



Ministry of Defence
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Claims

Annual Report

2009/2010



Investor in People

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Introduction by the Head of Common Law Claims & Policy

This report covers another busy year in the Common Law Claims & Policy Division and aims to set out how much we pay in compensation together with an explanation of the legal process and why the expenditure is incurred. An additional, but equally important aim is to raise awareness of avoidable incidents that give rise to claims. Overall cash payments were £89.9M. Over the same period recoveries of £1.1M were achieved.

The spectrum of claims brought against the Ministry of Defence is wide and provides unique challenges not faced by any other defendants or organisations. These range from high value complex claims relating to death or catastrophic injury to comparatively low value 'trips and slips'. Claims are either handled in house by the CLC&P team or by our commercial claims handlers Gallagher Bassett International. Those claims arising overseas are handled by our dedicated Area Claims Officers or in London by CLC&P.

In addition to our core business we are currently handling claims emanating from Iraq and Afghanistan, the Nuclear Test Veterans Group Action hearing in the Court of Appeal together with claims brought by the families of the Service personnel tragically killed in the Nimrod and Hercules aircraft accidents.

While efforts are made to identify and reduce the number of incidents that give rise to claims being brought against the Ministry of Defence through a regime of better risk management and education, the cost of such claims continues to rise. Such increases are not restricted to MOD, but all defendants facing common law claims. The increasing value of legal costs associated with claims continues to attract attention grabbing headlines and reason for concern. As reported in last year's Claims Annual Report, the Ministry of Defence therefore welcomed Lord Justice Jackson's review on reforming civil litigation costs. The review which was published at the beginning of the year set out his findings and recommendations for changing the way litigation is funded with the aim of making use of the courts more affordable. The recommendations are under consideration by the Ministry of Justice, and we eagerly await developments.

At the end of March the last member of staff in CLC&P that had opted for early release under the auspices of Streamlining left the Ministry of Defence. Over the year the headcount in CLC&P of 32.5 reduced to 22.5, leaving a smaller team facing some extremely big cases such as those mentioned above. With effect from 9 June 2010, we relocated from St George's Court to Main Building. Details of our new address are below.

In order that claims staff keep abreast of developments in the law, and to ensure that they have the knowledge, experience and confidence to manage claims brought against the Ministry of Defence, Claims handling staff undertake an on-going structured package of functional training. This is provided by Professor

Dominic Regan, a visiting legal academic, as well as ad-hoc training by our panel solicitors Beachcroft, Berryman Lace Mawer, Kennedys and Morton Fraser our legal services provider in Scotland.

Lastly, I would like to acknowledge the work of the Area Claims Office in Afghanistan. The existing compliment is 2 Pay Band C2 officers, who deploy on 6 month rolling tours. As the Support to Operations Claims Role Owner, I am encouraged by the number of suitable applicants who volunteer and do a thoroughly professional job in very demanding circumstances. Any Pay Band C2 officers who would like to be considered for deployment as an Area Claims Officer should register their interest with the Public liability Group Team Leader, on 020 7218 0380. The posts will however be formally advertised in the Job Opportunity Bulletin (JOB) later this year.

Additional copies of this report are available from the CLC&P iHub, Spine 3 Zone I, MOD Main Building, Whitehall, London SW1A 2HB. Copies can also be found on the Defence Intranet.

Jef Mitchell
Head of Common Law Claims & Policy

Executive Summary

1. Total CLC&P cash payments in the year 2009/2010 were £89.97 million. Over the same period recoveries totalling £1.14 million were achieved.
2. The highest claim settled in year was £4.39 million.
3. The total number of new claims lodged in year with CLC&P or the Department's commercial claims handlers was 4, 601
4. 872 Service personnel employers' liability claims were settled at a total cost of £39.8 million.
5. 732 Civilian employer's liability claims were settled at a total cost of £20.8 million.
6. 457 Public liability claims were settled at a total cost of £6.2 million.
7. 2261 Third Party motor claims in the UK were settled at a total cost of £5.4 million.
8. 38 Clinical Negligence claims were settled at a total cost of £14.7 million.
9. 141 Porton Down claims were settled at a total cost of £1.4 million.
10. ACO Afghanistan settled 969 cases at a total cost of £1.14 million.
11. ACO North West Europe settled 550 cases at a total cost of £1.16 million.
12. ACO Cyprus settled 140 cases at a total cost of £153K.
13. ACO South Atlantic Islands settled 2 cases at a total cost of £1.9K.

Section One

Introduction

Organisation

1.1 Common Law Claims and Policy (CLC&P) has, with effect from 3 November 2008, been a stand alone Division headed by a 1* and is part of the 2* Directorate of Business Resilience. This results from the wide ranging streamlining exercise carried out across the MOD Headquarters and reflects the high profile nature and complexity of the work undertaken by Claims. CLC&P moved from St George's Court to Main Building on 9 June 2010.

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

Responsibilities

1.3 In addition to being responsible for processing common law compensation claims, CLC&P also has a number of other important responsibilities such as providing claims policy advice, handling some residual 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 continued to deal with a large number of Parliamentary Questions, Ministerial Correspondence, Treat Official Correspondence and Freedom of Information requests.

1.4 Area Claims Officers (ACOs) and their staff are located in areas where there is a sizeable defence presence – Afghanistan, Cyprus, North West Europe, and the South Atlantic Islands. ACOs are accountable to the appropriate Civil Secretary, but have a professional responsibility to the Head of CLC&P. The ACO office in Iraq, based in Basrah, closed during the summer of 2009 following the drawdown of British forces from Iraq.

Policy and Procedures

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

1.6 The amount of compensation paid is determined by common law principles which, broadly, take account, as appropriate, of an individual's pain and suffering, degree of injury, property losses, past and future financial losses, level of care required. Levels of compensation including these elements can vary greatly depending on an individual's circumstances. Advice is sought where necessary from Treasury Solicitor's Department, and our commercial claims handlers' panel solicitors for cases brought in England and Wales; the Crown Solicitor in Northern Ireland; and Morton Fraser Solicitors, the Department's legal adviser in Scotland. Queen's Counsel and junior barristers are also consulted on high profile or complex cases or where a point of law needs to be explored. The overwhelming majority of cases are settled through amicable negotiation without claimants having to take the Ministry of Defence to court.

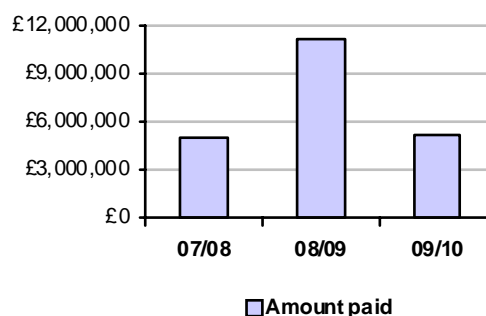
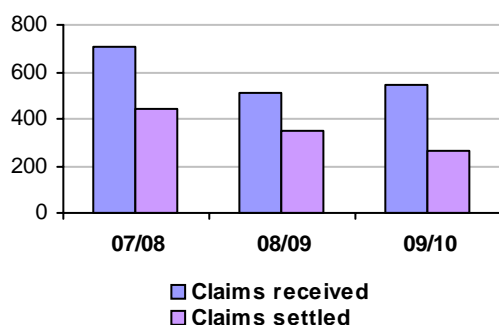
Section Two

Public Liability Claims

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

2.2 Property damage claims usually emanate from personnel working and living in service accommodation who, for example, have had their belongings damaged by the poor maintenance of the properties they occupy.

	2007/08	2008/09	2009/10
Number of PL Claims Received	705	512	548
Number of PL Claims Settled	441	353	263
Amount Paid (£)	£5.0M	£11.1M	£5.2M



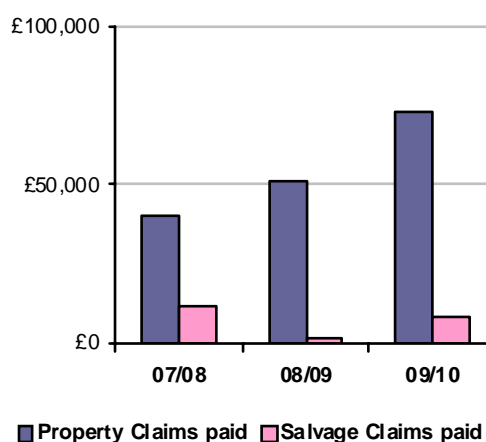
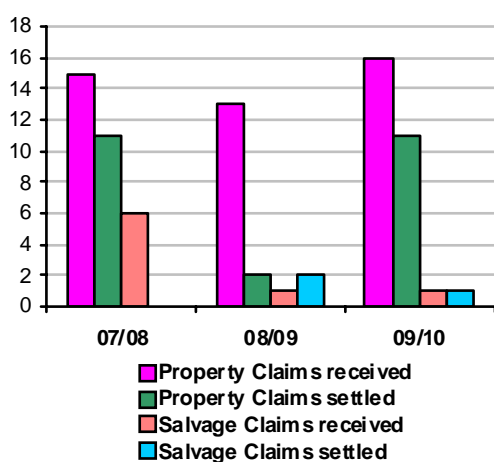
2.3 PLT continues to handle claims from Iraqi citizens who were the victims of abuse and torture whilst held in detention. The ACO Basrah office closed in August 2009 following the draw down of British forces from Iraq and a small number of residual claims continue to be handled by the PLT. ACO Lashkar Gah continues to handle claims locally in Afghanistan.

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

Maritime Claims

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

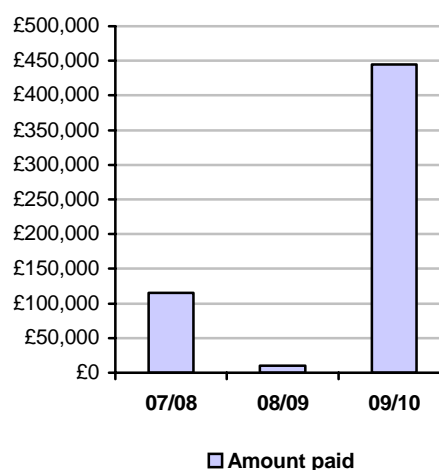
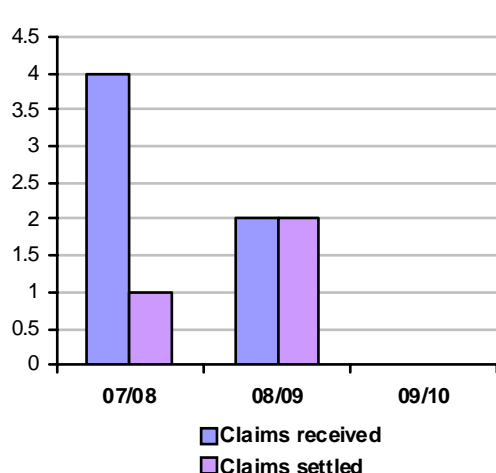
	2007/08	2008/09	2009/10
Number of property claims received	15	13	16
Number of property claims settled	11	2	11
Amount paid (£)	£40,038	£51,535	£72,736
Number of salvage claims received	6	1	1
Number of salvage claims settled	0	2	1
Amount paid (£)	£11,693	£2,158	£8,879



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

claims reflect the net effect of salvage claims paid by Ministry of Defence and a successful recovery.

	2006/07	2008/09	2009/10
Number of maritime recovery and salvage claims initiated	4	2	0
Number of maritime recovery and salvage claims settled	1	2	0
Amount recovered (£)	£115,676	£9,751	£444,282



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

	2007/08	2008/09	2009/10
Number of claims settled by FOSNNI	14	16	12
Amount paid by FOSNNI	£29,000	£33,570	£29,939
Number of claims settled by FOST	10	9	19
Amount paid by FOST	£12,000	£10,863	£31,447
Total amount paid	£41,000	£44,433	£61,386

Low Flying Military Aircraft Claims

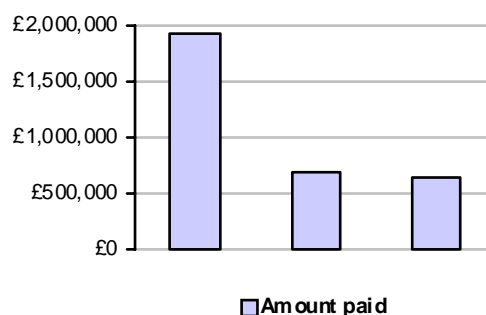
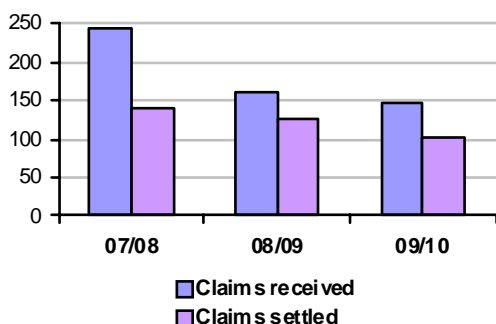
2.8 The activities of low flying military aircraft can give rise to claims for compensation from members of the public. The most common claims are those involving injury to, or death of, livestock and/or damage to property although claims are sometimes received for personal injury. Many of the claims are for relatively small amounts. Such claims are handled on an *ex-gratia* basis, but are investigated in the same way as if the principles of common law legal liability applied. The foundation of this approach is the Royal Prerogative, which gives an absolute right for all military flying activity, and, therefore, an injured party has no legal rights of redress for compensation. Lord Drumalbyn set out this approach in a Lords Written Answer on 22 November 1971 (Official Report Column 888):

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

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

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

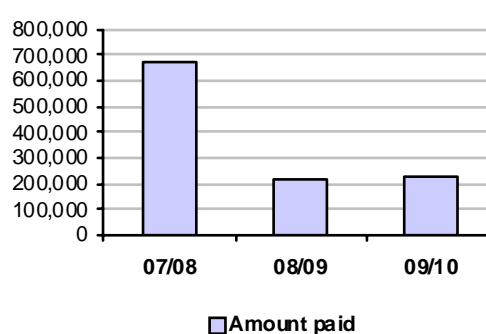
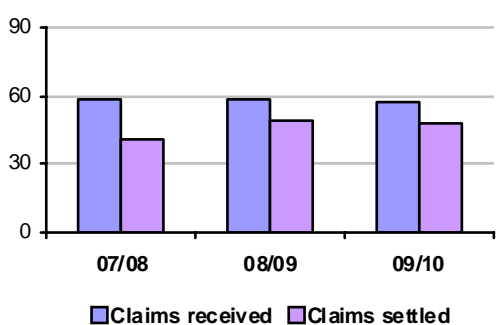
	2007/08	2008/09	2009/10
Number of claims received	244	161	146
Number of claims settled	141	126	103
Amount paid (£)	£1.93M	£0.69M	£0.65M



Visiting Forces Claims

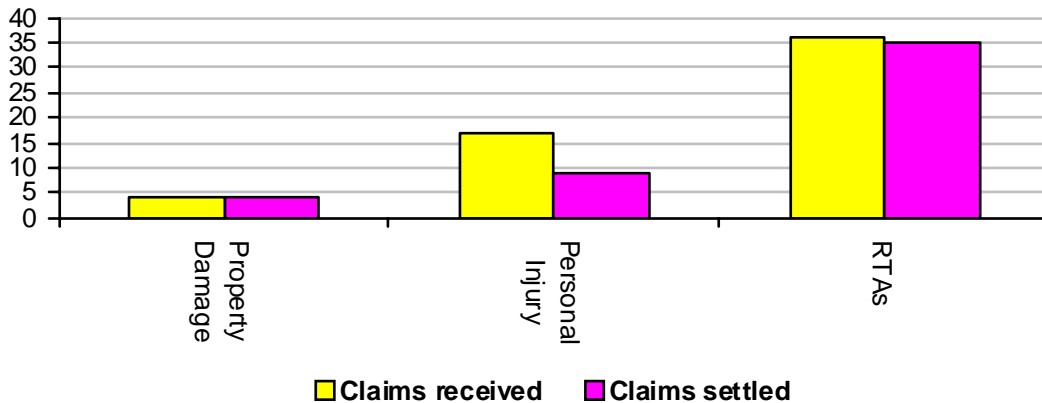
2.11 PLT handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII of the NATO Status of Forces Agreement (SOFA) and Section 9 of the Visiting Forces Act 1952. Such claims could be on behalf of any of the states who are signatories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

	2007/08	2008/09	2009/10
Number of visiting forces claims received	58	58	57
Number of visiting forces claims settled	41	49	48
Compensation paid (£)	£677,269	£219,275	£226,594



Visiting Forces claims can be categorised as follows:

2009/10	Clinical Negligence	Property Damage	Personal Injury	RTAs	Total
Claims Received	0	4	17	36	57
Claims Settled	0	4	9	35	48
Compensation Paid (£)	£9,039	£6,046	£146,771	£64,738	£226,594



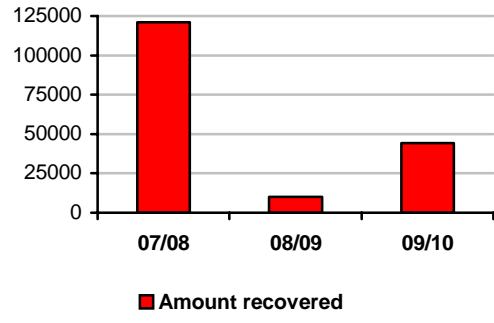
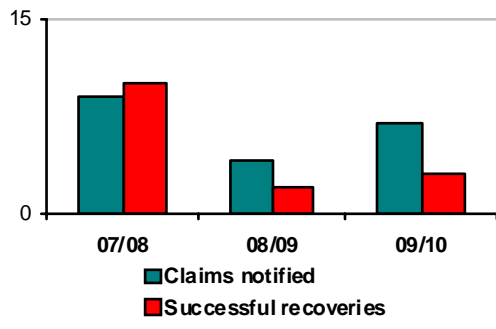
Financial Recoveries

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

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

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

	2007/08	2008/09	2009/10
Number of claims notified	9	4	7
Number of successful recoveries	10	2	3
Amount recovered (£)	£120,854	£9,995	£44,137



Section Three

Service Personnel Employer's Liability Claims

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

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

3.3 Mr Matthews, an ex-serviceman suffering from an asbestos related disease, challenged this position on the basis that Section 10 of the Crown Proceedings Act 1947 is incompatible with the European Convention of Human Rights. Mr Matthews alleged a breach of Article 2 (right to life) and Article 6 (due process rights) of the Human Rights Act. The case under Article 2 was that by exposing him to asbestos dust the Crown was in breach of its obligation to take positive steps to safeguard his health. The case under Article 6 was that Section 10 of the Crown Proceedings Act is a 'blanket' immunity which deprives him of his right of access to the Court. The matter was heard in the High Court in December 2001 and judgment handed down by Mr Justice Keith on 22 January 2002 in favour of the claimant. The Department, however, secured leave to take this matter expeditiously to the Court of Appeal and the hearing took place in April 2002. The Court of Appeal overturned Mr Justice Keith's decision on 29 May 2002, but granted leave for Mr Matthews to take this matter to the House of Lords. Their Lordships considered this matter in January 2003 and handed down a unanimous judgment on 13 February in favour of the Ministry of Defence. The five Law Lords agreed that there had never been the right in national law that Mr Matthews sought to assert i.e. that a member of the Armed Forces could sue the

Crown in tort, and that he has no “civil right” that Article 6 of the European Convention on Human Rights can operate to protect.

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

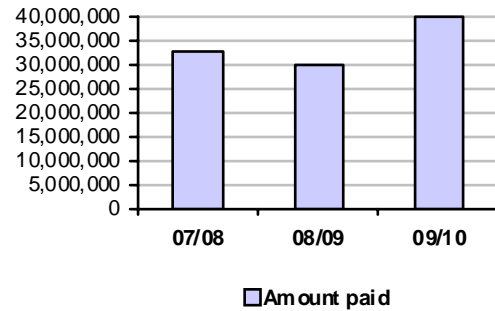
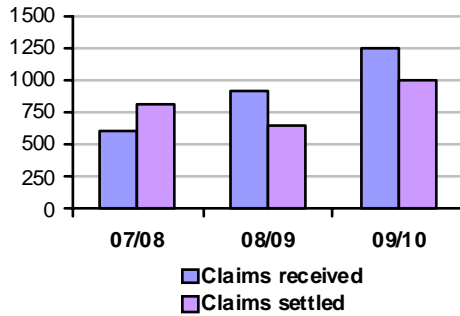
3.5 The AFCS is designed to provide compensation, irrespective of fault, across the full range of circumstances in which illness, injury or death may arise as a result of service. The AFCS does not seek to affect a person’s right to make a civil claim if the illness, injury or death was caused by the Department’s negligence.

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

3.7 The handling of routine personal injury claims from Service and ex-service personnel was contracted out with effect from 1 July 1996. Royal and Sun Alliance held the contract until 30 April 2007, at which time Gallagher Bassett International Limited were awarded a five-year contract following a competitive tender exercise. Claims of a political or sensitive nature, are handled in house by CLC&P.

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

	2007/08	2008/09	2009/10
Number of claims received	603	922	1115
Number of claims settled	812	657	872
Amount paid (£)	£32.7M	£29.8M	£39.8M



Combat Immunity

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

"One soldier did not owe to another a duty of care in tort when engaging the enemy in the course of hostilities.

Furthermore there was no duty on the Ministry of Defence to maintain a safe system of work in battle conditions. Accordingly, a soldier who was injured in battle conditions did not have a cause of action in negligence against the Ministry."

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

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

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

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

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

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

3.11 In *Bici -v- MOD*, Elias J narrowed the judgment in *Bell & Others* by stating:
“*But any such threat must in my view be imminent and serious*”.

Summary of Group Actions

Locally Engaged Civilians Claims (Iraq)

3.12 The Ministry of Defence, Foreign and Commonwealth Office (FCO) and the Department of International Development (DfID) are joint defendants in this Group Action. It has been agreed that the Ministry of Defence will take overall lead conduct of this matter because this Department has responsibility for the largest number of claimants.

3.13 Claims for compensation were initially brought by 26 Iraqi civilians, or their dependents, who were employed by the British Government in Iraq, primarily Basra, during the period 2003 to 2008 as part of Operation Telic as Locally Engaged Civilians (LECs). This number has increased to about 200.

3.14 The claimants allege that the Defendants should have known that locally engaged staff would be at significant risk of intimidation in the form of being tortured, kidnapped, taken hostage or otherwise injured by those opposed to the British presence in Iraq. It is claimed that a similar threat had been previously posed to locally engaged staff in Kosovo – therefore the Defendants, were under a duty, whether in English or Iraqi law, to take steps to avoid and/or reduce the risks.

3.15 The Claimants allege that the actual steps taken by the Defendants were “woefully inadequate” and that the policies were insufficient. There was a failure to take obvious and sensible steps to protect the identities of the LECs. Further, once their safety had been compromised, there was a failure by the Defendants to take adequate steps to protect the LECs’ security. The Claimants plead their case on a generic and case specific basis.

Nuclear Test Veterans

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

protective clothing was used where appropriate for each trial. The effectiveness of these procedures is demonstrated by the fact that the majority of participants received little or no additional radiation exposure as a result of participation.

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

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

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

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

3.21. Particulars of Claim were served on 29 December 2006, around a week before the claim would otherwise have lapsed. The MOD served a Summary Defence on 21 January 2008 and a High Court trial was held between 21 January and 6 February 2009 to rule on limitation only; whether the MOD is prejudiced by the delay in bringing the claims given that many of its key

witnesses are no longer alive, or able due to age, infirmity or loss of memory to give evidence. MOD, working closely with the Atomic Weapons Establishment at Aldermaston, disclosed a list of 12,295 documents in June 2008 that are considered relevant to the proceedings and the parties identified five lead cases each which they considered representative of the entire claimant cohort.

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

- Mr Justice Foskett found 5 of the lead cases to be time-barred and 5 were not time-barred. Importantly, in the 5 cases found to be time barred he exercised the Court's discretion to permit an out of time case to proceed to trial (the section 33 Limitation Act 1980 discretion). This means that if not successfully appealed or not otherwise summarily disposed of or discontinued, all 10 lead cases and indeed the Group Action of 1,011 cases may now proceed to a trial on causation and breach of duty.
- He did not find that MOD (or any other public body) concealed any evidence from the veterans or their representatives. Neither did he criticise MOD for the way in which it disclosed documents in these proceedings nor the way in which it released material to the National Archives. There was no criticism of the War Pension Scheme.
- He expressed concern about whether or not the Claimants can prove their case, particularly whether any of them can prove that they have a condition caused by exposure to ionising radiation at the tests. He said that he did not want the Claimants to be misled by his judgment into thinking that they will be successful at trial, which he refers to as a 'false dawn'.
- He essentially declined to express a conclusion on whether or not the Claimants are unable to prove causation based upon the current applicable legal test, considering the matter best dealt with at trial and believing that the Claimants need to adduce more expert evidence in order to have a hope of success. He acknowledged that the case law as it stands and if strictly read poses a potential problem for the Claimants, but considers that the law is in flux on this point and may be developed to assist the Claimants in the future.
- He appeared to accept the premise that the Rowland report may provide the Claimants with at least an arguable starting point for their case on causation but acknowledged that the Claimants will need more evidence to succeed at trial. He "assumes Rowland will withstand scrutiny".
- He was of the view that the case can be fairly tried on the documentary evidence available and that the absence of many key live witnesses would not be unfair or prejudice the MOD's case.

- He concluded that it would be “a very regrettable consequence” if it was necessary to decide that some cases could go forward to trial and that others could not. In handing down the judgment he says that a layman would say that to be fair to the claimants the case should proceed to a causation trial.
- He acknowledged that it may be an injustice to MOD if it had to pay the Claimant’s costs of the case because it was successful at the limitation hearing but it is later discontinued because it is without merit in relation to causation or breach of duty. He invited submissions as to how the Court might obviate that potential injustice.
- He invited the parties to negotiate a settlement via mediation.

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

3.24. In order to protect the Ministry’s position, grounds for appeal were lodged at the Court of Appeal on 12 October 2009. The Appeal was heard by Lady Justice Smith, Lord Justice Leveson and Sir Mark Waller between 7 and 14 May 2010, but a decision is not expected for several months.

Porton Down

3.25 Claims for compensation were received in March 2007 from solicitors representing 360 former volunteers who took part in non-therapeutic human trials at Porton Down. The claimants alleged either short term injury arising immediately after the trial in question, or long-term injury whereby an illness had arisen later in life, which they believed was directly due to the trials, they participated in.

3.26 The majority of the claims related to experiments involving nerve agents (including sarin), mustard gas and riot control agents such as CS gas. All the claimants claimed they suffered personal injury resulting from participating in these trials.

3.27 The Department indicated to the claimants’ solicitors in September 2007 that it was willing to explore a settlement by way of mediation and two mediation meetings took place on 21 December 2007 and 11 January 2008.

3.28 As a result of these mediation meetings amicable settlement was reached in respect of these claims. The settlement was made without admission of liability by the Ministry of Defence and involved the global payment of £3M in full and final settlement of all claims made by the group, together with an apology by the

Department; USofS made a written statement in the House of Commons on 31 January 2008. In addition, as is normal practice, the Ministry of Defence agreed to meet the claimants' reasonable legal costs in connection with these claims.

3.29 Following settlement of the Group Action claims, additional veterans, not part of the original Group Action, came forward seeking compensation. The Ministry of Defence recognised that more veterans, some of whom decided against joining the Group Action, might come forward. This is despite being assured by the claimants' solicitors that the Group Action had been well publicised and that those who remained in the group had been carefully selected on the basis that each had a meritorious claim for personal injury said to have been caused by exposure to a specific chemical warfare or treatment agent which was supported by expert evidence.

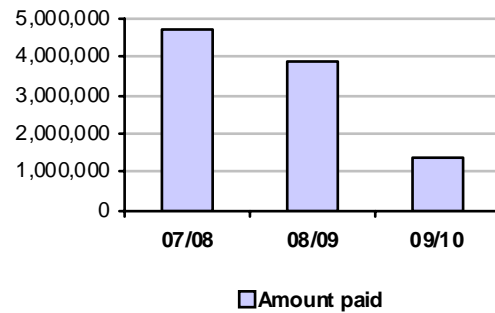
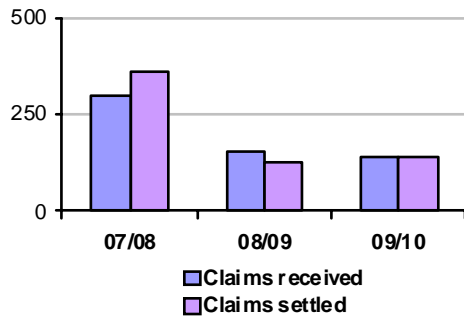
3.30 Against this background, the Ministry of Defence decided that it would consider any additional meritorious claims that were made on or before 30 June 2008; after that date, the Ministry of Defence reserved the right to plead a defence based on the provisions of the Limitation Act 1980.

3.31 A second tranche of Porton Down claims was submitted for consideration. The numbers of additional claims that were accepted totalled in excess of 400. 270 of these claims have been accepted and have now been amicably settled. Some claims were turned down as there was insufficient evidence to confirm attendance at Porton Down or alternatively the individual underwent testing but did not suffer any injury or illness. Staff at Dstl Porton Down provided valuable assistance in this exercise.

3.32 The MOD considers that all bar a handful of claims, which we hope to conclude in the early part of 2010/2011, have now been resolved and no further claims are expected to be submitted.

3.33 Details of compensation payments made in relation to Porton Down claims over the past three years are shown below. The expenditure in 2008/2009 also reflects the payment of agreed legal costs of those claimants whose claims were settled in 2007/2008.

	2007/08	2008/09	2009/10
Number of New Claims	298	152	140
Number of Claims Settled	360	130	141
Compensation Paid (including legal costs)	£4,700,000	£3,873,294	£1,395,391



Gulf War Claims

3.34 The Ministry of Defence accepts that some veterans of the 1990/1991 Gulf Conflict have become ill and that many believe that this ill-health is unusual and directly related to their participation in the conflict.

3.35 The Ministry of Defence has received approximately 2,000 notifications of “intentions to claim” from Gulf War Veterans or their dependants, but as yet no writs have been served or claims made of sufficient detail for the Department to be able to start considering these claims.

Radiation Compensation Scheme

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

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

3.39 The Scheme provides for payments to be made for lower levels of causation probability than would be allowed by the Courts. In addition the Scheme provides “full” payment of compensation at a level of 50% causation probability and lesser payments down to a level of 20% causation probability. In

this way the assessment of a case recognises that even below the balance of probability there is a chance that exposure to occupational ionising radiation played a role in the disease.

3.40 During financial year 2009/2010, the Scheme received 8 new claims from former Ministry of Defence employees (military and civilian) who believe their illness is associated with exposure to occupational ionising radiation. .

Asbestos Claims

3.41 Prior to May 1987, Service personnel were prevented by law from pursuing claims for compensation from the Ministry of Defence by Section 10 of The Crown Proceedings Act 1947 (Crown Immunity prevented claims from being made prior to 1947). This point of law applies to all Service personnel and has no bearing on rank, status or place of employment. However, Section 10 was repealed by The Crown Proceedings (Armed Forces) Act 1987. Since the change in the law, which was not made retrospective, Service personnel who suffer loss or injury as a result of negligence by the Ministry of Defence have been entitled to make common law claims for compensation. When compensation claims are submitted, they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a legal liability to pay compensation we do so.

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

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

3.44 Compensation in the form of a War Pension is available, however, to all former members of HM Forces suffering from Service attributable illness or injury. War Pensions are paid by the Service Personnel Veterans Agency, are non-discretionary, not means-tested and are made on a no-fault and

retrospective basis. They are up-rated annually and are tax-free. The Service Personnel Veterans Agency also makes provision for the widows of Service and ex-Service personnel whose death is attributable to service in the form of a War Widows Pension.

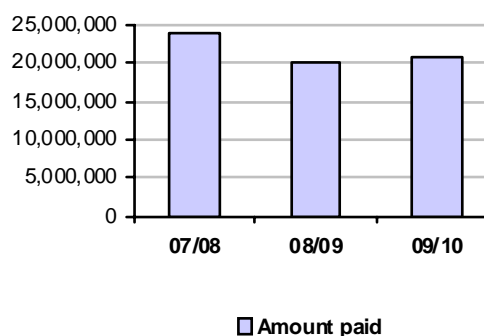
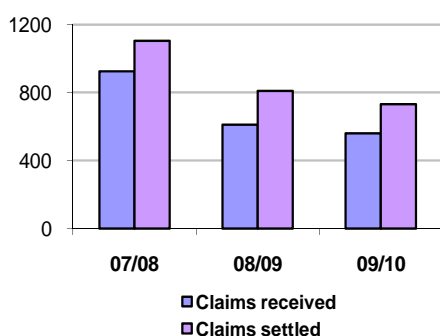
3.45 Former civilian employees, who are not bound by the provisions of Section 10 of the Crown Proceedings Act 1947, are, of course, able to pursue common-law claims for compensation.

Section Four

Civilian Staff Employer's Liability Claims

4.1 Since 1982, the Ministry of Defence has contracted out the handling of its civilian employee Employer's Liability claims. Gallagher Bassett International Limited were awarded a five-year contract to handle all newly notified civilian Employer's Liability claims from 1 May 2007. Many of the claims relate to asbestos related illnesses and noise induced hearing loss..

	2007/08	2008/09	2009/10
Number of claims received	924	610	560
Number of claims settled	1105	809	732
Amount paid (£)	£23.8M	£20.1M	£20.8M



Section Five

Motor Claims

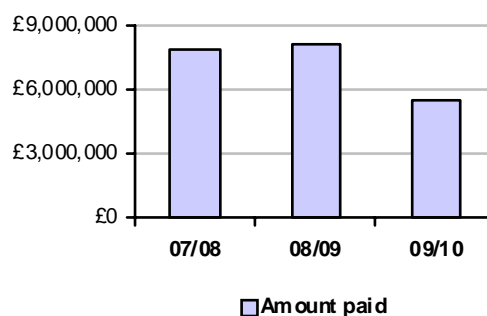
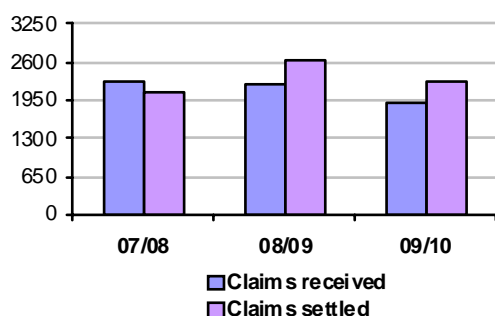
Third Party Motor Claims - UK

5.1 Since 1982 the Ministry of Defence has contracted out the handling of claims made against the Department by other road users. Up to 30 April 2007 the contract was held by AXA Corporate Solutions Services Ltd. However following a further competitive tendering exercise the contract was let to Gallagher Bassett International Ltd for a period of five years from 1 May 2007 to 30 April 2012.

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

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

	2007/08	2008/09	2009/10
Number of claims received	2263	2236	1923
Number of claims settled	2084	2642	2261
Amount paid (£)	£7.9M	£8.1M	£5.4M

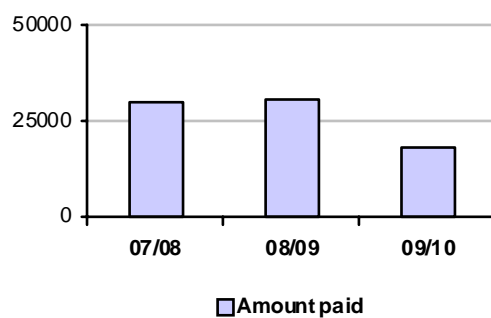
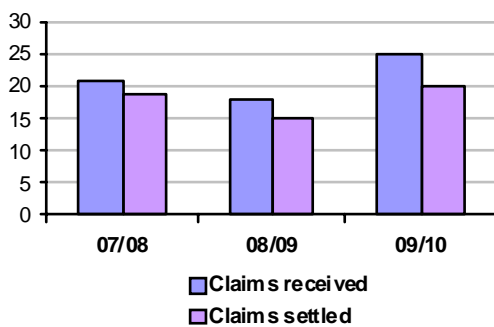


Third Party Motor Claims - Overseas (not dealt with by ACOs)

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

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

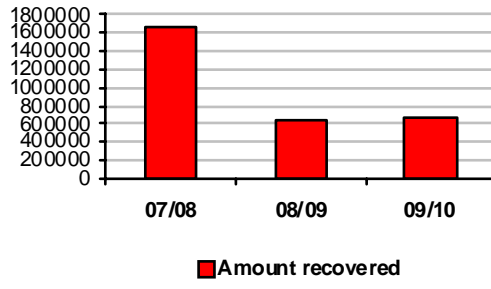
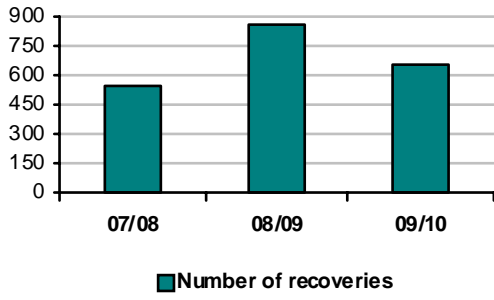
	2007/08	2008/09	2009/10
Number of claims received	21	18	25
Number of claims settled	19	15	20
Amount paid (£)	£29,642	£30,259	£17,884



Uninsured Loss Recovery

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

	2007/08	2008/09	2009/10
Number of recoveries	549	856	652
Amount recovered	£1.6M	£648,953	£660,607



Section Six

Clinical Negligence Claims

6.1 CLC&P handles clinical negligence claims brought by current or former members of HM Armed Forces and the small number of claims brought by their dependants treated in MOD medical facilities. The number of new claims received during 2009/1010 was broadly comparable with the number received in 2008/2009.

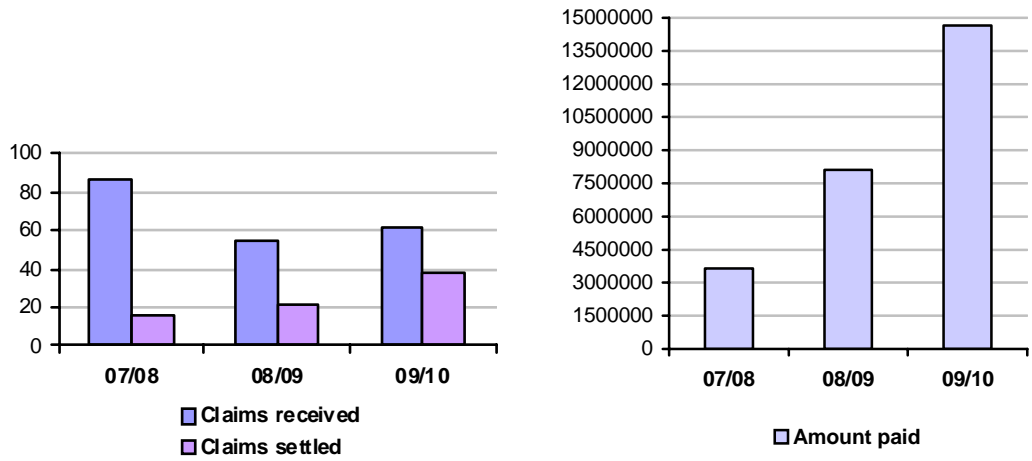
6.2 For a claimant to bring a successful clinical negligence case he or she must prove a causal link to the injury or illness suffered as well as proving negligence. It is not sufficient to prove negligence alone.

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

6.4 Following on from the significant progress made last year, a further number of comparatively high value, long running claims, were successfully settled during 2009/2010 including several brain damaged baby cases – resulting in compensation of £1M+ being awarded. These claims had been ongoing for several years and only now had been capable of settlement once all the various medical reports had been received and considered. This, together with a settlement of a number of Post Traumatic Stress Disorder (PTSD) cases has meant that expenditure on clinical negligence claims during 2009/2010 is substantially higher than in any previous year. A number of high value cases still remain under investigation.

6.5 Details of expenditure on clinical negligence cases over the past three years are shown below.

	2007/08	2008/09	2009/10
Number of claims received	86	55	61
Number of claims settled	16	22	38
Compensation plus cost of claims settled (£)	£3.7M	£8.1M	£14.7M



6.6 In addition to the number of formal claims received, the Clinical Negligence Team actioned 41 requests from solicitors for disclosure of medical records and other documentation, in anticipation of future clinical negligence claims against the Department being submitted.

Section Seven

Service Personnel Employment Tribunal Claims

7.1 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 with effect from 1 April 2003. They now have overall responsibility for handling such claims.

7.2 Any enquiries relating to such cases, or Service Employment Tribunal cases in general should be directed to the respective single Service personnel branches.

Homosexual Dismissal Cases

7.3 The Ministry of Defence previously operated a policy, which debarred homosexuals from serving in the Armed Forces. The Department's view was that nothing unlawful was done under domestic law, in terms of the Sex Discrimination Act 1975, or under European law, in terms of the Equal Treatment Directive.

7.4 In 1999 the European Court of Human Rights (ECHR) ruled that in four cases against the Ministry of Defence (*Smith, Grady, Beckett and Lustig-Prean v MOD*), there had been a violation of those individuals' right to respect for their private life under Article 8 of the European Convention on Human Rights. It found that there had not been a violation of Article 3; the applicants had not been subjected to inhuman or degrading treatment or torture. Compensation was awarded to each of the four applicants by the ECHR. Compensation has also been paid in a number of additional cases subsequently determined by the ECHR.

7.5 In light of the Court's judgment on 27 September 1999, the Department took legal advice on how to deal with claims from other individuals who had been dismissed. As a result, a decision was taken to enter into settlement negotiations with those who had already submitted Employment Tribunal applications and whose accounts were accepted as factually correct. A number of these claims were subsequently settled quite quickly.

7.6 The bulk of these claims, however, were not settled until financial year 2007/08, following awards determined by the ECHR. The awards made by the ECHR were, in each and every case, in line with the Ministry of Defence's valuation of these claims, rather than the figures claimed by the applicants.

7.7 Whilst the majority of these claims were settled during financial year 2007/2008, one additional claim settled during 2008/09 and the two final outstanding claims were settled and compensation paid during FY 2009/10. All claims of this nature have now been concluded. Details of expenditure over the past three years are shown below.

	2007/08	2008/09	2009/10
Homosexual Dismissal Cases Settled	57	1	2
Compensation Paid	£3.7M	£90K	£58K

Section Eight

Area Claims Officers

Area Claims Office Iraq

8.1 Owing to the general drawdown of British Forces in Iraq, the Area Claims Office Iraq closed in the summer of 2009. Any outstanding claims are now handled by the Public Liability Team of CLC&P. Any settlements made will have been incorporated into the statistics provided by the Public Liability Team (see Section Two).

Area Claims Office Afghanistan

8.2 The Area Claims Office, working alongside the Provincial Reconstruction Team (PRT) and HQ Task Force Helmand (TFH), is located in Lashkar Gah, capital of Helmand Province. When the security situation permits, the ACO visits Forward Operating Bases (FOB) to assist the Military Stabilisation Support Teams (MSST) in their understanding of Claims procedures. MSSTs give vital assistance to the ACO in areas where it is difficult for Afghan citizens to travel to Lashkar Gar, due to inherent security issues or the distance that they would be required to travel, by taking receipt of claims, gathering information and forwarding the paperwork to Lashkar Gar for the ACO to assess. The ACO has 3 civilian staff (2 x Band C2 MOD Civil Servants and 1 x Locally Employed Translator).

8.3 The significant increase in the level of military activity, with a number of major operations carried out across Helmand Province resulted in an increase in the volume of claims received. The main operations were Op Panchai Palaang (Panther's Claw), Op Tor Shpa (Black Night) and Op Moshtarak (Togetherness)..

8.4 The types of claims received from Afghan citizens are varied; ranging from fatalities and personal injuries mainly resulting from civilians being caught in the cross-fire between ISAF and insurgents, property damage caused by munitions, crop damage caused by the movement of military tracked vehicles or the use of flares. Other claims relate to the removal of crops/trees or buildings to improve security at ISAF Bases, to a handful of RTAs. .

8.5 In response to the increase in claims activity over the last 6 months a number of initiatives have been implemented to streamline the claims process in order to expedite payment where appropriate. Opening hours for the 5 weekly Claims clinics have been extended and made more flexible so that we can react to demand..

8.6 A total of 1710 claims were received of which 969 (including 67 from 08/09) were settled for a total of £1,142,000, also 570 (including 13 from 08/09) were denied or repudiated.

	2007/08	2008/09	2009/10
Number of claims received	994	2120	1710
Number of claims settled	300	736	969
Amount paid	£1,249,289	£452,707	£1,142,000

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

8.7 ACO(NWE) is part of the Civil Secretariat, Headquarters United Kingdom Support Command (HQ(UKSC)), located at JHQ, Rheindahlen. The ACO has five civilian staff responsible for handling claims by and against the Ministry of Defence in Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Luxembourg, Norway, Poland, The Netherlands and Switzerland. Claims handled include RTAs, Training and Manoeuvre Damage and, Public Liability.

8.8 Approximately 90% of claims received by ACO(NWE) relate to vehicle movements and are handled in accordance with Article 8.5 of the NATO Status of Forces Agreement (SOFA). Claims processed under Article 8.5 are negotiated by the host Nation, and the costs incurred are apportioned between Ministry of Defence and the Host Nation on a 25% / 75% basis. The host Nation therefore has a vested interest in keeping costs as low as possible.

8.9 ACO(NWE) continues to recover significant sums to the public purse, this year we have recovered over £679,000. The sums recovered come mainly from the pursuit of claims under German law for MoD incurred expenses where members of the force and/or their dependants have sustained injury as a result of third party liability in RTAs. The heads of claim which typically contribute to these recoveries are loss of earnings and medical related expenses, such as medical treatment costs, ambulance fees and physiotherapy and rehabilitation costs.

8.10 The establishment of a Claims Website for both the intranet and internet use, has enabled our customer base to have a better understanding of our role within North West Europe and has ensured that claimants are fully aware of the processes in place to action any claims against/for the MOD.

8.11 ACO(NWE) remains active in promoting the role of the claims office within BFG by raising its profile with a view to reducing the number of claims received and the associated costs incurred to the GOC HQ UKSC Budget. ACO action in this area in the last year has included briefings and presentations to key stakeholders, such as the RMP aimed at ensuring an understanding of the

ACO(NWE) requirement and continuation of the vital information flow and stakeholder support.

	2007/2008	2008/2009	2009/2010
Number of claims received	666	527	500
Number of Claims closed	545	655	550
Total Paid	£1,186,710	£1,128,740	£1,164,711
Total Recovered	£614,698	£680,118	£679,192

Area Claims Office Cyprus

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

8.13 The Cypriot climate and terrain continues to provide excellent training opportunities for the British forces, both in the air and on land, with most land based training taking place on privately owned land under access rights afforded to the UK by the Cyprus Treaty of Establishment. The majority of the ACO's work (76% of all claims received in FY09/10) continues to involve inspecting and investigating training and manoeuvre damage claims arising from land based exercises and associated helicopter activity. These claims are predominantly for crop damage and loss of livestock which sustain injury when panicked by a low flying helicopter or troop ground activity.

8.14 It is an objective of the ACO staff to visit and inspect all training and manoeuvre claims received and in doing so contribute to the good relations between British Forces Cyprus and the surrounding local communities; a vital ingredient in maintaining local consent to the UK's training activities in Cyprus. The ACO also assists in efforts to reduce the risk of damage or losses caused by routinely briefing military exercise reconnaissance parties on land areas to avoid due to animal grazing or crop growing.

8.15 This year has seen the return to Cyprus of several visiting UK units who go to the island to carry out unit infantry skills training. In addition an exercise-related fire occurred in June 2009 on privately owned land within the Western localities training area which has required a large proportion of the ACO's time

and effort inspecting and assessing fire damaged land/property losses from 39 claimants.

	2007/08	2008/09	2009/10
Number of claims received	151	114	172
Number of claims settled	257	104	116
Number of claims closed	292	118	140
Amount paid	£167, 712	£434,574	£153,422
Amount recovered	£14,235	£5,617	£13,525

Area Claims Office Kosovo

8.16 With effect from 3 May 2005 responsibility for all Balkan claims rested with either SO2 Commercial at Banja Luka or SO3 Commercial at Pristina (Kosovo). Since the closure of the “claims office” on 27 June 2007, all outstanding and new claims from Bosnia are handled by, the Public Liability Team of CLC&P. Any settlements made will have been incorporated into the statistics provided by the Public Liability Team (see Section Two).

Area Claims Office South Atlantic Islands

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

8.18 During FY09/10 a total of three new claims were received. Two have been settled in year and the other (damage to a car) has involved prolonged repair times with the costs being settled in FY 10/11.

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

8.20 There have been no accidental damage claims which have needed to be passed to CLC&P for consideration in Financial Year 09/10.

	2007/08	2008/09	2009/10
Number of claims received	2	5	3
Number of claims settled	1	4	2
Amount paid	£159	£3,865	£1,950
Amount Recovered	Nil	Nil	Nil

Section Nine

Insurance and Indemnities

Insurance

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

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

9.3 Willis (Aerospace) provides insurance, which is self-financing, for five 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
- Passengers conveyed for Wider Markets purposes

Indemnities

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

9.5 The Ministry of Defence always seeks an indemnity against claims arising from activities or events that do not further the interests of the Department. Examples include participation by Service personnel or Ministry of Defence civilian staff in non-core fund raising or social activities, work experience for students over the age of sixteen, 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. CLC&P issued around 133 indemnities in Financial Year 2009/10 and commented on 180 MOUs during the year.

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

Wider Markets

9.7 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. However, because of the unusual and hazardous nature of the activities the Ministry of Defence undertakes, commercial insurance may not always be available to cover these activities, or may not be cost effective. Therefore, alternatively customers may pay a Departmental Insurance Charge and any claims for compensation, which may arise, will then be paid by CLC&P.

9.8 Advice about insurance and risk reduction may be obtained from CLC&P and from the Ministry of Defence's insurance brokers, Willis Ltd, in accordance with 2008DIN08-014. Willis has created a specialised package of insurance policies offering a full range of business insurances for Budget Holders undertaking income-generating activity.

Section Ten

Law and Practice

Civil Justice Procedures

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

Aims

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

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

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

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

Experts

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

Pre Action Protocol

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

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

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

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

Fast-Track and Multi-Track

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

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

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

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

Letter of Claim

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

Defendant's Reply

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

Claim Investigation

10.16 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, is denied, or there is a partial admission. If the defendant denies liability they should enclose with the letter of reply documents material to the issues between the parties, and which would be likely to be ordered to be disclosed by the court. If a defendant is unable to comply with the requirements of the pre-action protocol, the claimant will be able to issue proceedings at the end of the three-month period.

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

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

Proceedings

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

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

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

Statement of Truth

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

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

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

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

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

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

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

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

Disclosure

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

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

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

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

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

Disclosure Statement

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

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

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

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

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

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

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

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

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

Legal Services Commission (Legal Aid)

10.36 It is well over 50 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).

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

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

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

Alternative Dispute Resolution

10.40 In accordance with a pledge made to the then Lord Chancellor Alternative Dispute Resolution/mediation is considered in all appropriate cases, usually 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

10.41 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 Head of CLC&P 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 need not undergo the trauma of a court case to secure compensation for an injury or loss caused by the Department's negligence.

Mediation

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

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

10.44 In financial year 2009/10, 28 Joint Settlement Meetings and Mediation Conferences took place resulting in savings to the Department of some £6M. In addition had these cases run to court, the legal costs payable by the Ministry of Defence would have been considerable.

10.45 The Head of CLC&P and Senior Claims Officer (Claims Handling) are accredited mediators and members of the Chartered Institute of Arbitrators. The Team Leader for Clinical Negligence claims is also an accredited mediator.

Contributory Negligence

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

10.47 The following are some examples of Contributory Negligence:

- Driver or pedestrian failing to keep a proper lookout
- Claimant failing to turn off a machine before cleaning it
- Failure of motorcyclist to wear a crash helmet
- Failure to wear seat belt while travelling in a vehicle

- Riding in a vehicle as a passenger with a driver who is known to be under the influence of alcohol or drugs.

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

Rehabilitation

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

10.50 CLC&P aims to utilise rehabilitation where appropriate when compensation claims are made. Rehabilitation is expected to assume far greater prominence in the claims handling process with the revision of the Civil Procedure Rules pre-action protocol on the handling of Personal Injury claims.

Fraud

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

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

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

Periodic Payments

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

10.55 A periodic payment normally consists of a conventional lump sum to the claimant together with a regular payment made on a monthly, quarterly or annual basis. The periodic payment can be made by way of an annuity purchased in the marketplace or, in the case of Government Departments and the National Health Litigation Service, on a self-funded basis. There are currently 28 cases where periodic payment arrangements have been put in place.

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

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

	2007/08	2008/09	2009/10
Total number of periodic payments	29	29	28
Total payments each year	£1,400,364	£1,433,281	1,574,188

Third Party Accident Scheme (ToPaS)

10.58 If Ministry of Defence Civil Servants or Service Personnel are injured in any type of accident caused by a third party (e.g. a member of the public or a contractor) whilst they are on duty, it is the individual's own responsibility to pursue a common law claim for compensation against that third party without any assistance or involvement by the Department. The reason for this is that the law does not recognise the Department's involvement in such cases and therefore the Ministry of Defence does not have authority to incur expenditure in such circumstances. The only exception to this is that Civil Servants injured in road traffic accidents can have their legal costs underwritten by their TLB (see 2008DIN01-012) but this does not apply to Service Personnel or to Civil Servants injured in other circumstances.

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

10.60 Generally, ToPaS will offer free advice and a help line for victims of accidents abroad, who should in the first instance call 0870 998 9000. There are many occasions when, although the accident occurred abroad, a claim can still be made within the UK and appropriate compensation can be recovered. On the other hand, Ministry of Defence personnel who suffer injury as a result of the negligence of a foreign national when abroad may need to obtain the services of a local lawyer. ToPaS can assist in locating a suitable legal representative in such circumstances.

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

10.62 Since May 2004 hundreds of unit visits/meetings have been conducted using the opportunity to brief key unit personnel, discuss how to advertise the scheme and hand out ToPaS information packs and posters. Without doubt presentations have been the most effective way of getting this important message across to all Ministry of Defence personnel, and they have also provided an ideal opportunity for questions and feed back. The response from those units who have made contact has been excellent. Enquiries have come from Canada, the South Atlantic Islands, Germany, Northern Ireland and from across mainland UK. Should you require further information regarding ToPaS, or you would like to arrange either a short briefing or presentation, or you wish to make a claim under the scheme then please contact:

Mr Carl Crawley
ToPaS Development Director
Tel: 0870 998 9999
Mobile: 07960 258 664
E-mail: xxxx.xxxxxxx@xxxxx.xxx.xx or Website: www.topas.org.uk

Common Law Claims & Policy - Organisation

As a result of streamlining CLC&P underwent significant change throughout 2008/2009, with a number of staff leaving under the Early Release Schemes. The final post streamlining organisation is as shown below. The Senior Claims Officer (Claims Handling) post was upgraded from Band C1 to band B2 level with effect from 1 January 2010.

Head of CLC&P - SCS

Senior Claims Officer (Claims Handling) - Band B2

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

Employer's Liability, Low Flying and Maritime Team

Staff:

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

Responsibilities:

Service Personnel Employer's Liability Claims

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

Civilian Personnel Employer's Liability Claims

Managing the claims handling contract with Gallagher Bassett International Ltd..

Combat Immunity Claims

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

Nuclear Test Veterans

Claims from veterans of the Nuclear Tests undertaken in the 1950s and 1960s in respect of the alleged health problems suffered by them, their children and

grandchildren, said to have resulted from their participation in the tests - now the subject of a Group Action.

Section 10 claims

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

Miscellaneous claims

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

Low flying

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

Maritime claims

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

Public Liability Team

Staff:

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

Responsibilities:

Public Liability Claims

Public Liability claims, including personal injury, 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 HM Forces in Northern Ireland.

Vehicle Claims

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

Overseas Operations

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

Compensation Scheme for Radiation Linked Diseases

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

Criminal Injuries Compensation

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

Non-Maritime Recoveries

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

Clinical Negligence Team

Staff:

Team Leader	Band C2
2 Case Managers	Band D
1 Assistant Case Manager (Part-time)	Band E1

Responsibilities:

Clinical Negligence

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

Post Traumatic Stress Disorder

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

LEC Claims

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

Gulf Veterans' Illnesses

Potential claims for alleged Gulf War illnesses.

Porton Down

Claims from Porton Down veterans.

Human Volunteer No Fault Compensation Scheme

Ex-gratia payments made under the human volunteer research no-fault compensation scheme.

Claims Annual Report

Responsibility for production of the Claims Annual Report.

Senior Claims Officer (Policy) - Band C1

Responsible for Policy Group

Staff:

1 Indemnities & Insurance Adviser	Band D
1 Policy & Contracts Adviser	Band D
1 Budget Manager	Band D
1 Finance Officer	Band E1
2 Focal Point Administrators	Band E2

Responsibilities:

Non-contractual Insurance

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

Third Party Motor Claims

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

Directorate Administration

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

Contractual Matters

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

Financial Management

Budget management, financial planning and bill paying for CLC&P.

Top 10 Cases Settled 2009/2010

Claimant	Type of Injury /Loss	Compensation*
Service	Road Traffic Accident – Paraplegic	£4,399,358
Service	Road Traffic Accident – Paraplegic	£2,600,680
Civilian	Clinical Negligence – Brain Damaged Child. Cerebral Palsy	£2,039,804
Civilian	Clinical Negligence – Brain Damaged Child. Cerebral Palsy	£1,787,057
Service	Serious personal injuries whilst serving in Afghanistan	£1,208,271
Service	Fall from Height - Severe personal injuries	£1,075,137
Service	Drowned in Diving Accident	£1,007,500
Civilian	Clinical Negligence – Brain Damaged Child. Cerebral Palsy	£1,000,000
Service	Serious personal injuries caused by a tank	£951,254
Service	Sustained serious personal injuries after claimant was struck by reversing military vehicle	£930,235

* Inclusive of claimant's legal costs

Distribution List

APS/Secretary of State	DCDS Pers-PCV-Pen Comp Vets
APS/Minister (AF)	DCDS Pers-PCV-Legacy Health
APS/Minister (DEST)	DJEP-D
APS/Minister (DISS)	CLS-D
APS/Minister(DPWW)	
US of S	
Parliamentary Branch	DBR-D
DPSO/CDS	DRP
PS/VCDS	D P&A
CNS	D Info
CGS	DGCC
CAS	DCCS
CDM	DCC(N)
DCDS (C)	DCC(A)
DCDS (EC)	DCC(RAF)
DCDS (Pers)	
DCDL	JAF
DCDS (Health)	JAG
CinC Fleet	CNJA
CinC Naval Home Command	DALS
CinC Land	DPS(A)
AG	COS/AMP
GOC NI	Director of Naval Personnel - RN _
	Terms of Service Personal Injury
	Litigation
AOCinC(STC)	Naval Service Incident Notification
	Cell Manager
CJO	APC Secretariat (2 copies)
CDM	APC (Litigation)
PS/PUS	PM(N)
PS/2 nd PUS	PM(A)
PS/CSA	DAS
DG Policy	DFCIT
DG Strategy	
DG HR&CS	CESO(Navy)
DG Finance	CESO(Army)
DG Science & Technology	CESO(RAF)
DCP	Ship Safety Management Office
Hd CP Pol	H&S FOSF
Hd CP ER	CE/DCSA
Hd Fin Pol	CE/DDA
Hd RP(Centre)	CE/DE
Hd Navy RP	CE/DGIA
Hd Army RP	CE/DHE
Hd Air RP	CE/DISC
DES SE Air – D	
SGD AD BM	CE/DMTO

Medical Director General (Navy) – SO1	CE/DSA
Head of AMD Med Legal	CE/DSCA
AMD (Med Leg) (2 copies)	CE/DSDA
RAF Med Legal (RAF)	CE/DSTL
Med Org 2(RAF)	CE/DTMA
SO1 Prev Med UKSC(G)	CE/DVA
CS/HQ UKSC(G)	CE/HO
CS HQ BF Cyprus	CE/JARIC
CS HQ BFSAI	CE/MSA
CS/Gib	CE/Met O
	CE/MDPA
CS/Afghanistan	CE/NMA
Area Claims Officer North West Europe	SC Ops(Tpt)4d1
Area Claims Officer Cyprus	SC Ops(Tpt)4d2
	SC Ops(Tpt)4d3
	SC Ops(Tpt)4d4
	CE/TGDA
	CE/WSA
Command Secretary Fleet	AD SC Ops(Tpt)4
Command Secretary Naval Home Command	SC Ops(Tpt)4d
Command Secretary Land Forces	WSA/620
Command Secretary AG	HQ Land Log Spt (Tpt)
Command Secretary Air Command	HQ STC S&M Pol 3e
Civil Secretary PJHQ	HQNI CSS(Tpt)
CE/ABRO	HQ BFC J4(Tpt & Mov)
CE/ABSDA	CSV (IPT)
CE/AFPAA	LAIT RO2A
CE/APC	LSTS SMTW RAF HALTON
CE/ATRA	DTMA Bus Tvl Man (Sfc)
CE/BFPO	HQRM WO1d
CE/DAC	Command Master Driver HQ LAND
CE/DASA	Command Master Driver HQNI
Queen Victoria School	Master Driver HQ 2 SE Brigade
Duke of York's Military School	Master Driver HQ 49 Inf Brigade
RLC Training Group	SO3 Log Sp Catterick Garrison
PMA CS1b	CE/DARA
3AF - UK/JA RAF Mildenhall	CE/DBA
MOD Library	OC Log Sp Unit Colchester
DFSHQ DFS CFO	TCWO HQ 42 Brigade
All CLC&P Staff	S4(F)Sqn
Defence College of Logistics and Personnel Administration	CESO(PJHQ)
	CESO(DE&S)
	CESO(Central TLB)

External:

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 Beachcroft LLP (London 3 copies)

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