

**MINISTRY OF DEFENCE**



**CLAIMS  
ANNUAL REPORT  
2003/2004**



Investor in People

**JULY 2004**

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## FOREWORD BY DR GEOFF HOOPER, DIRECTOR OF SAFETY AND CLAIMS

On 1 January 2004 the Directorate of Safety and Environmental Policy and the Claims Branch of the Directorate of Claims and Legal (Finance and Secretariat) merged to form the Directorate of Safety and Claims (DS&C). A driving force behind the merger was a recommendation made by the National Audit Office in their report on Ministry of Defence Compensation Claims to strengthen the process of handling within the Department the 'risk-incident-claims-cycle', associated with health and safety and compensation issues.

As a first step towards meeting this goal, a Risk Management Cell has been formed which will build upon the work previously undertaken by the Claims Risk Management Team. This cell will continue to educate personnel, both civilian and military, at all levels within the Department about risk management. As part of this exercise a cohesive knowledge management system will be established which will track cases 'from cradle to grave' This will be in line with the instruction by 2<sup>nd</sup> PUS that we should *"...reach agreement with key stakeholders on a single suite of software to be used MOD wide for the reporting of accidents, recording hidden costs (e.g. lost man days, retraining, recruitment and equipment replacement), storing key documents relating to the accident and providing a comprehensive claims handling management system"*

There is a feeling among some in the military that the Department is becoming risk averse, and that too much health and safety legislation can tie the hands behind the backs of operational commanders. Part of our job is to make sure this does not happen. However, many accidents can be prevented, and everyone has a responsibility to ensure that they are.

I believe that this report has much to offer readers at all levels across the Department and beyond. The message is be risk aware, not risk averse.

## INTRODUCTION BY THE CHIEF CLAIMS OFFICER

*“The pursuit of an unrestrained culture of blame and compensation  
has many evil consequences”*

Lord Hobhouse

This, the seventh annual report covers another busy year for the Directorate. Overall expenditure was £103 million. Over the same period receipts of £1.5 million were recovered. A detailed breakdown can be found at Annex A.

On 18 July 2003 the National Audit Office (NAO) published a report on Ministry of Defence Compensation Claims (HC 957 Session 2002-2003). Details of the NAO report appear at Section 2 of this report. In a move aimed at addressing one of the recommendations made by the NAO to strengthen the links between the Department's Health and Safety staff and Claims staff, the Directorate of Safety and Environmental Policy (DSef Pol) and the Claims element of DC&L(F&S) merged on 1 January 2004 to form the Directorate of Safety and Claims (DS&C).

In addition to normal core business, the Directorate was involved in some particularly important actions brought against the Department, not least were the claims for compensation by members of Samburu and Masai tribes people in Kenya. As mentioned in last year's Claims annual report, the Ministry of Defence paid compensation in 233 cases relating to injury or death caused by unexploded ordnance (UXO's) allegedly left by HM Forces on training areas in the north of Kenya. Following the settlement more than 6000 new claimants came forward with similar allegations against the Ministry of Defence. However, following a thorough investigation into the claims, the number of claimants was reduced to 1046. The matter was settled by way of mediation when damages of £500,000 were agreed against a claim of £37 million.

In the aftermath of Mr Justice Owen's Judgment in the PTSD High Court Group Action in favour of the Ministry of Defence, doubt has arisen on how far the Ministry of Defence's' combat immunity extends. Prior to this Judgment the leading case of *Mulcahy -v- MOD* set the parameters which made clear that the Ministry of Defence was immune in common law in relation to actions arising when actively engaging the enemy. However, Mr Justice Owen extended the boundaries in the Ministry of Defence's favour, to include the planning and preparation for operations in which the armed forces may come under attack or meet armed resistance. Furthermore such immunity will apply to peace-keeping/policing operations in which service personnel are exposed to attack or the threat of attack. The precise limits of the extension are nevertheless unclear. I am aware from discussions with solicitors who regularly act for members of HM Forces in actions against the Ministry of Defence, that a challenge to the combat immunity defence might be undertaken to secure clarity.

A culture of compensation and blame once previously associated with the USA appears to be taking root in the UK, particularly against public bodies such as local authorities, the National Health Service and the Ministry of Defence. Lord Levene, the chairman of Lloyds of London was recently quoted in the national press as describing this culture as 'pernicious, cancerous and ruinous'. Clearly in a civilised society, where a person has suffered a loss caused by the negligence of another, a method for seeking financial

restitution to make good that loss is a fundamental right. The potential consequence of this is the creation of a risk averse society – we have all read press reports such as Bonfire Night festivities being cancelled, schools chopping down trees in their grounds to prevent pupils climbing them, for fear of injury and the inevitable claim for compensation.

Risk Management remains one of my main priorities and I am delighted that our combined efforts on focussing attention on this area of work is showing the first signs of progress with the level of compensation falling compared to last year. Although some of the Department's activities, particularly in HM Forces, involve an inherent and greater than normal risk of injury, many incidents that result in compensation being paid are avoidable. The aim of the Risk Management Cell is to identify such risks and drive down the number of accidents and the subsequent cost of such compensation by investigating and scrutinising the incidents that give rise to claims, and explore ways which these can be prevented or reduced. However, to re-state my often repeated message, irrespective of their position in the Department, all staff both military and civilian have a responsibility to identify and report risks, thereby preventing accidents.

To ensure that claims staff are armed with the appropriate skills and knowledge to enable them to effectively carry out their roles, they each attend a structured series of legal training courses. Such training is generally provided by Dominic Regan an independent legal training consultant linked to the College of Law. In addition, training is occasionally provided by lawyers instructed by the Department. This training, underpinned by the Claims and Legal Functional Competence Framework, has ensured that staff are kept abreast of developments in common law, and have a thorough knowledge of the Civil Procedure Rules.

I commend the 2003/2004 Claims Annual Report to you all, with the sincere hope that the message that Health and Safety is everyone's responsibility is received loud and clear.

Additional copies of this report are available from the DS&C(Claims) Focal Point, Room 601, St Giles Court, St Giles High Street, London WC2H 8LD (Tel:020 7807 0049/0056 or Fax: 020 7807 0051). Copies can also be found on the Ministry of Defence intranet or supplied on disk. Please note that wef 6 September our new address shall be:

DS&C(Claims)  
7<sup>th</sup> Floor, Zone A  
St Georges Court  
2 - 12 Bloomsbury Way  
London  
WC1A 2SH

DS&C Risk Management Cell  
6<sup>th</sup> Floor, Zone D  
Main Building  
Whitehall  
London  
SW1A 2HB

## EXECUTIVE SUMMARY

*“He who think he can afford to be negligent is not far from being poor”*

Samuel Johnson

1. Total DS&C(Claims) expenditure in the year 2003/2004 was £103 million. Over the same period receipts of £1.5 million were recovered
2. Highest claim settled in year was £5.8 million
3. At 1 April 2004, the total number of new claims lodged with DS&C(Claims) or the Department's commercial claims handlers in year was 5163
4. 790 Service personnel employer's liability claims were settled at a total cost of £25 million.
5. 1398 civilian employer's liability claims were settled at a total cost of £17.9 million.
6. 604 public liability claims were settled at a total cost of £9 million
7. 2334 third party motor claims in the UK were settled at a total cost of £6 million.
8. 42 clinical negligence claims were settled at a total cost of £6 million.
9. 12 Employment Tribunal cases were settled at a total cost of £0.377 million. (These figures exclude cases settled by the single Service branches)
10. 2024 intentions to claim are registered for those alleged to be suffering from Gulf Veterans' Illnesses.
11. ACO North West Europe settled 846 cases at a total cost of £1,070,612.
12. ACO Cyprus settled 346 cases at a total cost of £256,000
13. ACO Northern Ireland settled 314 cases at a total cost of £712,800
14. ACO Balkans settled 118 cases at a total cost of £508,703
15. ACO Falkland Islands settled 3 cases at a total cost of £18,498
16. ACO Iraq settled 89 cases at a total cost of £122,124

# SECTION ONE

## INTRODUCTION

*“It is easy to dodge our responsibilities, but we cannot dodge the consequences of dodging our responsibilities”*

Sir Josiah Stamp

### ORGANISATION

1.1 The Ministry of Defence Claims branch 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 DS&C and DGS&S to the Personnel Director. Strategic guidance is provided by DCDS (Pers). Details of the staffing and work of the Claims branch are 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 a large number of Parliamentary Questions Ministerial Correspondence and Treat Official Correspondence.

1.3 Area Claims Officers and their staff are located in areas where there is a sizeable defence presence - Cyprus, Bosnia, Kosovo Falkland Islands Iraq, Northern Ireland and North West Europe, 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 organisation. Claims staff attended 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, professional insurance examinations and qualified as accredited mediators.

### POLICY AND PROCEDURES

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

1.6 The amount of compensation paid is determined by common law principles which, broadly, take account, as appropriate, of 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, and our commercial claims handlers' panel solicitors for cases brought in England and Wales; the Crown Solicitor in Northern Ireland; and Morton Fraser Solicitors, the Department's legal 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.

1.7 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.

1.8 In the past Claims branch also handled claims relating to Employment Tribunal applications brought by current or former Service personnel. These claims typically involved allegations of sexual/racial discrimination or sexual/racial harassment. However, with effect from 1 April 2003 the Employment Tribunal budget was disaggregated to the single Service secretariat branches, who are now responsible for the investigation and settlement of such claims.



## SECTION TWO

### **NATIONAL AUDIT OFFICE REPORT**

*“If moderation is a fault, then indifference is a crime”*

George C Lichtenberg

2.1 The National Audit Office (NAO) examined the effectiveness of the Department’s arrangements for handling compensation claims, whether Claims handling followed best practice, what steps were being taken to prevent accidents that give rise to claims and if the Department had started to address the risk-incident-claim cycle. As part of this process the NAO interviewed opposing solicitors and conducted a survey of claimants to gauge reaction on how well or otherwise the Ministry of Defence’s Claims Branch handle cases. The NAO’s investigation also included accident prevention and the further development of the risk-incident-claim cycle. .

2.2 The tone of the report was generally positive and helpful and concluded that the Department’s performance was broadly comparable with that of other organisations. It mentioned a number of positive areas where improvements have been made. For example, the Report recognised that the Department has taken major steps to improve its handling of claims and as a result almost three quarters of the claimants’ solicitors the NAO surveyed felt the Department’s handling of claims was the same as or better than that of other employers. The Report also mentioned the Department’s positive attitude to negotiated settlements and quotes from an article in a legal journal in which a leading opposing Queen’s Counsel praised the Chief Claims Officer and the Department’s handling of the then record claim against the Ministry of Defence.

2.3 The Report also recognised that claims were handled quicker than those received by the National Health Litigation Service and well within the average timescales set out by Lord Woolf in his review of the civil justice system in 1996. Also that claims were handled in accordance with the Civil Procedure Rules and that the Courts have not had to impose any sanctions on the Department for failure to comply with the rules or deadlines.

2.4 The Report acknowledged that the level of compensation awards and legal costs are largely outside the Department’s control.

2.5 On Health & Safety issues the Report recognised that the Department’s performance had improved, with falls in the number of reported incidents, and compared well to the performance of other organisations, as reported by the Health and Safety Executive. The Report recognised that the Department had strengthened its management of health and safety and had recently taken steps to improve its prevention of incidents, including promoting clear policies and guidance.

2.6 Inevitably, there were some criticisms. Examples included the identification by the NAO of a handful of cases where legal costs outweighed the compensation paid. Also that the Department has not considered fully the non-financial concerns of a claimant such as an apology or an explanation of the incident giving rise to a claim.

2.7 The report also recommended that the Department should seek to improve the quality of the risk assessments and incident investigations carried out by its line managers by reminding these staff of their health and safety responsibilities and setting them specific targets in this area.

## 2.8 Main Conclusions of the NAO Report

- The Department has taken steps to improve its handling of claims but further improvements should be made.
- Sound policies and systems are in place preventing incidents that give rise to claims, but these are not always well implemented.
- The Department has started to address the risk-incident-claim cycle

## 2.9 The Recommendations of the NAO Report are:

### HANDLING CLAIMS

2.9.1 The Department should develop a more proactive approach in the management of claims, aimed at adopting best practice, and provide appropriate training in this approach for its claims staff. Relevant practice includes:

- The agreement of the claimant to obtaining a joint medical opinion in appropriate cases.
- The provision of Departmental records within agreed timescales to assist the speedy processing of a claim.
- The prompting of claimants' solicitors for the timely provision of necessary information and the disallowance of any claimants' costs arising from their solicitors' delay.
- The making of higher initial offers, where justified after careful assessment of the facts in each case.
- The early acquisition of independent medical advice to supplement preliminary internal medico-legal opinion in clinical negligence cases.

2.9.2 The Department should seek to exert greater competitive pressure on the Treasury Solicitor by benchmarking its service against that of other legal service providers and, if necessary, market-testing the service.

2.9.3 The Department should make greater use of its claims database and the management reports from the insurance companies to monitor performance, to develop performance indicators and targets on, for example, the time taken to handle claims and the associated costs. Measures could include, for example, the time taken to provide claimants' solicitors with key documentation and, for each type of claim, claimants' legal costs as a percentage of compensation paid. The Department should also seek the views of claimants and their solicitors as to the quality of its handling of claims.

- 2.9.4 The Department should do more to satisfy claimants' non-financial expectations. Offering an apology, for example, could help avoid litigation and increase claimants' satisfaction. Such an apology would need to make clear that it did not include an admission of liability.

## **PREVENTING INCIDENTS**

- 2.9.5 The Department should address the problems of its health and safety database to ensure that more incidents that occur are recorded. It should also revise the structure of the database and improve access to it so that the data it contains can be analysed as required by staff. It should also provide staff with the training they need to carry out such analyses.
- 2.9.6 The Department should seek to improve the quality of the risk assessments and incident investigations carried out by its line managers by reminding these staff of their health and safety responsibilities and setting them specific targets in this area.

## **UNDERSTANDING THE RISK-INCIDENT-CLAIM CYCLE**

- 2.9.7 The Department should seek to reinforce the risk-incident-claim cycle in its operations by strengthening the links between its health and safety staff and Claims Branch and improving their co-operation. Health and safety staff need to ensure that they compile incident investigation reports with a view to the handling of a possible claim in the future, and that records are accessible and retrievable.
- 2.9.8 The Department needs to do more to establish the total cost of incidents, including the hidden costs, and make these more widely known among line managers so that they can make more informed assessments of risks to health and safety. It should also encourage line managers to invest in measures to reduce the risk of incidents by ensuring that their budgets bear at least some of the cost of any compensation paid.

## **MINISTRY OF DEFENCE RESPONSE TO RECOMMENDATIONS**

- 2.10 The recommendations made by the NAO have been, or are in the process of being addressed. Most importantly, from an organisational point of view, has been the merger with effect from 1 January 2004 of the Department's Health and Safety, and Claims staff to form the Directorate of Safety and Claims. The merger will enable the new directorate to examine fully the risk-incident-claims cycle and to develop proposals for improving Health and Safety and risk issues.

## SECTION THREE

### **RISK MANAGEMENT**

*“There’s as much risk in doing nothing as in doing something”*  
Trammell Crow

3.1 The Risk Management Group (RMG) was formed in January 2001 to investigate the types of accidents that give rise to claims, make proposals to eliminate such accidents and issue statistical data to TLBs. The amount of compensation paid by the Ministry of Defence has risen year on year for the past 20 years in line with the general trend across the country, but there are very positive signs that the amount paid in compensation by the Ministry of Defence has levelled out for the second year which may be indicative of the success in tackling risk across the Department.

3.2 RMG now provide detailed quarterly reports on claims activity to each Top Level Budget (TLB). Each report shows the number of new claims received, the cost of claims settled, and the number of claims outstanding by causation and claim type. The reports highlight the success or otherwise of each TLB in reducing the number accidents that lead to claims.

3.3 RMG give a number of presentations each year to a wide ranging audience which includes commanding officers and health and safety officers. In addition, RMG produces a quarterly newsletter that provides updates on legal and claims issues and examples of claims made against the Ministry of Defence. The newsletter is also on The Ministry of Defence’s intranet at: [http://centre.defence.mod.uk/newslettersac/mod\\_claims/index.htm](http://centre.defence.mod.uk/newslettersac/mod_claims/index.htm).

3.4 Articles on claims have also appeared in Soldier Magazine, Ships Telegraph, Ministry of Defence Focus magazine and the Ministry of Defence Personnel’s newsletter ‘Paper Clips’.

3.5 A short film is being produced called ‘At What Cost?’ to highlight the human cost of accidents. The film concentrates on life before and after an accident and how the accident affects the individual, their family, friends and career. It must be stressed that the message is not just about the financial impact of claims on the Ministry of Defence, but shows that accidents happen, often as a result of simple mistakes or a lack of thought and planning, and have a real human cost. The film will be distributed widely in late 2004.

3.6 Bespoke training on claims risk management has been provided for the Unit Safety Advisors Course for each Service. By promoting an awareness of accidents and claims it is hoped to reduce the number of accidents some of which lead to claims for compensation being made against the Ministry of Defence.

3.7 RMG has improved the policy and procedures for recovering the salary paid to Ministry of Defence civilian staff in periods of absence due to an injury caused by a third party. The legal right to recover salary from third parties is in all Civil Servants terms and conditions of employment, but was not widely implemented.

3.8 Improvements to current policy, an awareness campaign and a new sick reporting procedure should allow the Ministry of Defence to greatly increase the average annual recovery of £190,000.

3.9 Road Traffic accidents remain the highest cause of claims across the Ministry of Defence. In 2003/04 the Ministry of Defence received 2262 claims from civilians whose vehicle was in an accident with a Ministry of Defence driven vehicle, and approximately £6 million compensation was paid. There were a further 108 vehicle injury claims from Service personnel injured while on duty, and 125 claims were settled at a cost of approximately £8 million.

3.10 Claims staff are alert to the possibility of fraud or grossly exaggerated claims and, as part of the process of determining liability for the claim, critically assesses the information provided. Where there is reasonable suspicion about the veracity of the claim we have a number of options which include undertaking surveillance to observe the extent of the claimant's alleged injuries. Claims staff have also met with the Ministry of Defence Police Fraud Squad to discuss further this field of work.

## SECTION FOUR

### PUBLIC LIABILITY CLAIMS

*“The only way to get rid of responsibilities is to discharge them”*

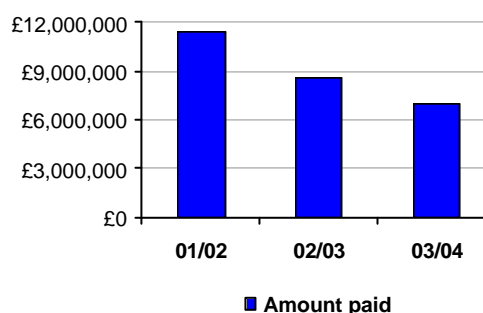
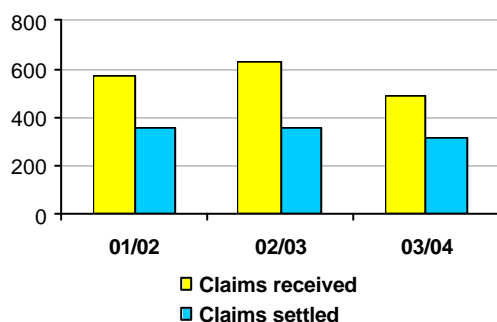
Walter S Robertson

#### CLAIMS PUBLIC LIABILITY GROUP

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

4.2 Property damage claims usually emanate from personnel working and living in service accommodation who, for example, have had their belongings damaged by the poor maintenance of the properties they occupy. In the past year claims have been received due to damage from burst water and sewage pipes, damp from poor insulation, pot holes and speed bumps in roads, and damage to vehicles due to the improper operation of security barriers and ramps at check points.

	2001/02	2002/03	2003/04
Number of claims received	570	631	491
Number of claims settled	356	354	314
<b>Amount paid</b>	<b>£11.3M</b>	<b>£8.5M</b>	<b>£6.9M</b>



4.3 Compensation for the second tranche of claims associated with UXO's from Kenyan tribes people were settled during the reporting period. Full details of this case can be found at Section 13 of this report

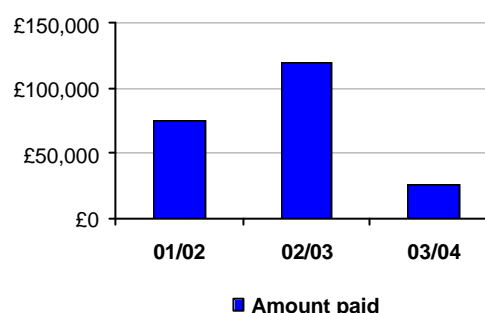
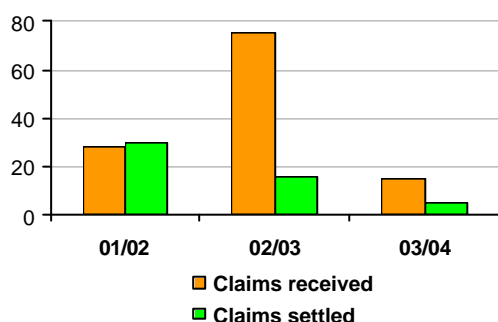
4.4 29 Property Damage claims were settled at mediation for a total sum of £300,000 inclusive of legal costs. These claims had been received as a result of a catastrophic bush fire in 1998 on the Paramali MQ Estate in Cyprus where 13 houses and their contents were totally destroyed.

4.5 A personal injury claim, from a contractor who had been seriously injured in a road traffic accident in the Falkland Islands was settled out of Court for £1.2 million.

## PUBLIC LIABILITY CLAIMS - NORTHERN IRELAND

4.6 The Claims PLG also deals with public liability claims from Northern Ireland provided they are of a political and/or sensitive nature. Claims are normally received from members of the public who have had some dispute with members of the armed forces whilst in support of the Police Service of Northern Ireland (PSNI). The majority of claims are for alleged assault, harassment or wrongful arrest, quite often at vehicle checkpoints. Although in FY 2002/03, 26 personal injury claims were received for injuries allegedly caused by baton round injuries, none were received in FY 2003/04 due to the relatively peaceful “marching season” in NI last year. Overall claims continue to fall in number.

	2001/02	2002/03	2003/04
Number of claims received	28	75	15
Number of claims settled	30	16	5
<b>Amount paid</b>	<b>£74,000</b>	<b>£119,000</b>	<b>£25,106</b>



## MARITIME CLAIMS

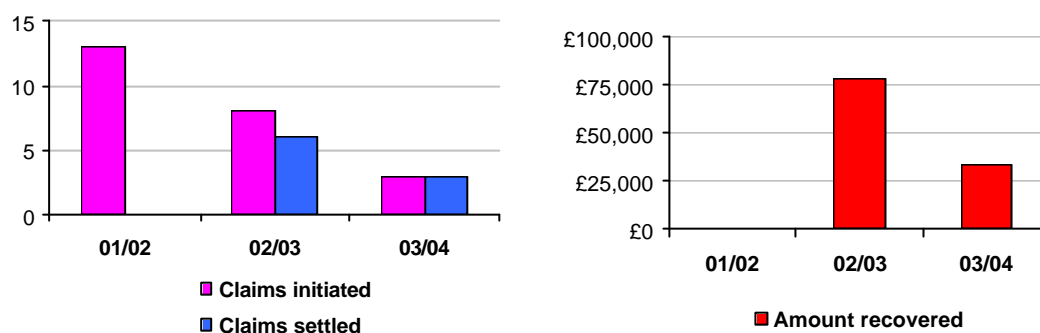
*“He that learn to pray, let him go to sea” - George Herbert*

4.7 Maritime claims by and against the Ministry of Defence 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 Ministry of Defence property. Maritime law is complex and much of the legislation dealing with the law of the sea was enacted more than one hundred years ago.

	2001/02	2002/03	2003/04
Number of property claims received	30	52	30
Number of property claims settled	32	49	29
<b>Amount paid</b>	<b>£218,000</b>	<b>£235,000</b>	<b>£146,794</b>
Number of salvage claims received	2	5	4
Number of salvage claims settled	3	7	2
<b>Amount paid</b>	<b>£271,000</b>	<b>£198,000</b>	<b>£40,000</b>

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

	2001/02	2002/03	2003/04
Number of maritime recovery and salvage claims initiated	13	8	3
Number of maritime recovery and salvage claims settled	0	6	3
<b>Amount recovered</b>	<b>£0</b>	<b>£78,000</b>	<b>£34,000</b>



4.9 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.

	2001/02	2002/03	2003/04
Number of claims settled by FOSNNI	43	29	23
Amount paid by FOSNNI	£56,000	£38,000	£49,000
Number of claims settled by FOST	40	32	10
Amount paid by FOST	£46,000	£40,000	£26,000
<b>Total amount paid</b>	<b>£102,000</b>	<b>£78,000</b>	<b>£75,000</b>

## LOW FLYING MILITARY AIRCRAFT CLAIMS

4.10 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. Lord Drumalbyn set out this approach in a Lords Written Answer on 22 November 1971 (Official Report Column 888):

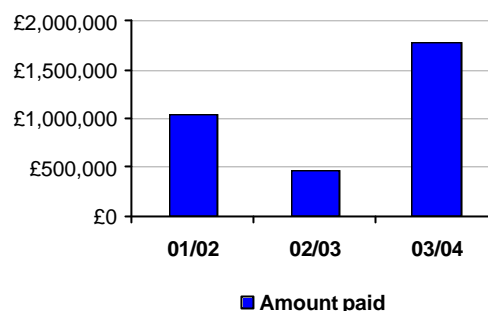
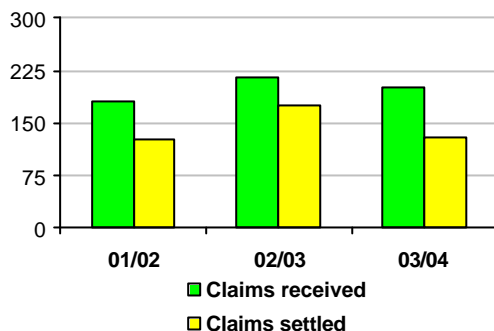
*"... No remedies exist in law against any military aircraft flying by virtue of the Royal Prerogative for the purpose of the defence of the Realm or of training or of maintaining the efficiency of the Armed Forces of the Crown. The ... Ministry of Defence will, however, pay compensation on an ex gratia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

4.11 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.

4.12 Unfortunately, this is a category of work that requires careful monitoring to identify potentially fraudulent claims.

4.13 On a local level, where public relations play an important role, RNAS, AAC and RAF Station Commanders have delegated authority to settle straightforward property damage 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.

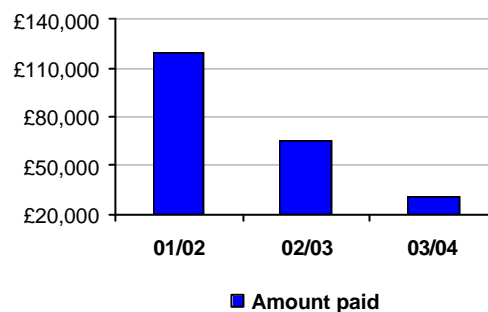
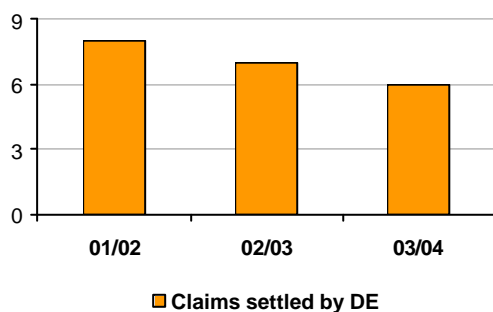
	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>
Number of claims received	182	215	200
Number of claims settled	127	174	130
<b>Amount paid</b>	<b>£1.1M</b>	<b>£0.469M</b>	<b>£1.7M</b>



## AIR CRASH CLAIMS SETTLED BY DEFENCE ESTATES

4.14 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

	2001/02	2002/03	2003/04
Number of claims settled by DE	8	7	6
<b>Amount paid</b>	<b>£119,000</b>	<b>£65,000</b>	<b>£30,000</b>

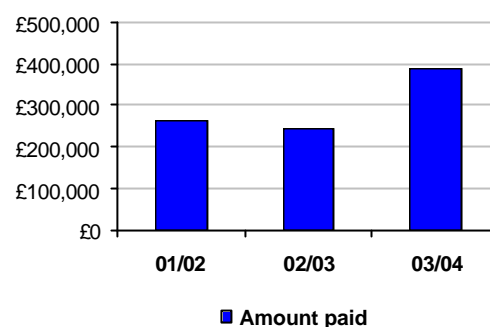
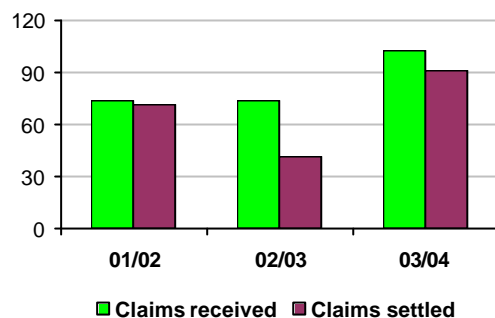


## VISITING FORCES CLAIMS

4.15 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 Status of Forces Agreement (SOFA) and Section 9 of the Visiting Forces Act 1952. Such claims could be on behalf of any of the states who are signatories to the agreement or who are invited to train in the UK, but primarily involve the USA, 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, the Ministry of Defence pays compensation on their behalf. In the case of NATO countries, the Sending

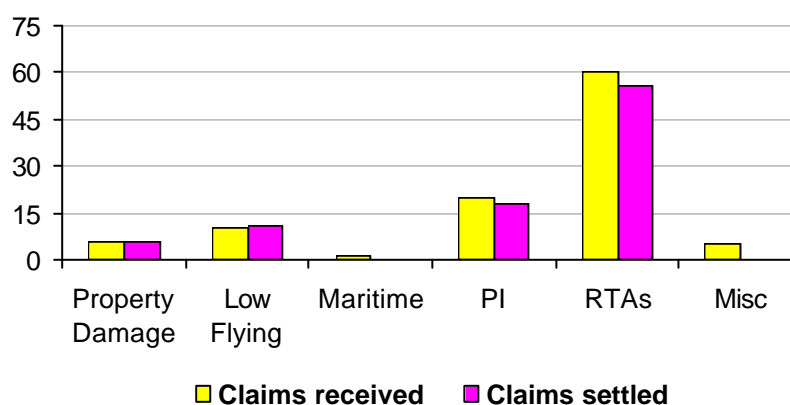
State is generally billed for 75% of the amount paid, the United Kingdom paying the other 25%.

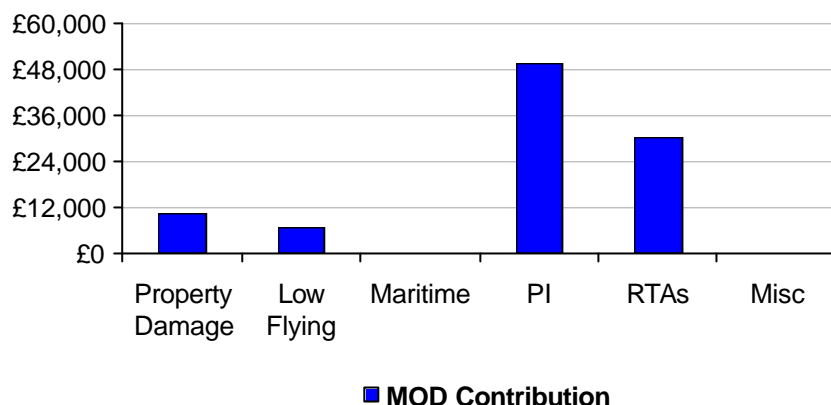
	2001/02	2002/03	2003/04
Number of visiting forces claims received	73	73	102
Number of visiting forces claims settled	71	41	91
<b>Amount paid</b>	<b>£265,000</b>	<b>£246,000</b>	<b>£390,400</b>



4.16 Visiting Forces claims can be categorised as follows:

2003/04	Property Damage	Low Flying	Maritime	Personal Injury	RTAs	Misc	Total
Claims Received	6	10	1	20	60	5	102
Claims Settled	6	11	0	18	56	0	91
Amount Paid	£41,209	£26,998	£0	£198,334	£123,900	£0	£390,441
<b>MOD Contribution</b>	<b>£10,302</b>	<b>£6,750</b>	<b>£0</b>	<b>£49,583</b>	<b>£30,975</b>	<b>£0</b>	<b>£97,610</b>





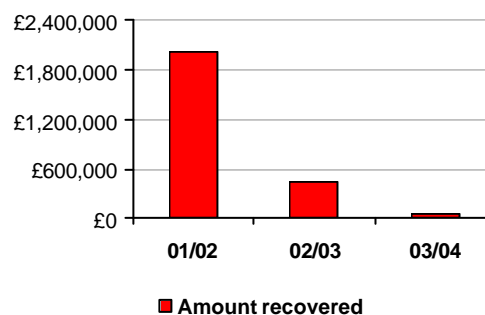
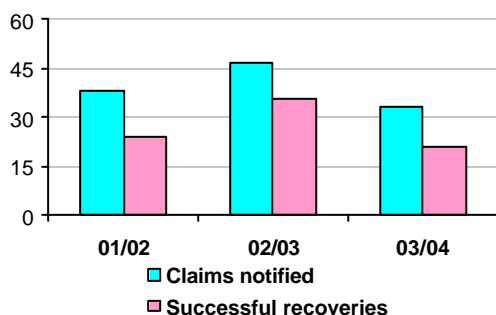
## FINANCIAL RECOVERIES

4.17 Where the Ministry of Defence 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. The main causes for taking action against third parties are occasions where Ministry of Defence static property has been damaged by vehicles, fire, or the negligence of a contractor.

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

4.19 As can be seen from the table below, although 21 recoveries were made, only relatively small sums were recovered, an average of just under £1,500 per recovery. The number of recoveries processed by Claims PLG in each of the last three financial years is shown in the following graphs and table:

	2001/02	2002/03	2003/2004
Number of claims notified	38	47	33
Number of successful recoveries	24	36	21
<b>Amount recovered</b>	<b>£2M</b>	<b>£439,000</b>	<b>£56,443</b>



## SECTION FIVE

### **SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS**

*"Stay alert, stay alive"*

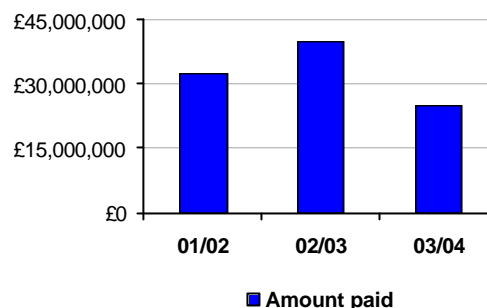
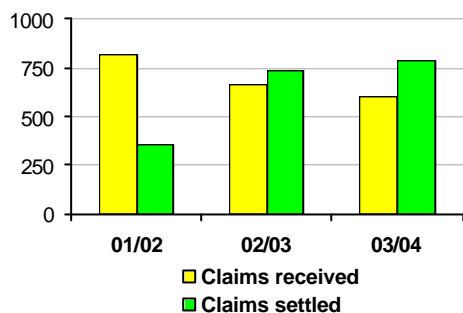
Motto of the US First Infantry Division in Vietnam

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

5.2 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 Ministry of Defence's Veterans Agency (formerly 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.

5.3 Royal and SunAlliance plc have been handling most personal injury claims from Service and ex-Service personnel on behalf of the Ministry of Defence since 1 July 1996 when they were first awarded the contract. As detailed elsewhere in the Annual Report, they were re-awarded the contract for a 5-year period as from 1 May 2002 following a competitive tender exercise. Claims notified before that date, and some more recent claims of a political or sensitive nature, are handled by the Employer's Liability Group within DS&C(Claims). The number of claims and amounts paid are shown below:

	2001/02	2002/03	2003/04
Number of claims received	819	666	604
Number of claims settled	351	733	790
<b>Amount paid</b>	<b>£32M</b>	<b>£40M</b>	<b>£25M</b>



## BRIEF SUMMARY OF GROUP ACTIONS

### NUCLEAR TEST VETERANS

5.4 Compensation for UK Nuclear Test Veterans was the subject of an Adjournment Debate held in Westminster Hall at the Houses of Parliament on 4 December 2002. At the Debate, the then Under Secretary for State Dr Lewis Moonie restated the Ministry of Defence's position that there is no scientific or medical evidence which currently shows that the health or other physical problems suffered by the children or grandchildren of test veterans could be attributed to participation in the test programme. He did however invite the nuclear test veterans to present any new evidence that supporting their case for independent review.

5.5 A third National Radiological Protection Board carried out independently of the Ministry of Defence report was published in early 2003 and this supported the conclusions reached in the previous reports published in 1988 and 1993.

5.6 Two firms of solicitors (Alexander Harris Solicitors, Altrincham and Clark Wilmot and Clark Solicitors, Bristol) announced in July 2002 that they had been jointly instructed by British nuclear test veterans to act on their behalf in an action against the Ministry of Defence for damages. It is understood that the solicitors have secured legal aid from the Legal Services Commission to pursue this matter. To date, no further announcements have been made.

### RADIATION COMPENSATION SCHEME

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

5.8 During financial year 2003/04, the Scheme received 18 new claims from former Ministry of Defence employees (military and civilian) who believe their illness is associated with exposure to occupational ionising radiation. Over the same period, 7 claims were repudiated as failing to meet the minimum 20% causation probability and 1 claim was settled.

#### **GULF VETERANS’ ILLNESSES**

5.9 The Ministry of Defence has not received any writs or detailed claims stating specific allegations of negligence sufficient to start considering these claims. The Ministry of Defence 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.

5.10 The Ministry of Defence has been aware for some time that solicitors acting for Gulf veterans were in the process of seeking advice from senior Counsel about the prospects of successfully bringing claims for compensation against the Ministry of Defence.

5.11 That advice has been provided and on 5 February 2004 the solicitor acting for the veterans announced that on legal advice claims against the Ministry of Defence were no longer viable as “we have not been able to find sufficient evidence that would stand up in court” and “we haven’t been able to establish that cause of those illnesses and if you can’t establish beyond the balance of probabilities what the cause is it’s very hard to show that somebody was at fault”. (*quote by solicitor on BBC Radio 5 - midday news*).

5.12 The solicitors acting for the veterans have now written to the Legal Services Commission – who had until now provided public funding in the form of legal aid – advising them of the latest legal advice they have received. The Legal Services Commission confirmed on 25 March 2004 that they had not yet reached a decision about future funding.

5.13 The Ministry of Defence accepts that some veterans of the 1990/1991 Gulf Conflict have become ill and that many believe this ill-health is unusual. Further information of Gulf Veterans’ illness issues is available from the Ministry of Defence’s Gulf veterans Illness Unit website at [www.mod.uk/issues/gulfwar](http://www.mod.uk/issues/gulfwar)

## **ASBESTOS RELATED CLAIMS FROM EX-SERVICE PERSONNEL**

5.14 Mr Matthews, an ex-Serviceman suffering from an asbestos related disease challenged the Ministry of Defence's position that the provisions of Section 10 of the Crown Proceedings Act 1947 provides a legal bar to him claiming compensation from the Ministry of Defence. Mr Matthews' challenge was based on his argument that Section 10 of the Crown Proceedings Act 1947 is incompatible with the European Convention of Human Rights.

5.15 The case was heard in the House of Lords on 13 and 14 January 2003. A unanimous judgment was handed down by the Law Lords on 13 February 2003 in favour of the Ministry of Defence.

5.16 On 4 July 2003 Mr Matthews made an application to the European Court of Human Rights (ECHR) for a hearing to challenge the decision of the House of Lords. We understand the ECHR are still in the process of giving this application consideration. Experience has shown this can be a fairly lengthy process

## **PORTON DOWN**

5.17 We have received notification of potential claims by some 500 former Service volunteers relating to biological and chemical research tests at Porton Down in the 1950s and 1960s. Solicitors acting for these veterans have previously indicated that their clients will soon be in a position to serve proceedings on the Ministry of Defence. This is still awaited.



## SECTION SIX

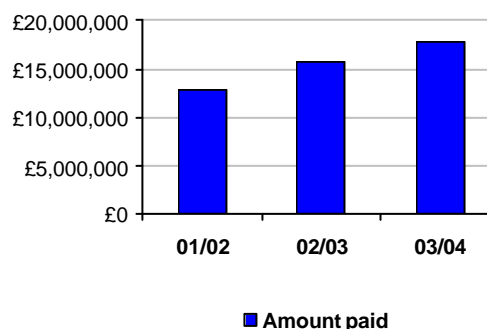
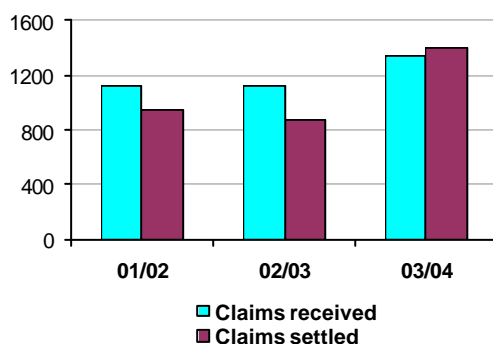
### CIVILIAN STAFF EMPLOYER'S LIABILITY CLAIMS

*“ One man's fault is another man's lesson.”*  
Maltese proverb

6.1 Since 1982, the Ministry of Defence has contracted out the handling of its civilian employee employer's liability claims. As from 1 May 2002 Royal and SunAlliance plc has been handling all new civilian Employer's Liability claims on behalf of Ministry of Defence under a 5-year contract. The contract was previously held by AXA Corporate Solution Services Ltd which is continuing to handle those claims first notified up to 30 April 2002. The information below reflects the combined total from both companies.

6.2 Ministry of Defence 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 and further information is given in DCI GEN 26/04. The increase in the number of claims received is mainly as a result of a large rise in asbestos related claims. There was also a rise in accident injury related claims (trip/slip, lifting etc). Asbestos related claims also account for the increase in the amount of compensation paid over the reporting period, which rose by £1,100,000 compared to last year. The increase in claims received and compensation paid against asbestos-related claims, a situation being experienced throughout the UK insurance industry, and not solely restricted to the Ministry of Defence, is predicted to continue rising over the next 10 years.

	2001/02	2002/03	2003/04
Number of claims received	1121	1113	1337
Number of claims settled	950	872	1398
<b>Amount paid</b>	<b>£12.8M</b>	<b>£15.6M</b>	<b>£17.9M</b>



## SECTION SEVEN

### MOTOR CLAIMS

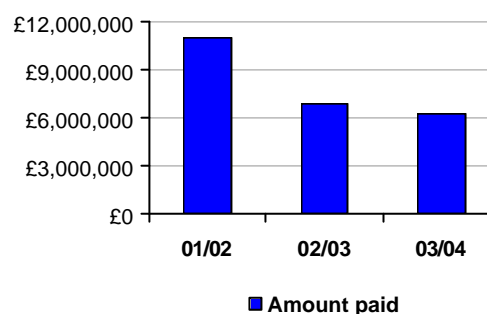
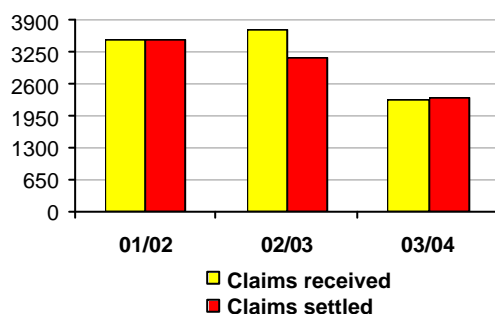
*“The way to stop financial joy-riding is to arrest the chauffeur, not the automobile”*

Woodrow Wilson

#### THIRD PARTY MOTOR CLAIMS - UK

7.1 Since 1982 the Ministry of Defence has contracted out the handling of claims made against the Department by other road users. The contract for the period 2002 to 2007 is held by AXA Corporate Solution Services Ltd. Claims branch works with the Defence Road Safety Officer to reduce the number of road traffic accidents experienced by the Department by raising awareness of the financial and human costs of accidents. To this end Claims branch participate in presentations at the Motor Transport Road Shows organised by the DLO and RAF. Claims branch is represented on the Defence Road Transport Regulation Working Group and the Defence Motor Transport Sub-Committee.

	2001/02	2002/03	2003/04
Number of claims received	3503	3709	2262
Number of claims settled	3503	3142	2334
<b>Amount paid</b>	<b>£11M</b>	<b>£7M</b>	<b>£6M</b>

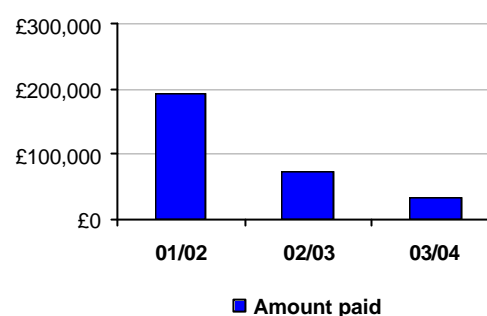
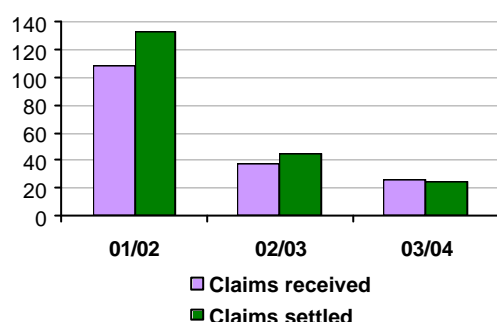


#### THIRD PARTY MOTOR CLAIMS - OVERSEAS (NOT DEALT WITH BY ACOS)

7.2 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 Gibraltar, Sierra Leone, Belize and Kenya. 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 DS&C Claims.

7.3 Claims managers are required to establish that an authorised driver was driving the Ministry of Defence vehicle on an authorised journey and route. If these criteria are met and all the evidence suggests that the Ministry of Defence driver was liable for the accident, then compensation will be paid. Statistics for motor claims for the last three years are shown in the table below. The number of claims received in FY 2003/04 shows that there has been, again, a very substantial reduction on previous year's totals.

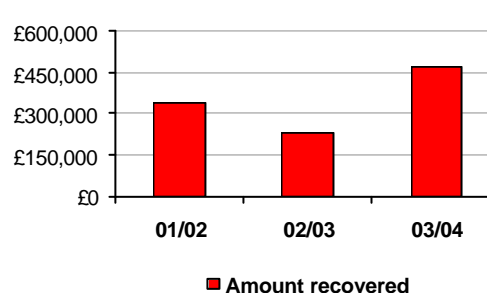
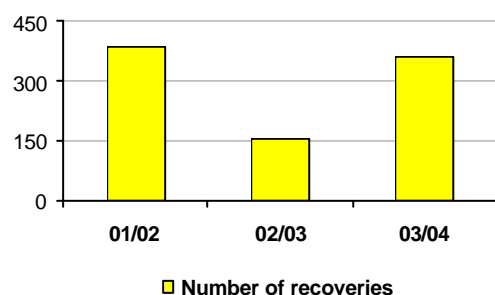
	2001/02	2002/03	2003/04
Number of claims received	108	38	26
Number of claims settled	133	45	24
<b>Amount paid</b>	<b>£192,000</b>	<b>£73,000</b>	<b>£34,498</b>



## UNINSURED LOSS RECOVERY

7.4 AXA Corporate Solution Services 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 amounts received are shown below.

	2001/02	2002/03	2003/04
Number of recoveries	382	153	359
<b>Amount Recovered</b>	<b>£343,300</b>	<b>£231,000</b>	<b>£470,157</b>



## COST OF DAMAGE TO MINISTRY OF DEFENCE VEHICLES

7.5 Claims PLG does not pay for damage to Ministry of Defence owned or hired vehicles involved in road traffic accidents in the UK, since this is the responsibility of the hiring units involved.

## SECTION EIGHT

### CLINICAL NEGLIGENCE CLAIMS

*“Few lawyers die well, few physicians live well”*

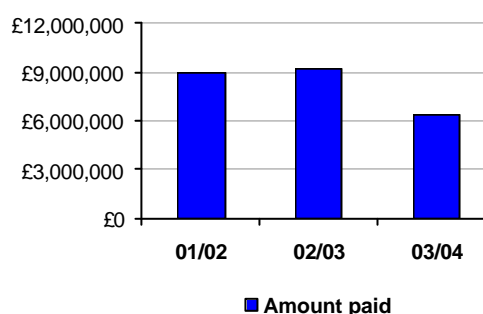
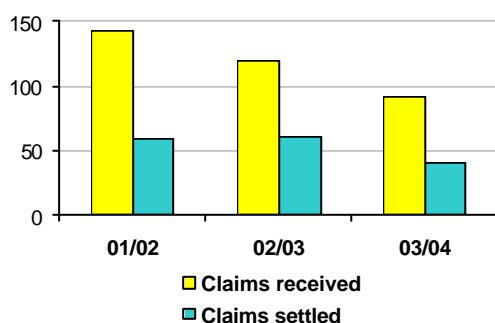
Camden (1636)

8.1 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 the defendant owed them a duty of care and that there was a negligent breach of that duty resulting in the claimant suffering damage.

8.2 Due to their nature clinical negligence claims can also be very expensive to settle. A number of factors underpin the rising costs of settling such claims. Cases settled in the courts have raised the level of general damages, and changes to the discount rate that applies to future costs have increased the levels of settlement. Also labour rates for carers and therapists have risen significantly faster than inflation.

8.3 During the financial year 2003/2004 3 cases were settled for sums in excess of £1 million and 1 other case was settled for £725,000. At the other end of the spectrum the lowest claim settled was £750 representing 8 days additional pain and suffering as a result of medical staff failing to adequately diagnose a soldier's fractured wrist.

	2001/02	2002/03	2003/2004
Number of claims received	142	119	92
Number of claims settled	59	60	41
<b>Amount paid</b>	<b>£9M</b>	<b>£9M</b>	<b>£6M</b>



8.4 During 2003/2004 a large claim was settled under the terms of a structured settlement. The terms of the settlement mean the Ministry of Defence paying the claimant a £900,000 lump sum together with periodic annual payments of £90,000 for the remainder of the claimant's life – which is estimated to be a little over 15 more years (which would mean the value of the claim could eventually reach £2.25 million). Further information on Structured Settlements can be found at Section 11 of this report.

## SECTION NINE

### **SERVICE PERSONNEL EMPLOYMENT** **TRIBUNAL CLAIMS**

*“Never assume the obvious is true”*  
William Safire

9.1 As highlighted in last years Claims Annual Report, as from 1 April 2003 the Claims budget relating to Employment Tribunal applications brought by current and former members of HM Armed Forces was disaggregated to the respective single Service Personnel branches, namely NP(Sec)Law for the Royal Navy, APC(Litigation) for the Army and AMP Sec(ET) for the RAF. The respective single Service branches have confirmed that they have settled the following number of cases at the amounts shown during FY 2003/2004.

Royal Navy 4 cases settled @ £132,600  
Army 7 cases settled @ £126,000  
Royal Air Force 3 cases settled @ £12,000

9.2 Any further enquiries relating to these cases, or Service Employment Tribunal cases in general, should therefore now be directed towards the respective single Service branch. As part of the agreement to disaggregate the Claims budget for Employment Tribunal applications it was decided that Claims branch would still continue to provide funding for four ongoing cases, which were in the middle of protracted litigation at the time of the transfer, and all of the homosexual dismissal cases – as they continue to have well established tri-service policy implications.

9.3 The figures shown below highlight that two of the four Employment Tribunal cases were settled during the course of the financial year 2003/2004 - the remaining two are subject to an Employment Appeals Tribunal hearing in May 2004. Nine homosexual dismissal cases were also settled. We are committed to ensuring that all practical attempts are made to bring to an amicable conclusion the 30 or so outstanding homosexual dismissal cases, in which we accept reasonable compensation is due.

	2003/2004
Number of Employment Tribunal Claims Settled by DS&C(Claims)	12
<b>Amount paid</b>	<b>£337,758</b>

#### **JUDICIAL REVIEW APPLICATION**

9.4 A Petition for Judicial Review, challenging the refusal to allow an unmarried servicewoman with children Services Family Accommodation (SFA) was raised in Scotland. The petitioner also sought financial compensation. A 4-day court hearing was scheduled to begin on 3 February 2004.

9.5 The petitioner was a nurse in the RAF until March 2001 and alleges that she was the victim of unlawful discriminatory interference in her family life. The root of her

complaint is that the RAF denied her SFA for her family, consisting of herself, her long-term partner and their two children. JSP 464 regulates eligibility of SFA. Paragraph 0109 of the rules prohibits an unmarried member of the Services cohabiting in Service accommodation with a partner.

9.6 In addition there are restrictions on the eligibility of the petitioner to have accommodation as a single parent for herself and her children. The general rule on entitlement to accommodation requires the individual to be in one of a number of specified “marital” categories. As a single parent she would be eligible for accommodation only if she provides an “agent” to look after the children when she is at work.

9.7 Advice from Queen's Counsel was sought and he opined that, in the context of today's moral and political environment, where the emphasis is on stable family units rather than marital status, he could not see any proportionate justification for these inflexible restrictions. It was therefore his view that there was no stateable defence to the allegation of a contravention of Articles 8 (Right to respect for private and family life) and 14 (Prohibition of discrimination) of the European Convention of Human Rights. Queen's Counsel consequently advised that a negotiated settlement be reached with the petitioner on the best possible terms – a result of which the Petition for Judicial Review be withdrawn. US of S was advised of this case and agreed that the Department proceeds on the basis of this advice. Settlement of this claim was reached on 30 January 2004, prior to the court hearing, by way of negotiation on the basis that the Ministry of Defence pays the petitioner the sum of £50,000 in compensation and that her application for a judicial review be withdrawn.

## SECTION TEN

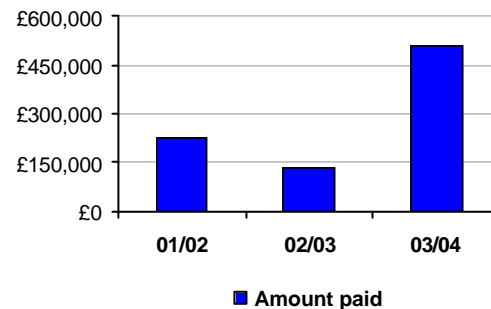
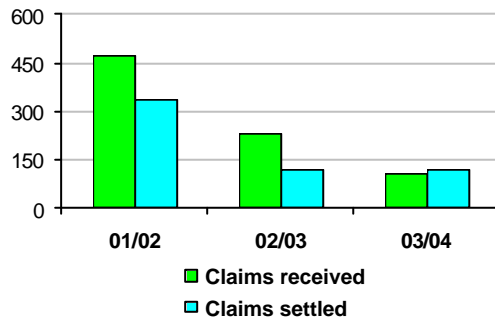
### AREA CLAIMS OFFICERS

*“Good judgement comes from experience; and experience – well, that comes from bad judgement”*  
Anon

10.1 As reported last year claims handling in the Balkans underwent an organisational change towards the end of Financial Year 2002/03 to reflect the reduction of forces deployed in Kosovo. The Area Claims Officer (ACO) post moved from Kosovo to Bosnia and is now pan-Balkans with responsibility for claims arising in Bosnia, Croatia, Macedonia and Kosovo. Accordingly the statistics for the Balkans have now been combined in the table below.

10.2 Approximately half of the claims submitted are the result of road traffic accidents and associated injuries, with the usual increase over the winter months. Most of the remainder are Property Damage claims, often arising as a consequence of weapon confiscation or search operations.

	2001/02	2002/03	2003/04
Number of claims received	470	228	109
Number of claims settled	336	117	118
<b>Amount paid</b>	<b>£223,247</b>	<b>£134,252</b>	<b>£508,703</b>
<b>Amount recovered</b>	<b>£459</b>	<b>£8,000</b>	<b>£0</b>



10.3 Financial Year 2003/2004 has seen the settlement of a number of significant cases including 6 fatalities and several serious personal injury claims. Although this has resulted in an increase in expenditure when compared with previous years the amount of compensation claimed for these cases was in excess of £1.5 million.

10.4 There has been limited success in recovering Ministry of Defence costs against third parties in Kosovo however success in Bosnia still proves elusive. The ACO has arranged to meet with the Ministry of Justice in the hope of making a breakthrough or agreeing a change in the current arrangements, which requires all claims against third parties to be channelled through The Ministry of Justice.

10.5 The ACO also represents the UK at Claims Commission Hearings throughout the Balkans. Five cases were the subject of Appeal to the Kosovo Claims Appeal Commission in November 2003. These were all successfully defended at an approximate saving of £200,000.

#### **AREA CLAIMS OFFICER FALKLAND ISLANDS**

10.6 The Claims Officer in the Falkland Islands has authority to handle Common Law damage claims up to a value of £5000 per claim, through the Command Secretary British Forces Falkland Islands.

10.7 During Financial Year 2003/04 one claim was received for body damage repair to a vehicle, which was settled in year along with a property damage claim to a portacabin that was outstanding from the previous year. In addition, to maintain the political good will of the community, an ex-gratia payment was made in accordance with JSP 462. This was because the Department felt a moral obligation following a fire on a local landowners land after an exercise, although there was no firm evidence to show how the fire was started.

10.8 There have been no recoveries made during this period.

	<b>2003/2004</b>
Number of claims received	1
Number of claims settled	2
Ex-gratia payment	1
<b>Amount paid</b>	<b>£18,498*</b>

\*Includes one ex-gratia payment for fire damage @ £14,165

#### **AREA CLAIMS OFFICE NORTHERN IRELAND**

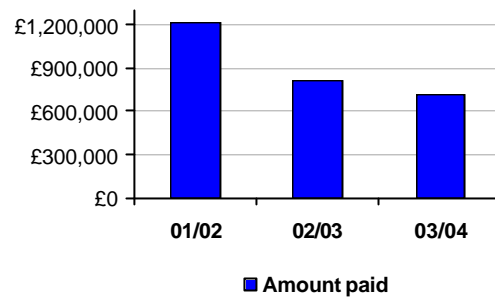
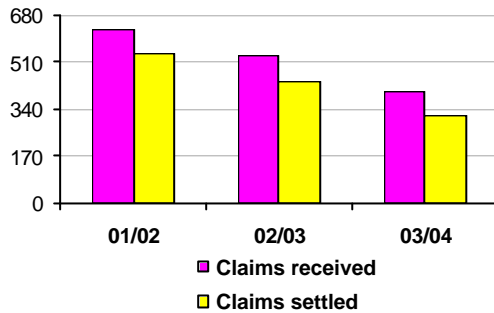
10.10 The ACO is based at HQ Northern Ireland and deals with common law claims for and against the Ministry of Defence in Northern Ireland. It also acts as a focal point for civilian employee claims.

10.11 The majority of claims handled by the office are as a result of low flying helicopters. A reduction in the level of helicopter activity during the year has seen a corresponding reduction in the number of claims received.

10.12 Most property/livestock claims settled for under £2000. The highest settlement was £57,500 for a bloodstock claim.

	<b>2001/02</b>	<b>2002/03</b>	<b>2003/04</b>
Number of claims received	625	533	399
Number of claims settled	538	438	314
<b>Amount paid</b>	<b>£1,210,000</b>	<b>£820,000</b>	<b>£712,800</b>





## AREA CLAIMS OFFICE (NORTH WEST EUROPE)

10.13 ACO (NWE) is part of the Civil Secretariat, Headquarters United Kingdom Support Command (Germany) based in Rheindahlen. It is responsible for handling claims by and against the Ministry of Defence in Germany, Norway, Denmark, The Netherlands, Belgium, Luxembourg, France, Austria, Switzerland, Poland, Hungary and the Czech Republic. With the emergence of the Rhine European Support Group (RESG), ACO (NWE) will be supporting the RESG isolated detachments located across Europe. The Area Claims Office has 11 civilian staff handling and processing claims.

## RISK MANAGEMENT

10.14 The Risk Management process within ACO (NWE) has been formalised with the creation of a Risk Plan which not only identifies actions to be taken on Claims which may be deemed avoidable, but it includes detail of the potential risks to both the ACO (NWE) mission (output) and business.

10.15 ACO (NWE) has been active in raising the profile of the Claims organisation roles and responsibilities with a view to reducing costs and numbers of Claims. The UKSC(G) website has a separate page for ACO (NWE) information and articles have been provided to, and published in, the British Forces weekly newspaper (Sixth Sense). A Newsletter is planned, based on the DS&C format, and will be produced four times annually in order to improve the awareness of ACO (NWE) business across British Forces (Germany). Presentations have been given to Garrison SHEF seminars on the work carried out by the Claims office and these briefs included elements on reporting of incidents, the financial cost to the Ministry of Defence as well as the hidden costs and also potential 'human' cost of Claims.

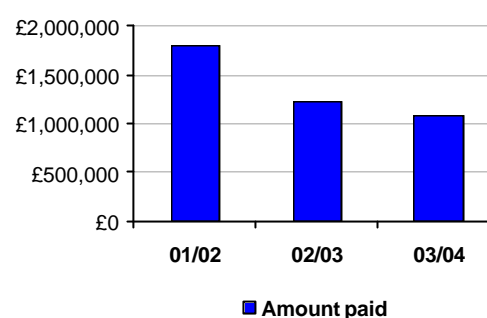
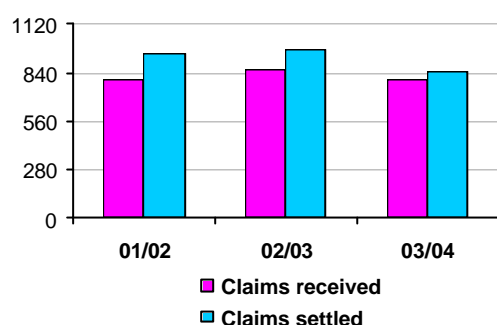
10.16 The construction of one new consolidated Claims database will soon enable statistics to be analysed with trends and/or common occurrences being identified and mitigating action taken where possible.

## NEW CLAIMS SETTLEMENT ORGANISATION

10.17 The transition from one German government claims handling department to another has passed without problems. ACO (NWE) has consolidated the relationship with the new department (SRB) with co-operation established with each SRB through a programme of informal visits. There are now 4 SRB Offices dealing directly with ACO (NWE).

## CLAIMS EXPENDITURE AND RECOVERIES

	2001/02	2002/03	2003/04
Number of claims received	798	860	794
Number of claims closed	948	968	846
<b>Amount paid</b>	<b>£1,800,000</b>	<b>£1,219,000</b>	<b>£1,070,612</b>
<b>Amount recovered</b>	<b>£ 427,290</b>	<b>£471,000</b>	<b>£590,929</b>



10.18 The reduction in the number of claims files opened during FY2003/04 can be attributed to troops being away in the Gulf as the vast majority of units in Germany contributed to the effort in Iraq. In addition, Claims officers were able to concentrate their efforts on those Claims already received. The total recovered figure in FY2003/04 also includes one major receipt of €200,000 due to the conclusion of a case, which has been in court for nearly 10 years. The majority of the work on this is attributable to Dieter Oqueka in the Agency Section.

## SUCCESS OF RECOVERIES

10.19 Over the past 12 months improvements have been made to the recovery process. Success has been achieved by reducing the administration of the number of open files together with a substantial reduction in the time taken to complete a Claim. From receipt of a Claim to file closure, the average turnaround time has been reduced by 40% which has ensured that time could be freed up and applied to other, more complicated Claims cases. This has also ensured that a more consistent approach is taken on Claims handling in all of ACO (NWE) business.

## AREA CLAIMS OFFICE CYPRUS

10.20 ACO Cyprus comprises two members of staff who are responsible for processing claims by and against the Ministry of Defence and the Sovereign Base Areas Administration in Cyprus and its territorial waters. The range of claims dealt with is similar to that of ACO NW Europe (road traffic accident, 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.

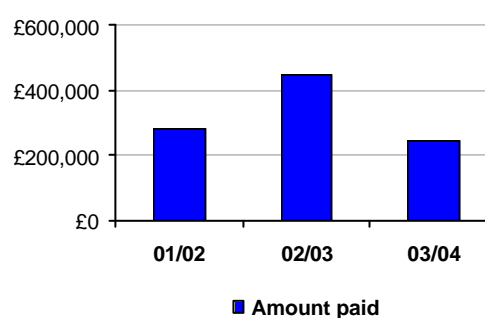
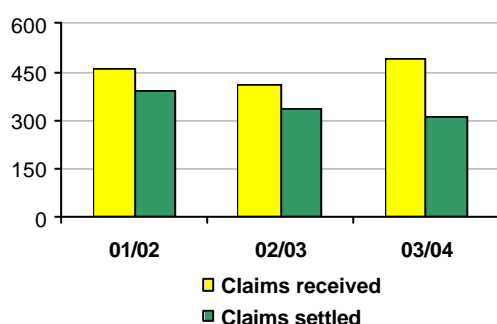
10.21 The Cypriot climate and terrain provide excellent training opportunities for the British forces, both in the air and on the ground. Most of this takes place on private land under rights granted by the ToE. Consequently a good deal of ACO's work involves

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 plays a significant role in maintaining good relations between the Ministry of Defence and the local community, a vital ingredient in supporting UK's training rights. ACO seeks to reduce the risk of damage being caused and to that end routinely briefs all exercise recce officers prior to training taking place.

10.22 The rise in training and manoeuvre damage claims during FY 2003/04 is due to the receipt of 179 individual claims from householders who reside in a village adjacent to RAF Akrotiri. They have alleged that their property has been damaged by vibration from military aircraft. None of these claims have been settled as investigations are incomplete. If these are taken out of the equation, claims in respect of training and manoeuvre damage actually fell during FY 2003/04 compared to recent years, both in number and in expenditure.

10.23 Expenditure during FY 2003/04 in settling employer's and public liability claims fell significantly too, although one claim alone had accounted for 58% of that year's total spend. Nevertheless, Cyprus is generally becoming an increasingly claims conscious and litigious society, and whereas the local courts generally award lower levels of general damages than in the UK, we are seeing signs of a move towards far higher awards than before, and it is difficult to see how the Ministry of Defence can be immune from the overall trend.

	2001/02	2002/03	2003/04
Number of claims received	458	407	489
Number of claims settled	388	337	313
<b>Amount paid</b>	<b>£282,000</b>	<b>£446,000</b>	<b>£242,000</b>



## AREA CLAIMS OFFICE IRAQ

10.24 The Area Claims Office Iraq was established in June 2003 following the cessation of Coalition Force combat operations on 1 May 2003. The office is now dealing with a heavy claims load resulting from the recent Iraq conflict, with a full range of claims covering such topics as search patrol damage, Prisoner of War losses and everyday Road

Traffic Accidents. Claims relating to fatal shootings, or serious injury as a result of shootings, are handled by Claims officials in London.

	<b>2003/2004</b>
Number of claims received	773
Number of claims settled	89
<b>Amount paid</b>	<b>£122,124</b>

## SECTION ELEVEN

### **STRUCTURED SETTLEMENTS**

*“To some lawyers, all facts are created equal”*

Felix Frankfurter

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

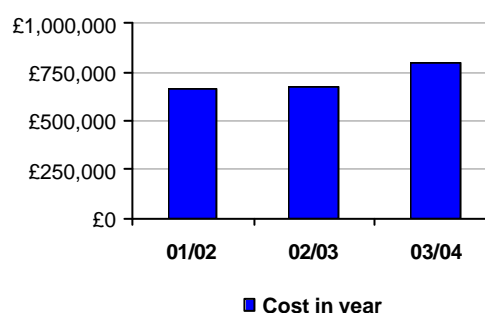
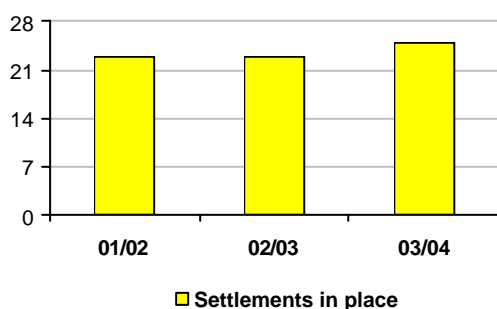
11.2 A Structured Settlement is an agreement whereby the compensation is paid by a lower lump sum followed by a periodic payment usually guaranteed for the Claimant's lifetime. . The payments are either funded by an annuity, usually index-linked to the Retail Price Index, from an insurance company or, where the paying party is a government body through a self funded arrangement.

11.3 The part of such a settlement which is to be paid by periodical payments attracts tax benefits and statutory guarantees of payment if entered into in accordance with the Damages Act 1996 and Income and Corporation Taxes Act 1988.

11.4 At present Treasury rules dictate that structured settlements are always considered for any settlements costing the Ministry of Defence £250,000 (less legal costs) or over. Proposals for structured settlements are subject to approval by the Chief Claims Officer on the basis of a 'value for money' report.

11.5 To date the Ministry of Defence has entered into 25 structured settlements.

	2001/02	2002/03	2003/04
Number of structured settlements in place	23	23	25
<b>Cost in year</b>	<b>£663,150</b>	<b>£675,000</b>	<b>£790,000</b>



11.6 There is concern that a claimant in receipt of a lump sum award of damages might not invest it wisely resulting in a shortfall of funding in future years. The Courts are aware of this issue and might be given the power to impose periodic payments.

## SECTION TWELVE

### **INSURANCES AND INDEMNITIES**

*“Never base your budget requests on realistic assumptions,  
as this could lead to a decrease in your funding”*

Scott Adams

#### INSURANCE

12.1 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.

12.2 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.

12.3 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

12.4 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 Memorandum of Understandings (MOUs) and other international agreements.

12.5 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. Examples include participation by Service personnel or Ministry of Defence civilian staff in non-core fund raising or social activities, work experience for students over the age of 16, or the use of Ministry of Defence personnel or equipment by other organisations for activities which have no direct benefit to the Ministry of Defence. The Ministry of Defence must seek an indemnity in such instances as there is no provision in the Defence Estimates to meet claims which are not defence related. Indemnities must be backed by insurance or a

guarantee from those companies/organisations that self-insure. The only exception to the requirement for indemnity is when the Ministry of Defence is dealing with other Government Departments. This is because of the principle of indivisibility of the Crown. Claims branch issued around 345 indemnities in 2003/2004 and commented on a similar number of other indemnity issues.

12.6 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 (Central Services Group, General Conditions).

## **WIDER MARKETS**

12.7 Income-generating activity under the Government's initiative for Selling Government Services into Wider Markets is also an exception to the rule that the Ministry of Defence does not purchase insurance. Budget holders undertaking this work need to carry out a full risk analysis and to consider whether it would be more cost effective for the Department as a whole to purchase insurance or to bear the risk of having to pay compensation directly from its current expenditure.

12.8 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 298/03. Willis have created a specialised package of insurance policies offering a full range of business insurances for Budget Holders undertaking income-generating activity.

## SECTION THIRTEEN

### **NOVEL AND CONTENTIOUS CASES**

*“I’m not saying that there won’t be an accident, mind you. They’re funny things accidents, you never have them till you’re having them”*

Eeyore (Winnie the Pooh)

#### **KENYAN GROUP ACTION**

13.1 As reported in last years report, in July 2002 compensation was paid to 233 Kenyan nomadic tribes people for personal injury or death caused one way or another after coming into contact with live ordnance left on the Kenyan training areas by British troops.

13.2 Following the above settlement more than 6000 new Kenyan claimants came forward with similar allegations against the Ministry of Defence. Over the course of 18 months these claims were investigated and, with the co-operation of the Kenyan Government, further evidence gathered from current and archived files. There was also a major amount of work done in the UK tracing those individuals who had commanded training in Kenya going back to the mid 1960s and obtaining statements from them. As a result of the detailed investigations the number of claims was reduced to 1046. An independent survey of the ranges and munitions found on them was also carried out that concluded that no more than 3% of the live ordnance was possibly of UK origin and possibly UK fired. This effort proved very worthwhile and in November 2003, at a further mediation meeting, we were able to demonstrate the questionable nature of some of the claims and the very limited nature of the Ministry of Defence’s liability. Consequently the 1046 claims were settled for £500,000 against an opening demand for £37,191,538

#### **CLINICAL NEGLIGENCE**

13.3 A claim for compensation was received from Sgt X. In October 1995 whilst serving with his unit in Greece, he fell from the back of an Army vehicle sustaining a fractured skull and also an arm injury. His solicitors claimed that this accident was entirely the fault of the Ministry of Defence. There were also other allegations relating the alleged poor standard of medical care afforded to Sgt X after his accident.

13.4 As a result of all the evidence collected legal advice was sought from Counsel on the question of liability. Legal advice was there was no realistic hope of continuing to deny liability, although causation was very much in issue. Liability was formally conceded in April 2003.

13.5 As a result of the fall from the Army vehicle Sgt X sustained a severe brain injury which caused the onset of severe psychotic symptoms. In an attempt to properly assess the extent of the injuries, future prognosis and future care needs and further expert medical evidence was obtained by both parties. A 5-day trial on quantum was scheduled



to commence in the Royal Courts of Justice on 12 January 2004. A number of experts from both sides were scheduled to give evidence.

13.6 Counsel for the Ministry of Defence met with Counsel acting for the claimant on 9 January 2004 and the issue of quantum was discussed in full. As a result, agreement was reached to pay the claimant the sum of £1,225,000 in full and final settlement of his claim

13.7 As a result of the severe brain injuries Sgt X sustained in the accident, it was agreed by all the medical experts who have examined him that his psychotic state meant he did not have the mental capacity to manage his own financial affairs and therefore an application was made to the Court of Protection for his solicitor to be granted authority to manage his affairs. Consequently, even though this claim was amicably settled by way of negotiation a Judge was still required to ratify the terms of the settlement.

### CLINICAL NEGLIGENCE

13.8 A claim for compensation was received in relation to the circumstances surrounding the birth of baby X in 1984 at the Princess Alexandra Hospital, RAF Wroughton. It is alleged that those clinicians on duty at the time failed to recognise early enough the obvious signs of fetal distress and that they did not take action quickly enough which would have prevented brain damage from occurring.

13.9 Baby X who is now 20 years of age suffers from both severe physical and mental impairment and is cared for by his foster parents.

13.10 Expert medical opinion was obtained by both parties and it was accepted that there was negligence in this case. Liability was conceded but there were major areas relating to causation which remained in dispute.

13.11 A counsel-to counsel settlement conference was held on 5 December 2003 and an amicable settlement figure was reached with the Ministry of Defence agreeing to pay the claimant a £900,000 lump sum together with periodical annual payments of £90,000 for the remainder of the claimant's life – which is estimated to be a little over 15 more years (approximately a £2.25 million overall settlement).

### CLINICAL NEGLIGENCE

13.12 Soldier X, whilst serving in Kosovo in 1999 reported to his medical centre with depression. He soon after returned to Germany on leave where his mental health deteriorated.

13.13 Soldier X whilst at home appears to have made one attempt at taking his own life. The diagnosis at that stage was a severe depressive episode with probable mild or early psychotic features. He was therefore immediately admitted to a military hospital on an emergency basis and placed on special observation as a result of possible unpredictable behaviour and possibility of self-harm.

13.14 Soldier X soon after walked out of the hospital – with his razor, which was not taken from him on arrival - into the surrounding hospital grounds where he attempted suicide, inflicting a number of superficial cuts to his neck and rather deeper and more significant wounds to his left wrist. His life was saved by the administration of first aid.

13.16 A claim was made by Soldier X on the basis that the Ministry of Defence failed in its duty of care towards him, taking into account his known, and fully documented, recent history, and strong likelihood of further self-harm.

13.17 Solicitors acting for Soldier X valued this claim in excess of £140,000. A settlement conference was held on 18 November 2003 as a result of which an amicable settlement was reached at the sum of £55,000.

## SHOOTING INCIDENT

13.18 Mohamet and Skender Bici are pursuing claims against the Ministry of Defence in respect of a shooting incident involving three members of 1 PARA who were deployed on OP AGRICOLA in Pristina, Kosovo. In the early hours of 3 July 1999 the claimants were travelling in, and on, the roof of a car and had been participating in victory celebrations following the withdrawal of Serb forces from Kosovo. It was reported that the Servicemen opened fire after a man on the roof of the car discharged several rounds from an assault rifle. As a result, two Albanian citizens, Mr Avni Dudi and Mr Fahri Bici, were killed, Mohamet Bici received gunshot wounds and Skender Bici suffered psychological trauma.

13.19 The claimants were awarded Legal Aid by the Legal Services Commission to bring a claim against the Ministry of Defence in the UK Courts. The Ministry of Defence was not party to that decision.

13.20 The matter was listed for trial and was heard before Mr Justice Elias at Leeds Registry of the High Court between 9 and 18 February 2004. The Ministry of Defence's defence was based on the following grounds:

- The soldiers acted in self-defence
- Regardless of the circumstances the soldiers were protected by the principle of Combat Immunity
- If the Ministry of Defence was found to be at fault, the Claimants contributed to their own misfortune by knowingly and unlawfully being in possession of firearms.

13.21 Judgment was entered in favour of the Claimants. The Judge did not consider the soldiers to have been acting in self defence, that they were not threatened with being shot when they fired their weapons and that, in the surrounding circumstances, they made an error of judgment as to whether they were under a threat of attack. He also ruled that there was no evidence to suggest that they had been reckless or had lost their discipline in such a fundamental way.

13.22 In relation to the issue of combat immunity, the Judge found that the doctrine did not have any application in the specific facts of this case. Despite the prevailing circumstances in Pristina, the Judge did not consider the soldiers to be engaged in combat at the time of the incident and, therefore, because the soldiers were engaged in a peacekeeping mission and not under threat of attack, a duty of care was owed by the Ministry of Defence to the Claimants.

13.23 Following the trial, the Ministry of Defence sought advice from a senior Queen's Counsel on the merits of an Appeal against the Court's findings. It was his view that such an Appeal would be unlikely to succeed and consequently the Ministry of Defence decided not to pursue the matter further.

13.24 Since the trial was on the issues of liability only, the Court did not assess damages, which will be subject of negotiation between both parties.

### **PUBLIC ORDER TRAINING**

13.25 The claimant, a member of HM Forces, injured his back while attending Public Order Training in Northern Ireland. It was alleged that while arrest and restraint techniques were being demonstrated, he was ordered to act as a demonstrator, and was thrown to the ground, thereby sustaining injury. A compensation claim followed on the basis that the Ministry of Defence had permitted the claimant to be manhandled in such a manner as to be likely to cause him harm. In addition it was alleged that insufficient regard had been taken of his medical history of back problems, making him unsuitable for participation in the above training.

13.26 The claim was repudiated on the basis that the claimant was not ordered to take an active part of the training. Indeed, in view of his back problems his attendance was an observer. Investigations into the claim also revealed that he was subsequently involved in a road traffic accident 6 months following the above incident, and sustained further injury to his back. The case proceeded to trial where the Judge preferred the Ministry of Defence's evidence as opposed to that of the claimant, and the case was dismissed.

### **ROAD TRAFFIC ACCIDENT**

13.27 The Claimant was employed by the Ministry of Defence as a civilian driving instructor at the Defence School of Transport in Leconfield.

13.28 The Claimant had taken a new student onto a local country road to gain driving experience in traffic when the student over reacted to oncoming traffic by steering sharply to his left and headed for a ditch. The Claimant, who was sitting in the middle seat of the cab, had to reach over and take control of the steering wheel to avoid going into the ditch. In reaching over, he alleges that he sustained a jarring injury to his back.

13.29 Also in the cab was another student, he was sitting in the passenger seat to the right of the Claimant.

13.30 The main allegations were that the Ministry of Defence was vicariously liable for the actions of the student driver and that the seatbelt in the cab was not suitable for a driving instructor in light of the fact that the instructor may have had to take actions just like the one in question.

13.31 Solicitors acting for the Claimant obtained documentary evidence to show that, despite there being a dedicated nursery circuit at Leconfield for student drivers, the student driver had had only 2 hours previous driving experience in an LGV vehicle before being taken onto a public road. At the end of the first day of driving (the same day as the accident), the Claimant made an entry in the student's driving record stating that the student had road positioning and speed problems.

13.32 Ministry of Defence solicitors also obtained lay witness evidence dealing with the suitability of the vehicle as a training vehicle.

13.33 At trial on 20<sup>th</sup> April 2004 the Claimant abandoned the allegation that the vehicle was not fit for its purpose. He then argued that during the morning of the first day's driving, the student had a problem with road positioning but that he did not see it as a dangerous or major problem and that is why, in his judgment, he felt it safe to take the student onto the public road that day.

13.34 After lengthy and detailed examination and cross-examination, the court found that the Claimant, albeit honestly, had made an error of judgment in taking the student onto a public road too soon, that the over reaction of the student driver was foreseeable and that the Claimant should have anticipated this. There was no fault on the part of the Ministry of Defence. The claim was dismissed and the Claimant was ordered to pay the Defendant's costs as asked. The judge commented that the costs claimed by the Defendant were more than reasonable, were proportionate and had been properly incurred. He was not minded to interfere with them at all.

### **ASBESTOS RELATED ILLNESS**

13.35 The Claimant, a former civilian employee aged 66, was diagnosed with asbestosis which gave him a 20% respiratory disability. The medical evidence provided by the agreed expert stated that he had a 30% chance of dying from respiratory failure caused by the asbestosis, a 30% chance of developing fatal lung cancer and a 7% chance of developing malignant mesothelioma.

13.36 The Schedule of Special Damages prepared by the Claimant's solicitors took those figures and calculated the lost years claim using an accumulated total risk of future malignancy of 67%. Despite there being no recognisable case law on this issue the Ministry of Defence argued that the risk of malignancy should be the one highest/worst risk, as the Claimant would not develop all the malignancies at the same time and any one of the malignancies would cause the same financial loss. Proceedings were threatened, but the Ministry of Defence claims handlers stuck to their position on this issue and the argument was eventually accepted by the Claimant's solicitors. This common sense approach effectively halved the future loss claim. This argument will be deployed in future similar cases.

## SKIING INCIDENT

13.37 The claimant, a member of HM Forces, was injured on a training accident in Bergen, Norway. While skiing down a hill he encountered a left hand bend followed by a sharp incline. The claimant, who was a novice skier, fell forward injuring his knee. A claim for compensation was subsequently made against the Ministry of Defence on the basis that he had not received adequate training, the snow conditions and terrain over which he was required to ski were unsuitable for someone with his limited ability, and that he had been provided with the wrong type of skis.

13.38 Following a thorough investigation of the claim, which involved obtaining witness evidence from the instructor involved in the training exercise, most of the allegations were refuted. The claimant subsequently discontinued his action a few weeks before trial.

## FIRE IN CYPRUS

13.39 In August 1998 Episkopi Garrison, in Cyprus, was seriously affected by a large scale bush fire which completely destroyed Commander British Force's (CBF) residence and 13 other Married Quarters (MQ's), most of which were occupied by Ministry of Defence civilian employees. Other properties were affected by smoke damage to varying degrees.

13.40 Some of the MQ occupants did not have personal property insurance at all and others were inadequately insured to varying degrees. Whilst initial indications were that the Ministry of Defence had no liability for the fire, which was started by a farm worker on adjoining land and exacerbated by very high temperatures and high winds, having obtained advice from various fire experts, it was finally conceded that some liability did rest with the Ministry of Defence because of poor maintenance of the properties and the surrounding fire breaks.

13.41 24 of the 32 Claims served on the Ministry of Defence were settled in July 2003, at a two-day mediation at the Chartered Institute of Mediation, for a total value of £300,000 inclusive of costs. This represented about 50% of the amount claimed. The Ministry of Defence was successful in persuading the claimants that a reduction in compensation was appropriate because, whilst it was conceded that the MQs and firebreaks could have been better maintained, the scale and speed of the blaze was such that the fire would have occurred in any event and would have caused the damage it did.

13.42 For civilian staff, the insurance of personal property is allowed for in the Cost of Living Allowance (COLA) budget, and staff are advised to take out insurance comparable to that which they would consider necessary in the UK. Service personnel are similarly advised. Therefore any uninsured losses, not resulting from the Ministry of Defence's negligence, are the owner's responsibility.

## SECTION FOURTEEN

### LAW AND PRACTICE

*“Justice renders to everyone his due”*

Cicero

#### CIVIL JUSTICE REFORMS

14.1 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

14.2 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.

14.3 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

- 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

14.4 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 fixing timetables to control the progress of the case. In addition, they encourage the parties to co-operate and consider adopting other methods of settlement such as alternative dispute resolution.

14.5 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

14.6 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

14.7 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".

14.8 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.

14.9 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.

14.10 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**

14.11 Personal injury claims will be assigned to either a fast-track or multi-track. Fast-track cases will be limited to a value up to £15,000 and will proceed to a hearing quickly.

14.12 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.

14.13 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.

14.14 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**

14.15 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**

14.16 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**

14.17 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.

14.18 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.

14.19 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

14.20 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.

14.21 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

14.22 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.”

14.23 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.

14.24 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.

14.25 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.

14.26 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.

14.27 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.

14.28 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 the Senior Claims Officer.

## **DISCLOSURE**

14.29 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.

14.30 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.

14.31 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**

14.32 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.

14.33 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**

14.34 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.

14.35 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.

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

14.37 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.

14.38 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 SERVICES COMMISSION (LEGAL AID)**

14.39 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 was wrongly or rightly distributed and it therefore came as no surprise that Legal Aid for personal injury claims was abolished in April 2000. The majority of such claims are now likely to be the subject of a conditional fee whereby a Claimant's solicitor can uplift his normal charging rate by 100% if successful (providing the success fee does not exceed more than 25% of the total compensation).

14.40 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.

14.41 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 Claimant's with conditional fee arrangements for our costs in the event that we are successful in defence of the claim

14.42 The Lord Chancellor's Department recently announced that they would review whether the Conditional Fee Arrangement regime can be simplified

### **ALTERNATIVE DISPUTE RESOLUTION**

14.43 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.

### **COUNSEL-TO-COUNSEL SETTLEMENT CONFERENCES**

14.44 In cases where liability is not an issue, counsel-to-counsel settlement conferences are an innovative and financially attractive way of settling cases without going to trial or settling at the courtroom door. A round table consultation is arranged with the Department represented by counsel, the 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.

14.45 In 2003/2004, for example, 9 such conferences were held and compensation totalling £3.9 million was agreed against claims totalling £6.6 million. Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher.

### **MEDIATION**

14.46 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, Alternative Dispute Resolution is not appropriate in every case. Judges are also now directing parties to an action to mediate the case rather than letting it proceed to court.

14.47 The mediation process employs an independent person (the mediator) to facilitate negotiations between parties in a dispute in an effort to reach a mutually accepted resolution. The process is voluntary, flexible, confidential and non-binding, and can be entered into and terminated at the discretion of either party.

14.48 During 2003/04 four such meetings took place. In all but one instance, the claims were successfully concluded.

14.49 The Chief Claims Officer and Senior Claims Officer qualified as accredited mediators in July 2003.

## **CONTRIBUTORY NEGLIGENCE**

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

14.51 The following are some examples of Contributory Negligence:

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

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

## **REHABILITATION**

14.53 Rehabilitation as a method of assisting injured or ill people back to work is a matter that is attracting an increasing level of support amongst various bodies in Government, the Judiciary and the legal profession. It is claimed that at present the UK track record in getting injured or ill people back to work falls well behind that of other Western countries. By way of supporting this, it is claimed by the London International Insurance and Reinsurance Market Association (LIRMA) in a study entitled UK Bodily Injury, that the prospects of a paraplegic returning to full time employment is at least 50% in Scandinavian countries, compared to 14% in the UK.

14.54 Claims branch aim to utilise rehabilitation where appropriate when compensation claims are made. To this end, Royal and Sun Alliance our commercial claims handlers with responsibility for employers liability claims have offered rehabilitation in some

cases, but to date the uptake has been disappointing. However, rehabilitation is expected to assume far greater prominence in the claims handling process with the revision later this year of the Civil Procedures Rules pre-action protocol on the handling of personal injury claims.

### **THIRD PARTY ACCIDENT SCHEME (TOPAS)**

14.55 If Ministry of Defence 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.

14.56 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 the Ministry of Defence cannot support staff in such circumstances is that the Ministry of Defence, 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 the Ministry of Defence 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.

14.57 In order to relieve concerns expressed by Ministry of Defence staff (both Service and civilian), the Third Party Accident Scheme -ToPaS - was devised to provide no expense legal assistance to staff in the UK who are able to contact the ToPaS solicitors direct and obtain immediate advice and assistance to pursue a claim 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.

14.58 The scheme is promoted extensively across Ministry of Defence establishments by way of posters, leaflets, newsletters and also via a dedicated website at [www.topas.org.uk](http://www.topas.org.uk). A current marketing campaign is underway to explore new opportunities and methods of promoting the scheme further, and to encourage personnel to advise the solicitors running the ToPaS scheme about accidents within 5 days of them occurring.

14.59 The ToPaS scheme has continued to flourish assisting hundreds of injured Ministry of Defence personnel each year. One of the problems has been communicating details of the scheme across the length and breadth of the Ministry. Many people within the Department are still unaware of the scheme, which has been in existence since November 2000. In fact, only in May 2004 one soldier was assisted under the scheme having previously been unaware of this no expense facility. If he had left it more than one month later he would have been time barred from bringing a claim. He suffered injuries in a road traffic accident which was not his fault where the driver was untraced. This lack of knowledge of the scheme is a fairly typical example of the need to increase publicity of the ToPaS scheme.

14.60 As a consequence, in May 2004, former Warrant Officer 1 Carl Crawley upon retiring from the Army at DLO Andover was appointed the ToPaS Development Director. Carl's brief is to develop knowledge of the ToPaS scheme within the Ministry of Defence so that personnel will have the opportunity to avail themselves of the scheme should they so wish.

14.61 Mr. Crawley is available to provide information leaflets, documentation and presentations about the scheme. He can be contacted as follows

Carl Crawley  
ToPaS Development Director  
PO BOX 1843  
ANDOVER  
SP11 8WD  
Tel: 0870 9989999

Mobile: 07960258664

e-mail: xxxx.xxxxxxx@xxxxx.xxx.xx

## **DS&C(CLAIMS) - ORGANISATION**

### **CHIEF CLAIMS OFFICER - BAND B1**

### **SENIOR CLAIMS OFFICER (CLAIMS HANDLING) - BAND C1**

Responsible for 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

#### **STAFF:**

Indemnities & Insurance Adviser	Band D
Assistant Adviser Indemnities & Insurance	Band E1
Policy & Contracts Adviser	Band D
Motor Transport Liabilities Adviser	Band D
2 Budget Managers	Band D
Budget Officer	Band E1
Payment Co-ordinator	Band E2
Focal Point Manager	Band E1
2 Focal Point Administrators	Band E2

#### **RESPONSIBILITIES:**

##### **FINANCIAL MANAGEMENT**

Budget management and financial planning for DS&C and the financial management of DS&C(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

##### **THIRD PARTY MOTOR CLAIMS**

Policy relating to third party motor claims and liaison with AXA Corporate Solution Services Ltd.

##### **REGULATIONAL CLAIMS POLICY**

Policy for Regulational 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).

**CONTRACTUAL MATTERS**

Liaison with contractors working for DS&C and the Ministry of Defence's commercial branch on contractual issues.

**EMPLOYER'S LIABILITY GROUP****STAFF:**

Team Leader	Band C2
2 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 which has dealt with this type of claim since 1 July 1996.

**CIVILIAN PERSONNEL EMPLOYER'S LIABILITY CLAIMS**

Managing the contracts with AXA which deals with claims of this type notified before 1 May 2002 and with Royal and Sun Alliance which deals with claims of this type notified on or after 1 May 2002.

**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, including Nuclear Test Veterans.

**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
3 Assistant Case Manager	Band E1
1 Section Administrator	Band E2

### **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 and road traffic accidents overseas in countries not covered by an Area Claims Officer.

#### **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 human volunteer research no-fault compensation scheme.

#### **CRIMINAL INJURIES COMPENSATION**

Responsible for criminal injuries compensation claims from Ministry of Defence Civil Servants' dependants based overseas.

#### **NON-MARITIME RECOVERIES**

Recovery of the Ministry of Defence's uninsured financial losses, excluding those arising from traffic accidents in the UK.

## **CLINICAL NEGLIGENCE GROUP**

### **STAFF:**

Team Leader	Band C2
3 Case Managers	Band D
1 Assistant Case Manager	Band E1

1 Part-time Assistant Case Manager

Band E1

**RESPONSIBILITIES:**

**CLINICAL NEGLIGENCE**

Claims for compensation where it is alleged that the Ministry of Defence has acted negligently.

**EMPLOYMENT TRIBUNALS**

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

**GULF VETERANS' ILLNESS**

Potential claims for alleged Gulf War illness.

**POST TRAUMATIC STRESS DISORDER**

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

**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 to devise ways of reducing the causes of incidents. Secretariat to the Claims Risk Management Working Group. Risk management statistics. Claims and risk presentations

**INFORMATION TECHNOLOGY SYSTEMS**

DS&C(Claims) information technology (IT) systems (CHOTS, RAPID, and CHASP).

## **DS&C(CLAIMS) STAFF, PROGRAMME AND OPERATING COSTS - FINANCIAL YEAR 2003/04**

### **CLAIMS EXPENDITURE 2003/04**

DESCRIPTION	£ MILLION
<b>IN YEAR EXPENDITURE</b>	
Compensation and associated legal costs	80.7
Receipts	-1.5
Operating costs	1.7
<b>PROVISION FOR FUTURE PAYMENTS</b>	19.8
Interest charge	3.2
<b>TOTAL</b>	<b>103.9</b>

The figure for total expenditure of £103.9 million is not directly comparable with those shown in previous Claims Annual Reports because of changes to the Ministry of Defence's accounting system and organisation.

Ministry of Defence's accounts are now (in common with those of other government departments) prepared on a resource accounting basis, as opposed to a cash basis. This results in additional charges to the Claims budget to allow for the liability to make future payments and for the cost of capital.

Also, due to reorganisation the costs attributable to Legal Branch are no longer included.

## DS&C(CLAIMS) STAFFING AS AT 31 MARCH 2004

GRADE	ESTABLISHED POSTS	ROLE
B1	1	Chief Claims Officer
C1	2	Senior Claims Officer
C2	4	Team Leaders
D	15	8 Claims Managers 2 Budget Managers 1 Policy & Contracts Adviser 1 Insurance and Indemnities Adviser 1 Risk Policy Adviser 1 Risk & IT Manager 1 Motor Tpt Liabilities Adviser
E1	10	6 Assistant Claims Managers 1 Asst Risk & IT Adviser 1 Budget Officer 1 Asst Adviser Indemnities & Insurance 1 Focal Point Leader
E2	5	1 Payment Co-ordinator 2 Section Administrators 2 Focal Point Administrators

## ANNEX B

### **TOP 20 CASES SETTLED BY DS&C(CLAIMS) 2003/04**

<b>CLAIMANT</b>	<b>TYPE OF INJURY/LOSS</b>	<b>COMPENSATION*</b>
Public Liability	Personal Injury – Kenyan claimant group action	£5.8M
Public Liability	Clinical Negligence - Failure to supervise birth resulting in cerebral palsy	£2.4M
Army	Clinical Negligence - Fractured skull and elbow	£1.2M
Public Liability	Clinical Negligence - Failure to supervise birth resulting in cerebral palsy	£1M
Royal Marines	Personal Injury - Head Injury 51% contributory negligence	£740K
Public Liability	Clinical Negligence - Misreporting of cervical smear test resulting in cancer	£720K
RAF	Personal Injury - Parachute accident	£400K
Army	Clinical Negligence - Failed to diagnose appendicitis	£250K
Public Liability	Clinical Negligence - Discectomy	£230K
Navy	Clinical Negligence - Surgery on foot	£200K
Navy	Clinical Negligence - Failed to diagnose leg fracture.	£190K
Army	Personal Injury - Skiing accident.	£190K
Royal Marine	Clinical Negligence & Personal Injury - Ligament damage to leg	£150K
Public Liability	Personal Injury - Army Lorry went into a ditch	£140K
Army	Clinical Negligence - Failure to diagnose a fractured wrist.	£140K
RAF	Clinical Negligence - Negligent treatment of a fractured wrist bone	£120K
Public Liability	Personal Injury - Hand injured when trapped between a gate	£120K
Public Liability	Personal Injury - Injured when a pillar gave way	£110K
Army	Personal Injury - Injured back changing Land Rover wheel	£110K
Public Liability	Clinical Negligence - Surgery to throat damaged vocal cords and scarring	£110K

\* Inclusive of claimant's costs

## ANNEX C

### TOP 10 SERVICE PERSONNEL CASES SETTLED BY RSA 2003/04

TYPE OF INJURY/LOSS	COMPENSATION *
Injured in boating accident	£4,207,099
Diving accident	£1,093,099
Injured in aircraft crash	£936,233
Injured in Road Traffic Accident	£873,852
Injured in aircraft crash	£733,250
Killed in aircraft crash	£706,520
Killed in aircraft crash	£565,000
Injured in Road Traffic Accident	£545,000
Killed in aircraft crash	£542,736
Killed in aircraft crash	£535,000

\* Inclusive of claimant's costs

**TOP TEN CIVILIAN PERSONNEL CASES SETTLED  
BY AXA AND RSA 2003/04**

<b>TYPE OF INJURY/LOSS</b>	<b>COMPENSATION *</b>
Asbestos related disease	£227,222
Asbestos related disease	£193,176
Asbestos related disease	£190,579
Asbestos related disease	£170,132
Foot injury	£169,244
Back Injury	£163,244
Asbestos related disease	£159,239
Asbestos related disease	£142,794
Asbestos related disease	£142,047
Asbestos related disease	£137,332

\* Inclusive of claimant's costs



## DISTRIBUTION LIST

APS/Secretary of State  
 APS/Minister(AF)  
 APS/Minister(DP)  
 APS/USofS  
 Parliamentary Branch

DPSO/CDS  
 PS/VCDS

CNS  
 CGS  
 CAS  
 CDL

DCDS (C)  
 DCDS (EC)  
 DCDS (Pers)  
 DCDS (Pers) BMU  
 DCDL  
 DCDS (Health)

CinC Fleet  
 CinC Naval Home Command  
 CinC Land  
 AG  
 GOC NI  
 AOCinC(STC)  
 AOCinC(PTC)  
 CJO  
 CE/DPA

PS/PUS  
 PS/2<sup>nd</sup> PUS  
 PS/CSA  
 Policy Director  
 Personnel Director  
 Finance Director  
 Science & Technology Director

DG SP (Pol)  
 D SP Pol(P&W)  
 D SP Pol(Man)  
 D SP Pol(MW)  
 D SP Pol(PA)  
 D SP Pol(SC)

AD IRU  
 AD2 CEDU  
 D CP HRM  
 D CP PA  
 AD CP Allowances  
 D CB(Pers)  
 D CPM 1  
 D CPM 2

DGMO  
 DGS&S  
 DGRP  
 D P&A  
 DG Info  
 DGCC  
 DCCS  
 DCC(N)  
 DCC(A)  
 DCC(RAF)

MOD Legal Adviser  
 JAF  
 JAG  
 CNJA  
 DALS  
 DLS(RAF)  
 DGNPSP  
 DPS(A)  
 COS/AMP

Hd NP Sec  
 Hd NMA Sec  
 APC Secretariat (2 copies)  
 APC (Litigation)  
 Hd AMP Sec  
 PMA (CS) (RAF)  
 PM(N)  
 PM(A)

D S&C  
 CESO(Navy)  
 CESO(Army)  
 CESO(RAF)  
 Ship Safety Management Office  
 H&S FOSF

DGCP  
D CP Pol  
D CP ER

D Fin Pol  
D RP(Centre)  
D Navy RP  
D Army RP  
D Air RP  
DCDS(Health) (2 copies)  
SGD AD BM  
Medical Director General (Navy) – SO1  
AMD(Navy)  
AMD (Med Leg) (2 copies)  
AMD (Legal) (RAF)  
Med Org 2(RAF)  
SO1 Prev Med UKSC(G)

CIVSEC/HQNI  
CS/HQ UKSC(G)  
CS HQ BF Cyprus  
CS HQ BFFI  
CS/Gib  
CS/Iraq  
Hd Def Admin (BDSW)

Area Claims Officer NI  
Area Claims Officer North West Europe  
Area Claims Officer Cyprus  
Area Claims Officer Kosovo  
Area Claims Officer Falkland Islands  
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HQNI CSS(Tpt)  
HQ BFC J4(Tpt & Mov)  
CSV (IPT)  
LAIT RO2A  
DTMA Bus Tvl Man (Sfc)  
HQRW WO1d  
Command Master Driver HQ LAND  
Command Master Driver HQNI  
Master Driver HQ 2 SE Brigade  
Master Driver HQ 49 Inf Brigade  
SO3 Log Sp Catterick Garrison

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