original Claims team who we helped train during the Exercise, has returned to Oman to deal with claims matters mainly relating to road and land damage. She provided valuable continuity during the transition phase from Exercise Force to Logistic Support Force.

Risk Management

9.8 The ACO (NWE) established a Risk Management post in 2001/02 to work and develop links with the Staff Master Drivers in Germany to increase the exchange of information between organisations. The work to be undertaken will include presentations to Unit Transport Staff based in Germany to highlight the role of the ACO office.

9.9 In the forthcoming year the Risk Management team will also play a key role in the redevelopment of the current IT system used within the office. It is hoped that this will enable the office to provide Commanders with the information they need to make informed decisions in respect of the risks associated with Claims.

Claims Expenditure and Recoveries



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	1,245	1005	1158	798
Number of claims settled	1,744	1011	1208	948
Amount Paid (£)	2,206,000	1,819,000	1,528,000	1,800,000
Amount Recovered (£)	700,000	963,000	1,008,000	427,290

9.10 The fall in the number of claims can largely be attributed to Ex Saif Sareea II and the number of troops from our theatre who were deployed on the exercise. This will continue to impact on our business next year because it normally takes several months from the date of the incident for settlements to be made.

9.11 Expenditure in 2001/02 in the ACO NWE area of responsibility has been distorted by three large cases. First, an Employment Tribunal case in respect of sexual harassment was settled out of court at a cost of £125,000 which is indicative of the increasing costs of this type of claim. It is important that all line managers are aware of the financial and human costs which can result from unacceptable behaviour in the work place.

9.12 Two payments totalling over £500,000 were also made in respect of two long running road traffic accident cases which resulted in the Claimants sustaining severe injuries and requiring on-going extensive medical treatment and care.

9.13 The level of recoveries of MOD losses was down in 2001/02 compared to previous years although this was largely due to court delays in a couple of long running cases. An increase in recoveries is expected in 2002/03.

Novel and Contentious Cases

9.14 Despite efforts to minimise claims and increase risk awareness little can be done to prevent the actions of individuals who fail to heed advice. This year whilst a speed ramp (sleeping policeman) was being repaired in a Garrison in Germany a security guard directed vehicles to use the road despite the contractor declaring the road out of bounds. As a result, the undersides of 10 cars were damaged and claims totalling nearly £20,000 were settled.

9.15 For the first time recovery action was taken through the Courts in France following a tragic road traffic accident near Calais in 1998 in which three members of a Service netball team were fatally injured and several more seriously hurt. Legal action is underway against the 3rd Party in a bid to recover our financial losses of over £170,000 arising from the accident. A final decision on the claim is expected during the next 12 months.

AREA CLAIMS OFFICE CYPRUS

9.16 ACO Cyprus comprises two members of staff who are responsible for processing claims by and against MOD and the Sovereign Base Areas Administration in Cyprus and its territorial waters. The range of claims dealt with is similar to that of ACO NWE (road traffic accidents, public and employer's liability, and training and manoeuvre damage), but the Cyprus Treaty of Establishment (ToE), rather than the NATO Status of Forces Agreement, applies.

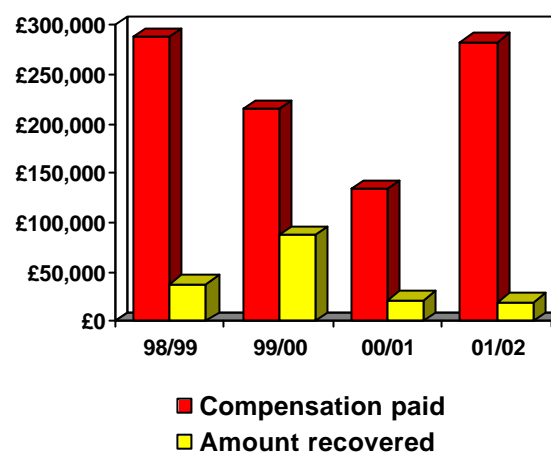
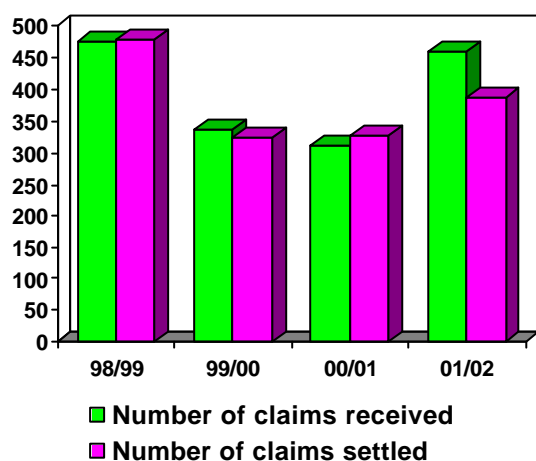
9.17 The Cypriot climate and terrain provide excellent training opportunities for the British forces, both in the air and on the ground. Most of this takes place on private land under rights granted by the ToE. Consequently a good deal of ACO Cyprus's work involves settling training and manoeuvre damage claims arising from the activities of our forces, whether the resident battalions and squadrons or those visiting from UK. These claims are predominantly for loss of livestock (which will sustain injury and abortion if panicked by helicopters, pyrotechnics, etc.) and

crop damage. In providing a rapid response to the claims and complaints raised by farmers and landowners, ACO Cyprus plays a significant role in maintaining good relations between MOD and the local community, a vital ingredient in supporting UK's training rights.

9.18 ACO Cyprus seeks to reduce the risk of damage being caused and to that end routinely briefs all exercise reconnaissance officers prior to training taking place. Nevertheless the last financial year has seen a fairly sharp rise in training and manoeuvre damage claims expenditure. Much of this can be linked to training undertaken by units preparing to deploy to Exercise Saif Sareea last autumn, but valuable lessons have been learned to help avoid a repetition.

9.19 A rise has also been observed in public liability claims, and it is believed that this reflects the fact that, like Britain, Cyprus is becoming a more claims conscious and litigious society.

9.20 Details are shown below covering the past three years, in respect of:

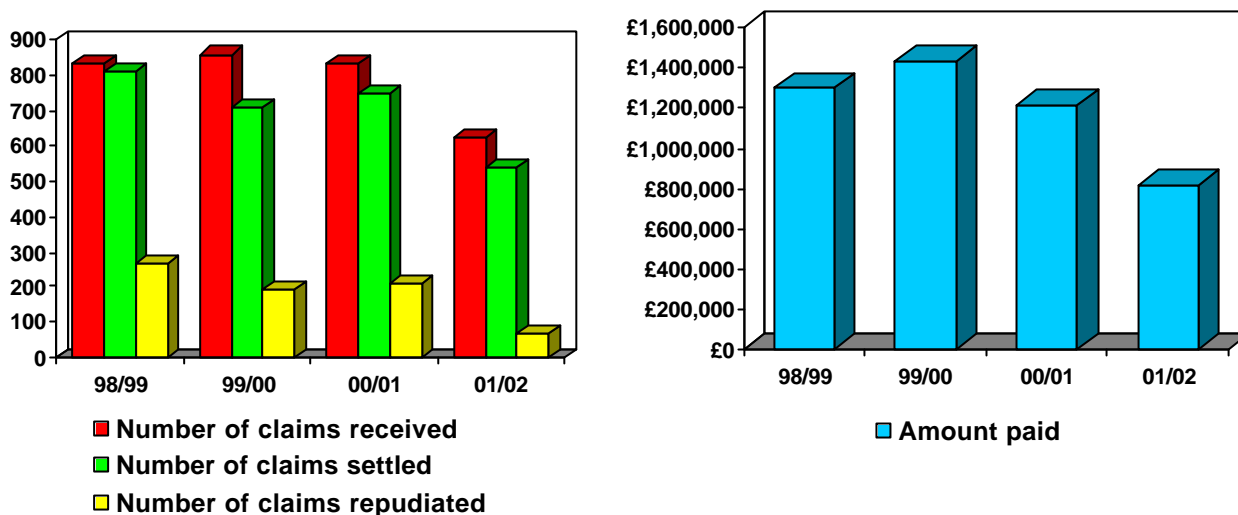


	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	474	337	312	458
Number of claims settled	478	323	326	388
Amount Paid (£)	228,000	215,000	134,000	282,000
Amount Recovered (£)	37,000	87,000	22,000	19,000

AREA CLAIMS OFFICE NORTHERN IRELAND

9.21 ACO Northern Ireland is based at HQ Northern Ireland and deals with common law claims for and against the MOD in Northern Ireland. It also acts as a focal point for civilian employee claims. ACO NI has authority to settle claims up to £50,000.

9.22 The continuation of the ceasefire has seen a fall of about 25% in the number of claims submitted during the year. About 85% of claims submitted continue to be as a result of military helicopter activity and vary in value from £25,000 for a horse that had to be euthanised after being scared by low flying helicopters down to £28 for a blouse blown from a washing line onto a hedge by the downdraft of a helicopter.



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	834	858	832	625
Number of claims settled	809	708	747	538
Number of claims repudiated	270	194	212	65
Amount paid (£)	1,297,000	1,433,000	1,210,000	819,694

AREA CLAIMS OFFICE BALKANS

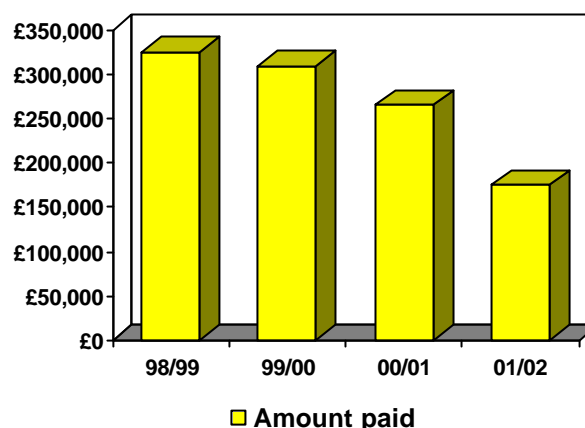
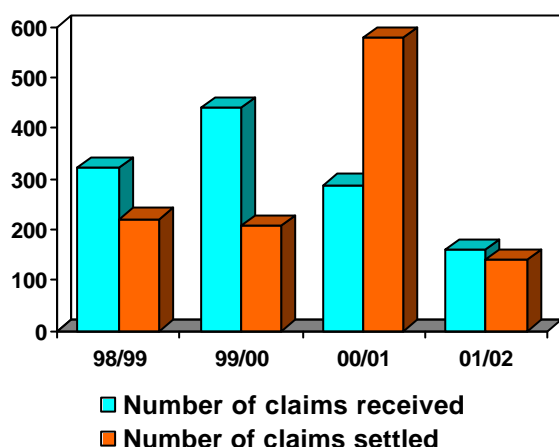
9.23 Claims handling in the Balkans theatre of operations underwent a major organisational change during financial year 2001/02. In November 2001 the MOD's Claims Office in Kosovo was established to deal with claims arising from the post-12 June 1999 activities of the UK contingent of the Kosovo Force (KFOR). As a result the Area Claims Officer (ACO) post moved from Bosnia to Kosovo to deal with the large backlog of claims held in abeyance until claims handling arrangements were agreed in Kosovo. The ACO has retained responsibility for in-theatre policy and claims arising in Bosnia, Macedonia (where we employ a local Claims Assistant), Albania and any Operation Agricola related claims in Greece. There is, however, still a claims presence in Bosnia with the Claims Officer Bosnia looking after the many claims still arising in Bosnia and Croatia as a result of the on-duty activities of the Stabilisation Force (SFOR).

Claims Office Bosnia.

9.24 The majority of claims still continue to be the result of road traffic accidents and associated injuries, particularly in the winter months due to the extreme weather conditions and the poor state of some roads. A small number of property damage claims continue to be submitted, with the biggest current area of claims being connected to a Helicopter Landing Site (HLS) near Sipovo Hospital where 12 claims have been received from local residents for alleged structural damage to their houses which they blame on helicopters. The HLS is, however, a multi National HLS and HQ SFOR in Sarajevo is currently investigating the matter further.

9.25 Three claims requesting compensation for the death of bees allegedly due to the destruction of ammunition were received in 2001/02. All were found to be unsubstantiated, and following investigation and an expert entomologist's report were repudiated.

9.26 The figure for claims recovered still remains at Nil. However, the claims officer is actively pursuing five recoveries with the assistance of either the Croatian Government, or the Federal Ministries of Justice for Bosnia & Herzegovina or the Republic of Srpska, which all act on the UK's behalf in such matters. Regretfully the process is expected to take some time.



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	321	440	288	160
Number of claims settled	221	208	578*	140
Amount paid (£)	325,000	309,000	265,356	174,163
Amount recovered (£)	Nil	Nil	Nil	Nil

* Includes 125 Kosovo claims held in Bosnia until the Kosovo Claims Office was established in November 2001. Also includes 241 claims connected to Glamoc, which were transferred to the MND(SW) Legal Adviser (see last year's Claims Annual report for further details).

Claims Office Kosovo.

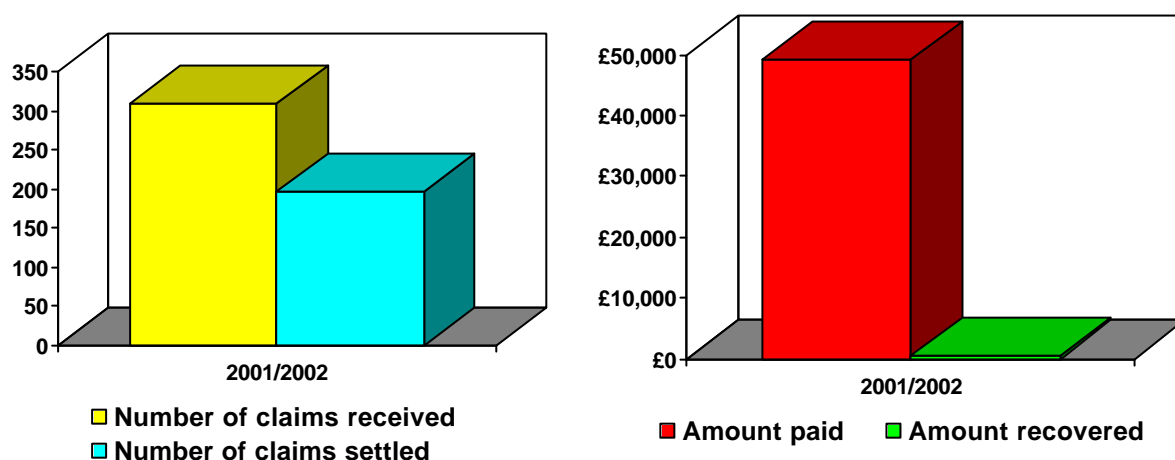
9.27 Opened for business in November 2001, the Claims Office Kosovo faced an immediate workload of 220 claims that had been acknowledged and held pending the signing of a claims agreement in Kosovo. Whilst the KFOR Theatre Claims Policy document is still in draft form the Claims office in Kosovo have, along with many other Troop Contributing Nations, started to investigate, settle or repudiate claims for compensation based on MOD's legal liability.

9.28 The majority of claims in Kosovo have been as a result of road traffic accidents, although there have also been a variety of property/land damage claims for such activities as EOD action on suspect vehicles, search patrol damage and weapon confiscations. The difficulties faced by the claims office investigating claims, some dating back to June 1999, have included a lack of property ownership and personal identification papers for Claimants as many documents were destroyed by the Serbian authorities. The situation is now improving as more individuals are being given UN ID cards and local land records are being re-created by the UN Mission in

Kosovo. Contacting Claimants two years after they submitted their claims has also proven to be an interesting challenge, but a media advert about the opening of the Kosovo Claims Office and an improving internal Kosovan postal system to outlying areas have brought many Claimants forward to enable further investigations of their claim to be carried out.

9.29 The claims office has, however, still had to physically trace several Claimants, including one from just a photograph of the Claimant standing in a damaged wheat field and a grid reference of the field on the side of a hill. However, the Claimant was successfully identified by making enquiries in nearby villages.

9.30 Recovery claims have just started to be presented to local Kosovan insurers, with one case so far successful. We wait with interest to see what the general response will be from insurers as further claims are submitted. No other KFOR nation has, as far as we are aware, been successful with a recovery claim.



	1998/1999	1999/2000	2000/2001	2001/2002*
Number of claims received	0	0	0	310**
Number of claims settled	0	0	0	196
Amount paid (£)	0	0	0	49,084
Amount recovered (£)	0	0	0	459.29

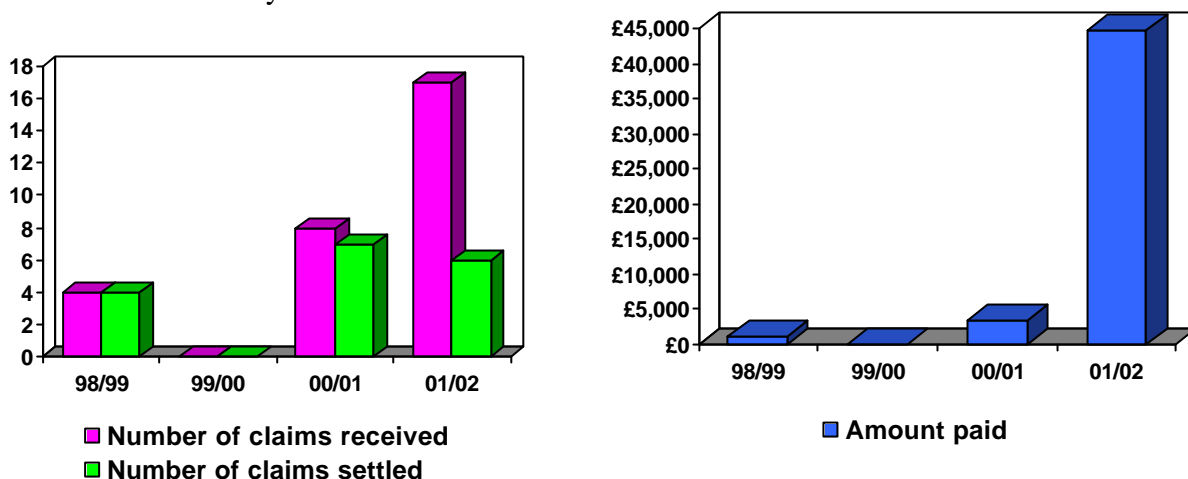
* Figures also include claims arising in Macedonia.

** This figure is for all claims received in Kosovo since 12 Jun 99. They were not however registered or investigated until Nov 2001 onwards when the Kosovo Claims Office opened.

CLAIMS OFFICE FALKLAND ISLANDS

9.31 The Claims Officer, Falkland Islands, has authority to handle common law damage claims up to a value of £5,000 per claim, through the Command Secretary British Forces Falkland Islands. Claims are handled in accordance with local law which is almost identical to English law.

9.32 In the last year claims have included backing into other vehicles or unseen obstacles, the sun (which is unusually bright in the Falkland Islands) temporarily blinding the driver, and damage caused by fire alleged to have been started by Service personnel. There have been no recoveries made in last year.



	1998/1999	1999/2000	2000/2001	2001/2002
Number of claims received	4	N/A	8	17
Number of claims settled	4	N/A	7	6
Amount paid (£)	1,079	N/A	3,471	44,797
Amount recovered (£)	0	0	0	0

SECTION TEN

INSURANCE AND INDEMNITIES

Insurance

10.1 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 activities.

10.2 Claims branch takes 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.

10.3 Willis (Aerospace) provide insurance, which is self-financing, for four specific non-core aviation risks:

Military aircraft attendance at air displays

Civil Use of Military airfields

Search and Rescue training with civilian organisations

Fare paying passengers on military aircraft

Indemnities

10.4 Claims branch 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 Estates licenses, indemnity provisions within MOUs and other international agreements.

10.5 The Ministry of Defence always seeks an indemnity against claims arising from activities or events that are not considered to be core business, or when activities or events do not further the interests of the Department. A frequent example is the Services' participation in charity fund-raising events e.g. inviting members of the public to take part in assault courses, or giving rides to prize-winners in service helicopters. The Ministry of Defence must seek an indemnity in such instances as there is no provision in the Defence Estimates to meet claims which are not defence related. Indemnities must be backed by insurance or a guarantee for those companies/organisations that self-insure. The only exceptions to the requirement for indemnity are when the Ministry of Defence is dealing with other Government Departments. This is because of the principle of indivisibility of the Crown.

10.6 Claims branch issued around 92 indemnities in 2000/2001 and commented on a similar number of other indemnity issues.

10.7 Indemnities that arise from the Department's contractual business are the responsibility of the appropriate Commercial Branch, with policy guidance provided by the Defence Procurement Agency (Defence Commercial Policy 22).

Wider Markets

10.8 Income-generating 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. Budget Holders undertaking this work need to obtain a full range of relevant business insurances. The cost of the insurance premium should be recovered in the charges raised from customers. The purchasing of insurance is necessary in order to ensure that the full cost of undertaking commercial activities is borne by the customer, rather than the taxpayer, and that the Ministry of Defence does not have an unfair financial advantage over commercial companies which are in competition for the same work.

10.9 Advice about insurance and risk reduction may be obtained from Claims branch and from the Ministry of Defence's insurance brokers, Willis Ltd, in accordance with DCI Gen 254/98. Willis have created a specialised package of insurance policies offering a full range of business insurances for Budget Holders undertaking income-generating activity.

SECTION ELEVEN

NOVEL AND CONTENTIOUS CLAIMS

Mountain Climbing Injury

11.1 In 1995 an SAC, serving as a member of an RAF Mountain Rescue Team, was injured whilst on a training exercise, following an avalanche that occurred on the North East face of Red Tarn. He suffered severe head injuries from which he has not fully recovered.

11.2 Solicitors representing the Claimant submitted a common law claim for compensation against the MOD, alleging that their client's injuries were sustained as a result of MOD negligence. The Claimant's case was in essence that the RAF Mountain Rescue Team should not have been training in the area on the day of the accident because the climbing conditions were foreseeably dangerous. In addition, it was alleged that the Claimant himself was insufficiently experienced to undertake the particular climb that day. The MOD disputed the Claimant's allegations of negligence and the case therefore proceeded to trial on 10 December 2001. The Judge subsequently found in favour of the MOD and stated in his conclusion that he was satisfied on the evidence that neither the decision to climb the Red Tarn face, nor the choice of climb upon that face, was negligent. He was also satisfied that the Claimant was competent to undergo the climb, that it was proper for it to be taken unroped, and that the Claimant was properly supervised throughout. The Claimant was therefore unable to recover damages. Prior to the trial the value of the claim had been assessed by the Claimant's solicitors as being around £1.5 million.

Slip Injury

11.3 The Claimant seriously injured his right leg after slipping on some liquid beside a drinks machine at the top of a flight of stairs in Rheindahlen, Germany. Following the incident, the Claimant suffered spasms in his right leg and he was diagnosed as suffering from the extremely rare condition 'stiff limb syndrome'. This involves irregular muscular spasms, extreme sensitivity and persistent pain. The injury led to the Claimant being medically discharged from HM Forces.

11.4 It was alleged that the MOD failed to clear up the spilt liquid or give adequate warning of the presence of the liquid on the stairs. The claim was investigated, and following legal advice was accepted on the basis that contributory negligence played an important part in the accident. As such the level of damages paid to the claimant was reduced by 20% to reflect his contribution to the accident. The claim was settled for £800,000.

Exhaust Inhalation

11.5 The Claimant in this case alleged he was exposed to carbon monoxide fumes whilst carrying out duties as a wireless operator on Army exercises. The radios were powered by the

vehicle engines used in the exercise in which the Claimant was required to sit in the rear for long periods, operating the radios. Exhaust fumes penetrated into the vehicles due to the rears of the vehicles being covered with a tent like structure thus restricting proper ventilation.

11.6 Following the incident the Claimant was medically downgraded before eventually being discharged from the Army. The claim settled out of court when the MOD accepted an offer to settle for £24,000.

Eye Injury

11.7 The Claimant was undergoing Close Protection Training prior to being posted to Rwanda. While participating in an anti-ambush exercise the Claimant was told by the officer in charge to dispense with his protective shooting glasses because bright sun light was causing glare. Shortly afterwards the Claimant was hit in the eye by a particle discharged by the blank ammunition being used in the exercise. Although the Claimant suffered from temporary loss of sight, he made a good recovery.

11.8 The subsequent Board of inquiry found that full protective clothing should have been worn to shield the face and to offer eye protection. Proceedings were issued seeking provisional damages from MOD. However, solicitors representing MOD argued that medical evidence did not fully support the claim, and the case was settled out of court for £4,500.

Clinical Negligence

11.9 Parents claimed on behalf of their son who suffered from quadriplegic cerebral palsy as a result of clinical negligence at the time of his birth at a military hospital in December 1992. His twin sister born a few minutes earlier had no such problems and indeed in later years was assessed as having a high IQ. Liability was accepted at an early stage and since that time matters progressed towards settlement. The boy is totally dependant on others for dressing, personal hygiene, eating and drinking. He is unable to speak and has little or no bodily control which severely restricts his mobility, and he will remain profoundly physically and developmentally impaired for the duration of his life.

11.10 Numerous expert reports were obtained and it was clear that a number of heads of claim would not be in dispute and could be agreed without debate. The main question to be answered was that of life expectancy which would greatly influence a very large proportion of damages by way of future care and loss of earnings. A schedule of loss was received claiming in the region of £4.5 million. The case settled by way of a Counsel-to-Counsel settlement conference for £3.6 million which is currently the second highest value claim settled by MOD.

Clinical Negligence

11.11 The Claimant pursued a claim of clinical negligence for failure to diagnose an initial sub-arachnoid haemorrhage early in March 1992 which would have prevented a second haemorrhage some 17 days later which resulted in the Claimant suffering from paralysis of the right side of his body, the inability to speak in an intelligible form, a visual deficit and loss of both taste and smell. Witness statements and experts reports were obtained and a conference was held in November 2000 with counsel to discuss liability and causation.

11.12 Counsel initially advised that the claim should be defended on the basis of expert opinion and witness evidence. A trial on liability was fixed in the Royal Courts of Justice for December 2001. Quantum would be assessed separately if the Courts found against the Department. Judgment was handed down in favour of the Department with an Order for costs against the Claimant, albeit the Claimant has been given leave to appeal the judgment.

Back Injury

11.13 While serving his last day at sea before leaving the Royal Navy, the Claimant was designated 'swimmer of the watch'. During a 'man over board' exercise the Claimant was being winched back on board ship and allegedly dropped on the deck, sustaining a serious back injury.

11.14 The Claimant's solicitors alleged that the exercise was ordered as a prank on his last day at sea, in poor weather and with inadequate manning. Proceedings were brought against MOD alleging serious back injury and loss of future career in the Police Force. The value of the claim was assessed in the region of £85,000 on full liability. However, the Claimant was unable to fully prove his case on liability, and the case was settled for £4,500.

Hand Injury - Exaggerated Claim

11.15 The Claimant had attended an official function when he allegedly slipped on a polished floor and put his hand through a window. Investigations carried out by the Unit appeared to support the Claimant's version of events. However, when medical evidence was received it included an extract of the notes made at the accident and emergency department of the hospital that treated him. These indicated that the Claimant had given the cause of the accident as '*been drinking, had argument with girlfriend, punched window*'. The Claimant's solicitors were subsequently invited to discontinue the claim but argued that the hospital had made an error in recording their client's remarks. The solicitors were subsequently advised that the hospital also recorded the Claimant being seriously inebriated when he arrived for treatment. The claim was repudiated, and nothing further has been heard from the Claimant or his solicitor.

Back Injury - Exaggerated Claim

11.16 The Claimant, a member of the TA, alleged that during an exercise he received a serious back injury and subsequent mental trauma. The back injury was supported by medical evidence. The Claimant's solicitor alleged that as a result of the injury their client had lost a future career in the TA. It transpired, however, that the Claimant had attended TA camps following the accident, and had volunteered for an exercise that involved a skiing activity. Investigations also revealed that the Claimant had tried to resign from the TA shortly after the accident, but when he found out that he would lose his bounty he withdrew his resignation. The claim was settled on the basis of general damages for pain and suffering only.

Electric Shock Injury – Exaggerated Claim

11.17 While serving aboard *HMS X* the Claimant sustained an electric shock, and alleged that he had lost full use of his right arm as a consequence. Legal proceedings were issued against MOD. Doubts of the extent of the alleged injury were raised, and surveillance of the Claimant was

undertaken. Video evidence taken during the surveillance revealed that the Claimant was exaggerating his claim. The claim which had been originally valued at £67,000, was settled for £1,000.

Clinical Negligence

11.18 An Army Sergeant injured his back while playing volleyball in 1987. He subsequently attended RN Hospital Haslar and underwent two operations in 1988. Unfortunately neither operation relieved his back pain. After further MRI scans it was suggested that an operation to fuse two of the lumbar vertebrae together could help. He agreed to the operation which took place at RNH Haslar on 20 July 1990. The operation was unsuccessful and a high level of residual pain remained. It was not until October 1990 at a post-operative clinic that he was told that the wrong vertebrae had been fused.

11.19 The surgeon accepted that he had operated at the wrong level, although he did not understand how he came to do this. To make matters worse, the bone graft involved did not consolidate, so the level of back pain actually increased. A period of rehabilitation at Headley Court did not result in any noticeable improvement and the individual was later medically discharged on 1 January 1993. He was offered the opportunity of a further operation, a triple fusion, but declined.

11.20 Although negligence was accepted, causation remained to be determined. MOD's medical expert was convinced that not all of the Claimant's symptoms were related to the failed operation and that he was exaggerating his condition. As no agreement on quantum could be reached the issue of causation was the subject of a trial held in May 2000 where the Judge ruled in favour of the claimant. The Claimant's solicitors valued the case in excess of £1.25 million. A Counsel-to-Counsel conference was held in December 2001 and settlement was reached at £950,000.

Clinical Negligence

11.21 The Claimant brought a clinical negligence claim against two Service clinicians and MOD on the grounds that she received negligent treatment following spinal surgery resulting in 5 decompressive surgical procedures to her lumbar spine. These alleged incidents occurred at the British Military Hospital Rinteln during the summer of 1994.

11.22 Numerous reports were obtained from experts from various medical disciplines in an attempt to determine liability. Queen's Counsel for the Department recommended that there was no evidence of clinical negligence in the treatment of the Claimant and that the matter should be fully defended. The value of the claim on a full liability basis had been quantified in excess of £950,000. The case was heard at Manchester Crown Court in October 2001. The Judge found in favour of the Claimant in respect of a Breach of Duty but that the original trauma to the Claimant's back and subsequent prolapsed disc resulting in four further back operations were found not to have been caused by the negligence of the MOD. Compensation of £60,000 was agreed between the parties

Employment Tribunal - Racial Discrimination

11.23 The Applicant, who is of Indian origin, claimed that he was subjected to race

discrimination whilst working at The Princess Mary's Hospital RAF Akrotiri. The Applicant's complaint to the Employment Tribunal had two main elements. The first was that following an alleged incident of misconduct between himself and an RAF Squadron Leader from the RAF Nursing Service, his Commanding Officer (an RAF Group Captain) had failed to discipline the junior officer. His second claim was that his CO victimised him for complaining about the lack of disciplinary action by writing what were perceived to be disparaging remarks in his 1999 Annual Confidential Report (ACR). The Applicant alleged that personal prejudice and racial bias motivated the CO's actions. It should be noted that the Applicant did not complain about this ACR at the time.

11.24 Legal advice on the merits of the Applicant's case was that it should be contested on the basis that there was no discriminatory act by the CO. The Applicant would have needed to show that, on the balance of probabilities, the CO treated him less favourably than others on the grounds of his race. The Applicant was seeking in excess of £500,000 as compensation for the stress he suffered and salary losses.

11.25 When counsel for the MOD was instructed shortly before the hearing he raised the issue of whether the Tribunal had jurisdiction to decide the case because the events occurred in Cyprus and the Race Relations Act 1976 does not extend beyond the UK. Following legal arguments at the hearing, the Tribunal ruled in favour of MOD and said that it could not hear the case.

11.26 The Department is currently considering the legal and policy ramifications contained in the detailed and lengthy Tribunal determination. The Applicant has decided to appeal the matter to the Employment Appeals Tribunal (EAT) and the application has been listed for a preliminary hearing for 2 July 2002.

Pristina Air Crash

11.27 On 12 November 1999, a French-registered, but Italian operated, UN World Food Programme (WFP) ATR-42 civil aircraft crashed in cloudy conditions on its approach to Pristina airport, Kosovo. All twenty-four people on board were killed, including three British aid workers.

11.28 This was a complex case involving a number of parties who individually or collectively were involved in the accident and would have to contribute towards the compensation claims by the relatives of the deceased. Therefore, in an attempt to avert the matter being heard by the courts (on which there were jurisdictional difficulties in view of the number of different nationalities killed), the World Food Programme invited the MOD to attend a series of without prejudice meetings of "interested parties" in Rome to begin to establish the potential for an out of court settlement of the relatives claims. The Chief Claims Officer, MOD Legal Adviser, and an RAF Air Traffic Control expert represented the Department (with full support from the British Embassy and the UK Permanent Representative to the United Nations Food and Agriculture Agencies). At the conclusion of negotiations which spanned several months the MOD contributed a sum which represented its involvement in the tragic accident.

Cash Back

11.29 Following an investigation by MOD Police it was alleged that over charging had taken place in a large number of contracts let by the Buying Agency to a specialist company for the supply and fitting of carpets and flooring to MOD establishments. Exceptionally Claims were asked to pursue recovery action. As a result Treasury Solicitor were instructed to commence further detailed enquiries and if necessary obtain Freezing Orders to restrict the owners of the company disposing of assets. After very careful investigation and bringing the matter to the notice of the High Court a recovery of £400,000 was achieved.

SECTION TWELVE

LAW AND PRACTICE

“The first thing we do, lets kill all the lawyers”

Shakespeare, Henry VI, part II

Civil justice reforms

12.1 This part of the Annual report deals with civil law and practice. It includes a brief summary of the 1999 Civil Justice Reforms. 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.

Civil Justice Procedures

12.2 The greatest upheaval ever in the Civil Litigation process occurred when the New Civil Procedure Rules were introduced on 26 April 1999. The Rules, which replaced the existing High Court and County Court Rules, have 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.

12.3 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.

Aims

12.4 The aims of the New Civil Procedure Rules are:

- 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

12.5 In keeping with the reforms the Courts have continued to take a pro-active approach to case management setting down directions which decide the order in which issues are to be resolved and fix 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.

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

Experts

12.7 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 decided that either party has acted unreasonably, they will not be able to recover the costs of obtaining the expert report.

Pre Action Protocol

12.8 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".

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

12.10 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.

12.11 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

12.12 Personal injury claims will be assigned to either a fast-track or multi-track.

12.13 Fast-track cases will be limited to a value up to £15,000 and will proceed to a hearing quickly. 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.

12.14 Multi-track cases will generally involve claims with a value in excess of £15,000 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.

12.15 The personal injury pre-action protocol (primarily designed for cases with a value of less than £15,000) sets out the following stages:

Letter of claim

12.16 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

12.17 The defendant should acknowledge within 21 calendar days of the date of posting of the letter of claim in Personal Injury cases and 14 calendar days in Clinical Negligence cases.

Claim investigation

12.18 The defendant will have a maximum of three months from the date of acknowledgement of the claim to investigate. 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, denied or there is a partial admission. If the defendant denies liability they should enclose with the letter of reply documents which are 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.

12.19 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.

12.20 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

12.21 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.

12.22 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

12.23 Under the new 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.

12.24 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.

12.25 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.

12.26 It follows that in future 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.

12.27 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.

12.28 Bearing in mind the tight time schedules, the Department will need 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 Chief Claims Officer or a Senior Claims Officer.

Disclosure

12.29 The new 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.

12.30 Under the new 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.

12.31 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

12.32 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.

12.33 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.

Way Forward

12.34 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 new rules. Updating and refresher courses and workshops have been undertaken during the last year. The acquisition of new and specialist skills has been recognised by the introduction of the Claims & Legal Functional Competence Framework.

12.35 Units and Establishments have also become aware of how the new 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.

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

12.37 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.

12.38 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 deployment of key witnesses overseas.

Legal Aid

12.39 It is over fifty 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 is 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 100% if successful (providing the success fee does not exceed more than 25% of the total compensation).

12.40 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.

12.41 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 defence of the claim

ALTERNATIVE DISPUTE RESOLUTION AND COUNSEL-TO-COUNSEL CONFERENCES

12.42 Alternative Dispute Resolution/mediation is considered in cases where there is some evidence to support a claim of negligence. In cases where there is currently no evidence it is not deemed appropriate.

12.43 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 court room door. A round table consultation is arranged with the Department represented by counsel, the Chief Claims Officer or Senior Claims Officer and Treasury Solicitor. 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 does not need to undergo the trauma of a court case to secure compensation for an injury or loss caused by the Department's negligence.

12.44 In 2001/2002, for example, 11 major cases were settled by ADR or counsel-to-counsel conferences. Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher.

Mediation

12.45 Mediation is a route strongly favoured by the Lord Chancellor as the way forward for civil justice in the UK, for cases where there is some evidence to support a claim. However in cases where there is currently no evidence to support a claim, mediation would not be appropriate. The Department is signed up to mediation as a method of Alternative Dispute Resolution but as the Lord Chancellor's Department's Press Notice on the subject makes clear that Alternative Dispute Resolution is not appropriate in every case.

12.46 The mediation process employs an independent person (the mediator) to facilitate negotiations between parties in 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.

THIRD PARTY ACCIDENT SCHEME (ToPaS)

12.47 If MOD civil servants or Service personnel are injured by a third party while on duty it is the individual's own responsibility to pursue a claim for compensation without any assistance or involvement by the Department. The only exception to this has been that civil servants injured in road traffic accidents can have their legal costs underwritten by their TLB. This arrangement does not, however, apply to Service personnel or to civil servants injured in other circumstances. This position has long been a cause of considerable dissatisfaction to staff and led to heated correspondence about it in Paperclips in late 1998.

12.48 Although, on the face of it the policy seems harsh, it is consistent with the approach adopted by many large private sector companies. The reason why MOD cannot support staff in such circumstances is that MOD, in common with all other government departments, may only pay compensation, or become involved in pursuing claims, where it has a legal liability to do so. Any other policy would involve the misuse of public funds and the making of subjective judgements which could give rise to inequitable treatment of Claimants. Under common law MOD has no standing or vicarious liability in these cases and it does not have the authority to pay compensation to such Claimants nor to fund the cost of legal action on their behalf.

12.49 In order to relieve concerns expressed by MOD staff (both Service and civilian), the Third Party Accident Scheme -ToPaS - was devised to provide legal assistance to staff in the UK on a conditional fee basis (so-called no win, no fee). The scheme is operated by Betesh Fox & Company, a firm of solicitors which specialises in personal injury claims.

12.50 In the event of injury caused by a third party while on duty, be it a road traffic accident, assault, or any other form of accident, MOD staff (Service or civilian) will be able to contact the solicitors direct and obtain immediate advice and assistance free of charge. All legal costs will be reclaimed as part of the compensation awarded by the insurance company or, in the event that the matter proceeds to trial, by the courts. If the action is unsuccessful there will be no charge to the MOD or the individual concerned.

12.51 The proposal was subject to formal consultation and has the support of the industrial and non-industrial trade unions. Details of the scheme were published in a DCI Gen 273/00. A wide ranging publicity campaign, including an eye catching poster for general distribution, has been mounted and a number of presentations have been given at key MOD sites.

12.52 Anyone wishing to use the scheme should contact Betesh Fox & Co on 0161 832 6131. E-mail xxxxx@xxxxxxxxxx.xx.xx Website: www.beteshfox.co.uk

HUMAN RIGHTS ACT AND SECTION 10 OF THE CROWN PROCEEDINGS ACT 1947

12.53 Many commentators believed that the enactment of the Human Rights Act would lead to an increase of claims generally by virtue of the 'right to a fair trial'. In particular, in the Ministry of Defence, it was considered likely that Claimants would use the Act to challenge Section 10 of the Crown Proceedings Act 1947.

12.54 Some solicitors representing former Service personnel barred by Section 10 of the Crown Proceedings Act 1947 from pursuing common law claims against MOD have argued that a Section 10 defence is an infringement of their clients Human Rights. The Department's position on this matter is that although the Human Rights Act 1998 incorporates the European Convention on Human Rights into domestic law, it does not give rise to any new rights under the Convention.

12.55 Article 6.1 of the Convention provides that everyone is entitled to a fair hearing in the determination of his civil rights. It does not, however, define what constitutes a civil right. That is a matter, according to the case law of the European Court of Human Rights, to be decided by domestic legislatures and courts. Section 10 of the Crown Proceedings Act 1947 therefore remains compatible with the European Convention on Human Rights.

DC&L(F&S)Claims - Organisation

Chief Claims Officer - Band B1

Senior Claims Officer (Claims Handling) - Band C1

Responsible for Service Personnel Employer's Liability Group, Public Liability Group and Clinical Negligence/Employment Tribunals Group

Senior Claims Officer (Policy, Finance and Risk Management) - Band C1

Responsible for Policy & Finance Group and Risk Management Group

Policy & Finance Group

Staff

Indemnities & Insurance Adviser – Band D

Assistant Adviser Indemnities & Insurance – Band E1

Policy & Contracts Adviser – Band D

Motor Transport Liabilities Adviser – Band D

Budget Manager – Band D

Budget Officer – Band E1

Payments Co-ordinator – Band E2

Focal Point Manager – Band E1

2 Focal Point Administrators – Band E2

Responsibilities

Financial Management

Budget management and financial planning for DC&L(F&S) and the financial management of C&L(F&S)Claims.

Non-contractual insurance

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

MOD Civilian employees employer's liability and third party motor claims

Policy relating to Ministry of Defence civilian employees employer's liability claims and Third Party motor claims.

Regulatory claims policy

Policy for Regulatory claims, which are those received from employees for loss of or damage to personal property in the course of their employment. The payment of claims is the responsibility of the TLB in which the employee works.

Directorate administration

Claims co-ordination and Focal Point (i.e. Registry functions).

Service Personnel Employer's Liability Group

Staff

Team Leader - Band C2

4 Case Managers - Band D

1 Assistant Case Manager - Band E1

1 Section Administrator - Band E2

Responsibilities

Service personnel employer's liability claims

Handling of Service personnel and ex-Service personnel employer's liability claims received before 1 July 1996 and managing the contract with Royal and Sun Alliance who have dealt with this type of claim since 1 July 1996.

Section 10 claims

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

Radiation claims

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

Post Traumatic Stress Disorder

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

Miscellaneous claims

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

Low flying

Claims relating to military low flying activity in England, Scotland and Wales.

Maritime claims

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

Public Liability Group

Staff

Team Leader - Band C2

3 Case Managers - Band D

4 Assistant Case Managers - Band E1

Responsibilities

Public liability claims

Public liability claims, including personal injury, and property damage.

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 Armed Forces in Northern Ireland. These range from unlawful detention to shootings.

Vehicle claims

Privately owned vehicle damage claims.

Overseas operations

Claims policy relating to overseas operations and advice to Area Claims Officers in Northern Ireland and overseas.

Ex-gratia payments

Responsible for ex-gratia payments, including the DERA/INM no-fault compensation schemes.

Criminal injuries compensation

Responsible for 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/Employment Tribunals Group

Staff

Team Leader - Band C2

3 Case Managers - Band D

2 Assistant Case Managers - Band E1

Responsibilities

Clinical Negligence

Claims for compensation where it is alleged that MOD has acted negligently.

Employment Tribunals

Co-ordination of the MOD's response to claims put to Employment Tribunals by current and former Service personnel.

Gulf Veterans' illness

Potential claims for alleged Gulf Veterans' illness.

Asbestosis

Claims from Service personnel who allege that they contracted asbestosis related diseases during their Service career

Porton Down

Claims from Service personnel who allege that they became ill as a result of taking part in tests at the CDE Porton Down.

Risk Management Group

Staff

Team Leader - Band C2

1 Risk Policy Adviser - Band D

1 Risk & IT Manager - Band D

1 Assistant Adviser Risk & IT - Band E1

Responsibilities

Risk Management

Development and implementation of a Risk Management strategy to identify the circumstances which give rise to claims for compensation and devise ways of reducing the causes of incidents. Secretariat to the Claims Risk Management Working Group (CRMWG). Risk management statistics. Claims and risk presentations

Information technology systems

DC&L(F&S) Claims information technology (IT) systems (CHOTS, RM database, RAPID, and CHASP).

**DC&L(F&S)CLAIMS STAFF, PROGRAMME AND OPERATING COSTS - FINANCIAL
YEAR 2001/2002**

Costs

Operating Costs	-	£1.08 million
Programme Costs	-	£91.26 million (compensation, legal costs, experts' fees, etc.)
Total Costs	-	£92.27 million

DC&L(F&S) staffing as at 31 March 2002

GRADE	ESTABLISHED POSTS	ROLE
B1	1	Chief Claims Officer
C1	2	Senior Claims Officers
C2	4	Team Leaders
D	18	12 Claims Managers 1 Budget Manager 1 Policy & Contracts Adviser 1 Insurance and Indemnities Adviser 1 Motor Transport Liabilities Adviser 1 Risk Policy Adviser 1 Risk & IT Manager
E1	11	7 Assistant Claims Managers 1 Asst Adviser Risk & IT 1 Budget Officer 1 Asst Adviser Indemnities & Insurance 1 Focal Point Leader
E2	4	1 Payments Co-ordinator 1 Administrator Service Personnel Claims 2 Focal Point Administrators

ANNEX B

TOP TWENTY CASES (BY VALUE) SETTLED BY DC&L(F&S)CLAIMS IN FINANCIAL YEAR 2001/2002

“A lawyer with his briefcase can steal more than a thousand men with guns”

CLAIMANT	TYPE OF INJURY/LOSS	COMPENSATION
Civilian (child)	Negligent treatment during birth resulting in the child suffering from Cerebral Palsy	£3,600,000.00
Civilian	Claimant suffers from Cerebral Palsy	£1,925,000.00
Army	Fractured spine while on duty leaving the claimant paraplegic	£1,635,000.00
Army	Road traffic accident, claimant rendered paraplegic	£1,500,000.00
Army	Claimant left brain damaged after negligent shooting	£1,115,000.00
Navy	Wrong vertebrae fused together during operation	£963,697.00
Civilian	Paid to dependent	£850,000.00
Army	Claimant seriously injured after slipping on spilt liquid	£800,000.00
RAF	Injured as a result of ejection following bird strike	£750,000.00
Civilian	Suffered multiple injuries as a result of inadequate instructions	£500,000.00
Civilian	Pristina air crash - dependency claim	£463,693.83
Civilian	Pristina air crash - dependency claim	£463,693.83
Civilian	Pristina air crash - dependency claim	£463,693.83
Civilian	Pristina air crash - dependency claim	£463,693.83
Civilian	Pristina air crash - dependency claim	£463,693.83
Civilian	Pristina air crash - dependency claim	£463,693.83
Civilian	Pristina air crash - dependency claim	£401,064.16
Civilian	Pristina air crash - dependency claim	£401,064.16
Civilian	Pristina air crash - dependency claim	£401,064.16
RAF	Mid air collision - dependency claim	£400,000.00

**TOP TEN (BY VALUE) SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS
SETTLED BY ROYAL AND SUNALLIANCE PLC IN FINANCIAL YEAR 2001/2002**

TYPE OF INJURY/LOSS	COMPENSATION
Injured following aircraft collision	£791,277
Gun shot injury as a result of negligent discharge	£523,884
Injured following RTA	£493,876
Injury to passenger in vehicle involved in RTA	£425,875
Dependency claim as a result of RTA	£374,707
Injured following RTA	£352,000
Injured following RTA	£304,642
Head injury leading to epilepsy	£256,274
Non-freezing cold weather injury	£227,778
Injured during riot training	£211,424

**TOP TEN (BY VALUE) CIVILIAN EMPLOYEE EMPLOYER'S LIABILITY CLAIMS
SETTLED BY AXA CORPORATE SOLUTIONS SERVICES LTD IN FINANCIAL YEAR
2001/2002**

TYPE OF INJURY/LOSS	COMPENSATION
Road Traffic Accident	£1,772,339.74
Severe spinal injury	£1,115,278.11
Road Traffic Accident	£531,113.38
Road Traffic Accident	£238,247.90
Road Traffic Accident	£233,933.08
Asbestos related disease	£206,025.07
Asbestos related disease	£174,622.49
Asbestos related disease	£172,479.34
Road Traffic Accident	£172,190.01
Dependency claim	£171,896.94

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	CE/DMTO
DGMO	CE/DSA
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