

Claims

Annual Report

2012/2013

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Executive Summary

1. Total DJEP-CLC&P cash payments in the year 2012/2013 were £108.9 million. Over the same period recoveries totalling £621,653 were achieved.
2. The highest value claim settled in year was £3,227,255.
3. The total number of new claims brought against MOD was 5,827
4. 2,517 Service Personnel Employer's liability claims were settled at a total cost of £51.3 million.
5. 724 Civilian Employer's liability claims were settled at a total cost of £18.2 million.
6. 517 Public Liability claims were settled at a total cost of £25.0 million.
7. 1,825 Third Party motor claims in the UK were settled at a total cost of £4.8 million.
8. 17 Clinical Negligence claims were settled at a total cost of £7.1 million.
9. ACO Afghanistan settled 616 cases at a total cost of £690,700.
10. ACO North West Europe settled 369 cases at a total cost of £613,462.
11. ACO Cyprus settled 368 cases at a total cost of £400,973.
12. ACO South Atlantic Islands settled 2 cases at a total cost of £550.00.

Section One

Introduction

Organisation

1.1 Common Law Claims and Policy (DJEP-CLC&P) was a stand alone Division headed by a 1*, part of the 2* Directorate of Business Resilience. With effect from 1 April 2013 it transferred to become part of the Directorate of Judicial Engagement Policy. From that date the formal branch title changed to 'Directorate of Judicial Engagement Policy – Common Law Claims & Policy', referred to in this report as the Claims Unit.

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

Responsibilities

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

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

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. The only major exceptions to this rule relate, as explained below, to claims arising from low flying and to certain claims settled in theatre by Area Claims Officers.

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

Section Two

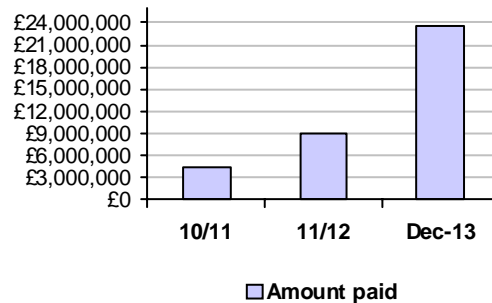
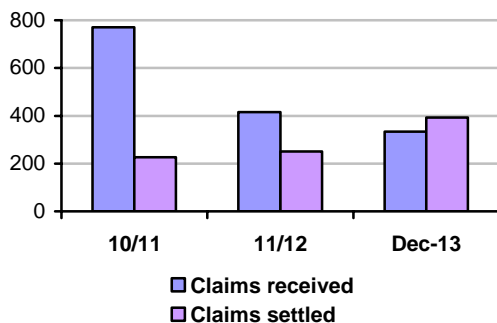
Public Liability Claims

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

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

2.3 Public liability claims have risen rapidly in recent years because of the large numbers of claims submitted by Iraqi nationals. While the number of claims submitted peaked some time ago, the cost of claims actually settled rose sharply in 2012/2013 as a result of the conclusion of negotiated settlements in many cases.

| | 2010/11 | 2011/12 | 2012/13 |
|------------------------------|--------------|--------------|---------------|
| Number of PL Claims Received | 771 | 416 | 334 |
| Number of PL Claims Settled | 227 | 251 | 393 |
| Amount Paid (£) | £4.4M | £9.0M | £23.7M |



Iraq

2.4 The MOD is currently dealing with 375 claims of abuse by Iraqi nationals arising from the years between 2003 and 2009. 204 further such claims have now been settled, at a total value of £10.575M. Many of these claims are for compensation for unlawful detention. UK forces believed that their UN mandate entitled them to detain Iraqi nationals where this was required for security purposes, but subsequent decisions of the European Court of Human Rights have established that this was not necessarily the case and that such detainees may be entitled to compensation. In such cases compensation is offered on a “tariff” basis, with the sum to be paid determined primarily by the length of detention, ranging from £1,500 for a few hours to £115,000 for 3 years or more.

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

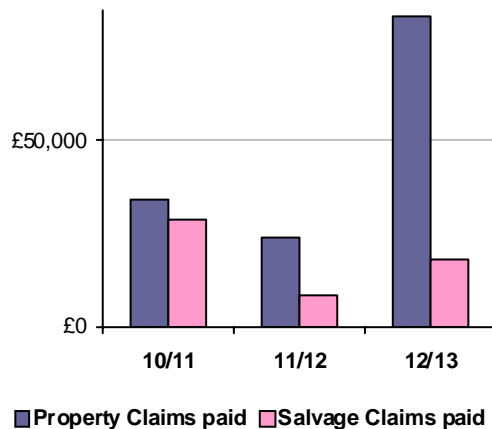
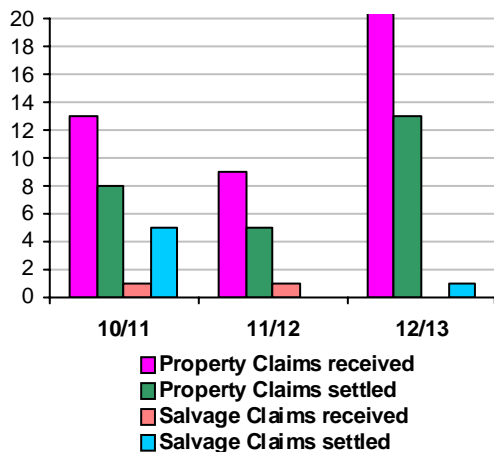
Afghanistan

2.6. ACO Afghanistan in Lashkar Gah continues to handle claims locally in Afghanistan. Details are provided in Section Seven – Area Claims Offices.

Maritime Claims

2.7 Maritime claims by and against the Ministry of Defence result mainly from collisions, oil spillage, gunnery/missile firing accidents, damage to static property, wash damage, fishing gear damage and the salvage and recovery of Ministry of Defence property. Expenditure during 2012/2013 increased slightly owing to settlement of one large claim (approx £44,000) together with several other smaller ones.

| | 2010/11 | 2011/12 | 2012/13 |
|------------------------------------|----------------|----------------|----------------|
| Number of property claims received | 13 | 9 | 21 |
| Number of property claims settled | 8 | 5 | 13 |
| Amount paid (£) | £34,050 | £23,783 | £83,234 |
| Number of salvage claims received | 1 | 1 | 0 |
| Number of salvage claims settled | 5 | 0 | 1 |
| Amount paid (£) | £29,042 | £8,600 | £17,991 |



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

| | 2010/11 | 2011/12 | 2012/13 |
|--|----------------|-----------|----------------|
| Number of maritime recovery and salvage claims initiated | 3 | 3 | 0 |
| Number of maritime recovery and salvage claims settled | 1 | 0 | 1 |
| Amount recovered (£) | £85,596 | £0 | £91,144 |



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

| | 2010/2011 | 2011/2012 | 2012/2013 |
|------------------------------------|----------------|----------------|----------------|
| Number of claims settled by FOSNNI | 14 | 6 | 12 |
| Amount paid by FOSNNI | £23,660 | £12,132 | £26,937 |
| Number of claims settled by FOST | 15 | 5 | 13 |
| Amount paid by FOST | £36,595 | £12,725 | £25,979 |
| Total amount paid | £60,255 | £24,857 | £52,916 |

Low Flying Military Aircraft Claims

2.10 The activities of low flying military aircraft can give rise to claims for compensation from members of the public. The most common claims are those involving injury to, or death of, livestock and/or damage to property, although claims are sometimes received for personal injury. Many of the claims are for relatively small amounts. Such claims are handled on an *ex gratia* basis, because the Royal Prerogative gives an absolute right for all military flying

activity, and an injured party has no legal rights of redress for compensation¹. They are however investigated in the same way as if the principles of common law legal liability applied.

2.11 A procedure has been in place since 1994, following consultation with farming unions and landowners' associations, for dealing with claims relating to death or injury to livestock. The procedure was most recently updated in December 1999 after a round of consultations with the National Farmers Union, the 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.

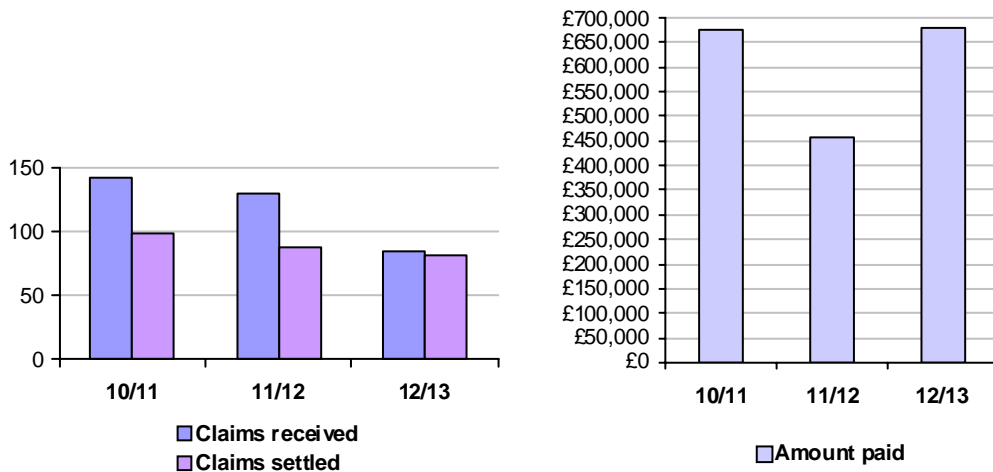
2.12 This is a category of work that requires particularly careful monitoring to identify potentially fraudulent claims. Cases are referred to the Ministry of Defence Police if the evidence indicates there is a potential problem.

2.13 The increase in expenditure during 2012/2013 reflects the expected fluctuation from year to year and also a number of high value cases which began in earlier years which were settled.

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|----------------|----------------|----------------|
| Number of claims received | 143 | 130 | 85 |
| Number of claims settled | 99 | 88 | 82 |
| Amount paid (£) | £0.67M | £0.46M | £0.68M |

¹ 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."

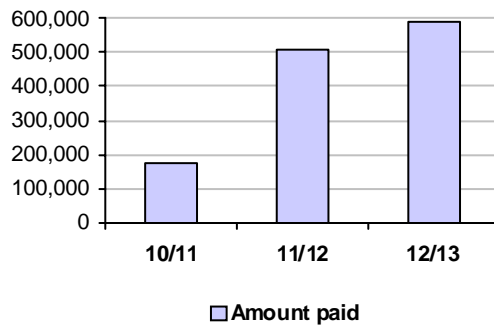
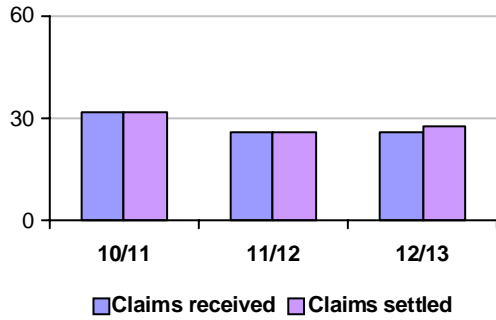


Visiting Forces Claims

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

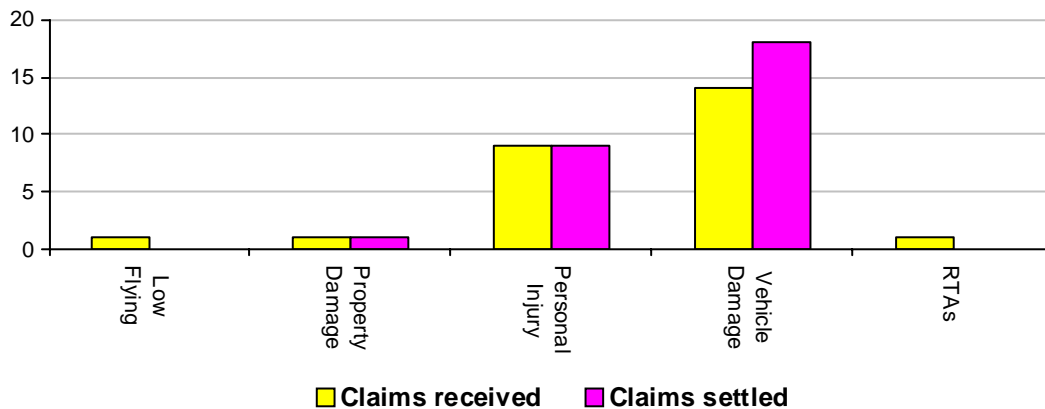
2.15 In order for the UK to comply more fully with its obligations under the NATO SOFA, the Visiting Forces Act 1952 has been amended to allow the transfer of liability from the Visiting Force to the UK MOD in certain claims. Once legal proceedings have been issued, and at the request of the Visiting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

| | 2010/11 | 2011/12 | 2012/13 |
|---|-----------------|-----------------|-----------------|
| Number of visiting forces claims received | 32 | 26 | 26 |
| Number of visiting forces claims settled | 32 | 26 | 28 |
| Compensation paid (£) | £173,044 | £508,195 | £588,008 |



Visiting forces breakdown

| 2012/13 | Low Flying | Property Damage | Personal Injury | Vehicle Related | RTAs | Total |
|------------------------------|------------|-----------------|-----------------|-----------------|-----------|-----------------|
| Claims Received | 1 | 1 | 9 | 15 | 1 | 26 |
| Claims Settled | 0 | 1 | 9 | 18 | 0 | 28 |
| Compensation Paid (£) | £0 | £4,641 | £556,396 | £26,971 | £0 | £588,008 |



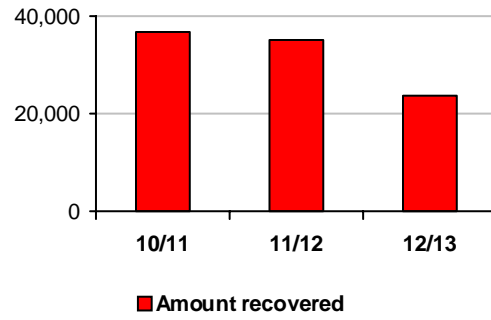
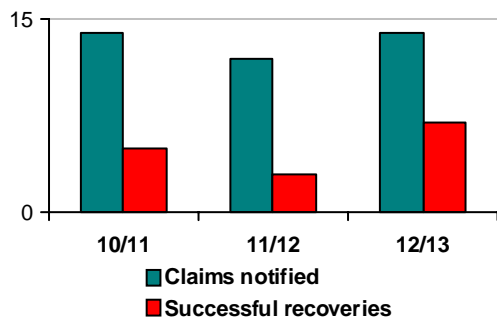
Financial Recoveries

2.16 Where the Ministry of Defence sustains loss or damage to equipment, or property, which has been caused by a third party, the Claims Unit will seek to recover those losses from the third party. The main causes for 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.

2.17 Less often, the Unit 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.

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

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------------|----------------|----------------|----------------|
| Number of claims notified | 14 | 12 | 14 |
| Number of successful recoveries | 5 | 3 | 7 |
| Amount recovered (£) | £37,061 | £35,258 | £24,064 |



Section Three

Service Personnel Employer's Liability Claims

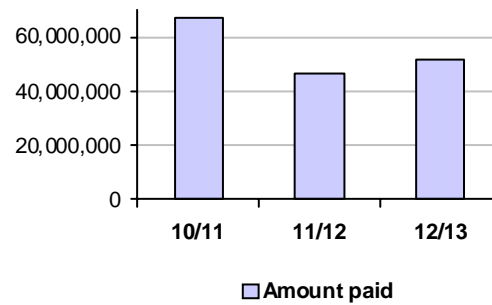
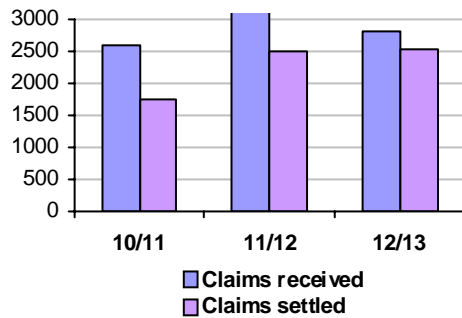
3.1 Since 1987 Service personnel have, like any other employee, been entitled to sue the Ministry of Defence for compensation where they have suffered harm as a result of the Department's negligence occurring after that time. Claims cannot however be made for alleged negligence which occurred before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

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

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

3.4 The number of service personnel employers' liability claims and amounts paid are shown below:

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|---------------|---------------|---------------|
| Number of claims received | 2583 | 3535 | 2793 |
| Number of claims settled | 1745 | 2495 | 2517 |
| Amount paid (£) | £67.3M | £46.3M | £51.3M |



3.5 High numbers of Noise Induced Hearing Loss claims relating to Army service in Northern Ireland have continued to be received and settled where appropriate. These account for 66% of all claims received in 2012/13 and 27% of the sums paid out under this heading in the same year.

Combat Immunity

3.6 Among the claims being handled in-house are those which relate to operational service in Afghanistan and Iraq. It is open to the Ministry of Defence to plead a defence of combat immunity in those claims where the injury was sustained engaging the enemy in the course of hostilities.

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

- a. Allegations that a commander on the ground was negligent in his actions or made decisions that were wrong
- b. Allegations that equipment provided by MOD was inadequate;
- c. Allegations that pre-deployment training provided by MOD was inadequate.

3.8 The Supreme Court upheld the doctrine of combat immunity in a judgment in June 2013 but limited its sphere of application. The specific claims which were at issue remain to be determined by the lower courts.

Summary of “Group Actions”

Nuclear Test Veterans

3.9 As recorded in the last Annual Report, the Supreme Court in March 2012 upheld the Government’s contention that there is no evidence of excess illness or mortality amongst former soldiers who had worked on nuclear tests 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. As a result of this decision the claims against the Department were dismissed, and the role of the Claims Unit is now limited to the recovery of the costs incurred by the government in this litigation from the claimants’ insurers. These discussions are still in progress.

Radiation Compensation Scheme

3.10 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.

3.11 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.

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

3.13 During financial year 2012/2013, the Scheme received 15 new claims from former Ministry of Defence employees who believe their illness is associated with exposure to occupational ionising radiation. £50,879 compensation was paid during this period.

Asbestos Claims

3.14 Members of the Armed Forces exposed to asbestos dust and fibre during service before 15 May 1987 are prevented by law from receiving compensation from the Ministry of Defence (see paragraph 3.1 above). As controls over the use of asbestos were introduced in 1970, this exclusion applies to most of those service personnel who were exposed to asbestos.

3.15 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.

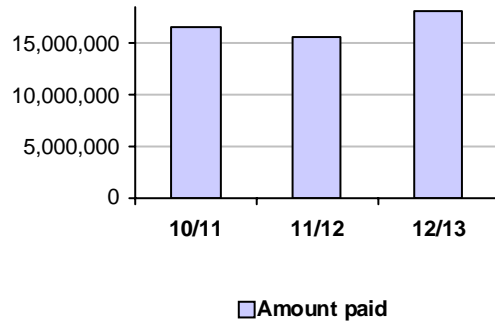
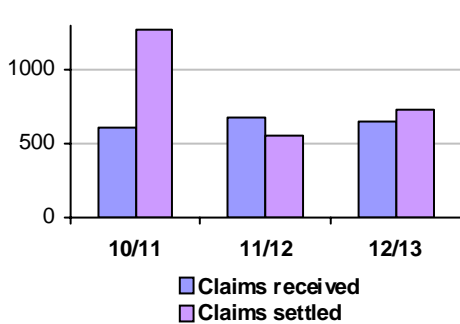
3.16 Former civilian employees, who are not bound by the provisions of Section 10 of the Crown Proceedings Act 1947, are, of course, able to pursue common law claims for compensation (see section 4 below).

Section Four

Civilian Staff Employer's Liability Claims

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

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|---------------|---------------|---------------|
| Number of claims received | 599 | 666 | 645 |
| Number of claims settled | 1269 | 551 | 724 |
| Amount paid (£) | £16.6M | £15.7M | £18.2M |



Section Five

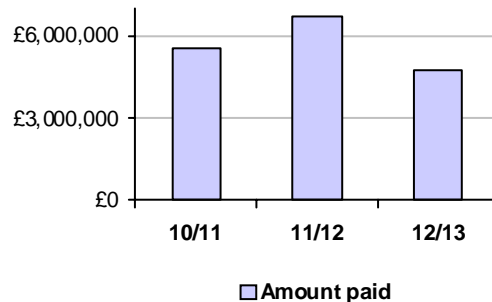
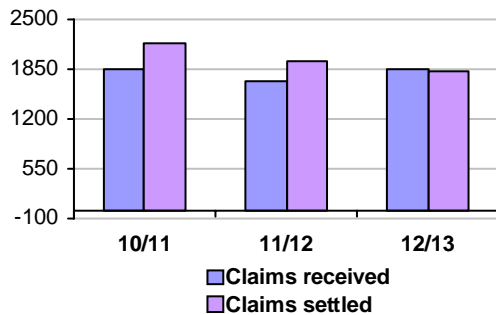
Motor Claims

Third Party Motor Claims - UK

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

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

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|--------------|--------------|--------------|
| Number of claims received | 1852 | 1674 | 1829 |
| Number of claims settled | 2168 | 1946 | 1825 |
| Amount paid (£) | £5.6M | £6.7M | £4.8M |

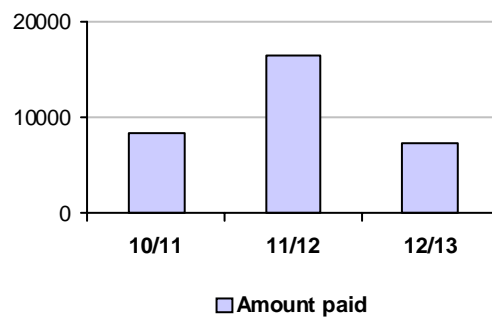


Third Party Motor Claims - Overseas (not dealt with by ACOs)

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

5.4 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 the evidence indicates 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:

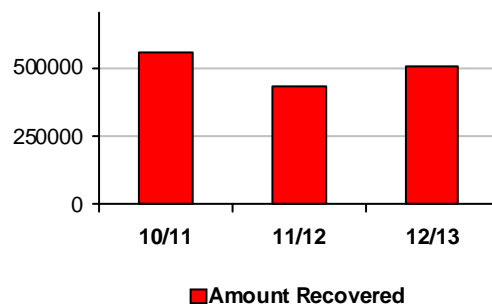
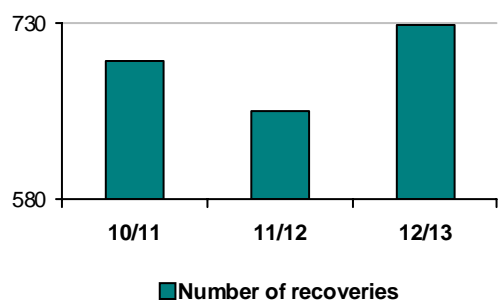
| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|---------------|----------------|---------------|
| Number of claims received | 16 | 17 | 14 |
| Number of claims settled | 15 | 11 | 13 |
| Amount paid (£) | £8,440 | £16,459 | £7,378 |



Uninsured Loss Recovery

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

| | 2010/11 | 2011/12 | 2012/13 |
|-------------------------|-----------------|-----------------|-----------------|
| Number of recoveries | 698 | 655 | 729 |
| Amount recovered | £555,617 | £433,384 | £506,445 |



Section Six

Clinical Negligence Claims

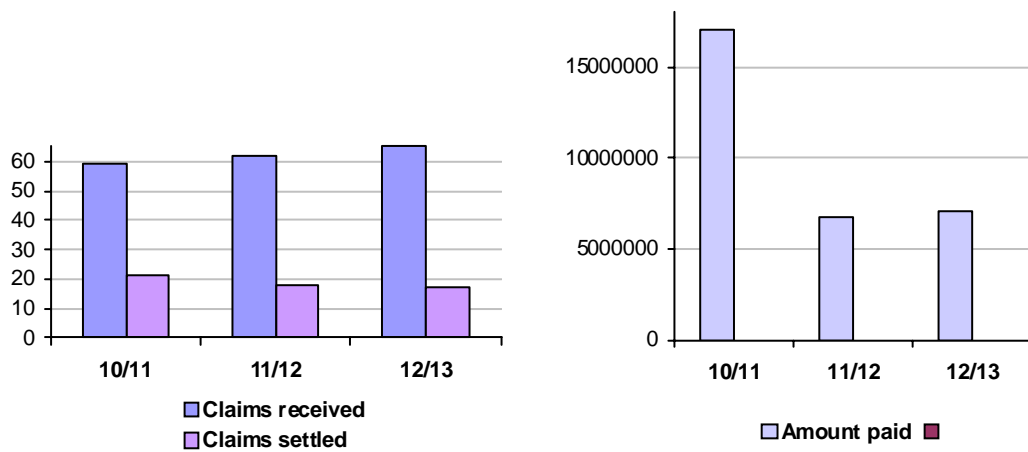
6.1 The Clinical Negligence Team within the Claims Unit handles such claims brought by current or former members of HM Armed Forces and the small number of claims brought by their dependants treated in MOD medical facilities. The number of new claims received during 2012/2013 was comparable with the number received in recent years.

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

6.3 As observed in previous reports, clinical negligence claims can be very 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 is often difficult.

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

| | 2010/11 | 2011/12 | 2012/13 |
|---|----------------|----------------|----------------|
| Number of claims received | 59 | 62 | 65 |
| Number of claims settled | 21 | 18 | 17 |
| Compensation plus cost of claims settled (£) | £17.0M | £6.7M | £7.1M |



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

Section Seven

Area Claims Offices

Area Claims Office Afghanistan

7.1 The office of the Area Claims Officer (ACO) in military premises in Lashkar Gah, the capital of Helmand Province, is staffed by one MoD Civil Servant and one Locally Engaged Civilian engaged as an Interpreter. The ACO's role is to settle claims brought by Afghan nationals against UK forces informally wherever possible. .

7.2 This year has seen an overall increase in claims received. Between the beginning of June and the end of August 2012 there was a spike in the number of claims as a new Patrol Base was established, together with associated check-points. A total of 231 crop damage and 130 property claims were lodged in those 3 months. Crop damage claims continued at a relatively high level between September and December 2012 as a result of armoured vehicles transiting agricultural land while providing a reconnaissance screen for Afghan forces. The year ended very quietly reflecting the continuing transition from active operations to mentoring. Fatalities and woundings of civilians as a result of being caught in the cross fire during contact between insurgents and ISAF have been mercifully low, again reflecting the reduced activity of ISAF forces. Reported Road Traffic Incidents (RTIs) are also down, although, as the withdrawal gathers pace, with more vehicle moves, the potential for more RTIs may increase.

7.3 There is recent anecdotal evidence that a number of claimants are inflating or inventing claims. Claims are also being made a number of years after the supposed event when effective investigations are all but impossible. The perceived readiness by UK forces to make compensation payments quickly in order to defuse difficult situations may have inadvertently encouraged claim inflation and/or fraudulent claims.

7.4 During the current financial year a total of 838 claims were received, of which 616 were settled at a total of £690,700. One further claim was settled from the years 2009 -2012 at a cost of £431.25. A total of 147 claims were repudiated during FY 2012/2013. Comparative figures are shown below:

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|-------------------|-----------------|-----------------|
| Number of claims received | 1743 | 650 | 838 |
| Number of claims settled | 1242 | 545 | 616 |
| Amount paid | £1,440,423 | £748,421 | £690,700 |

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

7.5 ACO(NWE) is part of G8, Headquarters British Forces Germany (HQ BFG), currently located at Rheindahlen. It will relocate to Bielefeld Germany from July 2013 with a reduction from four civilian staff to three. It is responsible for handling claims by and against the Ministry of Defence in Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Luxembourg, Norway, Poland, The Netherlands and Switzerland. Claims handled include Road Traffic Accidents, Training and Manoeuvre Damage, Public Liability and Loss of Service.

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

7.7 ACO(NWE) continues to recover significant sums to the public purse, this year recovering over £280,000. 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 road accidents. 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.

| | 2010/2011 | 2011/2012 | 2012/2013 |
|---------------------------|-------------------|-------------------|------------------|
| Number of claims received | 402 | 351 | 298 |
| Number of Claims closed | 525 | 401 | 369 |
| Total Paid | £1,168,176 | £1,267,645 | £613,462 |
| Total Recovered | £662,394 | £535,573 | £280,038 |

Area Claims Office Cyprus

7.8 Based at Episkopi Garrison in the Western Sovereign Base Area, the Area Claims Office Cyprus, staffed by one MOD civil servant and one locally engaged officer, is responsible for handling all third party claims for compensation made by and against British Forces Cyprus, the Sovereign Base Areas and visiting UK

forces, which arise out of on-duty military activity in the Sovereign Base areas and the Republic of Cyprus. The types of claims handled include road traffic accidents, training & manoeuvre damage, Public Liability and, for locally employed staff, Employer's Liability.

7.9 The Cypriot climate and terrain continues to provide excellent training opportunities for the British forces, in the air and on land and sea, with most land based training taking place on privately owned land under access rights afforded to the UK by the Cyprus Treaty of Establishment. The majority of the ACO's work continues to involve inspecting and investigating training and manoeuvre damage claims arising from land based exercises and associated helicopter activity. 90% of all claims received in-year were training & manoeuvre related and were predominantly for crop damage or loss of livestock.

7.10 HQ British Forces Cyprus are committing to an increased training programme in Cyprus. This is likely to lead to an increase in the number of training and manoeuvre claims made, and the use of a wider area of the Republic of Cyprus land. There is significant risk that training will extend into areas with large farms which will inevitably see more expensive claims being presented. A series of meetings is being held with local communities to explain the training programme and to give communities the opportunity to discuss issues raised by the training programme.

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|-----------------|-----------------|-----------------|
| Number of claims received | 154 | 429 | 343 |
| Number of claims settled | 156 | 334 | 368 |
| Number of claims closed | 179 | 358 | 394 |
| Amount paid | £456,150 | £491,602 | £400,973 |
| Amount recovered | £42,852 | £12,481 | £24,773 |

Area Claims Office South Atlantic Islands

7.11 The ACO in the Falkland Islands is responsible for collating all claims for approval or passing claims over the value of £5,000 to the claims Unit. During FY 2012/2013 three new claims were received.

7.12 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.

| | 2010/11 | 2011/12 | 2012/13 |
|---------------------------|----------------|------------------|----------------|
| Number of claims received | 2 | 4 | 3 |
| Number of claims settled | 2 | 2 | 2 |
| Amount paid | £646.00 | £3,654.00 | £550.00 |
| Amount Recovered | Nil | Nil | Nil |

Section Eight

Insurance and Indemnities

Insurance

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

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

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

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

Indemnities

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

8.5 The Ministry of Defence always seeks an indemnity against claims arising from repayment activities or events that do not directly further the military tasks of the Department. Examples include participation by Service personnel or

Ministry of Defence civilian staff in non-core fund raising charitable or social activities, or the use of Ministry of Defence personnel or equipment by other organisations for activities, which do not support military tasks. The Ministry of Defence must seek an indemnity in such instances as there is no financial provision in the Defence budget to meet claims which are not defence-related. Indemnities must be backed by insurance or a guarantee from those companies/organisations that self-insure. The only exception to the requirement for indemnity is when the Ministry of Defence is dealing with other Government Departments, because of the principle of indivisibility of the Crown. The Claims Unit issued 33 indemnities in Financial Year 2012/13 and advised on 23 MOUs during the year.

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

Income Generation

8.7 Income generation activity under the Government's initiative for 'Selling Government Services into Wider Markets' is also an exception to the rule that the Ministry of Defence does not purchase insurance. As a result, however, of the unusual and hazardous nature of many 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. Customers may therefore as an alternative pay a charge under the Departmental Insurance Scheme and any claims for compensation which may arise will then be settled by the Claims Unit.

Section Nine

Law and Practice

Fast-Track and Multi-Track

9.1 Personal injury claims will be assigned to either a fast-track or multi-track procedure. Fast-track cases are limited to a value of £25,000. In these cases there will be an automatic timetable for compliance with the various stages of the litigation. The hearings are designed to be relatively short and in the majority of fast-track cases written evidence only from a single expert will be accepted.

9.2 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 be required to attend a case conference before a judge, when decisions will be made as to the future conduct of the claim.

Legal Costs

9.3 New rules and practice directions for costs management, which will generally apply to all multi-track cases commenced on or after 1 April 2013, were announced this year. The key components in the package are:

- an end to defendants paying success fee uplifts
- an end to defendants paying ATE insurance premiums
- a 10% increase in general damages for non-pecuniary loss
- a regime of Qualified One-Way Costs Shifting in personal injury cases
- reforms to 'add teeth' to the claimant's Part 36 offer
- a new test of proportionality
- a new approach to costs management and cost budgeting

- the introduction of new Pre-action Protocols for personal injury claims under £25,000 in value has been deferred for a short period. This will likely introduce fixed costs for such cases.
- Litigants in person will not be required to prepare a costs budget.
- Damages Based Assessments – solicitors can take up to 25% of the claimant's damages.

Dispute Resolution Commitment

9.4 In accordance with a pledge made to the then Lord Chancellor Alternative Dispute Resolution (now rebadged as Dispute Resolution Commitment) is considered in all appropriate cases, usually where there is some evidence to support a claim of negligence. This may take the form of a counsel-to-counsel Settlement conference or Mediation (see explanations below).

9.5 In financial year 2012/13, there were 28 cases where Dispute Resolution Commitment led to settlement of the claim either directly or indirectly. This resulted in estimated savings to the Department of some £ 18 Million.

Counsel-to-Counsel Settlement Conferences

9.6 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. A round table consultation is arranged with the Department represented by counsel, the instructing solicitor and an appropriate representative from the Claims Unit. This method of negotiated settlement has had a significant effect on the way claims are handled but of course depends on both the claimant and defendant showing an element of goodwill combined with a realistic approach. An added benefit is that the claimant need not undergo the stress of a court case to secure compensation for an injury or loss caused by the Department's negligence.

Mediation

9.7 The Department is committed to considering the use of mediation as a method of Dispute Resolution in appropriate cases. 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. Within the Claims Unit, the Senior Claims Officer (Claims Handling) and Team Leader Clinical Negligence claims are accredited mediators.

Rehabilitation

9.8 Rehabilitation, as a method of assisting injured or ill people back to work, is attracting an increasing level of support 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, but is expected to be used much more in future. The Claims Unit aims to utilise rehabilitation where appropriate when compensation claims are made.

Periodic Payments

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

9.10 A periodic payment, by contrast, is a regular payment made on a monthly, quarterly or annual basis, often in addition to a conventional lump sum. The periodic payment can be made by way of an annuity purchased in the marketplace or, in the case of Government Departments and the National Health Service Litigation Authority, on a self-funded basis. The Courts now have the power to impose periodic payment settlements and must consider in every case involving future pecuniary loss whether periodical payments are a suitable means to pay all or part of the damages

| | 2010/11 | 2011/12 | 2012/13 |
|-----------------------------------|-------------------|-------------------|-------------------|
| Total number of periodic payments | 35 | 42 | 41 |
| Total payments each year | £1,566,674 | £2,416,117 | £2,406,279 |

Third Party Accident Scheme (ToPaS)

9.11 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 the Department, but

this does not apply to Service Personnel or to Civil Servants injured in other circumstances.

9.12 In order to alleviate the problems to which this gives rise, a scheme called ToPaS (Third Party Accident Scheme) has been in operation since November 2000, providing legal advice and assistance to Ministry of Defence Civil Servants and Service Personnel who have been injured whilst on duty and who consider the injury to be the fault of a negligent third party. Ralli Solicitors, a firm of solicitors who specialise in personal injury claims, operates the scheme on behalf of the Ministry of Defence.

Common Law Claims & Policy - Organisation

Head of DJEP-CLC&P - SCS 1

Deputy Head of DJEP-CLC&P – B1

Senior Claims Officer (Claims Handling) - Band C1

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

Employer's Liability, Low Flying and Maritime Team

Staff:

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

Responsibilities:

Service Personnel Employer's Liability Claims

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

Civilian Personnel Employer's Liability Claims

Managing the claims handling contract with Gallagher Bassett International Ltd.

Combat Immunity Claims

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

Nuclear Test Veterans Group Action

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

Section 10 claims

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

Miscellaneous claims

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

Low flying

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

Maritime claims

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

Public Liability Team**Staff:**

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

Responsibilities:**Public Liability Claims**

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

Visiting Forces

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

Northern Ireland Claims

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

Vehicle Claims

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

Overseas Operations

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

Compensation Scheme for Radiation Linked Diseases

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

Criminal Injuries Compensation

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

Non-Maritime Recoveries

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

Clinical Negligence Team

Staff:

| | |
|-----------------|---------|
| Team Leader | Band C2 |
| 1 Case Manager | Band D |
| 1 Administrator | Band E2 |

Responsibilities:

Clinical Negligence

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

Post Traumatic Stress Disorder

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

Human Volunteer No Fault Compensation Scheme

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

Claims Annual Report

Responsibility for production of the Claims Annual Report.

Senior Claims Officer (Policy) - Band C1

Responsible for Policy Group

Staff:

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

Responsibilities:

Non-contractual Insurance

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

Third Party Motor Claims

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

Contractual Matters

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

Financial Management

Bill paying for DJEP-CLC&P and management of periodic payments

Annex B

10 Highest Value Cases Settled in 2012/13

| Claimant | Type of Injury /Loss | Compensation (including claimant's legal costs) |
|----------|---|--|
| Service | Fall on assault course left claimant paralysed | £3,227,255 |
| Civilian | Clinical Negligence – Brain damaged child. Cerebral Palsy | £2,600,000 lump sum plus annual periodical payments |
| Service | Claimant developed Parkinson's Disease following exposure to solvents during his military service | £1,090,000 |
| Service | Clinical Negligence - Delay in diagnosis and treatment of carcinoma of the colon resulting in death of claimant | £1,075,000 |
| Service | Claimant fell during mess game sustaining serious back injuries | £966,205 |
| Service | Asbestos Related Disease | £951,807 |
| Service | Claimant was a passenger in Army vehicle which was involved in a Road Traffic Accident | £849,952 |
| Service | Fatality resulting from helicopter crash | £807,774 |
| Service | Claimant, a cadet, suffered sexual abuse/assault | £505,127 |
| Civilian | Asbestos Related Disease | £498,196 |

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