MINISTRY OF DEFENCE

DC&L(F&S)CLAIMS ANNUAL REPORT 1998/1999

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CONTENTS

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INTRODUCTION BY THE CHIEF CLAIMS OFFICER

This is the second Claims Annual Report. In preparing the first report, we were careful to consult widely to ensure that we covered the issues you would find interesting and informative. I was delighted, therefore, that the first report was warmly commended by Ministers and senior officials, who saw the report as a very important step to alert colleagues to the nature and costs of compensation claims.

It is fact that the negligent actions or omissions of Ministry of Defence employees will sometime in the future personally affect others, perhaps because their property is damaged or, more seriously, because they suffer a major injury or a member of their family is killed. It is very important, therefore, that the Ministry of Defence has a well-trained and professional claims handling organisation to ensure that, 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 a thorough and objective assessment of the case proves that there is a legal liability to pay compensation we do so. The amount of compensation awarded (quantum) is assessed in accordance with the levels being awarded by the courts to ensure that it is fair both to the Claimant and taxpayer. We seek to deal with claims quickly and fairly to minimise administrative and legal costs and to avoid additional distress to the Claimants. We must remain alert to the fact that the decisions made when handling claims affect the quality of Claimants lives and their perception of the Ministry of Defence.

The need to become increasingly professional has never been greater, due to the upheaval in the Civil Litigation process which was introduced on 26 April 1999. The New Civil Procedure Rules will significantly change 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 protocol, will govern the conduct of litigation with an overriding objective 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. The courts will impose severe sanctions against those who do not comply with the new Rules. Claims staff have undergone a high level of specialist training to enable them to cope with these changes. It is, however, extremely important that our colleagues throughout the Department become more focussed in playing their part in the collection of evidence, disclosure of documents and providing assistance to my staff.

DC&L(F&S) Claims' total expenditure for financial year 1998/1999 was about £76M compared to about £70M in 1997/1998. The Branch was responsible, directly and indirectly, for approximately 8,000 new claims received in 1998/1999. Cases regularly attract Ministerial, Parliamentary and media attention. (Indeed the first annual report received coverage in the national press).

I make no apology for repeating a statement made in the first report, that it is a fact that the money spent in settling compensation claims results in no tangible defence output and that compensation is only part of the total financial loss sustained by the Ministry of Defence. However, this is overshadowed completely when a family is left without a loved one or an individual suffers a catastrophic injury. It is therefore very important that all areas of the Ministry of

Defence have a better understanding and greater visibility of the work of DC&L(F&S)Claims. I am particularly concerned that everyone should be made aware of the sort of activities or omissions that give rise to claims, and what action can be taken to reduce the risks. Since the publication of the first report, I have put in place a small team to help management areas to identify such risks and what might be done to reduce the incidence of claims.

In common with the rest of the Department, DC&L(F&S), of which Claims forms part, has been working towards gaining Investors in People accreditation. The project began in July 1997 and a formal commitment to seek accreditation was made to the Central London Training and Enterprise Council in February 1998. The Directorate's Investors in People assessment was carried out on the 26 and 27 May 1999 and the Investors in People standard was awarded on 22 June 1999.

I would be glad to respond to any questions raised by this Report and to receive comments and observations on how future reports might be improved.

Additional paper copies are available from the DC&L(F&)Claims Focal Point, Room 813, Northumberland House, Northumberland Avenue, LONDON, WC2N 5BP (Telephone 0171 807 70049/56 or Fax 0171 807 70051). This Report can also bee-mailed via CHOTS or supplied on floppy disk.

J T R MITCHELL
Chief Claims Officer

SECTION 1

COMPENSATION CLAIMS HANDLING IN THE MINISTRY OF DEFENCE

Organisation

1.1 The Head of DC&L(F&S)Claims is the Chief Claims Officer, a Grade 7 civil service post. The Chief Claims Officer reports to AUS (SP Pol) through D C&L(F&S). At the end of March 1999, the Branch comprised forty-one staff. In-year expenditure amounted to £76M. The staffing position at the end of the year, 1998/1999 operating costs and programme costs are set out at Annex A. It is important that staff at all levels within DC&L(F&S) Claims acquire the training, skills, knowledge and experience needed to enable them to contribute effectively to the goals of the Division. Claims staff, therefore, attend a series of specialist training seminars covering all aspects of common law compensation issues.

Responsibility

1.2 DC&L(F&S)Claims is primarily responsible for processing common law non-contractual compensation claims against, and on behalf of, the Ministry of Defence. The Branch also has a number of other important responsibilities such as providing claims policy advice, handling Service personnel employment tribunal claims, handling claims against foreign forces based in the UK and providing advice on insurance and indemnities. It also has a variety of secretariat tasks and during the period of this report the Branch dealt with 120 Parliamentary Enquiries, 19 Parliamentary Questions and 296 Official Action Letters. Further information on the various activities for which the Branch is responsible is set out at Annex B.

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

Policy and Procedures

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

1.5 The amount of compensation paid is determined by common law principles which, broadly, take account, as appropriate, of the individual's pain and suffering, degree of injury, property losses, past and future financial losses, level of care required, etc. Levels of compensation including these elements can vary greatly depending on an individual's circumstances. Advice is sought where necessary from Treasury Solicitor's Department for cases brought in England and Wales; the Crown Solicitor in Northern Ireland; and Robson

McLean, the Department's legal advisers in Scotland. Junior and leading counsel are also consulted on high profile or complex cases or where a point of law needs to be explored. The majority of cases are settled amicably one way or the other and most payments of compensation are made without Claimants having to take the Ministry of Defence to court. More detail on the legal process is provided in Annex C.

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

1.7 In addition to common law claims, DC&L(F&S)Claims also handle claims relating to Employment Tribunal applications brought by current or former Service personnel. These claims typically involve allegations of unfair dismissal, sexual/racial discrimination or sexual/racial harassment. Whilst the single Service secretariat branches will initially receive and investigate Employment Tribunal applications, they have no delegated financial authority and claims can only be settled by obtaining the agreement of DC&L(F&S)Claims who hold funds centrally.

Common Law Claims From Service Personnel

1.8 Prior to May 1987, Service personnel were prevented 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). 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, and the dependants of deceased Service personnel, who suffer loss or injury (including illness) as a result of negligence by the Ministry of Defence have been entitled to make common law claims for compensation.

1.9 Compensation in the form of a war pension and associated benefits are available to all former members of HM Forces suffering an illness or injury attributable to their service. War Pensions are administered and paid by the Department of Social Security's War Pensions Agency only to those who qualify after leaving the Armed Forces. War pensions are abated to take account of any common law compensation paid for the same injury or illness.

SECTION 2

HIGH PROFILE, NOVEL OR CONTENTIOUS CASES/GROUPS OF CASES SETTLED IN FINANCIAL YEAR 1998/99

2.1 The nature of compensation claims is such that very often, and certainly for the more serious cases, some considerable time can elapse between the event that gives rise to the claim and the claim being settled. The 'Top Ten' cases by value settled by DC&L(F&S) in 1998/1999 are summarised at Annex D. Outline details of some of the most high profile cases, or types of cases, settled during the reporting period are given below.

Claim from Parents of Brain Damaged Child - Clinical Negligence

Baby X was born at the British Military Hospital in Hanover. His father was a serving soldier stationed in West Germany. It was alleged that due to the negligence of the medical staff, before and during the birth, Baby X suffered foetal hypoxia (irregular and/or lack of oxygen supply to unborn child which can result in organ damage or death). As a result permanent brain damage was caused and he now suffers from athetoid cerebal palsy (medical condition that manifests itself in paralysis or involuntary writhing movements). It was claimed that had more appropriate action been taken during the labour, possibly by means of a caesarean section being carried out, brain damage would have been averted. On Counsel's advice, the Department admitted liability in this case 5 years ago. Since that time both the Department and Claimant's representatives have instructed various experts to provide medical and care reports on Baby X, in an attempt properly to quantify the claim by agreeing the extent of disability, the level of care needed and life expectancy. Once all the relevant expert evidence was available a Counsel-to-Counsel settlement conference was held where the Department agreed to pay £2.3M compensation. A very large part of the award will be used for providing the correct level of expert care for Baby X.

Claim from Member of the Public - Clinical Negligence

Mr X had a long history of problems of the colon and rectum. He underwent an operation at the Royal Naval Hospital, Haslar, which included a terminal colostomy (a surgical procedure to provide for the establishment of an artificial opening in the colon). Mr X alleged that the surgeons failed properly to advise him of the surgical procedures that they planned to carry out and the possible risks involved. Had they done so, he claimed that he would not have consented to the operation being performed. The Department took the decision to defend this case in view of the statements made by the Surgeons involved in this matter that confirmed that the correct level of advice had been given to Mr X.. The Judge, however, on the balance of probabilities found in favour of Mr X and awarded him the sum of £24,369.55 compensation.

Claim from Serviceman's Next of Kin - Clinical Negligence

The late Mr X consulted Service medical doctors over a period of five years on a number of unrelated ailments. During the course of these consultations, he asked for advice concerning a mole on his body. On each occasion the doctors assured him that it was benign.
However, after further consultation it was decided a biopsy should be carried out. The results confirmed that Mr X was suffering from terminal malignant melanoma (cancerous skin tumour caused by the pigmentation of cells in moles). His widow brought a claim for compensation citing clinical negligence against the Department. On Counsel's advice, the Department admitted liability in this case**.** A Counsel-to-Counsel settlement conference was held where the Department agreed to pay £810,000 compensation which included a sum for loss of earnings, pension and promotion.

Legal Challenge to the Crown Proceedings Act 1947

A former member of HM Forces initiated a claim for compensation against the Ministry of Defence for the alleged failure to diagnose and treat a malignant carcinoma in his left eye. Between September 1985 and early 1987 Mr X attended the British Military Hospital in Munster during which time his developing condition was not diagnosed or treated. In April 1987 while on leave in the UK, a private consultant made a correct diagnosis and Mr X subsequently underwent treatment.

The Ministry of Defence defended the claim on the basis of Section 10 of The Crown Proceedings Act 1947, which prevents Service and ex-Service personnel from suing the Crown for illness or injury sustained prior to May 1987. The case proceeded to trial in May 1998, when the presiding Judge ruled in favour of the MOD and dismissed the action. Mr X was, however, given leave to appeal. On 18 February 1999, his case went before the Court of Appeal, with his legal representative arguing that Section 10 of The Crown Proceedings Act 1947 did not apply to medical negligence cases. The three Judges who heard the case handed down judgement on18 March, when they ruled on a majority decision in favour of the Ministry of Defence.

If the Court of Appeal had ruled that Section 10 did not apply to medical negligence cases, there would have been a considerable increase in claims from Service personnel arising from incidents before 1987, particularly those relating to Post Traumatic Stress Disorder (e.g. Falklands Island conflict).

Accident – Army – Training Exercise

A former member of the Territorial Army twisted her ankle on a cattle grid during a training exercise, tearing the tissues around her ankle bone and rupturing a nerve in her left foot, for which she claimed damages from the Ministry of Defence. The Ministry of Defence denied liability for the accident, and the case went to trial. The Judge dismissed the claim, saying that in the course of battle nobody placed covers over obstacles such as cattle grids. The Claimant had already crossed the grid on five previous occasions that day and simply failed to look where she was going when she twisted her ankle. No compensation was awarded.

Leg Injuries - Army

A former infantry soldier brought a claim for compensation against the Ministry of Defence in respect to injuries to his lower legs allegedly sustained as a result of being made to run in combat boots. The Claimant also alleged that the subsequent medical treatment which he received was negligent. The Ministry of Defence denied liability for the injuries and the case proceeded to trial. Although the Judge ruled in favour of the Claimant, the amount of compensation he awarded (£5,025) was significantly less than the £400,000 being sought. This was because the Ministry of Defence were found only liable for the pain and suffering caused by the delays in the Claimant being seen by an orthopaedic specialist, and not for the leg injuries.

Accident – Army – Skiing

While on a Nordic Skiing Survival Course in Norway, X was skiing down a slope when he swerved to avoid another skier and hit a mound of snow. The anterior cruciate ligament in his right knee snapped and he was subsequently medically discharged. X claimed damages from the Ministry of Defence in respect of the accident principally on the basis that he was not fully trained for such skiing. Following legal advice from Counsel, settlement of the claim for £315,000 was achieved without the need for the case to proceed to Court.

Accident – RAF – Aircraft Crash

Flt Lt X was severely injured when the aircraft that he was piloting crashed following an engine failure. Flt Lt X was still in the aircraft when it hit the ground rendering him paraplegic. Flt Lt X submitted a claim for damages against the Ministry of Defence claiming that the accident was due to faulty maintenance procedures which caused one of the engine compressors to disintegrate resulting in engine failure. Following a pre-trial Counsel to Counsel negotiation the case was settled in July 1998 for approximately £1,500,000.

Accident – Army – Car Crash

Mr X, then a LCpl serving in Northern Ireland, was involved in a road traffic accident when the vehicle in which he was travelling as a passenger left the road and crashed into a concrete bridge support. Although Mr X sustained only minor physical injuries, the driver was seriously injured, and two other passengers sustained fatal injuries. Mr X brought a claim for damages against the Ministry of Defence claiming that following the accident he developed Post Traumatic Stress Disorder (PTSD), which the Ministry of Defence negligently failed to diagnose or treat. Although the Ministry of Defence initially defended the claim, the case was settled on legal advice from Counsel for £100,000 on the basis that the Department did not have sufficient evidence successfully to refute the Claimant's allegations should the case go to trial. One other claim for compensation as a result of the accident was made against the Ministry of Defence, from the mother of one of the dead passengers. This was settled in June 1994.

Accident - Royal Navy - Fall

Mr X then serving in the Royal Navy sustained serious back injuries following a fall down an unguarded hatch on the helicopter flight deck of a war ship. Mr X's claim for compensation was settled in October 1998 on legal advice from Counsel for over £100,000.

Accident – Army - Fall

Mr X injured his back when he fell from a window ledge in Army accommodation while cleaning windows, resulting in him being medically discharged. The claim was settled out of Court for £35,000 on the basis that Mr X was not provided with the correct safety equipment.

Accident – Army – Shooting

L/Cpl X was fatally wounded during a training exercise on an Army range in Germany. The training involved a simulated battle scenario with live ammunition being used. Unfortunately, due to a breakdown in communication, the strict timetable of firing was off course and L/Cpl X was hit in the back, with the bullet penetrating his spine causing fatal injuries. He survived for some hours and the damages included an element towards pain and suffering between the injury and the time of death. The balance of the settlement related to Fatal Accident Act damages and incidental expenses on the part of his Parents who brought the claim against the Ministry of Defence. Under the terms of the Fatal Accidents Act 1976, compensation to cover bereavement is only awarded in two cases (i). to a spouse, (ii) to the parents, if the deceased was a minor (under 18 years) and had never married. Furthermore, although a widow or dependant children may receive a large award of compensation calculated on past and future financial loss, a parent who was not financially dependant on the deceased may have little entitlement, which is usually restricted to funeral expenses up to a maximum of £7,500.

Accident – Army - Burn

The Claimant was working in a kitchen and decided to clean a container on the vegetable rack. The shelving became loose and the Claimant called for assistance. As they tried to secure the shelf it collapsed causing boiling stock, which had been placed there earlier, to spill causing injury to the Claimant. The Department accepted primary liability as another employee had inappropriately placed the stock on the shelf. The Department, however, alleged a high proportion of contributory negligence because the repairs to the shelving were attempted whilst the boiling stock was still positioned on the shelve. The claim was settled out of court for approximately £2,900.

Accident – Army – Crush Injury

Mr X was assisting other members of his Platoon to push a faulty Warrior Armoured Personnel Carrier from its garage to the parade ground. The Warrior rolled backwards when Mr X and the other soldiers stopped pushing, crushing Mr X between the vehicle and a concrete pillar, causing injuries to his chest. Mr X accepted a Payment into Court of approximately £8,500.

Accident - Army - Facial Injury

Mr X sustained severe facial injuries, and subsequent medical discharge when a battery exploded in his face whilst on military exercise. Although the Claimant was claiming compensation for significant future loss of earnings, he was imprisoned for several years for a serious criminal offence committed after the accident, thus reducing his future loss of earnings claim because

while in prison he was unable to work. The claim was settled for £29,000.

Accident - Army - Spinal Injuries

Mr X suffered major spinal injuries during a posting to Belize with his Unit. Solicitors acting for Mr X claimed that their client had been assaulted by local youths. They claimed that the Ministry of Defence should be held liable for failing to take steps to ensure the safety of employees, given that they had earlier knowledge of an assault on Service personnel by locals. Investigations revealed that Mr X and two of his colleagues had disobeyed standing orders by visiting an island off the coast of Belize. Following an extensive drinking session there was an altercation with locals followed with Mr X having to be restrained from offering further violence to local youths. Mr X, in a fit of rage, then ran toward the beach and jumped into the ocean from a shallow jetty. Unfortunately, the depth of water below the jetty was insufficient to break his fall and he sustained major spinal injuries. The Ministry of Defence cannot be held liable in these circumstances as the individual was neither acting in the course of his employment nor were his actions foreseeable or due to the negligence of his employer. The claim was repudiated.

Accident - RN - Fall

During an exercise on board a submarine Mr X, wearing bulky breathing equipment, stepped back and fell through a hatch which had been left open. Initially he suffered bruising to head and ribs, returning to work the following day. However, some days later he reported sick, and was found to have suffered a pneumothorax (air in the pleural cavity). Although he recovered fully, having suffered from this type of injury he was unable to continue serving on submarines and was discharged from the RN. The claim was settled for £8,500

Sexual Discrimination and Harassment – RN

Wren X alleged that she suffered sexual discrimination and harassment by a named superior officer soon after taking up her appointment on board a warship. Wren X was later discharged from the Royal Navy on the grounds of being temperamentally unsuitable for Navy Service. She subsequently took the Department to an Employment Tribunal who found in her favour. In addition, the Tribunal accepted that had it not been for the treatment she received by the named officer, she would not have left the Navy. The Department agreed to pay the applicant the sum of £75,000 compensation. The named officer, however, was found not guilty at court-martial of the charges on which the Employment Tribunal case was based.

Sexual Discrimination - RAF

Senior Aircraftwoman X was discharged from the RAF on compassionate grounds. During her RAF service she became pregnant and gave birth to a son. The domestic pressures of looking after her son persuaded her to seek a compassionate discharge from the RAF and, after careful consideration, her request was approved and she was notified of this decision in May 1996. In June 1996 she applied to withdraw her application for a compassionate discharge because her personal

circumstances had changed. The RAF rejected her request. She subsequently registered a complaint at an Employment Tribunal alleging that the decision to discharge her from the RAF was based on grounds which amounted to sexual discrimination. She claimed that due to a shortage of personnel in her trade, Senior Aircraftmen were actively being encouraged to extend their periods of Service. The Tribunal upheld the complaint of direct sexual discrimination in a 2 to 1 majority decision. Compensation of £80,000 was paid.

Conversion from sheep to beef farming as a result of low flying activity

The Claimant's farm lies very close to the runway of a Welsh RAF station. Under certain weather conditions, aircraft have to approach the runway by flying directly over his farm. Due to the condition and layout of his land, the Claimant had to bring his ewes in to lamb in a shed directly under the flight path. The ewes, however, became distressed by the noise of the aircraft and often aborted their lambs. The farmer had claimed his losses annually over a number of years. He eventually claimed that sheep farming was no longer viable and that the Ministry of Defence should pay for a conversion to beef farming, cattle being by nature less susceptible to aircraft noise. After consideration of expert reports and legal advice, the Claimant was paid £185,000 towards the conversion.

Maritime Claim against MOD

In May 1995 HMS Illustrious struck a Maltese tug while in Valetta Harbour causing severe damage to the vessel and an injury to one of its crew. As a result the Ministry was faced with two separate compensation claims: one from the owners in respect of the damage to the tug and a personal injury claim brought by the crewman. Causation was not in dispute but specialist Maltese shipping surveyors had to be engaged to assist in investigating what was a complex property damage claim. It was finally settled out of court for £515,000 plus costs in April 1998. In the case of the personal injury claim the principle issue in contention was the extent to which the incident had aggravated a pre-existing back injury. An out of court settlement of £100,000 plus costs was finally reached in February 1999.

Maritime Salvage Claim against MOD

In April 1998 HMS Cromer, while searching for the wreckage of a sunken fishing vessel off the coast of Cornwall, was forced to abandon its Remote Control Mine Disposal System (RCMDS). The RCMDS, a miniature submersible craft used to search the seabed, was subsequently found on the surface by the crew of a Plymouth fishing vessel. It was then taken in tow to Mevagissey, whereupon the owner of the vessel submitted a salvage claim against the Ministry. The owner of the fishing vessel initially detained the RCMDS while attempting to negotiate a salvage settlement with the Department. However, on the intervention of the Treasury Solicitor the craft was returned to the Ministry. At this time a number of stories also appeared in the local and national media referring to the RCMDS as the "Yellow Submarine", a sobriquet which stuck. On the return of the craft protracted negotiations commenced and a salvage settlement of £40,000 inclusive of costs was finally agreed in March 1999.

Maritime Salvage Claim by MOD

The yacht "Ruth" was found abandoned and drifting in the Atlantic by HMS London in July 1997. The yacht, which had suffered only minor damage, was drifting close to the main shipping lanes off the East Coast of America, and was considered to be an immediate hazard and in danger of being sunk. It was decided to salvage the vessel and sail her to the nearest safe port, the US Naval Base, Roosevelt Roads, in Puerto Rico. Once made ready and provisioned, the vessel was manned by a volunteer crew of six personnel from HMS London and sailed in heavy seas to Roosevelt Roads, arriving a week later. Subsequent negotiations with the US authorities failed to reach an agreement on a berth for the yacht, which resulted in her being sailed, with a fresh crew from HMS London, to Tortola in the British Virgin Islands. Having contacted the German owners of the "Ruth", it unfortunately became necessary for the Ministry of Defence to threaten to arrest the yacht in Tortola, in order to establish jurisdiction for the salvage claim. Fortunately the threat of arrest was sufficient for English jurisdiction to be agreed, and after lengthy negotiations, an amicable settlement of £25,000 inclusive of costs was finally reached in July 1998. After deduction of the Department's costs from the settlement award, the remainder has been divided between the Ministry of Defence and the ship's company of HMS London, whose share amounts in total to approximately £6,600. In due course those crewmembers that directly assisted in the salvage of the "Ruth" will each receive shares from this fund.

SECTION 3

BRIEF SUMMARY OF GROUP CLAIMS

3.1 Some particular incidents or events involving Ministry of Defence personnel have led to a number of claims from those affected. The position on the major group claims, as at 31 March 1999, was as follows.

Gulf War Illness – Intentions to Claim

3.2 The position concerning claims for compensation remains as set out in last year's report – the Department has not received any writs or claims of detail stating specific allegations of negligence sufficient to start considering these claims. The Ministry of Defence has not accepted either cause or negligence but has acknowledged less than satisfactory handling of a number of matters, such as the failure to transfer details of vaccination to permanent records, the way in which "informed consent" was implemented and the initial failure to provide information about the use of organophosphates.

3.3 Once writs have been served or properly formulated claims submitted, DC&L(F&S) Claims will be in a position to start dealing with the claims expeditiously. It is likely that each individual claim for common law compensation will have to be considered on its merits, taking into account each individual's symptoms, the suggested causation and the degree of sickness, disability or distress. However, if possible we shall make clear in settling the first cases the line for dealing with the rest. DC&L(F&S)Claims would, as always, hope to avoid cases proceeding to a court trial.

3.4 During the reporting year DC&L(F&S)Claims received 123 notifications from Gulf War veterans, their families and civilians of an intention to claim compensation. The total number of such notifications received as at 31 March 1999 is 1780 (this figure excludes 103 intentions to claim that were subsequently withdrawn by the 'Claimants').

3.5 Under the provisions of the Limitation Act the general period in tort for bringing a claim is six years from the date on which the cause of action accrued. In the case of personal injury the relevant period is three years. In the case of Gulf War illness, however, it was agreed that the Department would not seek to use the Limitation Act as a defence against any claims from Gulf War veterans until such notice was given formally by the Department. This decision was made on the basis that research was underway, that proper discovery of documents could not be achieved at that time and that the Ministry of Defence's Medical Assessment Programme was being put in place. However, once Writs are served, Claimants' solicitors will be advised that the limitation period will begin to run.

3.6 There is still no medical or scientific consensus on the subject of Gulf veterans' illnesses and important research is underway. The Ministry of Defence is funding two major epidemiological studies to look at the health of Gulf veterans and their families. One study aims to determine whether Gulf veterans are experiencing greater ill-health than Service personnel who did not take part in the conflict and to identify possible exposures and predisposing factors associated with any distinctive pattern of symptoms which may be found. The other epidemiological study will examine the reproductive health of Gulf veterans, their partners and the health of their children. In addition, three other studies are in hand: a neuromuscular study; work on the possible adverse health effects of the combination of medical countermeasures which were used in the Gulf to protect against the threat of biological or chemical warfare agents and a literature review of world-wide research into Gulf veterans' illnesses.

3.7 A further epidemiological study, looking at whether service in the Gulf is associated with increased illness in UK veterans, is being funded by the US Department of Defense. This is being carried out by a team at Kings College School of Medicine. This study involves Gulf veterans and two control groups: one of non-Gulf personnel and another of personnel who have served in Bosnia. Although this study is being carried out independently of the Ministry of Defence, the Department co-operated with the King's team by providing essential data to the researchers. The results from phase one of the study were published in The Lancet in January 1999.

3.8 The Gulf Veterans' Medical Assessment Programme (MAP), now based at St. Thomas' Hospital, London, was established by the Ministry of Defence in July 1993 to examine UK Gulf veterans concerned that their health had been adversely affected by service in the Gulf conflict. The MAP is open to all Servicemen and women, and Ministry of Defence civilians who served in the Gulf at any time between August 1990 and July 1991, or who believe that their health has suffered as a direct result of the Gulf conflict. Individuals who worked for contractors providing direct support to UK operations during the Gulf conflict may also apply, but the programme is not intended to cover other UK citizens who may have been in the Gulf region at the time. The MAP has two main purposes. First, to investigate patients' medical complaints and, so far as possible, to diagnose what they are suffering from and recommend appropriate management, or provide reassurance if no illness is found. Secondly, the MAP collates statistical information, which will be available in an

anonymised form as a resource for researchers; this may be useful in helping to determine whether there are particular patterns of ill health associated with service in the Gulf. A paper entitled "Clinical Findings for the First 1000 Gulf War Veterans in the Ministry of Defence's Medical Assessment Programme" was published in the British Medical Journal on 30 January 1999.

3.9 Further information on Gulf veterans' illnesses issues is available from the Ministry of Defence's Gulf Veterans Illnesses Unit (Helpline number: 0171 218 4462); the Ministry of Defence's internal Chots web site at: 'Personnel/Military/Veterans/Gulf Veterans Illnesses' or on the Internet at: http://www.mod.uk/ policy/gulfwar/index.htm. The postal address for enquiries is Gulf Veterans Illness Unit, Room 8270, Ministry of Defence, Main Building, Whitehall, London SWIA 2HB.

Asbestos-related Disease

3.10 Asbestos dust and fibre principally affects the lungs, although it can cause problems in other organs too. Once asbestos dust or fibre is inhaled, a proportion may stay in the lungs for the rest of the individual's life. In time - between fifteen and forty plus years - the asbestos may cause disease. The effect of asbestos-related disease ranges from asymptomatic illness to certain death. There is no clear link between the level of exposure to asbestos dust and fibre and the likelihood of developing disease. There is very little prospect of a cure being found for the diseases: the best sufferers can hope for is help in alleviating their symptoms. Regrettably, in the past, some Ministry of Defence employees were exposed to levels of asbestos higher than is permitted today. Unfortunately, the numbers of present and former Ministry of Defence employees who have died as a result of an asbestos disease, are currently suffering, or are yet to develop a disease, are not known. Generally, however, RN personnel who served afloat in any capacity during the period from the end of the second world war to the 1970s when regulations on the use of asbestos were introduced, particularly those working in ships' boiler rooms, are most likely to have been at risk. Ministry of Defence civilians involved in ship refitting or repair in the same period are also likely to have been at risk

3.11 Since most Service personnel will have been exposed prior to 15 May 1987 (the date from which they could receive compensation for Ministry of Defence negligence – see paragraph 1.8.) they are not able to receive compensation. This position was confirmed in a Court of Appeal judgement [1]. (Leave to appeal to the House of Lords was not given.) They are however entitled to war pensions and associated benefits from the War Pensions Agency. Civilian employees have, since 1947, been able to sue the Ministry of Defence for common law compensation.

3.12 The number of former Ministry of Defence employees who have or will develop asbestos related disease is unknown. However, during the period 1 April 1985 to mid June 1998, 2,488 common law compensation claims for asbestos-related disease were received from Ministry of Defence or former Ministry of Defence civilian employees (approximately 200 a year). The Department receives, on average, about 13 claims from former Service personnel a year for asbestos-related disease.

[1] Ronald Quinn -V- Ministry of Defence

3.13 For several years campaigners working on behalf of former Servicemen have argued that the compensation Servicemen receive is less than their civilian counterparts with the same degree of disability and that this is unfair. As a result, and following a meeting with interested MPs on 16 July 1997, the then Minister (Armed Forces) asked for advice on the issue. Specifically, he wished to consider whether there is any unfairness in the amount of financial compensation paid to former Service personnel when compared to civilians. Minister (Armed Forces) has received advice on this issue from Claims officials, which is under consideration.

Nuclear Test Veterans

3.14 Ex-Service personnel who participated in the atmospheric nuclear tests in the late 50s/early 60s have been campaigning for some years for compensation, alleging that their health has been damaged by exposure to ionising radiation. While it is acknowledged that some veterans are ill, and some have died, there is no evidence of excess illness or mortality among the veterans as a group which could be linked to their participation in the tests. This is borne out by independent studies into the health of test veterans carried out by staff from the National Radiological Protection Board (NRPB) and the Imperial Cancer Research Fund
which showed that for the British veterans as a group, their participation in the nuclear test programme has not had a detectable effect on their expectation of life, or on their risk of developing cancer or other fatal diseases.

3.15 The Ministry of Defence has agreed, however, to fund a further study by the NRPB into the incidence of multiple myeloma in the veterans of the tests. The study will address the question of multiple myeloma rates in the NRPB database which records some 22,000 veterans and a like number of matched controls. This decision was in response to a recent analysis of the NRPB which noted an increase in numbers of veterans and members of the study control population who are developing this illness.

3.16 As reported in last year's Claims Annual Report, in June 1998 the European Court of Human Rights ruled in favour of the UK in the two test cases it heard on 26 November 1996. (McGinley and Egan -v- UK and LCB -v- UK). However, the British Nuclear Test Veterans association have subsequently succeeded in persuading the European Commission of Human
Rights to revisit the judgement in the case of McGinley and Egan on the grounds of alleged new evidence. The Government is contesting this and a decision by the European Court of Human Rights is awaited.

Post Traumatic Stress Disorder

3.17 The Department's position concerning stress is that we acknowledge that some members of the Armed Forces may, during the course of their careers, be subjected to traumatic experiences and may suffer stress as a result. This does not necessarily mean that the Ministry of Defence has been negligent or that the individual will receive compensation. The Department does, however, have a duty to ensure that Service personnel receive proper treatment and where we fail in this respect, and the individual suffers some loss or damage as a result, then that individual may be

entitled to compensation. This is often referred to as the failure to recognise, diagnose and treat PTSD.

3.18 Last year 54 new PTSD cases were received, mainly relating to service during the Falkland Island conflict, the Gulf war, Bosnia and Northern Ireland. In one such case involving a former Falklands veteran, which proceeded to court in late 1998, the Judge found for the Ministry of Defence on all counts. The court accepted a defence based on Section 10 of the Crown Proceedings Act; rejected the Claimant's case that the Ministry of Defence had failed to implement any proper system for detecting and treating PTSD; and was surprised that the Claimant never once complained to any medical officer of any symptoms of PTSD whilst in the Army.

SECTION 4

MOD CIVILIAN EMPLOYEES EMPLOYER'S LIABILITY CLAIMS

4.1 Since 1982, the Ministry of Defence has contracted out the handling of its civilian employees employer's liability claims. Following a competitive tender exercise in 1997, which for the first time excluded an insurance element in the contract on value for money grounds, the contact was awarded to Guardian Insurance Services (UK) Limited.

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

Civilian Employees Employer's Liability Claims Received

Type	**Number of claims received In each financial year**		
	1996/97	**1997/98**	**1998/99**
Asbestos-related disease	191	183	237
Noise Induced Hearing Loss	318	494	297
Vibration White Finger	110	94	90
Accident Injury(Falls/Machinery/Lifting)	571	522	562
TOTAL	1,190	1,293	1,186

SECTION 5

THIRD PARTY MOTOR CLAIMS

5.1 Since 1982, the Ministry of Defence has contracted out the handling of third party motor claims against the Department. Following a competitive tender exercise in 1997 the contract was awarded to Guardian Insurance Services (UK) Limited. Details were published in DCI GEN 1/98.

5.2 The majority of motor accidents involving Ministry of Defence vehicles occur within the UK, although Guardian do handle around 40 third party claims each year from UK based vehicles

travelling in mainland Europe. The number of third-party claims received by Guardian and their value is shown in the Table below.

Third-Party Motor Claims

	1996/97		1997/98		1998/99	
Service	**Claims Received**	**Estimate (£)**	**Claims Received**	**Estimate (£)**	**Claims Received**	**Estimate (£)**
Army	2,732	4,172,955	2,434	2,972,225	2,652	3,575,274
Navy	437	461,960	356	291,449	356	330,929
RAF	542	735,583	551	344,019	593	517,859
Other	308	191,573	266	131,112	258	578,183
TOTAL	4,019	5,562,071	3,607	3,738,805	3,589	5,002,245

5.3 Claims arising from non-UK based vehicles overseas are handled by the appropriate Area Claims Officers (ACO) or DC&L(F&S)Claims where no ACO exists in that geographical area. In addition, DC&L(F&S) Claims handle third party claims involving Visiting Forces in the UK. Any personal injury element of such claims are handled in exactly the same way as other injury claims, and damage claims are settled on production of a bill or an expert's assessment. In certain cases loss of use and depreciation will also be paid. DC&L(F&S)Claims does not pay for damage to Ministry of Defence owned or hired vehicles as this is the responsibility of the unit involved.

5.4 Statistics for motor claims (excluding claims handled by Guardian Insurance Services (UK) Ltd) for the last three years are shown in the Table below. The upward trend reported last year appears to have levelled off.

Motor Claims (excluding claims handled by Guardian Insurance Services (UK) Ltd)

	1996/1997	**1997/1998**	**1998/1999**
No of motor claims received	296	432	371
Total costs (excluding in-house administration)	£650,000	£893, 000	£687,000

5.5 The figures for compensation payments made in respect of hire cars which were 'written off' are included in the table above, but when extracted are as follows:

Vehicle Write-Offs

	1996/1997	**1997/1998**	**1998/1999**

Vehicles written off	21	32	31
Cost incurred (excluding in-house admin costs)	£99,000	£247,000	£191,000

5.6 The number of claims in these categories being received should be taken in the context of the total number of hires (150,000) and miles driven (approximately 45 million) last year.

SECTION 6

SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS

6.1 During financial year 1998/1999, Royal Sun Alliance (RSA), (who, since 1 July 1996, have been contracted to handle new claims from Service personnel for personal injury), received 738 claims. Over the same period they settled 132 claims for £866,195.04 and a further 165 claims were either repudiated or withdrawn. Also during financial year 1998/1999, 280 employer's liability claims from Service personnel received before 1 July 1996 and handled 'in-house' by DC&L(F&S) Claims were settled at approximately £26,000,000 inclusive of legal costs. The number and value of cases settled by RSA may appear low but this is because of the time it takes for claims, especially major ones, to be investigated before they are resolved one way or another.

Service Personnel Employer's Liability Claims Received

	1995/96	1996/97	1997/98	1998/99
Number of Service personnel claims received (includes personal injury, medical negligence etc	1,014	924	1038	997

Bullying

6.2 The number of claims from Service personnel alleging personal injury as a result of bullying (physical or mental) is relatively small. At present there are about 38 active bullying/abuse related claims which includes 7 claims received during financial year 1998/1999. These cases are being investigated by RSA

Unlawful Imprisonment / Detention

6.3 The importance of units adhering to the correct procedures during the arrest and/or imprisonment of Service personnel pursuant to The Armed Forces Act 1966 is underlined by

the number of claims received from Service personnel alleging unlawful imprisonment/detention. During 1998/1999 13 such claims were received, with a total potential financial liability of approximately £200,000. A typical example is the failure in the arrest/imprisonment process which generally relates to administrative errors, such as the failure to charge the prisoner; to complete the charge sheet, or to complete, as appropriate, the 8, 40, 56 and 72 day delay report. Simple administrative errors can cost the Department dearly.

SECTION 7

RADIATION COMPENSATION SCHEME

7.1 The Ministry of Defence's policy on compensation for past and present radiation workers (both civilian and military) is to be a member of the nuclear industry's Compensation Scheme for Radiation Linked Diseases, which the Ministry of Defence joined in 1994. 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 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. 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.

7.2 The amount of compensation payable in a successful case is determined by negotiation between the solicitors representing the parties, based upon the same guidelines as would apply if the case had proceeded to Court. However, 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 a "full" payment 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.

7.3 During financial year 1998/1999, the Scheme received 35 enquiries from former Ministry of Defence employees (military and civilian) who believe their illness is associated with exposure to occupational ionising radiation. Over the same period one claim from a former civilian employee was settled. (Since 1994 four Ministry of Defence cases have been settled under the Scheme).

SECTION 8

CLINICAL NEGLIGENCE CLAIMS

8.1 Lord Justice Woolf stated during his review of the Civil Justice system that the number of complaints and claims against hospitals, GPs, dentists and private healthcare providers continues to grow as patients become more prepared to question the treatment they are given, to seek explanations of what happened, and secure appropriate redress. Patients may require further treatment, an apology and assurances about future action or simply financial compensation. These trends are unlikely to change. The Patients Charter encourages patients to have high expectations. Service personnel, their dependants and members of the public who receive medical treatment from Service sources have the same high expectations.

8.2 In deciding whether a defendant's medical care fell within an acceptable standard, the courts rely upon the test laid down in the case of Bolam -v- Friern Hospital Management committee (1957), namely that a doctor is not negligent if he/she acts in accordance with a practice accepted at the time by a responsible body of medical opinion even though other doctors adopt a different practice. The "Bolam Test" remains central to the issues on liability and causation in clinical negligence cases.

8.3 By their very nature clinical negligence claims can take a long time to settle. In many cases the Claimant will not wish to agree settlement until the full extent of their disablement is known. In some particularly complicated cases the Claimant may have instructed a number of experts in different disciplines to prepare reports on their behalf. Similarly, the Ministry of Defence may also wish to instruct experts to prepare reports on its behalf. This process can often take a long time as experts may not be readily available, especially those who specialise in rare areas of medicine.

8.4 One of the Civil Justice reforms recommended by Lord Justice Woolf will encourage economy in the use of experts and a less adversarial expert culture. For example, there may be scope in some cases for experts to be instructed jointly. Sharing expert evidence may also be appropriate on issues relating to the value of a claim.

8.5 During financial year 1998/99 a Claims section dedicated to the handling of clinical negligence claims was formed and a significant number of clinical negligence claims were either settled or repudiated. Two claims were settled for sums exceeding £1M and one claim for a sum exceeding £2M. 255 new claims were received during this period and the number of active clinical negligence cases at the end of financial year 1998/99 was 399. The comparative figure at the end of financial year 1997/1998 was 530 active cases. Details covering the past four years are shown in the following table.

	1995/1996	**1996/1997**	**1997/1998**	**1998/1999**
Number of Clinical Negligence claims received	280	243	308	255
Number of Clinical Negligence claims settled	31	58	58	112
Compensation plus cost of claims settled (excluding in house staff costs)	£1,759,663	£2,766,821	£3,545,060	£9,816,803

SECTION 9

MARITIME CLAIMS

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

9.2 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.

Salvage

9.3 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 by a Ministry of Defence owned ship or aircraft a vessel is salved, the Ministry of Defence 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.

9.4 Maritime/Salvage statistics for the last three years are shown in the Table below.

Maritime/Salvage Claims

	1996/1997	**1997/1998**	**1998/1999**
Claims received	42	61	159
Claims settled	44	45	24
Compensation paid	£122,865	£53,233	£698,934

9.5 The increase in claims received last year is as a result of one pollution incident. This has led to 135 claims which are still active. The increase in expenditure is due to the Maltese tug case referred to earlier in Section 2.

Maritime claims settled by FOST and FOSNNI

	1996/1997	**1997/1998**	**1998/1999**
Number of FOSNNI claims settled	70	91	59
Compensation paid by FOSNNI	£97,763	£128,040	£81,230
Number of FOST claims settled	56	45	40
Compensation paid by FOST	£57,946	£52,424	£60,859
Total compensation paid	£155,709	£180,464	£142,089

Maritime Recoveries and Salvage

	1996/1997	1997/1998	1998/1999
Number initiated	9	21	10
Number settled	8	18	6
Total recovered (excludes "Albanian Gold")	£39,730	£1,182,706	£164,804

Albanian Gold

9.6 In October 1946 two British warships were badly damaged by mines laid in the Corfu channel by Albanian Forces. The vessels' crews suffered significant loss of life and injuries. Subsequently the International Court of Justice ruled that Albania should pay compensation to Britain. The Albania government refused, however, and Britain consequently retained a large quantity of gold belonging to Albania, which had been sent to the Bank of England for safe keeping at the outbreak of the Second World War. After negotiation between the British and Albanian governments, the matter has been amicably resolved by the release of the gold in return for a compensation payment to Britain of £1.24M. This sum was paid into the DC&L(F&S) Claims Maritime Recoveries account towards the end of 1998/1999.

SECTION 10

MILITARY LOW FLYING CLAIMS IN ENGLAND, SCOTLAND AND WALES

10.1 Military low flying activities sometimes result in claims for compensation from members of the public. Claims are most often received for injured livestock and/or property damage but sometimes for personal injury. Although many of the claims are for relatively small amounts, military low flying is controversial in some areas of the country. Although investigated on the basis of legal liability, DC&L(F&S)Claims handles military low flying claims on an ex-gratia basis. This is founded on the premise that the Royal Prerogative gives an absolute right for all military flying activity and, therefore, an injured party has no legal rights of redress for compensation. This approach was set out in a Lords Written Answer by Lord Drumalbyn on 22 November 1971 (Official Report Column 888) thus:

"… 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."

10.2 In June 1994, a procedure was introduced in consultation with various farming unions and landowners' associations for processing claims relating to death or injury of livestock. Meetings between DC&L(F&S) Claims and the National Farmers Union greatly assist in keeping both sides informed of developments and improve the procedures. Under this procedure farmers should report the incident promptly, provide veterinary evidence and a fully quantified claim.

10.3 Unfortunately, this is a category of work which requires careful monitoring to identify potentially fraudulent claims. In March 1998, a Claimant alleged that while he was riding his motor

cycle on the motorway, 2 Hercules aircraft passed overhead causing him to look up suddenly, thereby injuring his neck. He claimed that he had taken a number of days off work as a result, but on investigation this proved to be entirely false. In July 1998 he was convicted of attempted fraud, sentenced to Community Service and ordered to pay costs.

10.4 In an effort to improve public relations, RNAS, AAC and RAF Station Commanders have been given delegated authority to settle straightforward claims up to £200 if a Claimant lives within two miles of the airfield. In addition, the Chief Claims Officer has given Regional Community Relations Officers (RCROs) the authority to recommend fast track settlements for simple claims up to a value of £250.

Low flying claims statistics for England, Scotland and Wales

	1996/1997	**1997/1998**	**1998/1999**
Number of military low flying claims settled	171	171	180
Low flying claims expenditure	£459,000	£263,000	£610,000

10.5 The number of low flying claims received remains fairly constant. The increase in the overall value of compensation paid last year can be attributed in part to one claim alone (£185,000) which is referred to in Section 2 of this report. Interestingly, many of the new claims received, although relatively low in value, were complex and there is a continuing tendency for Claimants to claim for losses that can only remotely be connected to low flying.

10.6 The Defence Estates organisation (DE) has delegated authority to settle property damage claims arising from military air crashes in the UK within delegated financial authority of up to £50,000 per claim. DE personnel perform valuable work in the aftermath of an air crash and have the expertise to assess many different types of damage from forestry to buildings.

Air Crash claims settled by DE

	1996/1997	**1997/1998**	**1998/1999**
Claims settled	20	17	4
Total value	£126,100	£105,800	£128,300

SECTION 11

PUBLIC LIABILITY CLAIMS

11.1 Public liability claims are submitted by third parties. The majority of claims are for personal injury or the loss of, or damage to, property. Most personal injury claims are from members of the public or contractors injured on Ministry of Defence property but can also be from individuals participating in 'Keeping the Army in the Public Eye', 'Executive Stretch', and other recruiting activities which are not covered by insurance.

11.2 Property claims usually result from damage to private belongings on Ministry of Defence land or in married quarters, often because of a lack of maintenance resulting in buildings being flooded, moth infestation, falling roof tiles, falling trees, drain covers collapsing, etc. Some of the more expensive claims result from negligence on Ministry of Defence property resulting in flood or pollution to adjoining private property.

Public Liability (PL) Claims

	1996/1997	**1997/1998**	**1998/1999**
Number of PL claims received	572	590	563
Number of PL claims settled	295	334	276
Compensation plus cost of claims settled (excluding in house staff costs)	£1.115M	£6.937M	£1.357M

11.3 After paying compensation of some £5.163M in 1997/1998 to the families of those killed in the 1994 Chinook helicopter crash at the Mull of Kintyre, compensation payments have now returned to the levels previously experienced.

Public Liability Claims - Northern Ireland

11.4 For security reasons, DC&L (F&S) Claims handle all Northern Ireland public liability claims of a political and/or sensitive nature. Claims mainly result from the on duty contact which military personnel have with members of the public. The majority of claims are for assault, baton round injuries, harassment, shootings and wrongful arrest. Some claims are very high profile, such as the shooting of alleged terrorists by the Security Forces. Compensation payments are usually subject to a Terms Endorsed clause whereby each side agrees not to disclose specific details once settlement has been reached. Examples of claims settled in 1998/1999 are: £750 paid to a man unlawfully detained by the Security Forces; £3,500 paid to a woman struck by a plastic baton round, and £2,500 paid to a man assaulted by the Security Forces.

Public Liability Claims arising in Northern Ireland

	1996/1997	**1997/1998**	**1998/1999**
Number of claims received	112	97	49
Number of claims settled	94	101	58
Compensation plus cost of claims settled (excluding in house staff costs)	£326,000	£292,000	£243,000

11.5 The number of claims received in 1998/1999 continues to show a sharp fall and is most certainly due to the cease fire, which in turn led to less military activity in support of the RUC.

Visiting Forces Claims

11.6 DC&L(F&S)Claims handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII Paragraph 5 of NATO 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 two agreements, but primarily involve the USA, Holland, Belgium and Germany. Claims are investigated and handled in exactly the same way as if British Forces were involved and, if satisfied that the Visiting Force is liable, the Ministry of Defence pays compensation on their behalf. In the case of NATO countries, the Sending State is billed for 75% of the amount paid, the United Kingdom paying the other 25%. The vast majority of Visiting Forces cases result from road traffic accidents.

Visiting Forces Claims

	1996/1997	**1997/1998**	**1998/1999**
Number of visiting forces claims received	105	89	85
Number of visiting forces claims settled	77	68	70
Compensation plus cost of claims settled (excluding in house staff costs)	£318,000	£328,000	£241,000

11.7 While the number of claims received and settled remains fairly constant, the level of compensation paid has shown a modest decrease.

SECTION 12

SERVICE PERSONNEL EMPLOYMENT TRIBUNAL CLAIMS

12.1 In addition to common law claims, DC&L(F&S)Claims also handles claims relating to Employment Tribunal applications brought by current or former Service personnel As from 3 August 1998, Industrial Tribunals have been referred to as Employment Tribunals (ETs) and although these are independent judicial bodies their procedures are quite unlike those of other Courts. They are intended to be relatively simple and informal: lawyers are not always involved as some applicants, and respondents, choose to represent themselves. Claims brought typically involve allegations of unfair dismissal, sexual/racial discrimination or sexual/racial harassment. Whilst the single Service secretariat branches will initially receive and investigate Employment Tribunal applications, they have no delegated financial authority to settle them and claims can only be settled by obtaining the agreement of DC&L(F&S)Claims who hold funds centrally. ET applications made by the Department's civilian employees are handled and settled by the appropriate Civilian Personnel Management Authority. There is no DC&L(F&S)Claims involvement with such claims.

12.2 The composition of an Employment Tribunal consists of a legally qualified Chairman (always called a "Chairman", whether male or female) plus two other lay members, one of whom will be

from an employers organisation and the other from an employees organisation - normally a Trades Union.

12.3 Service personnel have the right to submit complaints to ETs under the Sex Discrimination Act 1975 (& 1986), the Race Relations Act 1976 and the Equal Pay Act 1970. However, the regulations, which came into force on 1 October 1997, require personnel first to have made a complaint on the same matter under the Service redress procedures and for that complaint not to have been withdrawn.

12.4 In recognition of the requirement for complaints to be submitted first under the internal redress procedures, the time limit for a Service complainant to refer his/her case to an ET on all eligible matters is six months, instead of the normal three months.

Equal Pay

12.5 During 1998/1999, four new claims were received which involved equal pay, redundancy or pension matters. No claims were settled during the year but six claims were repudiated, withdrawn by the applicants or struck out by the ET.

Sex Discrimination

12.6 During 1998/1999, 31 new claims were received alleging sexual discrimination (compared to 138 in 1997/1998). Four of these claims also involved allegations of sexual harassment. Fourteen sexual discrimination cases were settled during the year at a cost of £425,000 (compared to 16 at a cost of £271,000 in 1997/1998) and 36 cases were repudiated, withdrawn by the applicants or struck out by the ET.

Sexual Harassment

12.7 During 1998/1999, four new claims were received alleging sexual harassment (compared to 11 in 1997/1998). Five sexual harassment cases were settled during the year at a cost of £144,000 (compared to 5 cases at a cost of £173,614 in 1997/1998) and two cases were repudiated, withdrawn by the applicants or struck out by the ET. Please also note the section on "Homosexuals" below, in view of the Tribunal's decision on 9 December 1998 to allow their Originating Applications to be amended to now include allegations of sexual harassment.

Racial Discrimination

12.8 During 1998/1999, 16 new claims were received alleging racial discrimination compared to 14 in 1997/1998, of which three also involve allegations of racial harassment. Two racial discrimination cases were settled during the year at a cost of £6,000 and four cases were repudiated, withdrawn by the applicants or struck out by the ET.

Racial Harassment

12.9 During 1998/1999 three claims were received alleging racial harassment. No racial harassment cases were settled during the year and one case was withdrawn by the applicant prior to an ET hearing.

Pregnant Servicewomen

12.10 The handful of pregnancy dismissal cases outstanding at the beginning of 1998/99 were all successfully settled during the course of the year at a cost of £520,063. All 5,038 claims received have now been settled in full at a total cost of £60,279,782 No further payments will be made.

Homosexuals

12.11 The Ministry of Defence received a total of six new claims in 1998/1999 - making a total of 86 claims received - from men and women who allege that they were dismissed from the Armed Services solely on the grounds of their homosexuality. All these cases were stayed by the Tribunal pending the determination by the European Court of Justice (ECJ) of the questions referred to it by the Divisional Court in the lead case of ex-RN rating Perkins.

12.12 On 13 July 1998 in the High Court Mr Justice Lightman withdrew the reference to the ECJ in Perkins on the basis that the ECJ in Grant -v- South West Trains Ltd had sufficiently answered the question when it ruled that the Equal Treatment Directive does not afford protection against discrimination on the grounds of sexual orientation. As a result of this 18 applicants either withdrew their applications or had their applications struck out by Employment Tribunals.

12.13 A further Employment Tribunal hearing took place on 9 December 1998 to hear the Ministry of Defence's arguments that, in view of the decision in Perkins, the remaining applications should also be struck out. The solicitors acting for a number of the remaining applicants, whilst now conceding the dismissals themselves can no longer be argued as unlawful, argued that the manner of their clients' dismissals, and in particular the investigations into their sexuality prior to dismissal, amounted to unlawful sexual harassment. The Tribunal's decision was that all remaining applicants should be permitted to amend their Originating Applications to now include an allegation of sexual harassment, and 58 have now done so. The sexual harassment claims relate to their treatment during the investigations conducted by the military police in order to establish the applicants' sexual orientation. Therefore, even if the applicants succeed in establishing that sexual harassment has taken place their claims will be for compensation for injury to feelings rather than claims based on the loss of their Service careers.

12.14 The present position is that the solicitors acting for the majority of the applicants have, on the instructions of the Tribunal, been granted discovery of various Ministry of Defence documents relating to the applicants' dismissals. The solicitors will now seek to identify "lead cases", which they can then take back to the Tribunal for the purposes of obtaining a preliminary ruling.

SECTION 13

CLAIMS ARISING FROM OVERSEAS OPERATIONS AND EXERCISES

13.1 Operational claims arise from the deployment of troops to such theatres as the former Yugoslavia, the Gulf, Namibia or from overseas training exercises such as Purple Star and Ulan Eagle. The full range of claims can result from such operations but experience has shown that the vast majority result from road traffic accidents and property damage. Combat related claims and those for wear and tear to roads are routinely rejected. If the operation is carried out under NATO SOFA or a Memorandum of Understanding, we are obliged to consider ex-gratia claims resulting from the off duty activities of Service personnel. On large scale or long term operations and exercises it is likely that a claims officer will be deployed within the Civil Secretariat.

SECTION 14

AREA CLAIMS OFFICERS (ACO)

ACO Northern Ireland

14.1 The majority of compensation claims handled by ACO Northern Ireland in 1998/1999 related to military helicopter activity and most often concerned the loss of livestock and alleged damage to property. Other main heads of claim include damage to property, such as cut fences, broken farm gates, etc., caused by military personnel on operational duty; and personal injury claims from third parties. ACO Northern Ireland does not handle politically sensitive claims such as shooting, assault, wrongful arrest or personal injury resulting from the actions of military personnel on duty.

ACO Northern Ireland

	1996/1997	**1997/1998**	**1998/1999**
Number of claims received	901	1,052	834
Number of claims settled	908	1,122	809
Number of claims repudiated/not pursued	422	309	270
Total Paid	£1.362M	£1.342M	£1.297M

ACO North West Europe

14.2 ACO NWE at JHQ Rheindahlen is responsible for handling claims by and against the Ministry of Defence in Germany, Norway, Denmark, Holland, Belgium, Luxembourg, France, Austria and Switzerland. ACO NWE also acts as agent for the Danish Government and all the Ministry of Defence sponsored organisations located in North West Europe. The organisation handles three major areas of claims work: traffic accidents; training and manoeuvre; and miscellaneous. Claims are processed in accordance with Article VIII(5) of the NATO Status of Forces Agreement and Article 41 of the Supplementary Agreement. Claims are dealt with by the appointed agency in each of the countries in accordance with the laws and regulations of that country and in close liaison with the ACO NWE staff.

14.3 Settlements are negotiated by the host nation (if a NATO partner) which bills the UK for 75% of the total paid. It is in the interest of the Host Nation to keep costs as low as possible as they pay the other 25%.

14.4 Outside his usual geographical region, ACO NWE handles claims arising from British Forces training activity in Poland where some 90% of the total £350,000 exercise damage expenditure is committed.

14.5 ACO NWE deals with many claims involving personal injury, which can involve substantial sums of money. Where Service personnel are killed or injured in Germany through the negligence of a third party it is possible for the Ministry of Defence to recover its losses (medical costs, evacuation, repatriation of the body, loss of service, etc.) and much of ACO NWE's recovery work involves this type of claim.

ACO North West Europe

	1996/1997	**1997/1998**	**1998/1999**
Number of claims received	1,444	1,613	1,245
Number of claims closed	1,589	1,404	1,744
Total Paid	£3.906M	£3.4M	£2.206M
Total Recovered	£995,000	£726,000	£700,000

14.6 Last year was relatively quiet in terms of claims received for ACO NWE. This reflects reduced troop and vehicle numbers in theatre and the rundown of the RAF presence in Germany.

ACO Cyprus

14.7 Two Claims staff are responsible for claims by and against the Ministry of Defence within the geographical area of Cyprus and its territorial waters. A similar range of claims are handled to those received by ACO North West Europe but, in addition to NATO SOFA, the Cyprus Treaty of Establishment also applies. Advice and assistance is provided by DC&L(F&S) Claims when requested and those claims where proceedings have been issued in the UK, or those likely to exceed £50,000, are transferred to DC&L(F&S) Claims to handle.

ACO Cyprus

	1996/1997	**1997/1998**	**1998/1999**
Number of claims received	418	364	519
Number of claims closed	348	311	509
Total Paid	£284,000	£218,000	£228,000
Total Recovered	£26,000	£32,000	37,000

ACO BOSNIA

14.8 ACO Bosnia is based in The Metal Factory, Banja Luka and deals with all claims by and against the UK contingent of SFOR and has authority to settle third party claims up to £75,000. He has recently assumed claims responsibility for Operations UPMINSTER and AGRICOLA in Macedonia. Most claims result from traffic accidents, but there is also a large number of property damage and personal injury claims. Claimants frequently visit the office to negotiate their claims and to receive cash payments. The ACO travels a great deal, inspecting property damage and meeting Claimants. He also represents the UK at Claims Commission Hearings in Croatia, Bosnia & Herzegovina and Republic Srpska.

ACO Bosnia

	1996/1997	**1997/1998**	**1998/1999**
Number of claims received	566	270	321
Number of claims closed	410	152	221
Total Paid	£342,000	£611,000	£325,000
Total Recovered	Nil	Nil	Nil

Claims Officer Falkland Islands

14.9 In the Falkland Islands, the Claims Officer has authority to handle property damage claims up to a value of £5,000. Claims are handled in accordance with local law which is, in fact, identical to English law. As can be seen from the Table below, in financial year 1998/1999, very few claims were received and settled. It should be noted, however, that the Claims officer is also responsible for other areas of work including lands, contracts, repayment matters and finance.

Claims Officer Falkland Islands

	1996/1997	**1997/1998**	**1998/1999**
Number of claims received	3	8	4
Number of claims settled	3	7	4
Total Paid	£1,638	£5,235	£1,079
Total recovered	£1,345	£1,713	Nil

SECTION 15

SPEND ON BEHALF OF TOP LEVEL BUDGET HOLDERS

15.1 Work is under way to replace the present Claims management information system (TAURUS) which is limited in its capabilities. For example, it cannot link individual claims to a Top Level Budget (TLB) area in which the incident occurred. A requirements analysis for a replacement database has been prepared but further work will be necessary in order to implement a replacement system.

SECTION 16

FINANCIAL RECOVERIES

16.1 Where the Ministry of Defence sustains loss or damage to equipment which has been caused by a third party, DC&L(F&S)Claims seeks to recover those losses from the third party. The main causes for taking action against third parties are where Ministry of Defence static property has been damaged by fire, negligence of a contractor, traffic accidents overseas; damage to Visiting Forces vehicles and static property in the UK. A contract is in place with Willis Corroon Ltd to handle these claims in the UK. Recovery claims world- wide, except where there is an Area Claims Officer, are handled by DC&L(F&S) Claims. Additionally, DC&L(F&S)Claims will take over the responsibility for a claim when Willis Corroon have failed to recover and decide if legal action to recover is appropriate.

16.2 The number of recoveries processed by DC&L(F&S)Claims in each of the last three financial years is shown in the following Table:

Recoveries

	1996/1997	**1997/1998**	**1998/1999**
No of claims notified	21	22	29
No of successful recoveries	19	12	17
Amount recovered	£19,000	£32,000	£68,000

16.3 In addition, Willis Corroon, received approximately 500 recovery actions arising from RTAs in the UK in the last year and recovered approximately £475,000.

SECTION 17

INSURANCE AND INDEMNITIES

Insurance

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

17.2 DC&L(F&S)Claims takes the policy lead on all Ministry of Defence non-contractual insurance issues and encourages units and establishments to transfer risks arising from non-core activities away from the Department.

17.3 Willis Corroon (Aerospace) Ltd provide insurance which is self-financing for four specific non-core aviation risks:

Military aircraft attendance at air displays

Civil use of military airfields

Search and rescue training with civilian organisations

Fare paying passengers on military aircraft

Indemnities

17.4 DC&L(F&S)Claims 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 DE licences, indemnity provisions within MOUs and other international arrangements.

17.5 The Ministry of Defence always seeks an indemnity against claims arising from activities or events that are not considered to be core business, or when activities or events do not further the interests of the Department. The Ministry of Defence must seek indemnity in such instances as there is no provision in the Defence Estimates to meet claims which are not Defence related. Indemnities must be backed by insurance or a guarantee for those companies/organisations that self-insure. The only exceptions to the requirement for indemnity are when the Ministry of Defence is dealing with other Government Departments. This is because of the principle of indivisibility of the Crown.

17.6 DC&L(F&S)Claims issued approximately one hundred indemnities in 1998/1999 and commented on approximately one hundred other indemnity related issues.

17.7 Indemnities that arise from the Department's contractual business are the responsibility of the appropriate Contracts Branch, with policy guidance provided by the Procurement Executive (ADC/Pol2).

SECTION 18

DEVELOPMENTS IN LAW AND PRACTICE

Civil Justice Reforms

"April is the cruellest month"

T S Eliot

18.1 The greatest upheaval ever in the Civil Litigation process occurred when the New Civil Procedure Rules were introduced on 26 April 1999. The Rules which replace the existing High

Court and County Court Rules, will significantly change 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, will govern the conduct of litigation and will encourage the appointment of a single expert to provide an independent opinion.

18.2 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.

Aims

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

18.3 The Courts will begin to take a pro-active approach to case management. In addition, they will encourage the parties to co-operate and consider adopting other methods of settlement such as alternative dispute resolution. The Courts will decide the order in which issues are to be resolved and fix timetables to control the progress of the case.

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

Experts

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

Pre Action Protocol

18.6 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 Rt. Hon the Lord Irvine of Lairg 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".

18.7 The first two pre-action protocols (primarily designed for cases with a value of less than £15,000), on personal injury cases and clinical negligence have now been published. Another, on the instruction of experts will follow and will explain in more detail how experts must write their reports. Eventually all types of litigation will be categorised and, if appropriate, pre-action protocols developed.

18.8 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.

18.9 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

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

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

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

18.13 Multi-track cases will generally involve claims with a value in excess of £15,000 or which feature complex issues. Case management by the courts will play an important part in setting the timescales for certain stages of the case and defendants may possibly be required to attend a case conference before a judge, when decisions will be made as to the future conduct of the claim.

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

Letter of claim

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

Defendant's reply

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

Claim investigation

18.17 The defendant will have a maximum of three months from the date of acknowledgement of the claim to investigate. No later than at the end of that period the defendant must inform the Claimant or their legal representative whether liability is admitted in full, denied or there is a partial admission. If the defendant denies liability they should enclose with the letter of reply documents which are material to the issues between the parties, and which would be likely to be ordered to be disclosed by the court. If a defendant is unable to comply with the requirements of the pre-action protocol, the Claimant will be able to issue proceedings at the end of the three-month period.

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

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

Proceedings

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

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

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

Statement of Truth

18.22 Under the new rules a statement of truth must verify the Defence. The form of the statement is as follows:

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

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

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

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

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

18.26 It follows that in future solicitors will always ask the defendant to either sign the Defence or to approve the contents of the Defence before signing on the defendant's behalf.

18.27 If the Defence is not signed the court will strike it out and the defendant will lose his or her opportunity to defend the claim.

18.28 Bearing in mind the tight time schedules, the Department will need to be in a position to deal with the Defence quickly. In the case of Claims against the Ministry of Defence the appropriate person to sign the Statement of Truth or verify the Defence will be the Chief Claims Officer.

Disclosure

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

18.30 Under the new rule, standard documents to be disclosed include:

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

- all documents which could support the other party's case.

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

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

Disclosure Statement

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

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

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

Way Forward

18.34 The implementation of the reforms will involve a massive change in working practices. Claims officials have already undertaken additional training to ensure they comply with the new rules. Units and Establishments will also need to be aware of how the new protocols and rules operate.

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

18.36 Claims officials will have to work closely with and remind Units and Establishments of their duties to co-operate in supplying information and assisting in defence of claims.

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

18.38 The courts will not be sympathetic to the Department arguing that there has been insufficient time to investigate a claim.

Counsel to Counsel Settlement Conferences

18.39 In cases where liability is not an issue, counsel to counsel settlement conferences are an innovative and financially attractive way of settling cases without going to trial or settling at the court room door. A round table consultation is arranged with the Department represented by counsel, the Chief Claims Officer or Senior Claims Officer and Treasury Solicitor. This method of negotiated settlement has had a significant effect on the way claims are handled due to the Claimant and defendant showing an element of goodwill combined with a realistic approach. This has demonstrated that it is possible to agree a settlement without recourse to the courts. An added benefit is that the Claimant does not need to undergo the trauma of a court case to secure compensation for an injury or loss caused by the Department's negligence.

18.40 In 1998/1999, for example, 14 such conferences were held and compensation totalling £11.3M was agreed against claims totalling £17.5M. Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher. It is estimated that savings in legal costs of at least £500K were achieved.

Legal Aid

18.41 Legal Aid for personal injury claims is to be abolished in October 1999. After that time the majority of personal injury claims are 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).

18.42 Conditional fees will cause a problem for Claims officials in trying to estimate the legal costs element of settling a claim. One method of overcoming this problem will be 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 know until after the case has settled.

ANNEX A

DC&L(F&S)CLAIMS STAFF, PROGRAMME AND OPERATING COSTS - FINANCIAL YEAR 1998/1999

Costs

Operating Costs	-	£ 702,991
Programme Costs	-	£75,199,653 (compensation, legal costs, experts' fees, etc.)
Total Costs	-	£75,902,644

DC&L(F&S) average staffing as at 31 March 1999

GRADE	NUMBER	ROLE
7	1	Chief Claims Officer
SEO	1	Senior Claims Officer
SEO (Part time)	1	IIP Implementation for the Division
HEO	4	Section Head
EO	13	Case Manager
EO	2	Indemnities, Insurance, civilian staff employer's liability claims and third party motor.
EO	1	Directorate Budget Manager and Management Planner
EO	1	Branch Finance and Information Technology
AO	9	Case Manager
AO	3	Administrative Support
AA	5	Administrative Support
TOTAL	41	

ANNEX B

DC&L(F&S)CLAIMS RESPONSIBILITIES

DC&L(F&S)Claims is primarily responsible for processing common-law, non-contractual compensation claims against and on behalf of the Ministry of Defence at home and abroad. They are not responsible for contractual, quasi-contractual, sales or estates matters. DC&L(F&S)Claims is split into four sections as follows:

Claims 1

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

- **Information technology systems**
  Responsible for the C&L(F&S)Claims information technology (IT) systems (CHOTS, TAURUS, CHASP, CHAD).

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

- **MOD Civilian employees employer's liability and third party motor claims**
  Policy relating to Ministry of Defence civilian employees employer's liability claims and Third party motor claims handled on behalf of the Ministry of Defence by Guardian Insurance Services (UK) Ltd.

- **Risk management**
  Preparation of a Risk Management strategy to identify the circumstances which give rise to claims for compensation and devise ways of reducing the causes of incidents.
  Risk management statistics.

- **Regulational claims policy**

  Regulational claims are claims from employees for loss of or damage to personal property in the course of their employment. Claims 1 is responsible for the claims handling policy.

Claims 2

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

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

- **Radiation claims**
  Claims for compensation due to illness alleged to have been caused by exposure to radiation.

- **Gulf War illness**
  Potential claims for alleged Gulf War illness

- **Post Traumatic Stress Disorder**
  Claims from Service and ex-Service personnel alleging failure of the MOD to recognise, diagnose and treat their PTSD

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

Claims 3

- **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).

- **Low flying**
  Claims relating to military low flying in England, Scotland and Wales.

- **Northern Ireland claims**
  Politically sensitive claims from members of the public arising from the activities of the Armed Forces in Northern Ireland. These range from unlawful detention to shootings.

- **Maritime claims**
  Maritime claims including accidents, salvage, collisions and damage to fishing gear (excluding maritime claims involving damage to property abroad).

- **Vehicle claims**

  Privately owned vehicle damage claims and hired vehicle loss of use and write off claims.

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

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

- **Criminal injuries compensation**
  Responsible for criminal injuries compensation claims from MOD Civil Servants' dependants' based overseas.

- **Non-maritime recoveries**
  Recovery of MOD's uninsured financial losses.

Claims 4

- **Industrial Tribunals**
  Responsible for co-ordinating the MOD's response to claims put to Industrial Tribunals by current and former Service personnel.

  Clinical Negligence
  Responsible for all claims for compensation where MOD is deemed responsible for medical negligence.

- **DC&L(F&S)Claims administration**
  Claims co-ordination and Focal Point (i.e. Registry functions).

ANNEX C

AN INTRODUCTION TO LEGAL LIABILITY AND CLAIMS SETTLEMENT

1. As part of DC&L(F&S)'s commitment to improve the level of legal awareness within the Ministry of Defence, this Annex is intended to provide an introduction to the concept of legal liability and common law claims settlement. It should not be relied upon as being definitive legal advice.

Tort of Negligence

2. Common law compensation claims made against the Ministry of Defence are usually considered in accordance with the Department's legal liability. The area of the law concerned is known as 'tort' and within this we are usually concerned with the tort of negligence. The tort of negligence is the breach of a legal duty to take care which results in damage, undesired by the Defendant (in our case usually the Ministry of Defence), to the Claimant. Thus there must be:

a. A legal duty of care on the part of the Defendant towards the Claimant to exercise care in his conduct towards the Claimant;

b. a breach of that duty by the Defendant;

c. consequential damage/loss to the Claimant which is reasonably foreseeable.

3. It is important to note that common law cases are decided on the balance of probabilities, whereas criminal law cases are tried and prosecutions made where the circumstances are beyond all reasonable doubt.

4. When dealing with claims, DC&L(F&S)Claims staff consider whether there has been a negligent act or omission on the part of the Ministry of Defence which has resulted in injury, loss or damage to the Claimant. They take legal advice where necessary and must do so if the value of the claim is likely to be more than £10,000. The Ministry of Defence must be prepared to take a case to court if a negotiated settlement cannot be reached or when there is an unresolved issue on liability.

Employer's Liability

5. As an employer, the Ministry of Defence may be legally liable for someone's loss on the basis of Common Law negligence. Alternatively, the Ministry of Defence may be vicariously liable to the injured employee or member of the public where the injury was caused by the negligence of another employee who was acting in the course of his employment. For example, the Ministry of Defence may be vicariously liable for the driver of a Ministry of Defence vehicle who negligently caused a road accident whilst on duty.

Duty of Care

6. Lord Atkin stated that a duty of care could be defined as follows:

> "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

Breach of Duty of Care

7. The test for deciding whether there has been a breach of duty is as follows:

> Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

8. This is commonly referred to as the objective, 'reasonable man' test.

Burden of Proof

9. The burden of proof is on Claimant: i.e. they have to show that there were specific acts or omissions on the part of the Defendant which qualify as negligent conduct. Sometimes, however, the circumstances are such that the Court will be prepared to draw an inference of negligence against the Defendant from the very facts: i.e. the facts speak for themselves. It is then for the Defendant to prove that he has not been negligent. The Claimant will have established negligence if he shows that he is owed a duty of care and that there has been a breach of that duty of care. The Claimant must have suffered damage as a result of the incident or accident complained of.

Contributory Negligence

10. Where a Claimant has sustained injuries or loss as a result of their own action or inaction as well as that of the Ministry of Defence, then a portion of the blame will be attributed to the Claimant resulting in a reduction of damages: i.e. the amount of compensation paid. This principle is governed by the Law Reform (Contributory Negligence) Act 1945.

Legal Advice

11. Legal advice is obtained by DC&L(F&S)Claims from the Ministry of Defence's Legal Adviser (LA) and his staff if advice of a general legal nature is needed or on an aspect peculiar to the Ministry of Defence. However, for compensation cases being brought by solicitors in England and Wales, legal advice is obtained from Treasury Solicitor. In
Northern Ireland advice is provided by the Crown Solicitor. Service Level Agreements cover the responsibilities of the Treasury Solicitor and Crown Solicitor to the Ministry of Defence and vice

versa. In cases being heard in Scotland, advice is provided by Robson McLean Solicitors under contract to the Ministry of Defence.

Damages

"Perfect compensation is hardly possible"

Justice Field circa 1879

12. Justice Field's observation holds good today because the award of damages is designed to put the Claimant into the position he was in immediately before the tort was committed. This is an artificial concept particularly in a personal injury or clinical negligence case because, for example, no amount of money will replace a lost limb.

13. Personal injury damages are not chargeable gains (under S51 of the Taxation of Chargeable Gains Act 1992) and therefore the damages themselves are not subject to tax (however, the returns from the investment of those damages are subject to tax).

Special Damages.

14. Special Damages are damages that are capable of precise mathematical calculation. In practice, special damages are normally awarded in regard to pre-trial financial losses such as loss of earnings and private medical expense. Special damages must be pleaded and proved.

General Damages.

15. General damages are those which are not capable of precise mathematical calculation, for example, damages for pain suffering and loss of amenity and post-trial financial losses. Although it can never be said that there could be an upper limit, because each case turns on its own facts (Mustart -v- Post Office) there are guidelines and case law that provides a good indication of the level likely to be awarded.

Loss of Earnings from accident to trial.

16. Damages awarded in respect of loss of earnings from accident to trial will be special damages. The Claimant is entitled to damages equivalent to his net earnings lost during the period of absence from work, i.e. gross earnings less Income tax, National Insurance Contributions, and compulsory pension payments. However, it may be that a particular Claimant's earnings are subject to variable factors such as bonuses or overtime. In such cases the amount of these extras is added to the award.

Loss of Earnings post-trial (i.e. future loss of earnings)

17. Damages for loss of earnings after the trial will be general damages. Under this head a lump sum is awarded which is arrived at by means of a 'multiplicand' and 'multiplier

system'. The system allows for the contingencies for life; and the accelerated receipt of a sum which is available for investment. No allowance is made for inflation.

The Multiplicand

18. The multiplicand is the Claimant's net annual earnings that he would have been receiving at the date of the trial. No increase is allowed for inflation but allowance may be made for likely increased earning capacity as a result, for example, of the acquisition of greater skills or promotion. Conversely, a likely decrease in earning capacity may be taken into account.

The Multiplier

19. The multiplier is based on the period of likely loss. This will depend on the facts of the case, e.g. in the case of a male Claimant who will never work again the period of loss will normally extend until his likely retirement age (normally 65). The period of loss is then converted into a multiplier by the use of actuarial tables. The conversion assumes a rate of return on investment of the damages of 3% net per annum.

Pension

20. If the Claimant receives a pension this cannot be set against the claim for loss of earnings. However, if there is a separate claim for loss of pension rights, for example, since the Claimant is unable to work he will receive less pension in the future, any pension he does not receive may be offset against the claim for loss of pension rights.

Medical Expenses

21. The Claimant may claim for the reasonable cost of private medical care actually incurred. The availability of free National Health Service treatment is ignored. However, the Claimant cannot be treated free under the National Health Service system and then claim what it would have cost to have the treatment done privately. Future private medical care may also be claimed (if long term, on a multiplicand and multiplier system) provided that it is reasonably likely to be incurred. However, only the cost of the medical care may be claimed; the Claimant cannot claim for the 'hotel' element in the expenses, for example, the proportion of the fees that relate to the provision of meals heating and lighting. Medical expenses incurred pre-trial are claimed as special damages; post trial as general damages.

Loss of Earning Capacity

22. The purpose of an award for loss of earning capacity is to compensate the Claimant for any disadvantage he may experience on the open labour market by reason of some permanent disability caused by the accident in question. Such an award will be appropriate for example where the Claimant returns to his former employment but because of the permanent effects of his injury, is a more likely candidate for redundancy and will find difficulty in finding suitable alternative employment. This head of damage is often referred to as Smith -v- Manchester

Other pecuniary losses

23. The Claimant may claim for other losses reasonably incurred. Such losses may include for example:

a. costs of medication and prescription charges;

b. provision of special medical equipment such as wheelchair;

c. adaptation of the home (e.g. ramp access for a wheelchair), purchase of a vehicle to help cope with their disability. The Claimant may claim for the costs of the adaptation but will have to give credit for any enhanced value of the home as a result of the adaptation;

d. alternative accommodation to cope with the Claimant's disability. If the Claimant buys alternative (and normally more expensive) property to a certain extent the Claimant has acquired an investment i.e. a valuable item that could eventually be sold. Therefore the Claimant cannot simply claim all the amount of capital he has spent but rather only a proportion of the capital.

Non-Pecuniary losses.

24. The two most common items of non-pecuniary loss are and Suffering and Loss of Amenity. The award of damages under this head is designed to compensate the Claimant for the pain and suffering attributable to:

a. the injury; and

b. consequential surgery; and

c. mental and physical suffering.

The award will cover both past and future suffering.

Loss of Amenity

25. Technically, loss of amenity is a separate head from 'pain and suffering' but usually one sum is awarded for 'pain suffering and loss of amenity' without distinguishing between the two heads.

26. The award for loss of amenity is designed to compensate the Claimant for loss of faculty or pleasure in life over and above the pain and suffering of the injury. For example a Claimant formerly was an active sportsman who has suffered a disabling injury such that he can no longer pursue his sport. Although his pain and suffering may be the same as any other person with that disability, his loss of amenity may be greater than another person who did not formerly lead an active life and hence the total award for pain and suffering and loss of amenity may be greater.

Limitation

27. The Limitation Act 1980 sets out the time limits within which certain claims must be made. The normal rule is that a Claimant has 6 years except in personal injury cases from the date of the cause of action accrued (i.e. from the date of the commission of the tort), in which to present his claim. In negligence cases, since negligence is only actionable on proof of damage, the action in negligence accrues only when some damage occurs.

28. Section 11 of the Act provides that in personal injury claims the normal rule is within 3 years of the date on which the cause of action accrued (i.e. date of accident) or 3 years from when the Claimant knew, or might reasonably be expected to have known, certain specified facts. Good examples of the latter are deafness and asbestosis where the effect does not immediately follow the cause, as opposed for example to a broken leg. There are, however, circumstances where the Courts will allow an action to be brought even though the 3-year period has elapsed. These are:

a. a material fact relating to the cause of action was at all times outside the knowledge of the Claimant until a date falling outside the 3 year limitation Period, or a date not earlier than 12 months before the end of that period;

and

b. the action is commenced within 3 years of the Claimant becoming aware of material facts relating to the cause of action;

and

c. the leave of the Court is obtained either before or after the commencement of action.

ANNEX D

'TOP TWENTY' CASES (BY VALUE) SETTLED BY DC&L(F&S)CLAIMS IN FINANCIAL YEAR 1998/1999

CLAIMANT	TYPE OF INJURY/LOSS	COMPENSATION
Civilian (child)	Negligent treatment before and during the birth resulting in brain damage.	£2,417,000.00
Royal Air Force	Ejected from Harrier aircraft which crashed resulting in partial paralysis and medical discharge.	£1,513,331.70
Army	Brain damaged during a training exercise.	£1,317,625.00
Army	Personal Injuries and Psychological Trauma after Lynx Helicopter crash.	£1,281,488.20
Civilian (child)	Negligent treatment before and during the birth resulting in brain damage.	£1,159,457.40
Army	Helicopter crash in Omagh. Resulting in leg amputation, blindness and deafness.	£909,335.63
Army	Paraplegic. Crushed between two Scimitar Track vehicles.	£960,816.73
Army	Clinical negligence. Failure to detect cancer.	£810,000.00
Army	Traumatic amputation of leg during a boating accident.	£690,163.90
Royal Air Force	Fatality. Hercules crash.	£667,600.00
Civilian (child)	Negligent handling of premature birth resulting in blindness.	£640,000.00
Royal Air Force	Fatality. Lynx helicopter crash in Germany.	£630,000.00
Army	Traumatic leg injury in boating accident.	£561,501.87
Civilian company	Damage to a tug in Malta.	£518,958.33
Army	Close impact of a mortar shell during training	£500,775.00

	exercise resulting in multiple injuries.	
Army	Shot in the groin by another soldier during training.	£457,083.38
Army	Aircraft crash. Crush fracture to first lumbar vertebrae.	£451,494.80
Army	Multiple injuries after being crushed by falling girders at training camp.	£412.138.26
Army	Leg amputated after accident in Northern Ireland.	£411,456.25
Army	Knee injury sustained during skiing accident.	£315,000.00

ANNEX E

'TOP TEN' (BY VALUE) MOD CIVILIAN EMPLOYEES EMPLOYER'S LIABILITY AND THIRD PARTY MOTOR CLAIMS CASES SETTLED BY GUARDIAN INSURANCE IN FINANCIAL YEAR 1998/1999

ACCIDENT DETAILS	SETTLED
An engineer was removing samples of explosive material from a warhead, which caused an explosion to occur. The Claimant sustained major burns to his body, both legs, both upper arms and his right lower arm; loss of his left lower arm and his right eye; damage to his left eye, multiple fractures to his right hand, fractures to his left shoulder, fractured right cheekbone and damage to his left eardrum. The Claimant remains extensively disfigured and has permanent and severe disabilities that will prevent him from returning to his pre-accident employment. Despite this the Claimant returned to work in a modified capacity.	£407,103
In November 1994, a MOD vehicle turned into the path of an oncoming third party vehicle resulting in a serious accident. The Claimant was in intensive care and on life support following the accident. The Claimant sustained a severe head injury and fractured skull, which caused brain damage leading to emotional and behavioural difficulties, damage to his right optic nerve and his hearing. The Claimant also sustained a major chest injury in which he fractured 5 ribs and a collapsed lung. The Claimant lost his hearing on the right side and has mild hearing loss on the left side, which will be permanent. Following considerable rehabilitation the Claimant has mild loss of control of his right arm and leg. Future loss of earnings was claimed, as the Claimant's ability to work remains restricted.	£222,823
The Claimant, employed as a Seaman with the Royal Fleet Auxiliary, was the coxswain of a vessel being used to transfer personnel to a submarine. Due to the condition of the weather/water, the vessel dipped and rose as it came alongside the submarine and the Claimant's leg became trapped between the vessel and the fin of the submarine. The Claimant sustained a fractured leg, which became infected and required a skin graft which left a permanent scar. The Claimant was not considered fit enough to return to work at sea and was therefore medically retired. The Claimant subsequently found alternative employment, however, there was still a substantial claim for partial future loss of earnings.	£215,170
A rivet boy and then a driller employed at Portsmouth Dockyard from 1949 to 1966 was exposed to asbestos during the course of his employment and subsequently contracted pleural plaques, pleural thickening and asbestosis.	£205,816
A stores officer employed at RAF Carlisle slipped and fell backwards whilst descending some steps. The Claimant sustained injury to his back and also developed psychiatric problems. The Claimant was medically retired due to "chronic anxiety, depressive neurosis and chronic spinal nerve root pain."	£173,411
A welder employed at Portsmouth Dockyard from 1957 to 1963 was exposed to asbestos during the course of his employment and subsequently contracted	£172,130

mesothelioma.	
A coppersmith employed at Chatham Dockyard from 1958 to 1983 was exposed to asbestos during the course of his employment and subsequently contracted mesothelioma.	£171,671
A fitter employed at Rosyth Dockyard from 1955 to 1987 was exposed to asbestos during the course of his employment and subsequently contracted mesothelioma.	£155,211
A MOD vehicle was in the process of turning around on a main road, intending to use a farm track to reverse into. As the MOD vehicle was in the process of reversing it was hit by a third party vehicle, which had not seen it. Claims were received from the driver and 3 passengers.	£154,556
A shipwright employed at Portsmouth Dockyard from 1957 to 1962 was exposed to asbestos during the course of his employment and subsequently contracted mesothelioma.	£152,615

ANNEX F

'TOP TEN' (BY VALUE) SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS SETTLED BY ROYAL AND SUN ALLIANCE IN FINANCIAL YEAR 1998/1999

TYPE OF INJURY/LOSS	COMPENSATION
Fatality following RTA	£107,471
Back injury as a result of carrying another person over 100 yard run	£85,052
Fell from building during training exercise, sustaining internal injuries	£49,711
Fell into uncovered inspection pit resulting in soft tissue back injuries	£34,534
Whilst demonstrating safety harness, the rope broke resulting in back injury	£29,832
Loss of sight in right eye when battery exploded in face	£29,000
Soft tissue injury to ankle following RTA	£12,287
RTA resulting in multiple fracture to left arm and hand	£11,620
Slipped in shower resulting in non-displaced wedge fracture to T4 vertebrae	£11,000
Severe bruising and back pain following RTA	£10,909
Note: Royal and Sun Alliance took over responsibility for Service personnel employer's liability claims from 1 July 1996. Because serious personal injury claims take many months to settle only the more straightforward cases were settled in 1998/1999.	

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