

**MINISTRY OF DEFENCE**



**CLAIMS  
ANNUAL REPORT  
2004/2005**



**JULY 2005**

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## INTRODUCTION BY THE CHIEF CLAIMS OFFICER

*“Each loss has its compensation  
There is healing for every pain  
But the bird with the broken pinion  
Never soars high again”*  
Hezekiah Butterworth 1839 – 1905

This, our eighth annual report covers another busy year for the claims branch. Overall cash payments during the period of the report were £63.5 million. Over the same period receipts of £1.4 million were recovered. A detailed breakdown can be found at Annex A.

I am delighted that the number of claims received and the total paid in compensation has fallen. Some of this will undoubtedly be attributable to factors outside the Ministry of Defence’s control such as the restricted availability of funding in personal injury cases from the Legal Services Commission, but greater emphasis on risk awareness throughout the Department appears to be paying dividends

Compensation claims emanating from Iraq, from Iraqi citizens and members of HM Forces, details of which are at Sections 4 and 10 of this report, have presented us with some challenging issues, not least that of combat immunity. This in general provides that a soldier does not owe a fellow soldier or a third party a duty of care in tort when engaging the enemy in battle conditions in the course of hostilities, nor is there any duty on the Ministry of Defence in such a situation to maintain a safe system of work. However, the Ministry of Defence will seek to manage risk to an extent consistent with delivering the mission, recognising that force protection and military ethos are critical in war fighting.

As in previous Claims Annual reports, a section in this report covers the work of the Area Claims Officer’s who operate overseas in areas where there is a permanent UK military presence. In areas such as NW Europe and Cyprus these offices are staffed by officials on accompanied postings of usually no less than 2 -3 years. On the other hand, Area Claims Officer’s in theatres such as the Balkans and Iraq are operated by officials on short term postings usually working in hostile environments lasting about 6 months.

The work of the Area Claims Office in Iraq warrants special mention. Since its establishment following the cessation of hostilities in May 2003, they have, as at 31 March 2005, received 1,563 claims from Iraqi citizens, and paid out £506,328 in damages, the vast majority relating to road traffic accidents and property damage. Notwithstanding the restrictions imposed upon them due to the security situation in country, they have nevertheless carried out their role in an exemplary manner.

Because of the complex and sensitive nature of death related claims, and to ensure a consistent approach in handling such matters, those claims involving the death or serious injury of an Iraqi civilian (with the exception of those resulting from road traffic accidents), are handled by Ministry of Defence claims staff in London.

I am eager to develop the Department’s understanding of hidden costs of accidents. Hidden costs are the non-compensation or legal costs associated with incidents where

common law compensation is paid, such as those relating to recruitment, retraining and replacing equipment. This will provide the true cost of an accident. These costs do not form part of the compensation claim and are therefore paid by the relevant TLB and not the central Claims budget. The National Audit Office, in their report on Ministry of Defence: Compensation Claims (HC 957 2002/03 dated 18 July 2003) estimates that the hidden cost of accidents in the Ministry of Defence is 6 times the amount of compensation made. Latest estimates of hidden costs by the Health and Safety Executive for claims in the UK put this figure between 8 and 36 times the amount of compensation paid. It is therefore clear that the hidden costs of Ministry of Defence incidents, even on the most conservative basis, are huge.

During the period of the report, in a move to address one of the recommendations of the above mentioned NAO report, a benchmarking exercise was conducted by DS&C(Claims) during the period 1 January to 30 June 2004 to examine the Treasury Solicitor's performance. The exercise demonstrated that the Treasury Solicitor's performance was comparable with panel solicitors employed by Royal and Sun Alliance on a selection of Ministry of Defence cases. Similar benchmarking exercises are being considered on our other service providers.

I place great onus on ensuring that Claims staff are fully trained to fulfil their roles, and to this end they attend a structured series of legal training courses during the year. Such training is generally provided by Mr Dominic Regan, an independent legal training consultant linked to the College of Law. This not only ensures they possess the appropriate skills and knowledge to be effective claims managers, but also that they keep abreast of developments in the law.

We continue to work on ways to improve the management of the risk-incident-claims cycle by strengthening the links between health and safety staff and Claims Branch. For example we aim to provide improved feedback on settled claims to Units and Establishments in addition to the claims statistics issued each quarter. In return we would expect earlier visibility of incident accident reports and the greater accessibility of documents.

I commend the 2004/2005 Claims Annual Report to all readers. The cost of accidents both in monetary terms and human suffering terms should be a matter of concern to us all in the Ministry of Defence. Irrespective of whether you are a member of HM Forces or a civilian employee, we all have a responsibility for making sure accident do not happen.

Additional copies of this report are available from the DS&C(Claims) Focal Point, Zone A, 7<sup>th</sup> Floor, St George's Court, 2 – 12 Bloomsbury Way, London WC1A 2SH. (Tel: 020 7305 3348/3334 or Fax: 020 7305 4166) Copies can also be found on the Ministry of Defence Intranet or supplied on disk.

## EXECUTIVE SUMMARY

*“To be ignorant of one’s ignorance is the malady of the ignorant”*  
Amos Branson Alcott 1799 – 1888

1. Total DS&C(Claims) cash payments in the year 2004/2005 was £63.5 million. Over the same period receipts of £1.4 million were recovered
2. Highest claim settled in year was £3 million
3. At 1 April 2005, the total number of new claims lodged with DS&C(Claims) or the Department’s commercial claims handlers in year was 6072
4. 706 Service personnel employer’s liability claims were settled at a total cost of £25.6 million.
5. 1195 civilian employer’s liability claims were settled at a total cost of £21.1 million.
6. 578 public liability claims were settled at a total cost of £9 million
7. 3706 third party motor claims in the UK were settled at a total cost of £7 million.
8. 25 clinical negligence claims were settled at a total cost of £6 million.
9. 2047 intentions to claim are registered for those alleged to be suffering from Gulf Veterans’ Illnesses.
10. ACO North West Europe settled 772 cases at a total cost of £1.2 million
11. ACO Cyprus settled 296 cases at a total cost of £253,000
12. ACO Northern Ireland settled 236 cases at a total cost of £1,066,500
13. ACO Balkans settled 59 cases at a total cost of £129,546
14. ACO Falkland Islands settled 1 case at a total cost of £110
15. ACO Iraq settled 214 cases at a total cost of £377,204

# SECTION ONE

## INTRODUCTION

*“Responsibility educates”*  
Wendell Phillips 1811 – 1884

### ORGANISATION

1.1 The Ministry of Defence Claims branch is primarily responsible for processing common-law, non-contractual compensation claims against and on behalf of the Ministry of Defence at home and abroad. It is not responsible for contractual, quasi-contractual, sales or estates matters. It is headed by the Chief Claims Officer (Band B1) and three staff at Band C1. The Chief Claims Officer reports through DS&C and DGS&S to the Personnel Director. Details of the staffing and work of the Claims branch are at Annex A.

### RESPONSIBILITIES

1.2 In addition to being responsible for processing common law compensation claims, Claims branch also has a number of other important responsibilities such as providing claims policy advice, handling some Service personnel employment tribunal claims, handling claims against foreign forces based in the UK and providing advice on insurance and indemnities. It undertakes a variety of secretariat tasks and during the period of this report dealt with a large number of Parliamentary Questions (21), Ministerial Correspondence (245) and Treat Official Correspondence (71).

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

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

### POLICY AND PROCEDURES

1.5 When compensation claims are received they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid. To deal with cases on any basis

other than legal liability requires difficult subjective judgements to be made that would undoubtedly lead to inconsistency and unfairness.

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

1.7 In accordance with Treasury policy, the Ministry of Defence does not normally make ex-gratia compensation payments in respect of occurrences within the UK. There are, however, a small number of exceptions: i.e. claims arising from military low flying aircraft; claims from volunteers who are injured during research work and for certain miscarriages of justice affecting Service personnel. In certain overseas areas, because of the provisions of the NATO Status of Forces Agreement and other international agreements, the Ministry of Defence is obliged to consider making ex-gratia payments following off duty torts. Such claims arise from a wide variety of incidents ranging from minor criminal damage to, exceptionally, rape and murder. While there is no legal obligation, each case is decided on its merits. A number of factors are taken into account including: the seriousness of the offence, 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 wrong-doer to make satisfactory restitution to the claimant.

## SECTION TWO

### NATIONAL AUDIT OFFICE REPORT

*“Whoever is careless with the truth in small matters, cannot be trusted with important matters”*

Albert Einstein 1879 - 1955

2.1 As reported in last year’s Claims Annual Report, the National Audit Office (NAO) examined the effectiveness of the Department’s arrangements for handling compensation claims. The report was positive and helpful and concluded that the Department’s performance was broadly comparable with that of other organisations. Seventy-five percent of opposing solicitors rated the Ministry of Defence’s Claims staff as good as or better than those employed by other organisations. Below is an update on the progress made as a result of the main recommendations of the report:

#### HANDLING CLAIMS

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

2.3 It is Ministry of Defence policy for Claims Branch to adopt a proactive approach to claims handling. All claims staff undertakes a minimum of 18 hours continued professional development training each year (the same requirement placed on solicitors). The Chief Claims Officer and Senior Claims Officer will have each undertaken at least 25 hours Continued Professional Development training during the past twelve months, both of whom qualified as accredited mediators. Relevant practice includes:

2.3.1 *The agreement of the claimant to obtaining a joint medical opinion in appropriate cases.*

- As a result of the NAO recommendation it is Ministry of Defence policy to agree a joint medical expert in all appropriate cases. However, the valuation of some complex cases hinge on forecast life expectancy and it is prudent to obtain the opinion of more than one expert. It is not uncommon to receive forecasts that differ by more than 10 years. Enormous savings can be made in cases where, for example, care costs are £100,000 pa.

2.3.2 *The provision of Departmental records within agreed timescales to assist the speedy processing of a claim.*

- As a result of the NAO recommendation a Defence Council Instruction setting out the importance of timely provision and disclosure of documents has been issued.



2.3.3 *The prompting of claimants' solicitors for the timely provision of necessary information and the disallowance of any claimants' costs arising from their solicitors' delay.*

- It is Ministry of Defence Claims policy to hasten claimants' solicitors for the timely provision of information. We know that this approach has greatly benefited the claimant, but this is not an approach adopted by many claims handling organisations for obvious reasons.

2.3.4 *The making of higher initial offers, where justified after careful assessment of the facts in each case.*

- The level of offer to settle a claim is made by experienced claims staff usually with advice from lawyers – and in the larger cases on the advice of Queen's Counsel. For a short period prior to September 2000 a handful of unrealistic offers were made in relatively low value cases where advice had been given by junior barristers newly appointed to Treasury Solicitor's panel of counsel. On being made aware of this situation the Chief Claims Officer wrote to the Treasury Solicitor stamping out such practice.
- Conversely, Claims staff settled cases pleaded at £37 million, £18 million, £9 million and £800,000 for £500,000, £4.5 million, £1 million and £95,000 respectively.
- Higher initial offers usually raise the Claimant's expectations of the likely final financial outcome of the claim and can put the Ministry of Defence in a weakened negotiating position. Furthermore, and very importantly, yesterday's settlement becomes tomorrow's starting position in similar cases.

2.3.5 *The early acquisition of independent medical advice to supplement preliminary internal medico-legal opinion in clinical negligence cases.*

- As a result of the NAO recommendation, independent medical advice is obtained earlier, which supplements that given by in-house medico-legal staff.

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

2.5 As a result of the NAO recommendation a benchmarking exercise was carried out during the period 1 January to 30 June 2004 to examine the service provided by Treasury Solicitor. The exercise demonstrated that the Treasury Solicitor's performance had improved and was comparable with panel solicitors employed by Royal and Sun Alliance. In addition, a problem on the continuity of staff employed on Ministry of Defence work has been resolved and Treasury Solicitor's client care has greatly improved. The Chief Claims Officer is a member of Treasury Solicitor's Client Care Group.

2.6 The exercise will be repeated later this year.

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

2.8 Claims handling databases have become much more sophisticated in the past two years allowing a range of target setting and performance indicators. Project IRIS, if approved, will include a claims management suite of software, which would go far beyond the recommendations made by the NAO, and be connected to the Department's accident reporting databases

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

2.10 As a result of the NAO recommendation the Chief Claims Officer wrote to each TLB on 29 August 2003 to ascertain what action was undertaken and by whom. Initial findings suggested that performance in this area was patchy. Therefore to ensure a consistent approach and guard against a letter of apology being interpreted as an admission of liability a specimen letter on the lines of "I was sorry to hear of your accident on....." was provided for use by the TLBs by the Chief Claims Officer on 1 December 2003. This has worked well.

## **PREVENTING ACCIDENTS**

2.11 **Recommendation** *The Department should address the problems of its health and safety database to ensure that more incidents that occur are recorded. It should also revise the structure of the database and improve access to it so that the data it contains can be analysed as required by staff. It should also provide staff with the training they need to carry out such analyses.*

2.12 As a result of comments by the NAO, the Health and Safety Directorate and Claims Branch merged with effect from 1 January 2004 to ensure that the risk-incident-claims cycle is fully addressed. Project IRIS mentioned above will feature large in this initiative. IRIS would replace existing incident reporting and claims handling systems, which would provide a user-friendly accident reporting system. It would also allow electronic storage on a case-by-case basis of key documents and would have a facility to measure the progress made on addressing risk management at TLB or lower levels.

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

2.14 A range of measures to improve the risk management, accident reporting and audits is in hand. These include a pilot study to determine the suitability of introducing a captive insurance scheme across MOD and the introduction of standards based auditing.

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

2.15 **Recommendation:** *The Department should seek to reinforce the risk-incident-claim cycle in its operations by strengthening the links between its health and safety staff and Claims Branch and improving their co-operation. Health and safety staff need to ensure that they compile incident investigation reports with a view to the handling of a possible claim in the future, and that records are accessible and retrievable.*

2.16 See 2.12 above

2.17 **Recommendation** *The Department needs to do more to establish the total cost of incidents, including the hidden costs, and make these more widely known among line managers so that they can make more informed assessments of risks to health and safety. It should also encourage line managers to invest in measures to reduce the risk of incidents by ensuring that their budgets bear at least some of the cost of any compensation paid.*

2.18 See 2.12 above

## SECTION THREE

### **RISK MANAGEMENT**

*“The new and terrible dangers which man has created can only be controlled by man”*

John F Kennedy 1917 – 1963

3.1 One significant synergy identified in the merger that created DS&C arose from the variety of risk management functions being undertaken in both Claims and D SEF Pol. In June 2004 a new Risk Team was created, encompassing the groups formerly dealing with Claims risk management, accident and incident reporting (Central Health And Safety Project - CHASP), claims data (Records And Payments Information Database - RAPID), legislation and policy tracking and the development work on a replacement for both CHASP and RAPID and the processes for recording accidents, incidents and claims (Incident Recording and Information System - IRIS).

3.2 The new Risk Team’s role is to gather information from a wide variety of sources including accident and incident data, claims data, audits, inquiries and investigations, and the experiences of others, to identify, learn and share the lessons widely across the Ministry of Defence. As part of its role to inform, the team is also starting to circulate data on accident rates and claims rates to TLBs and, as the data and its handling becomes more sophisticated, information on the underlying causes.

3.3 During the last year, a user requirement document for an incident recording and information system (IRIS) has been agreed. IRIS is a concept that links the end to end processes starting with an accident or incident through its investigation to any subsequent compensation claim or file closure. The concept encompasses a suite of software and processes that would replace and enhance the capabilities of CHASP and RAPID, and provide a single source of information about an accident and its follow-up actions. One of the benefits to the Ministry of Defence is the time saving; adding all the relevant documentation to the IT record so that it is immediately at hand improves the ability to handle a claim, reduces the claims handling costs and significantly improves the ability to learn lessons. The project, with equipment supply side led by DCBA IPT in the DCSA is aiming to place an advert inviting tenders in the Official Journal of the European Communities (OJEC) in late 2005.

3.4 The Risk Team currently produces two newsletters, the Claims Newsletter and the Safety and Environment Newsletter. To reach a broader audience and broaden their understanding of the close link between accidents and claims, and how both can be reduced, the two newsletters are being brought in to one publication combining the best of both. The first issue will be in June 2005. Copies will be available on the Ministry of Defence intranet. Recent newsletters can be found at:

<http://centre.defence.mod.uk/newslettersps/safety/index.htm>

[http://centre.defence.mod.uk/newslettersac/mod\\_claims/index.htm](http://centre.defence.mod.uk/newslettersac/mod_claims/index.htm)

3.5 A short film about three compensation cases called ‘At What Cost?’ has been widely circulated. Each drama highlights from different roles and perspectives the impact that an accident can have, not just on the injured person but also on their families, friends

and those in a command situation. The Defence Centre of Training Support at RAF Halton directed the project, provided the film crew and used a professional theatre company which produced the script and actors. Copies of the DVD are available free of charge from British Defence Film Library [www.ssvc.com/bdfl](http://www.ssvc.com/bdfl).

## SECTION FOUR

### PUBLIC LIABILITY CLAIMS

*“Negligence is the rust of the soul, that corrodes through all her resolves”*

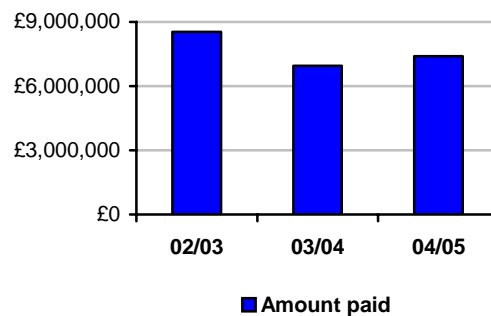
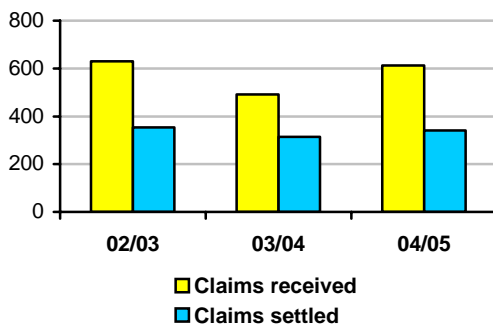
Owen Fellman 1602 – 1668

#### CLAIMS PUBLIC LIABILITY GROUP

4.1 The majority of claims submitted to the Public Liability Group (PLG) are for personal injury or property damage from members of the public who have either been injured on Ministry of Defence property or have sustained injuries whilst taking part in the various public relations and recruiting activities run by the three Services e.g. injuries sustained on assault courses. The total paid this year includes the final compensation payment and costs for the second tranche of the Kenyan UXO Claims, five personal injury claims which settled for six figure sums and one significant claim paid to a property developer as a result of the Ministry of Defence’s alleged misrepresentation about planning proposals.

4.2 Property damage claims usually emanate from personnel working and living in service accommodation who, for example, have had their belongings damaged by the poor maintenance of the properties they occupy. However, in the past year claims were received from farmers who had their land polluted by two separate oil spills, tenants whose property had been damaged due to damp from poor insulation and drivers who had their vehicles damaged by pot holes, speed bumps and the improper operation of security barriers and ramps at check points. Whilst 272 claims of this nature were received this year, they are generally small in value, the average claim being settled at a little under £1,000 per claim.

	2002/03	2003/04	2004/05
Number of claims received	631	491	613
Number of claims settled	354	314	340
<b>Amount paid</b>	<b>£8.5M</b>	<b>£6.9M</b>	<b>£7.4M</b>



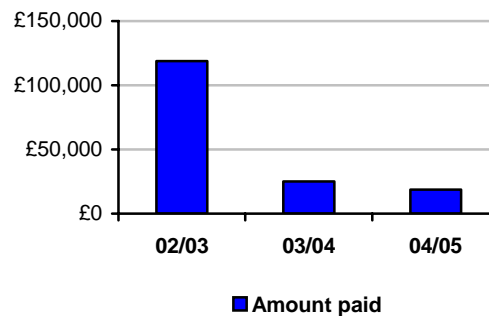
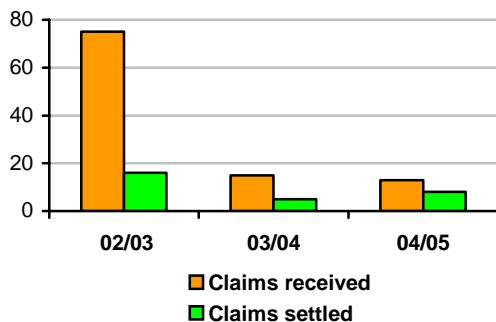
4.3 The large increase in the number of claims received this year is mainly due to a number of fatal and serious injury claims submitted by Iraqi civilians and transferred to the Public Liability Group from the Area Claims Officer Iraq. Because of the nature of

the claims, their high profile and the fact that two firms of British lawyers have been instructed to handle a number of the claims, a decision was taken that the claims should be transferred to the Public Liability Group so that a consistent approach was taken and the claims handled in accordance with the Civil Procedure Rules. Less serious injury claims (e.g. those resulting from RTAs) and property damage claims emanating from Iraqi civilians, continue to be handled locally by the Area Claims Officer in Basrah. Ultimately, funding for these claims is met by the FCO's Conflict Prevention Fund.

## PUBLIC LIABILITY CLAIMS - NORTHERN IRELAND

4.4 The Claims PLG also deals with public liability claims from Northern Ireland if they are of a political and/or sensitive nature. Claims are normally received from members of the public who have had a dispute with members of the armed forces whilst in support of the Police Service of Northern Ireland (PSNI). The majority of claims are for alleged assault, harassment or wrongful arrest, quite often at vehicle checkpoints. As can be seen below, claims continue to fall in number as the political situation stabilises and the armed forces' role in NI decreases.

	2002/03	2003/04	2004/05
Number of claims received	75	15	13
Number of claims settled	16	5	8
<b>Amount paid</b>	<b>£119,000</b>	<b>£25,106</b>	<b>£18,700</b>



## MARITIME CLAIMS

*“The winds and the waves are always on the side of the ablest navigators.”*

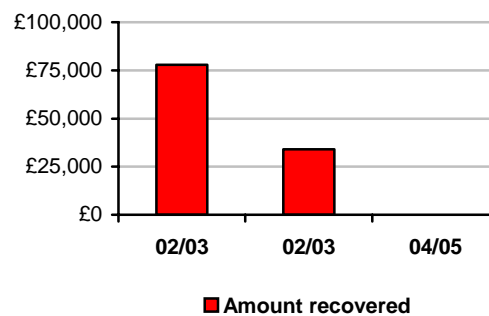
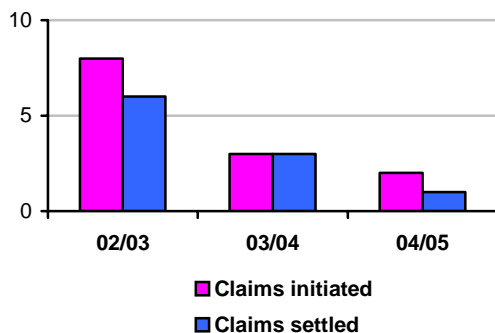
Edward Gibbon

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

	2002/03	2003/04	2004/05
Number of property claims received	52	30	12
Number of property claims settled	49	29	6
<b>Amount paid</b>	<b>£235,000</b>	<b>£146,794</b>	<b>£162,051</b>
Number of salvage claims received	5	4	4
Number of salvage claims settled	7	2	3
<b>Amount paid</b>	<b>£198,000</b>	<b>£40,000</b>	<b>£18,293</b>

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

	2002/03	2003/04	2004/05
Number of maritime recovery and salvage claims initiated	8	3	2
Number of maritime recovery and salvage claims settled	6	3	1
<b>Amount recovered</b>	<b>£78,000</b>	<b>£34,000</b>	<b>£0</b>



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



	<b>2002/03</b>	<b>2003/04</b>	<b>2004/05</b>
Number of claims settled by FOSNNI	29	23	20
Amount paid by FOSNNI	£38,000	£49,000	£33,000
Number of claims settled by FOST	32	10	33
Amount paid by FOST	£40,000	£26,000	£41,000
<b>Total amount paid</b>	<b>£78,000</b>	<b>£75,000</b>	<b>£74,000</b>

## LOW FLYING MILITARY AIRCRAFT CLAIMS

*“Airplane travel is nature's way of making you look like your passport photo.”*  
Al Gore

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

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

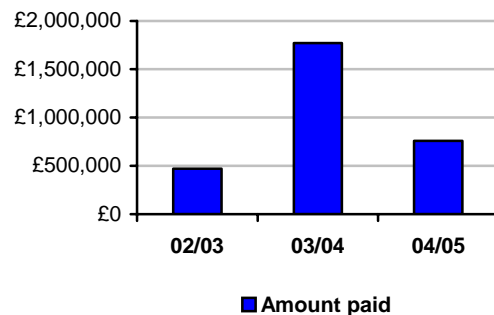
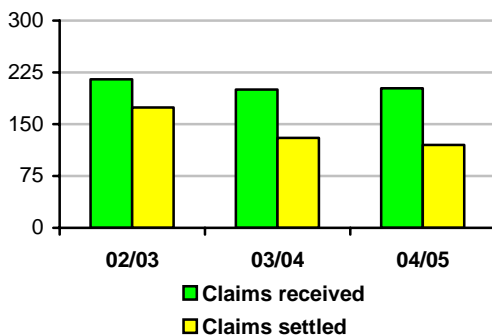
4.9 A procedure has been in place since 1994, following consultation with various farming unions and landowners’ associations, for dealing with claims relating to death or injury to livestock. The procedure was most recently updated in December 1999 after a round of consultations with the NFU, Country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

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

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

damage claims up to the value of £200 where the claimant lives within two miles of the airfield. In addition, the Regional Community Relations Officers (RCROs) have been given authority from the Chief Claims Officer to recommend fast track settlements for simple straightforward claims up to £250.

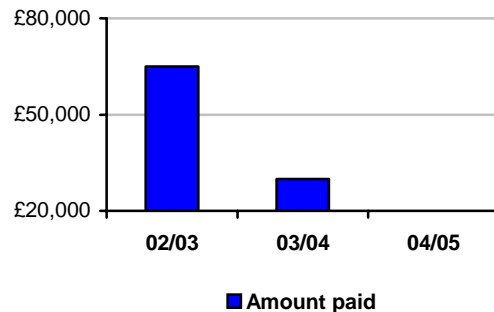
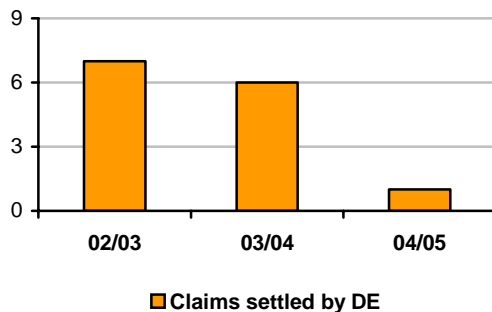
	2002/03	2003/04	2004/05
Number of claims received	215	200	202
Number of claims settled	174	130	120
<b>Amount paid</b>	<b>£0.469M</b>	<b>£1.7M</b>	<b>£0.759M</b>



#### AIR CRASH CLAIMS SETTLED BY DEFENCE ESTATES

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

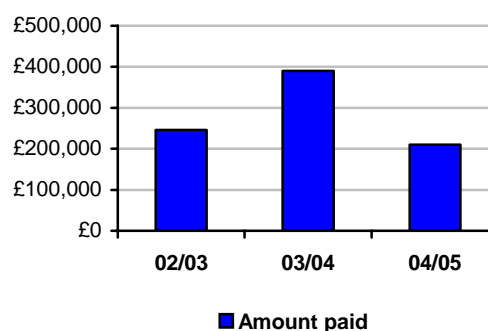
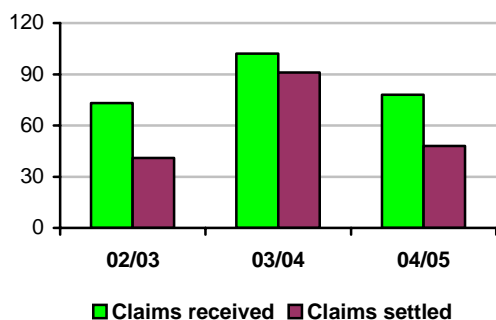
	2002/03	2003/04	2004/05
Number of claims settled by DE	7	6	1
<b>Amount paid</b>	<b>£65,000</b>	<b>£30,000</b>	<b>£500</b>



## VISITING FORCES CLAIMS

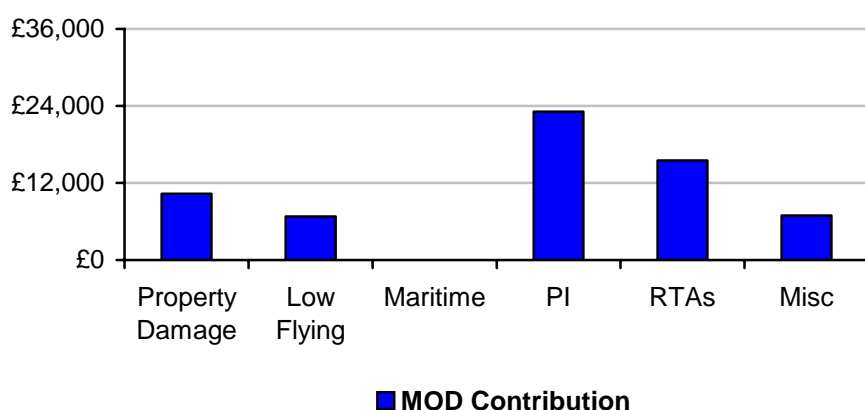
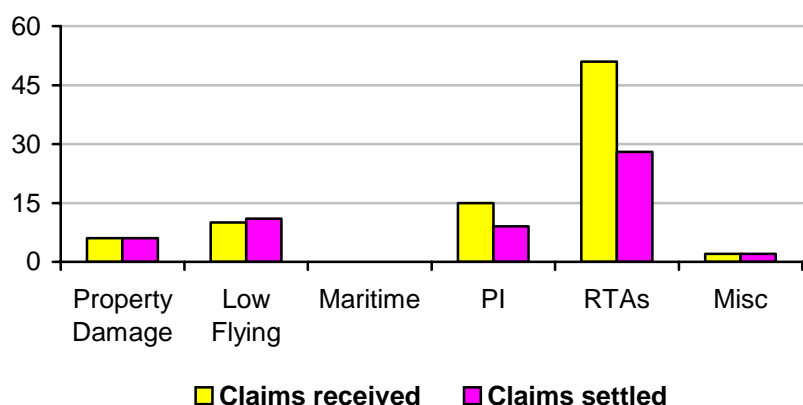
4.13 Claims PLG handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII of NATO Status of Forces Agreement (SOFA) and Section 9 of the Visiting Forces Act 1952. Such claims could be on behalf of any of the states who are signatories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

	2002/03	2003/04	2004/05
Number of visiting forces claims received	73	102	78
Number of visiting forces claims settled	41	91	48
<b>Amount paid</b>	<b>£246,000</b>	<b>£390,400</b>	<b>£210,000</b>



Visiting Forces claims can be categorised as follows:

2004/05	Property Damage	Low Flying	Maritime	Personal Injury	RTAs	Misc	Total
Claims Received	6	4	0	15	51	2	78
Claims Settled	5	3	0	9	28	2	48
Amount Paid	£5,948	£22,071	0	£92,424	£61,903	£27,603	£209,949
<b>MOD Contribution</b>	<b>£1,487</b>	<b>£5,518</b>	<b>0</b>	<b>£23,106</b>	<b>£15,476</b>	<b>£6,901</b>	<b>£52,487</b>



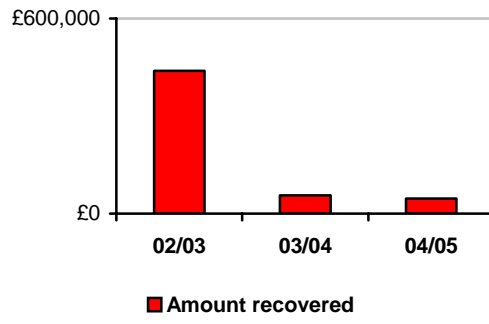
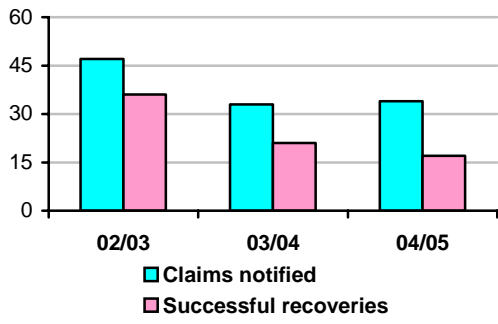
## FINANCIAL RECOVERIES

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

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

4.16 As can be seen from the table below, of the 17 recoveries made, only relatively small sums again were recovered this year, an average of just £2,500 per recovery. The number of recoveries processed by Claims PLG in each of the last three financial years is shown in the following graphs and table:

	2002/03	2003/04	2004/05
Number of claims notified	47	33	34
Number of successful recoveries	36	21	17
<b>Amount recovered</b>	<b>£439,000</b>	<b>£56,443</b>	<b>£46,553</b>



## SECTION FIVE

### SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS

“Warning: Misuse may cause injury or death”  
*Unknown, on the metal barrel of a .22 calibre rifle*

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

5.2 The Armed Forces Compensation Scheme, a new compensation package for members of the Armed Forces, became effective from 6 April this year. The new legislation replaces the previous arrangements under the War Pensions Scheme and will be administered and paid by the Veterans Agency.

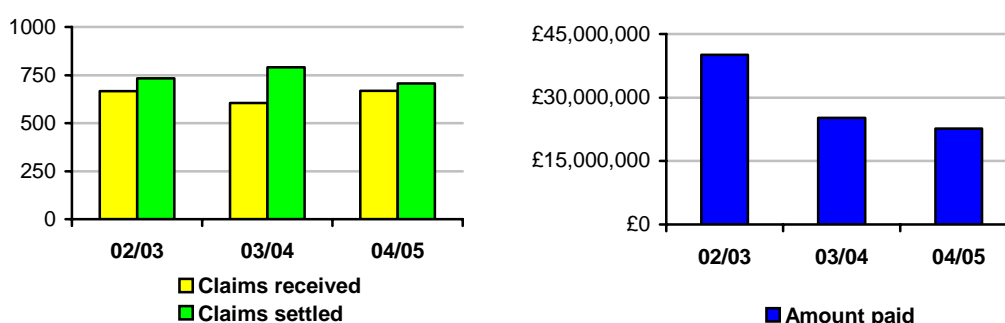
5.3 The new Scheme covers all Regular (including Gurkhas) and reserve personnel whose injury, ill health or death is caused by service on or after 6 April 2005. Ex-Members of the Armed Forces who served prior to this date or who are receiving a current War Disablement Pension or War Widows Pension will not be affected by the new scheme. They will continue to receive their War Pension or War Widows pension and any associated benefits in the normal way. The new scheme affects only those who served after 6 April 2005.

5.4 The Armed Forces Compensation Scheme will provide modern, fair and simple arrangements and will focus help on the more severely disabled. It will provide compensation for significant injuries, illness and death that are caused by service. It will also cover injury, illness or death that results from warlike incidents or terrorism. It is a 'no fault' scheme which means that individuals still have the option to sue the MoD for negligence.

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

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

	02002/03	2003/04	2004/05
Number of claims received	666	604	667
Number of claims settled	733	790	706
<b>Amount paid</b>	<b>£40M</b>	<b>£25M</b>	<b>£22.7M</b>



## COMBAT IMMUNITY

5.7 It is open for the Ministry of Defence to plead a defence of combat immunity in those claims where the injury was sustained engaging the enemy in the course of hostilities. The Court of Appeal ruled in *Mulcahy v Ministry of Defence* on 21 February 1996 that:

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

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

5.8 The *Mulcahy* judgment was expanded in *Bell & Others -v- Ministry of Defence* (the PTSD High Court Group Action) when Owen J ruled:

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

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

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

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

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

5.9 In *Bici -v- Ministry of Defence* Elias J narrowed the judgment in *Bell & Others* by stating:

*“But any such threat must in my view be imminent and serious”.*

5.10 As the foregoing demonstrates, Combat Immunity is a complex matter, and the decision on when to plead such a defence is taken on the basis of the merits of individual cases.

## **BRIEF SUMMARY OF GROUP ACTIONS**

### **NUCLEAR TEST VETERANS**

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

5.12 A third National Radiological Protection Board report NRPB-W27 entitled “Mortality and Cancer Incidence 1952-1998 in UK Participants in the UK Atmospheric Nuclear Weapons Tests and Experimental Programmes” published in 2003 carried out independently of the Ministry of Defence supported the conclusions reached in the previous reports published in 1988 and 1993.

5.13 Two firms of solicitors (Alexander Harris Solicitors, Altrincham and Clark Willmot and Clark Solicitors, Bristol) announced in July 2002 that they had been jointly instructed by British nuclear test veterans to act on their behalf in an action against the Ministry of Defence for damages. They secured legal aid from the Legal Services Commission to pursue this matter. On 15 November 2004 they sent a Letter of Claim to the Ministry of Defence which indicated that they represented some 655 British Veteran Servicemen, 130 Fijian Veteran Servicemen and 213 New Zealand Veteran Servicemen who are Potential Claimants on a group action against the Ministry of Defence. Although the original Letter of Claim did not arrive at Main Building, Claims staff were alerted to



its existence by a series of Parliamentary Questions and other Ministerial Correspondence. Investigations into the allegations, which include failure to consider the health, safety and well being of the servicemen when planning and conducting the tests, failure to warn participants adequately of the potential damage and breach of statutory duty are ongoing. A range of cancerous and non-cancerous pathologies are alleged to have been caused by exposure to radiation generated by the nuclear tests. Legal proceedings were served upon the MOD in April 2005.

## **RADIATION COMPENSATION SCHEME**

5.14 The Ministry of Defence is a member of the nuclear industry's Compensation Scheme for Radiation Linked Diseases. This is a 'no fault' scheme where there is no requirement for claimants to prove negligence on the part of the Department in order to receive compensation. The Scheme, which the Ministry of Defence joined in 1994, was set up and is run jointly by the participating employers and Trade Unions and does not affect claimants' rights to seek legal redress. The Scheme provides for the assessment of a case, on an agreed technical basis, in order to determine the probability that a cancer contracted by a worker could have been caused by occupational radiation exposure. The amount of compensation payable in a successful case is determined by negotiation between the solicitors representing the parties based upon the same guidelines that would apply if the case had proceeded to Court. The Scheme provides for payments to be made for lower levels of causation probability than would be allowed by the Courts. In addition the Scheme provides "full" payment of compensation at a level of 50% causation probability and lesser payments down to a level of 20% causation probability. In this way the assessment of a case recognises that even below the balance of probability there is a chance that exposure to occupational ionising radiation played a role in the disease.

5.15 During financial year 2004/05, the Scheme received 29 new claims from former Ministry of Defence employees (military and civilian) who believe their illness is associated with exposure to occupational ionising radiation. Over the same period, 12 claims were repudiated as failing to meet the minimum 20% causation probability and 1 claim was settled. As the financial year ended, there were no claims outstanding in which settlement remained to be negotiated.

## **PORTON DOWN**

5.16 LAC Ronald Maddison died at the Chemical Defence Experimental Establishment at Porton Down on 6 May 1953. He was taking part in a trial in which 200mgs of the nerve agent GB (Sarin) was applied to his forearm through two layers of cloth. The original inquest returned a verdict of death by misadventure.

5.17 On 18 November 2002, the Lord Chief Justice ruled that the original inquest into the death in 1953, at Porton Down, of Mr Maddison be quashed and a new inquest held. Consequently on 5 May 2004, the new inquest was opened by Mr David Masters, the Coroner for Wiltshire & Swindon. The jury returned a verdict on 15 November 2004 stating that Mr Maddison had been unlawfully killed.

5.18 The Parliamentary Under-Secretary of State for Defence wrote to the solicitor acting for the Maddison family on 20 December 2004 apologising for the fact that

Ministry of Supply employees at the Chemical Defence Experimental Establishment at Porton Down Wiltshire proceeded with a test involving Mr Maddison on 6 May 1953, which led to his death. A ministerial statement was made in Parliament on 21 December 2004 announcing publicly the apology.

5.19 In addition to this, Minister also indicated that the Ministry of Defence would consider favourably any claim for compensation from Mr Maddison's family on the basis of proceeding with a test on 6 May 1953, which led to his death. The Ministry of Defence has accepted that Section 10(i) of the Crown Proceedings Act would not afford legal protection to the Ministry of Defence because the tests were under the direction and control of civilians and not members of the Armed Forces. In the meantime the Ministry of Defence has indicated that it will seek to challenge the inquest verdict by means of a Judicial Review on the basis of defects in the Coroner's summing up and directions to the Jury, which in the MOD's view were not balanced, and the Coroner's ruling on other legal issues which arose during the Inquest.

5.20 The Ministry of Defence received notification from the solicitor acting for the next of kin of Mr Maddison as to what valuation they place on this claim. A meeting, involving legal representatives of both parties and the Chief Claims Officer was held on 18 March 2005 in an attempt to resolve this specific claim and also to discuss potential claims from some 500+ other former Service volunteers relating to biological and chemical research tests at Porton Down in the 1950s and 1960s. An offer of settlement was made to Mr Maddison's next of kin at this meeting which is still being considered. To date we have not received any additional formal claims from other former Porton Down volunteers.

## **ASBESTOS CLAIMS**

5.21 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 who suffer loss or injury as a result of negligence by the Ministry of Defence have been entitled to make common law claims for compensation.

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

5.23 Mr Matthews an ex-serviceman suffering from an asbestos related disease challenged this position on the basis that Section 10 of the Crown Proceedings Act 1947 is incompatible with the European Convention of Human Rights. Mr Matthews alleged a breach of Article 2 (right to life) and Article 6 (due process rights) of the Human Rights Act. The case under Article 2 was that by exposing him to asbestos dust the Crown was in breach of its obligation to take positive steps to safeguard Mr Matthews' health. The

case under Article 6 was that Section 10 Crown Proceedings Act is a 'blanket' immunity which deprives Mr Matthews of his right of access to the Court. The matter was heard in the High Court on 10 and 11 December 2001. Mr Justice Keith handed down judgment on 22 January 2002 in favour of the Claimant. The Department, however, secured leave to take this matter expeditiously to the Court of Appeal and the hearing took place on 22 and 23 April 2002. In its judgment, handed down on 29 May 2002, the Court of Appeal overturned Mr Justice Keith's decision, but granted leave for Mr Matthews to take this matter to the House of Lords. Their Lordships' considered this matter on 13 and 14 January 2003 and handed down a unanimous judgment on 13 February in favour of the Ministry of Defence. The five Law Lords agreed that there had never been the right in national law that Mr Matthews sought to assert i.e. that a member of the Armed Forces could sue the Crown in tort, and that he has no "civil right" that article 6 of the European Convention on Human Rights can operate to protect.

5.24 Mr Matthews has now made an application to the European Court of Human Rights (ECHR). We understand that the ECHR are still in the process of giving this application consideration. .

### **GULF WAR CLAIMS**

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

5.26 The Ministry of Defence has received approximately 2,000 notifications of 'intentions to claim' from Gulf veterans or their dependants but, as yet, the claimants' solicitors have served no writs or claims of sufficient detail for the Department to be able to start considering these claims.

5.27 We are aware that solicitors acting for Gulf veterans have received legal advice from Queen's Counsel about the prospects of successfully bringing claims for compensation against the Ministry of Defence. From public comments made by the solicitor acting for the veterans in February 2004 it is believed that the advice received was that prospects of successfully bringing claims were not good. We further understand that the Legal Services Commission, who had been providing funding in the form of legal aid, have still to reach a decision about future funding.

5.28 Further to the publication of Lord Lloyd's report into Gulf Veterans Illness, the Department has received requests to set up an ex-gratia scheme to deal with claims for Gulf War related illnesses. The Department does not consider there is any case, or justification, to do this. In accordance with HM Treasury guidance the Ministry of Defence considers claims for compensation on the basis of legal liability. No such legal liability exists in the case of Gulf veterans, therefore to treat them as a special case and establish an ex-gratia scheme would set an unwelcome precedent, and would undoubtedly be seen as unfair by other groups of veterans.

5.29 Gulf veterans can, and do, receive compensation in the form of war pensions and attributable armed forces pensions which are already available to ex-service personnel who suffer illness or injury as a result of their service.

## SECTION SIX

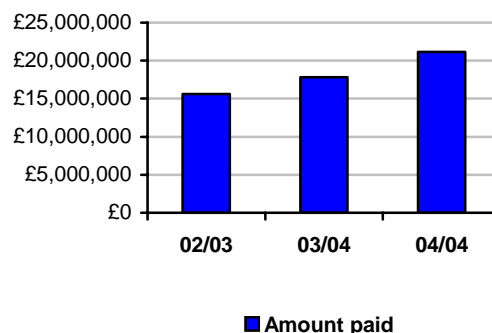
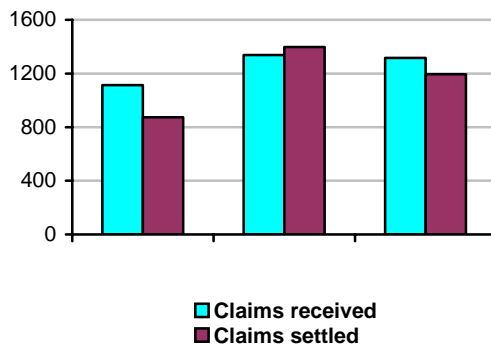
# CIVILIAN STAFF EMPLOYER'S LIABILITY CLAIMS

*“Injuries may be forgiven, but not forgotten”*  
Aesop 620BC – 560BC

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

6.2 Ministry of Defence civilian employees injured in the course of their official duties may be able to claim compensation. Details on how to submit a claim are contained in Volume 16, Section 7 of the Ministry of Defence Personnel Manual and further information is given in DCI GEN 26/04. Asbestos claims again account for the majority of high-value settlements (as shown in Annex D). The high number of asbestos claims received and compensation paid is being experienced throughout the UK insurance industry and not solely restricted to the Ministry of Defence. The position is likely to peak in about 2015.

	2002/03	2003/04	2004/05
Number of claims received	1113	1337	1316
Number of claims settled	872	1398	1195
<b>Amount paid</b>	<b>£15.6M</b>	<b>£17.9M</b>	<b>£21.1M</b>



## SECTION SEVEN

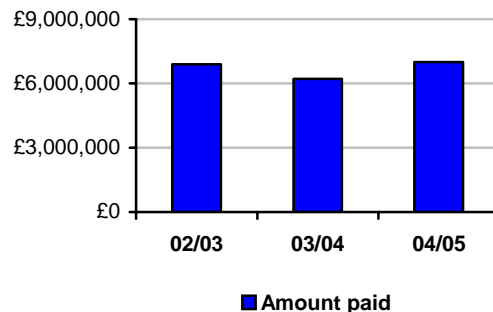
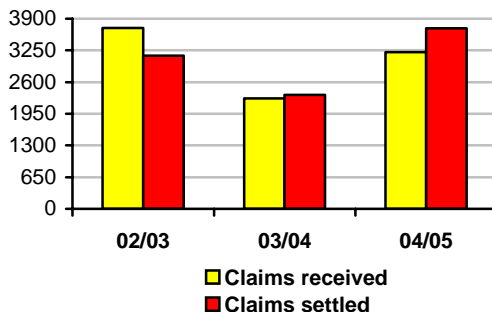
### MOTOR CLAIMS

*“The most dangerous component in a car is the nut behind the wheel”*  
Urban wisdom

#### THIRD PARTY MOTOR CLAIMS - UK

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

	2002/03	2003/04	2004/05
Number of claims received	3709	2262	3216
Number of claims settled	3142	2334	3706
<b>Amount paid</b>	<b>£7M</b>	<b>£6M</b>	<b>£7M</b>



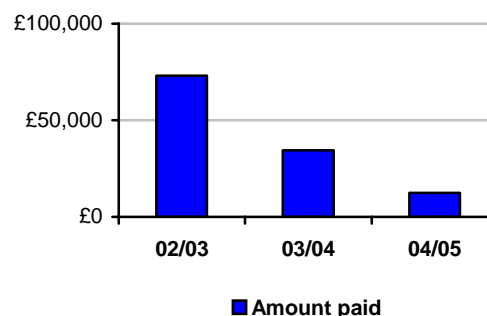
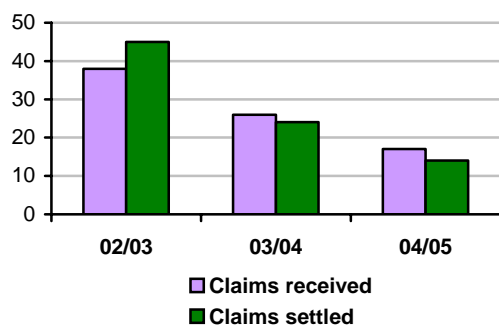
#### THIRD PARTY MOTOR CLAIMS - OVERSEAS (NOT DEALT WITH BY ACOs)

7.2 Claims arising from non-UK based vehicles overseas are handled by the appropriate Area Claims Officers (ACO) or Claims PLG where no ACO exists for that geographical area. The Claims PLG geographical area is large, and this year has seen claims from Gibraltar, Spain, Portugal and Kenya. In accordance with JSP 341, units and organisations should send FMT 3-1 (the form submitted by the user unit notifying details of traffic accidents involving Ministry of Defence owned or hired vehicles, and showing that the driver was on duty at the time of the incident) and supporting statements to DS&C Claims.

7.3 Claims managers are required to establish that an authorised driver was driving the Ministry of Defence vehicle on an authorised journey and route. If these criteria are

met and all the evidence suggests that the Ministry of Defence driver was liable for the accident, then compensation will be paid. Statistics for motor claims for the last three years are shown in the table below. The statistics for FY 2004/05 show that, again, there has been a significant reduction in the number of claims received.

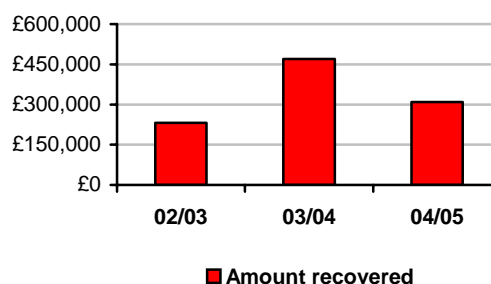
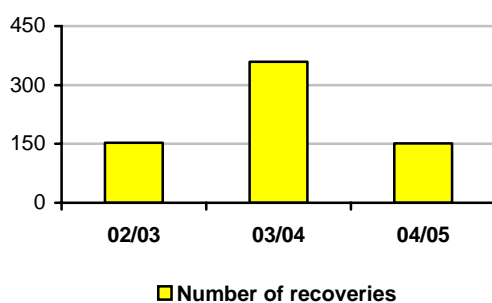
	2002/03	2003/04	2004/05
Number of claims received	38	26	17
Number of claims settled	45	24	14
<b>Amount paid</b>	<b>£73,000</b>	<b>£34,498</b>	<b>£12,469</b>



## UNINSURED LOSS RECOVERY

7.4 AXA Corporate Solution Services Ltd recovers on behalf of the Ministry of Defence the cost of damage caused to its vehicles in accidents which are the fault of a third party. The number of recoveries and amounts received are shown below.

	2002/03	2003/04	2004/05
Number of recoveries	153	359	151
<b>Amount Recovered</b>	<b>£231,000</b>	<b>£470,157</b>	<b>£308,825</b>



## COST OF DAMAGE TO MINISTRY OF DEFENCE VEHICLES

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

## **SECTION EIGHT**

### **CLINICAL NEGLIGENCE CLAIMS**

*“It is not only what we do, but also what we do not do, for which we are accountable”*  
Moliere 1622 1673

8.1 Clinical negligence claims arise when a patient considers that the advice and/or treatment received fell below acceptable standards due to the negligence of the medical staff. To succeed in bringing a claim for negligence the claimant must establish that the defendant owed them a duty of care and that there was a negligent breach of that duty resulting in the claimant suffering damage.

8.2 Due to their nature clinical negligence claims can be very time consuming and expensive to settle. In many cases experts in a number of different fields may be instructed by both parties to provide advice on liability and quantum issues. A number of factors underpin the rising costs of settling such claims. The Judicial Studies Board have raised the level of general damages for pain suffering and loss of amenity, and changes to the discount rate used to calculate future losses have increased the levels of settlement. Labour rates for carers and therapists have risen significantly faster than inflation.

8.3 A number of claims involving alleged clinical negligence in hospitals overseas have been put on hold due to a very important Court of Appeal judgment in favour of the Ministry of Defence, which may lead to the matter being considered by the House of Lords. Brief details are as follows:

#### *Child A -v- Ministry of Defence*

8.4 In 1996 the Ministry of Defence contracted out hospital care for British Service personnel and their families based in Germany to German hospitals selected on the Ministry of Defence's behalf by Guy's & St Thomas' NHS Trust. The hospitals are known as Designated German Provider hospitals (DGPs). The child of British Service personnel suffered brain damage at the time of his birth on the 22 June 1998 at the Gilead Hospital, Germany allegedly due to clinical negligence. As a result he suffers from cerebral palsy. His parents brought a case against the Ministry of Defence.

8.5 The appellant argued that the Ministry of Defence was under a non delegable duty for the provision of secondary health in Germany by German hospitals even after it had closed its own military hospitals in Germany. On this basis the Ministry of Defence would be liable for any negligence by the staff of those Designated German Provider hospitals. The Court of Appeal rejected that argument.

8.6 The common theme in all of the relevant cases was that the hospital had accepted the claimant as a patient. The Ministry of Defence did not (generally) accept patients for secondary healthcare in Germany after 1996. The appellant was therefore arguing for an extension to English law. The appellant's counsel pointed to the NHS policy for sending patients abroad. The DoH recommends NHS Trusts to accept liability for the negligence of overseas doctors so that patients do not have to sue abroad. The distinction, however, is that the NHS first accepts the individual as a patient then chooses to discharge its duty

to the patient by sending the patient abroad. The Court said that the same did not follow in the case of the Ministry of Defence. It therefore declined to extend the boundaries of the non delegable duty principle and dismissed the claim against the Ministry of Defence. If the Ministry of Defence were under any duty from 1996 on, it was limited to making reasonable provision for access to secondary healthcare and to exercising reasonable skill and care in selecting that healthcare provider.

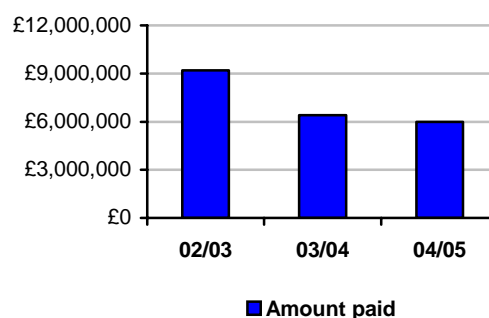
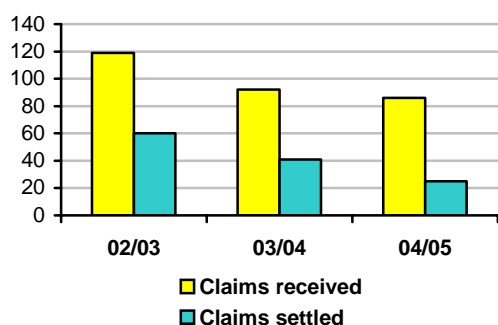
8.7 The Master of the Rolls therefore concluded:

*“There is no suggestion here that there had been any fault on the part of the MOD. There is no suggestion that the imposition of the duty of care for which Mr Tattersall (the appellant’s counsel) contends would or could impact on the care actually taken by the DGPs. In these circumstances I can see no justification for imposing a non-delegable duty of care on MOD to ensure that due skill and care is exercised in those hospitals. It seems to me that Germany is the appropriate forum for this litigation and the Gilead Krankenhaus is the appropriate defendant.”*

8.8 We understand that that the appellant has now sought funding from the Legal Services Commission (LSC) to petition the House of Lords for permission to appeal the Court of Appeal decision.

8.9 The table below shows expenditure on clinical negligence claims over the past three years. During financial year 2004/2005 two extremely complex cases were settled in excess of £1 million. At the other end of the spectrum the lowest claim settled was for £950 for the residual scarring together with the additional pain and suffering as the result of a chemical burn to the arm when medical staff tried to remove a patient’s bandage. The reduction in the number of clinical negligence claims received reflects the closure of some Service hospitals.

	2002/2003	2003/2004	2004/2005
<b>Number of claims received</b>	119	92	86
<b>Number of claims settled</b>	60	42	25
<b>Amount Paid</b>	<b>£9M</b>	<b>£6M</b>	<b>£6M</b>





## SECTION NINE

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

*“A man is called selfish, not for pursuing his own goal, but for neglecting his neighbours”*

Archbishop Richard Whaley 1787 – 1863

9.1 As highlighted in previous Claims Annual Reports, the claims budget relating to Employment Tribunal applications brought by current and former members of HM Armed Forces was disaggregated to the respective single Service Personnel branches with effect from 1 April 2003.

9.2 Any further enquiries relating to these cases, or Service Employment Tribunal cases in general, should therefore now be directed towards the Respective single Service branches, NP(Sec)Law 2, (RN), APC (Litigation), (Army), or AMP(Sec) ET (RAF).

9.3 During 2004/2005 one payment of £36,500 was made on an Employment Tribunal case for the legal costs on a case which had been settled during 2003/2004.

#### **Homosexual Dismissal Cases**

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

9.5. The European Court of Human Rights (ECHR) ruled, however, that in four cases against the Ministry of Defence there had been a violation of those individuals’ right to respect for their private life under Article 8 European Convention on Human Rights. It found that there had not been a violation of Article 3: the applicants had not been subjected to inhuman or degrading treatment or torture. Total compensation of £325,000 was awarded to the four applicants by the ECHR, which has been paid in full. Since then the ECHR has considered and awarded compensation in a handful of similar cases.

9.6. With regards to other domestic Employment Tribunal (ET) applications, the Department took the view that rather than pursuing the litigation to a conclusion in the ET, and then dealing with further litigation to a conclusion before the ECHR, the Department would attempt to settle claims from each claimant whose claim was in progress at the ET.

9.7 Attempts to reach settlement on these cases were delayed by the case of *MacDonald -v- Ministry of Defence*. Mr MacDonald was a serving Flight Lieutenant, whose resignation from the RAF was compulsorily effected in 1997 because of his voluntary declaration of homosexuality. He lost a claim at a full hearing at an ET that he

had been discriminated against unlawfully on grounds of sex, contrary to the Equal Treatment Directive and Section 6 of the Sex Discrimination Act 1975. Following the ET ruling Mr MacDonald took his case to the Employment Appeals Tribunal (EAT) which found that he had been discriminated against in terms of the Sex Discrimination Act 1975 and had been subjected to sexual harassment. He would be entitled to compensation in both respects and the matter was remitted back to the ET to consider compensation.

9.8. The judgment of the EAT was radical in that it overturned the previously accepted interpretation of the Sex Discrimination Act 1975. The EAT found that the word “sex” should be interpreted to include not just gender but also sexual orientation. It was decided that this judgment should be challenged and the appeal was heard before the Inner Court of the Court of Session in Scotland in January 2002. The Inner Court ruled in favour of the Ministry of Defence and ordered that the decision of the Employment Tribunal be restored.

9.9. Mr MacDonald subsequently decided to appeal this decision to the House of Lords. The Law Lords considered the appeal on 22 and 23 January 2003 and handed down a unanimous judgment on 19 June 2003 in favour of the Ministry of Defence. Mr MacDonald has now taken steps to have his case considered by the ECHR.

9.10. Now that the outstanding legal uncertainties surrounding the homosexual litigation has been removed, urgent work has been put in hand to bring the outstanding cases to an amicable and speedy conclusion. We are in liaison with the solicitors acting for the remaining claimants, all of whom have also now made applications to the ECHR, and have asked them to provide detailed schedules of loss for our further consideration. Once all the necessary information has been received and considered we will aim to bring this tranche of claims to a conclusion.

## SECTION TEN

### AREA CLAIMS OFFICERS

*“Be sure you put your feet in the right place, then stand firm”*  
President Abraham Lincoln 1809 - 1865

#### AREA CLAIMS OFFICE (NORTH WEST EUROPE)

10.1 ACO (NWE) is part of the Civil Secretariat, Headquarters United Kingdom Support Command (Germany) based in Rheindahlen. It is responsible for handling claims by and against the Ministry of Defence in Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Luxembourg, Norway, Poland, The Netherlands, Switzerland. The Area Claims Office has 10 civilian staff handling and processing claims.

#### ACO(NWE) RE-ORGANISATION.

10.2 The current structure and staffing levels within ACO(NWE) have been reviewed and as a result a reorganisation of the existing Claims BF(G) and Claims Agency Sections a single Claims Team is being implemented. The main aim of the reorganisation was to provide a more flexible structure which offers both better value for money and service to ACO (NWE) customers, and in addition, greatly increases the skill base of existing staff.

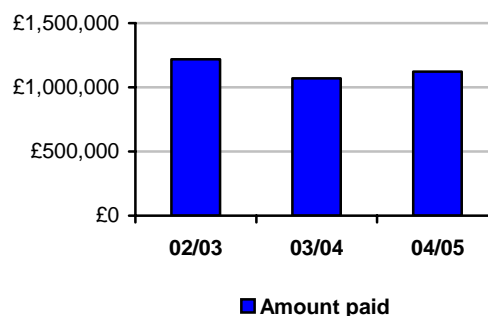
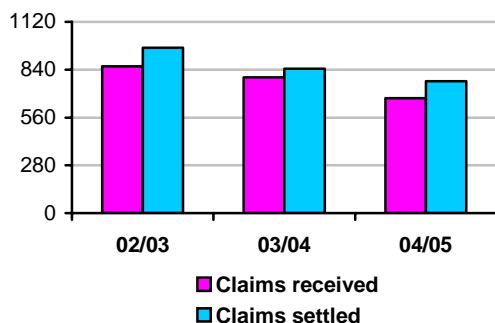
#### RISK MANAGEMENT

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

10.4 ACO (NWE) has been active in raising the profile of the Claims organisation roles and responsibilities with a view to reducing costs and numbers of Claims. The UKSC(G) website has a separate page for ACO (NWE) information and articles have been provided to, and continue to be regularly published in, the British Forces weekly newspaper (Sixth Sense). An ACO (NWE) Newsletter is now established and is issued in both English and German and will be produced quarterly with a view to improving the awareness of ACO (NWE) business across British Forces (Germany). Presentations have been given to Garrison SHEF seminars and Works staff seminars on the work carried out by the Claims office and these briefs included elements on reporting of incidents, the financial cost to MOD as well as the hidden costs and also potential ‘human’ cost of Claims. A series of meetings have taken place with the BF(G) RMP detachments to raise awareness of the information and assistance ACO(NWE) requires and also to ensure continuing awareness of ACO role and services provided. In future the establishment and populating of the new consolidated Claims database will deliver the functionality to enable statistics to be analysed with trends and/or common occurrences being identified and mitigating action taken where possible.

## CLAIMS EXPENDITURE AND RECOVERIES

	2002/2003	2003/2004	2004/2005
Number of Claims received	860	794	673
Number of claims closed	968	846	772
<b>Total Paid</b>	<b>£1,219,000</b>	<b>£1,070,612</b>	<b>£1,121,382</b>
<b>Total Recovered</b>	<b>£471,000</b>	<b>£590,929</b>	<b>£491,604</b>



10.5 The reduction in the number of claims files opened during FY04/05 is largely attributable to troops being away in the Gulf.

## RECOVERIES/LOSS OF SERVICE.

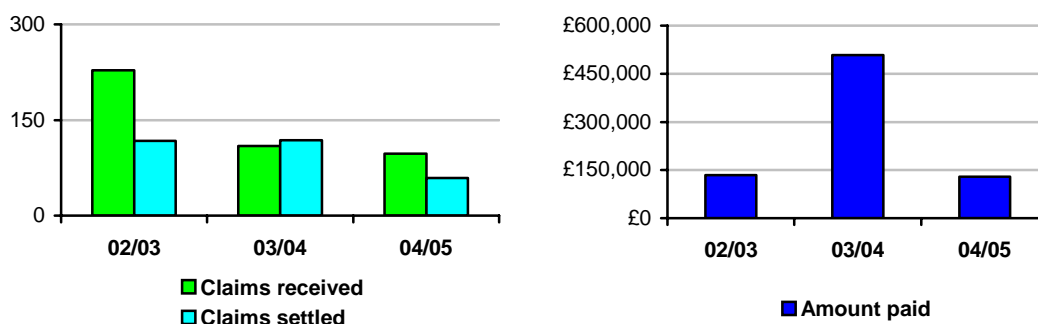
10.6 Over the past 12 months further improvements and refinements have been made to the recovery and loss of service processes which have enabled ACO(NWE) to focus on maximising potential. With the implementation of the new ACO(NWE) structure there will be three claims handlers fully trained on all aspects of recovery and loss of service claims and this should see a reduction in the average turnaround time for recovery claims.

## AREA CLAIMS OFFICE BALKANS

10.7 The Area Claims Officer post, which was made pan-Balkans towards the end of FY 2002/03, is to be cut with effect from 2 May 2005. The decision was taken as part of the Civil Secretary's recent review of posts within the Balkans. The claims responsibility will transfer to SO2 Commercial with effect from 3 May 2005.

10.8 There was a marked change in the proportion of claims submitted this year. Whereas in FY 2003/04 the majority of claims were as a result of Road Traffic Accidents, in FY 2004/05 approximately half of the claims submitted were for property damage with about one third resulting from RTAs.

	2002/03	2003/04	2004/05
Number of Claims Received	228	109	97
Number of Claims Settled	117	118	59
<b>Amount Paid</b>	<b>£134,252</b>	<b>£508,703</b>	<b>£129,546</b>
<b>Amount recovered</b>	<b>£8,000</b>	<b>Nil</b>	<b>£382</b>



10.10 There is one outstanding claim which will require further adjudication by Claims PLG in London. This involved a negligent discharge from a weapon being confiscated by HM Forces when an interpreter sustained a leg injury. Whilst a claim has been submitted for approximately £100,000, a final medical expert's report is awaited whereupon quantum can be properly assessed.

10.11 There was limited success in recovering Ministry of Defence costs against third parties in Kosovo although success in Bosnia still proves to be elusive. Accidents continue to occur where local drivers are entirely liable for the accident but apparently without any form of redress. Reminders are constantly sent to the Ministry of Justice regarding claims already lodged, but to date no acknowledgements have been received or recoveries made.

## AREA CLAIMS OFFICE CYPRUS

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

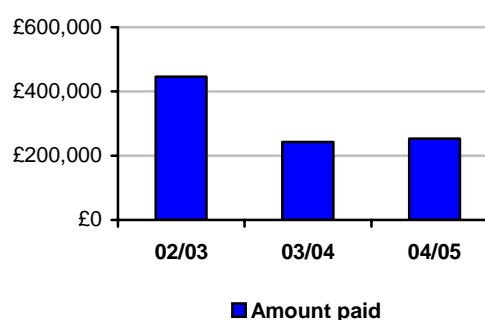
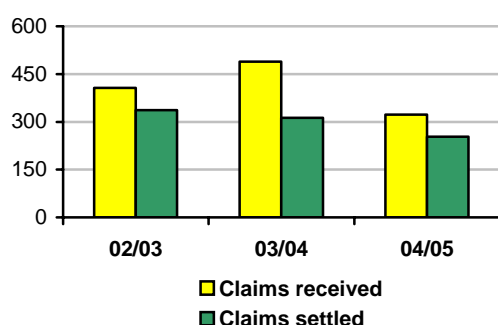
10.13 The Cypriot climate and terrain provide excellent training opportunities for the British forces, both in the air and on the ground. Most of this takes place on private land under rights granted by the ToE. Consequently a good deal of ACO's work involves settling training and manoeuvre damage claims arising from the activities of our forces, whether the resident battalions and squadrons or those visiting from UK. These claims are predominantly for loss of livestock (which will sustain injury and abortion if panicked by helicopters, pyrotechnics, etc.) and crop damage. In providing a rapid response to the claims and complaints raised by farmers and landowners, ACO plays a significant role in maintaining good relations between the Ministry of Defence and the local community, a vital ingredient in supporting UK's training rights. ACO seeks to reduce the risk of damage being caused and to that end routinely briefs all exercise reconnaissance officers prior to training taking place.

10.14 The rise in training and manoeuvre damage claims during 2003/04 is due to the receipt of 179 individual claims from householders who reside in a village adjacent to RAF Akrotiri. They have alleged that their property has been damaged by vibration from

military aircraft. None of these claims have been settled as investigations are incomplete. If these are taken out of the equation, claims in respect of training and manoeuvre damage actually fell during 2003/04, both in number and in expenditure and this has continued into 2004/05. This is largely due to the cancellation of a number of Exercises due to operational commitments elsewhere.

10.15 Expenditure during 2004/05 in settling employer's and public liability claims fell again mainly due to the number of smaller value claims settled. Nevertheless, the higher number of claims received is a reflection that Cyprus is generally becoming an increasingly litigious society, and whereas the local courts generally award lower levels of general damages than in the UK, we are seeing signs of a move towards far higher awards.

	2002/03	2003/04	2004/05
Number of claims received	407	489	323
Number of claims settled	337	313	296
<b>Amount paid</b>	<b>£446,000</b>	<b>£242,000</b>	<b>£253,000</b>
<b>Amount Recovered</b>	<b>£19,000</b>	<b>£14,000</b>	<b>£18,000</b>



## AREA CLAIMS OFFICE IRAQ

10.16 After an initial nomadic existence, ACO Iraq now occupies permanent accommodation close to the HQ of Multi-National Division (SE), at Basrah International Airport. Current staff comprises a Band C2 and Band D Claims Officer, and two locally-employed Iraqi interpreters.

10.17 Apart from claims for loss of property by Prisoners-of-War, claims are only registered and investigated for incidents occurring since the declared end of warfighting, on 1 May 2003. Because of the complex sensitive nature of death related claims, and to ensure a consistent approach in handling such matters, those claims involving the death or serious injury of an Iraqi civilian (with the exception of those resulting from RTAs), are handled by Ministry of Defence Claims staff in London. For the purposes of this exercise a "serious injury" can be defined as those injuries arising from an incident where another individual was killed.

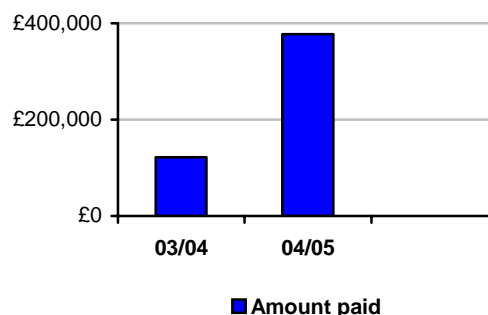
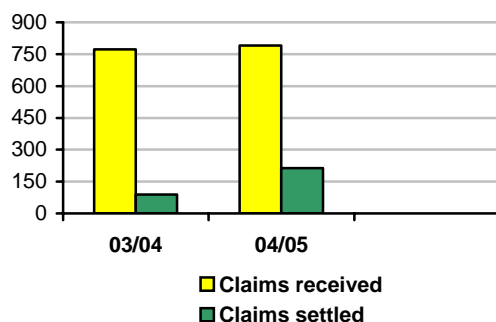
10.18 The number of claims registered in FY2004/05 is similar to the previous year, and whilst the FY03/04 total contained a large number of war claims (which were denied), the FY04/05 total was boosted by claims for collateral property damage as a result of

large-scale military operations against insurgents in Maysan, in May and August, and Basrah, also in August. These operations also boosted the number of fatality claims. Claims for collateral damage in these operations are being settled on basis of the balance of probabilities up to a maximum of 50% of the sum claimed where it is acknowledged that British forces caused the damage whilst engaging the insurgent forces. The resident battle group in Maysan has already reported favourable local reaction to this policy, and has detected a notable decrease in hostility. It is also anticipated that the recent take-over of Muthana province from the Dutch contingent will produce a small increase in claims, although this area is very sparsely populated.

10.19 Apart from the 300 combat-related claims received as a result of action by insurgent, the vast majority of claims have been for RTAs, mainly due to military vehicle executing unexpected tactical manoeuvres, combined with the indigenous erratic and impatient style of driving. It is difficult for military drivers to reach a compromise between the requirement for tactical manoeuvre to avoid becoming a target and to permit the indigenous road traffic to flow smoothly.

10.20 ACO Iraq has assisted the Japanese contingent to formulate a claims handling procedure, and has had several meetings with their liaison and legal officers.

	<b>2003/04</b>	<b>2004/05</b>
Number of claims received	773	790
Number of claims settled	90	214
<b>Amount paid</b>	<b>£122,124</b>	<b>£377,204</b>



## AREA CLAIMS OFFICE NORTHERN IRELAND

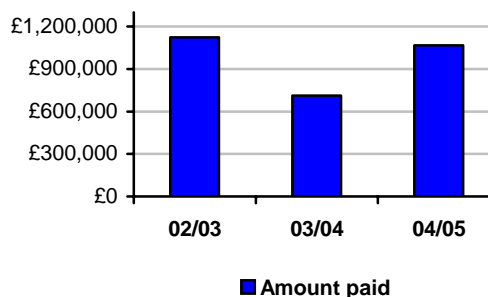
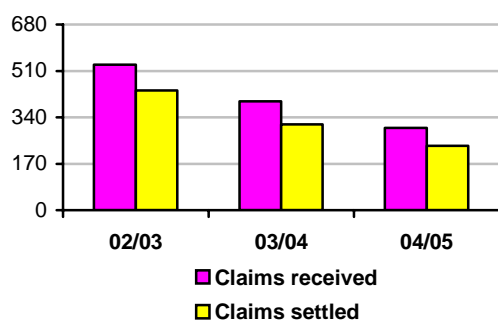
10.23 The ACO is based at HQ Northern Ireland and deals with common law claims for and against the Ministry of Defence in Northern Ireland. It also acts as a focal point for civilian employee claims.

10.24 The majority of claims handled by the office are as a result of low flying helicopter incidents. A further reduction in the level of helicopter activity this year has seen a commensurate drop in the number of claims received.

10.25 Most property/livestock claims as a result of helicopter damage are settled for £2500 or under. However, bloodstock claims can have a high value. The 3 highest settlements for bloodstock this year were £44,800, £30,000 and £24,500. There have also been some high value personal injury claims settled, which have increased expenditure this year. The 3 highest settlements for personal injuries were £184,000, £100,000 and £30,900 respectively. The settlement of £30,900 was for injuries received by an 80 year old lady who broke her wrist when she was blown off her feet by a Chinook helicopter.

10.26 Expenditure has been offset slightly by a successful action against a landscaping contractor for damage to a Ministry of Defence helicopter caused by a ride-on lawnmower. This resulted in a receipt of £57,200.

	2002/03	2003/04	2004/05
Number of claims received	533	399	301
Number of claims settled	438	314	236
<b>Amount paid</b>	<b>£1,123,000</b>	<b>£712,800</b>	<b>£1,066,500</b>
<b>Amount recovered</b>	<b>£7,710</b>	<b>Nil</b>	<b>£66,922</b>



## AREA CLAIMS OFFICE FALKLANDS ISLANDS

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

10.28 During FY 04/05 4 claims were received for body damage repairs to vehicles of which 1 has been settled. The geographical peculiarities of life in the South Atlantic Islands mean that the repairs damaged vehicles can take a considerable time when parts have to be ordered from UK, and delivered by ship.

10.29 There have been no recoveries made during this period.

	2003/04	2004/05
Number of claims received	1	4
Number of claims settled	2	1
<b>Amount paid</b>	<b>£18,498</b>	<b>£110</b>



## AFGHANISTAN

10.30 There is no Area Claims Officer as such in Afghanistan. Any third party claims against the MOD are therefore handled by the resident Civil Secretary in Kabul. The small number of claims (see below) received have all resulted from Road Traffic Accidents.

	<b>2004/05</b>
Number of claims received	4
Number of claims settled	3
<b>Amount paid</b>	<b>£17,000</b>

## SECTION ELEVEN

### DEFENCE INTERNAL AUDIT REVIEW

*“Nothing has such power to broaden the mind as the ability to investigate systematically and truly all that comes under thy observation”*

Marcus Aurelius 121 -180AD

11.1 The National Audit Office (NAO) completed a review of Compensation Claims handling by MOD in July 2003 and concluded that the Department’s performance was broadly comparable with that of other similar sized organisations and commented on positive areas where progress had recently been made. A number of recommendations were also made by which the effectiveness of policies and systems could be improved (See Section 2)

11.2 It was agreed that Defence Internal Audit should action a review to follow through the implementation of the recommendations made by the NAO, and in addition cover the problems associated with Departmental records being provided within agreed timescales to assist the timely processing of a claim. The work was also to incorporate provision of an assurance on project management controls over the proposed ‘cradle to grave’ Incident Recording and Information System (IRIS) and data integrity on the existing information systems.

11.3 The DIA concluded that DS&C had made significant progress to ensure implementation of the recommendations made by the NAO including; a proactive approach to claims handling, provision of Departmental records within agreed timescales, issue of comprehensive guidance on Risk Assessments and firm proposals for IRIS.

11.4 In the main access/retrieval of records was in line with industry best practices, although there were inconsistencies in methods, document ownership and retention timeframes. It was noted that IRIS should address the requirement for incorporation of a field(s), which either identifies the location of key evidence or store it in electronic format. This will be a significant enhancement in enabling MoD to supply necessary evidence to resist claims in a timely manner.

11.5 Compliance with key MOD Accident Reporting Policy and Processes was high in all areas visited and the knowledge and professionalism of Safety, Health, Environment and Fire Officers was commendable, but it was felt that further guidance for line managers and others involved in the incident reporting and document retention process would be beneficial. It was therefore recommended that DS&C formulate an Awareness Strategy to help direct the need for competent reporting, investigation and evidence retention.

11.6 Linkages with Risk Management processes had been substantially enhanced by a ‘one stop’ call centre approach utilised in many areas visited, however there remained

concerns regarding under reporting, low levels of near-miss reporting and failure to effectively identify the 'hidden costs' of incidents.

11.7 Review of Project IRIS indicated that the system would supply the key functionality required by DS&C.

11.8 Overall DIA were able to provide a Substantial Assurance that controls in place over the MOD Claims and Compensation Payments systems were economic, efficient and effective.

## **SECTION TWELVE**

### **INSURANCE AND INDEMNITIES**

*“You do not examine legislation in the light of the benefits it will convey if properly administered, but in the light of the wrongs it would do and the harms it would cause if improperly administered”*

Lyndon Johnson 1908 - 1973

#### **INSURANCE**

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

12.2 Claims branch takes the policy lead on all Ministry of Defence non-contractual insurance issues and encourages units and establishments to transfer risks arising from non-core activities away from the Department.

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

- Military aircraft attendance at air displays
- Civil Use of Military airfields
- Search and Rescue training with civilian organisations
- Fare paying passengers on military aircraft

#### **INDEMNITIES**

12.4 Claims branch is responsible for all non-contractual indemnity matters, ranging from issuing indemnities to land owners who are letting the Armed Forces use their land for exercises to commenting on different clauses within Defence Estates licenses, indemnity provisions within Memorandum of Understandings (MOUs) and other international agreements.

12.5 The Ministry of Defence always seeks an indemnity against claims arising from activities or events that are not considered to be core business, or when activities or events do not further the interests of the Department. Examples include participation by Service personnel or Ministry of Defence civilian staff in non-core fund raising or social activities, work experience for students over the age of 16, or the use of Ministry of Defence personnel or equipment by other organisations for activities which have no direct benefit to the Ministry of Defence. The Ministry of Defence must seek an indemnity in such instances as there is no provision in the Defence Estimates to meet

claims which are not defence related. Indemnities must be backed by insurance or a guarantee from those companies/organisations that self-insure. The only exception to the requirement for indemnity is when the Ministry of Defence is dealing with other Government Departments. This is because of the principle of indivisibility of the Crown. Claims branch issued around 362 indemnities in 2004/2005 and commented on a similar number of other indemnity issues.

12.6 Indemnities that arise from the Department's contractual business are the responsibility of the appropriate Commercial Branch, with policy guidance provided by the Defence Procurement Agency (Central Services Group, Risk).

## **WIDER MARKETS**

12.7 Income-generating activity under the Government's initiative for Selling Government Services into Wider Markets is also an exception to the rule that the Ministry of Defence does not purchase insurance. However, because of the unusual and hazardous nature of the activities which MOD undertakes commercial insurance may not always be available to cover these activities, or may not be cost effective. In December 2004 new arrangements were introduced, with the agreement of Partnerships UK, on behalf of HM Treasury, by which customers pay a Departmental Insurance Charge and any claims for compensation which may arise will then be paid by DS&C (Claims).

12.8 Advice about insurance and risk reduction may be obtained from Claims branch and from the Ministry of Defence's insurance brokers, Willis Ltd, in accordance with DCI Gen 298/03. Willis has created a specialised package of insurance policies offering a full range of business insurances for Budget Holders undertaking income-generating activity.

## SECTION THIRTEEN

### NOVEL AND CONTENTIOUS CLAIMS

*“The chapter of accidents is the longest chapter of the book”*

John Wilkes 1727 – 1797

#### ELECTRICAL FIRE ACCIDENT

13.1 During the testing of high voltage electrical equipment at the Ministry of Defence’s Whitehall Headquarters, a contractor employed to conduct maintenance work was fatally burned in an electrical fire and a colleague sustained severe burns to his hand. Both the widow of the deceased and the surviving contractor submitted claims against the Department.

13.2 The incident was investigated by the H&SE, Ministry of Defence personnel and the police. It was agreed that Ministry of Defence personnel were partly at fault for not properly isolating the incoming high voltage electrical supply thus failing to make safe the equipment the contractors were going to maintain. As a Crown body, the Ministry of Defence cannot be prosecuted, but 2<sup>nd</sup> PUS accepted a Crown Censure on behalf of the Ministry of Defence from the H&SE.

13.3 The Ministry of Defence admitted primary liability for the accident but did not admit full liability since it was opined that some fault for the incident also rested with three contractors employed by the Ministry of Defence who were also involved in circumstances surrounding the incident. The Ministry of Defence has settled the claims for compensation and is now seeking a contribution to its outlay from the other parties concerned.

#### CLINICAL NEGLIGENCE

13.4 A claim for compensation was received from Mrs X, the widow of a serving Officer who died on 19 August 1999.

13.5 Mrs X’s husband was on duty at a foreign military base when the region was struck by an earthquake. He was taken from the scene of the earthquake with serious internal crush injuries to a host nation military hospital. A decision was taken by UK military authorities to send a medical evacuation team from the United Kingdom to return him home. The evacuation took place two days later and unfortunately he died in flight from his injuries.

13.6 Expert medical evidence was obtained which stated that the decision to remove the patient from hospital was flawed and that he would have had a significant chance of survival had he remained in the hospital. Furthermore had he survived then it is likely that his life expectancy would have been normal. On legal advice liability was conceded in February 2003.

13.7 Following the preparation of detailed schedules of loss setting out the respective valuations of the claim it was agreed to attempt a speedy amicable settlement by way of mediation which would also limit the legal costs. This session was facilitated by professional mediators but financial agreement was not achieved - although the mediation did narrow some of the areas of dispute.

13.8 The claim was eventually settled for £860,000 in November 2004 against a claim pleaded at well over £1million.

## CLINICAL NEGLIGENCE

13.9 Mr X underwent a vasectomy operation in December 1996 at a Service medical facility. After the operation he provided two semen specimens in accordance with the operation requirements and was informed by a medical officer that the samples were negative and he was infertile. Unfortunately, both the samples contained spermatozoa and consequently his wife became pregnant with twins. She subsequently decided to terminate the pregnancy. This was because the family already had two children and Mrs X had experienced a difficult pregnancy.

13.10 The available evidence suggested that the medical officer gave Mr X the wrong test result, due to poor internal procedures at the medical centre. Breach of duty could not be denied.

13.11 After his wife's pregnancy termination Mr X suffered a major depressive episode leading to his medical discharge from the Service in 2003, because of his psychological state. Mr X's wife also suffered a mild adjustment disorder after the termination and then a major depressive episode for approximately 6 months thereafter. A number of expert medical reports were obtained by both parties and causation was clearly established

13.12 This claims from both Mr and Mrs X were settled amicably for £285,000 against claimed damages in excess of £500,000.

## CLINICAL NEGLIGENCE

13.13 A claim for compensation was received from solicitors acting for an ex-soldier who alleged that whilst serving in the Army he was subjected to regular physical and verbal abuse, including beatings and destruction of his personal property and a serious sexual assault. It was further alleged that as a result of these incidents the individual developed Post Traumatic Stress Disorder (PTSD). The allegations made against the Ministry of Defence included (a) failing to provide a safe system of work; (b) failure to ensure the claimant's personal safety and well being; and, c) failure to diagnose and treat the PTSD in a timely manner. The claimant gave interviews to a national daily newspaper in which he confirmed he was suing the MOD for £2,000,000 for alleged "Army abuse".

13.14 The Ministry of Defence denied these allegations and repudiated the claim. In addition we believed that the claimant had considerable psychological issues and therefore considerable doubt must be attached to his allegations.

## **SKIING ACCIDENT**

13.15 The claimant sustained injuries in December 2000 in Norway with the Army Air Corps while participating in a two month pre-selection training course for the Regimental Ski Team. Unfortunately two days into the course he fell heavily whilst being instructed in basic ski techniques. As a result he sustained moderate brain damage and is now classed as a patient under the Mental Health Act.

13.16 This claim was defended on the basis that the Ministry of Defence did everything reasonably practicable to discharge its duty of care to the claimant and the other participants. Risk assessments and the training were all consistent with best practice. This was supported by an independent ski expert.

13.17 Three days before the case was due to be heard at Nottingham County Court, the claim was withdrawn.

## **TEAM BUILDING ACCIDENT**

13.18 The claimant was injured during a team building exercise at a hotel out of normal hours involving an obstacle course. The claimant initially declined to participate, but after some persuasion agreed to do so. Whilst completing the course the claimant's superior jumped out from behind a pillar and rugby tackled her, causing her to fall and hit her head on the pillar. A claim for compensation was subsequently made for the injury caused by the accident.

13.19 This raised the question as to whether the claimant was 'on duty' at the time of the accident, and whether she had consented to participate in the obstacle course and accept the additional risk of suffering injury. Following an investigation into the claim, it was decided that as the claimant was only at the hotel because she was on a team building event, and the fact that the other members of the team were participating in the obstacle course under the direction of a superior officer, it was likely that a Court would conclude that she was 'on duty' when the accident happened.

13.20 The claim was settled for a comparatively modest £3,800, which included a 15% discount to reflect that the claimant could have reasonably foreseen that this activity was dangerous.

## **DIVING INCIDENT**

13.21 In September 2000, the claimant took part in Submarine Escape Training Tank (SETT) trials at Fort Blockhouse, Gosport. There were to be three successive trials in which the servicemen taking part were to spend 24 hours at depths of 5, 6, and 7 metres before experiencing a rapid drop in pressure to 90 metres and then a rapid rise in pressure over 17 seconds to surface pressure. When the claimant was brought back to the surface after the first dive there were nitrogen bubbles in his blood and his blood foamed in the hypodermic syringe when the nurse attempted to take blood from him. The claimant



apparently had the “bends” and he was transferred to a special oxygen chamber where he was kept for 5 hours at a pressure of 18 metres. Following the incident, he was diagnosed as suffering from an acute neurological decompression with severe pain and weakness in his right leg. Within approximately one month of the incident, the claimant began to experience symptoms of stress, anxiety, depression and phobic reaction to diving.

13.22 The Ministry of Defence received a claim from the claimant under the No Fault Compensation Scheme alleging that, but for the accident, upon completion of service he would immediately have commenced a new career as a commercial diver, working to the age of sixty.

13.23 The claim for financial losses was grossly inflated at just over £1,500,000 and was based on mainly unsustainable arguments concerning the claimant’s potential earnings as a commercial diver. The Treasury Solicitor assessed quantum at a much lower level and an offer was put forward to the Claimant which he rejected. The claimant’s solicitors proposed a Counsel to Counsel settlement Conference in order to achieve an appropriate settlement.

13.24 At the settlement conference the Ministry of Defence was served with a more realistic revised schedule of loss for £176,000 and after several hours of negotiation the claimant agreed to accept a sum of £77,500 in full and final settlement plus his legal costs

## SECTION FOURTEEN

### LAW AND PRACTICE

*“A lawyer is a learned gentleman who rescues your estate from your enemies and keeps it for himself”*

Lord Henry Peter Brougham 1778 – 1868

#### CIVIL JUSTICE REFORMS

14.1 This part of the Annual Report deals with civil law and practice. It includes a brief summary of the 1999 Civil Justice Reforms. Although these reforms have been in place for some time now, we believe it is important to recapitulate the main aims and procedures, to serve both as a reminder for regular readers of these reports and as a simple digest for those unfamiliar with the subject.

#### CIVIL JUSTICE PROCEDURES

14.2 The greatest upheaval ever in the Civil Litigation process occurred when the New Civil Procedure Rules were introduced on 26 April 1999. The Rules, which replaced the existing High Court and County Court Rules, have significantly changed the way common law claims are handled, in an attempt to speed up, simplify and make the whole process less expensive. The Rules, which include pre-action protocols, govern the conduct of litigation and encourage the appointment of a single expert to provide an independent opinion.

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

#### AIMS

- Litigation will be avoided wherever possible
- Litigation will be less adversarial and more co-operative
- Litigation will be less complex
- The timescale of litigation will be shorter and more certain
- Parties will be on a more equal footing
- There will be clear lines of judicial and administrative responsibility for the civil justice system
- The structure of the courts and the deployment of judges will be designed to meet the needs of litigants

- Judges will be employed effectively so that they can manage litigation in accordance with the new rules and protocols
- The civil courts system will be responsive to the needs of litigants

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

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

## EXPERTS

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

## PRE ACTION PROTOCOL

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

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

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

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

## **FAST-TRACK AND MULTI-TRACK**

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

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

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

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

### **LETTER OF CLAIM**

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

### **DEFENDANT'S REPLY**

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

### **CLAIM INVESTIGATION**

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

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

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

## PROCEEDINGS

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

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

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

## STATEMENT OF TRUTH

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

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

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

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

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

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

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

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

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

## **DISCLOSURE**

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

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

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

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

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

## **DISCLOSURE STATEMENT**

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

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

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

## **WAY FORWARD**

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

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

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

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

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

## **LEGAL SERVICES COMMISSION (LEGAL AID)**

14.39 It is over fifty years since the Legal Aid and Advice Act was enacted. For the first time, it gave access to justice to a range of people who beforehand could not afford to bring a case in criminal or civil law. Eligibility for legal aid depended on the Applicant's disposable income and capital but anecdotal evidence is plentiful about how legal aid was wrongly or rightly distributed and it therefore came as no surprise that Legal Aid for personal injury claims was abolished in April 2000. The majority of such claims are now likely to be the subject of a conditional fee whereby a claimant's solicitor can uplift his normal charging rate by 100% if successful (providing the success fee does not exceed more than 25% of the total compensation).

14.40 Conditional fees can cause problems for Claims officials when trying to estimate the legal costs element of settling a claim. One method of overcoming this problem is to ask the claimant's solicitor to clarify the basis of funding the costs together with an indication of the success fee agreed. However, as the Rules stand, solicitors are not obliged to provide this information to the Defendant and to do so might give an

indication of the strength of their client's case. In many cases, therefore, the level of the success fee will not be known until after the case has settled.

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

## **ALTERNATIVE DISPUTE RESOLUTION**

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

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

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

14.44 In 2004/2005, for example, 8 such conferences were held and compensation totalling £5,800,000 was agreed against claims totalling £12,400,000. Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher.

## **MEDIATION**

14.45 Mediation is a route strongly favoured by the Lord Chancellor as the way forward for civil justice in the UK, for cases where there is some evidence to support a claim. However in cases where there is currently no evidence to support a claim, mediation would not be appropriate. The Department is signed up to mediation as a method of Alternative Dispute Resolution, but as the Lord Chancellor's Department's Press Notice on the subject made clear, Alternative Dispute Resolution is not appropriate in every case. Judges are also now directing parties to an action to mediate the case rather than letting it proceed to court.

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



14.47 A number of claims made against the Ministry of Defence have been successfully concluded through the mediation process.

14.48 The Chief Claims Officer and Senior Claims Officer (Claims Handling) are accredited mediators.

## CONTRIBUTORY NEGLIGENCE

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

14.50 The following are some examples of Contributory Negligence:

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

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

## REHABILITATION

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

14.53 Claims branch aim to utilise rehabilitation where appropriate when compensation claims are made. To this end, Royal and Sun Alliance our commercial claims handlers with responsibility for employers liability claims have offered rehabilitation in some cases, but to date the uptake has been disappointing. However, rehabilitation is expected to assume far greater prominence in the claims handling process with the revision later this year of the Civil Procedures Rules pre-action protocol on the handling of personal injury claims.

## FRAUD

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

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

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

## PERIODIC PAYMENTS

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

14.58 A periodic payment, often referred to as a structured settlement, normally consists of a conventional lump sum to the claimant together with a regular payment made on a monthly, quarterly or annual basis. The periodic payment can be made by way of an annuity purchased in the marketplace or in the case of Government Departments and the National Health Litigation Service on a self funded basis. The Ministry of Defence has entered into 26 periodic payment arrangements, but to date such an agreement needed the consent of both the defendant and claimant.

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

14.60 The changes have been introduced to ensure a guaranteed income stream for those facing long term future loss of earnings and care needs. The Court will also have the power to make a variable order to alter the terms of the periodic payment in cases where the claimant suffers some serious deterioration or indeed significant improvement

	2002/03	2002/03	2004/05
Total number of periodic payments	23	25	26
<b>Total payments each year</b>	<b>£675,000</b>	<b>£790,000</b>	<b>£1,026, 000</b>

### THIRD PARTY ACCIDENT SCHEME (TOPAS)

14.61 If Ministry of Defence civil servants or Service personnel are injured by a third party while on duty it is the individual's own responsibility to pursue a claim for compensation without any assistance or involvement by the Department. The only exception to this has been that civil servants injured in road traffic accidents can have their legal costs underwritten by their TLB. This arrangement does not, however, apply to Service personnel or to civil servants injured in other circumstances.

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

14.63 In order to relieve concerns expressed by Ministry of Defence staff (both Service and civilian), the Third Party Accident Scheme -ToPaS - was devised to provide no expense legal assistance to staff in the UK who are able to contact the ToPaS solicitors direct and obtain immediate advice and assistance to pursue a claim on a conditional fee basis (so-called no win, no fee). The scheme is operated by Betesh Fox & Company, a firm of solicitors which specialises in personal injury claims. Details are given in DCI Gen 50/05.

14.64 Mr. Carl Crawley, ToPaS Development Director is available to provide information leaflets, documentation and presentations about the scheme. He can be contacted as follows

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

Mobile: 07960258664

e-mail: [xxxx.xxxxxxx@xxxxx.xxx.xx](mailto:xxxx.xxxxxxx@xxxxx.xxx.xx)

## DS&C(CLAIMS) ORGANISATION

### CHIEF CLAIMS OFFICER - BAND B1

### SENIOR CLAIMS OFFICER (POLICY) - BAND C1

Responsible for Policy Group

**STAFF:**

Indemnities & Insurance Adviser	Band D
Assistant Adviser Indemnities & Insurance	Band E1
Policy & Contracts Adviser	Band D
Motor Transport Liabilities Adviser	Band D
Focal Point Manager	Band E1
2 Focal Point Administrators	Band E2

### RESPONSIBILITIES:

#### **NON-CONTRACTUAL INSURANCE**

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

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

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

#### **DIRECTORATE ADMINISTRATION**

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

#### **CONTRACTUAL MATTERS**

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

### HEAD OF BUDGETS – BAND C1

Responsible for Budget management and financial planning for DS&C(Claims)

**STAFF:**

Team Leader	Band C1
Budget Manager	Band D
2 Budget Officers	Band E1

## **RESPONSIBILITIES:**

### **FINANCIAL MANAGEMENT**

Budget management and financial planning for DS&C(Claims)

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

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

### **EMPLOYER'S LIABILITY, LOW FLYING AND MARITIME GROUP**

#### **STAFF:**

Team Leader	Band C2
2 Case Managers	Band D
1 Assistant Case Manager	Band E1
1 Group Administrator	Band E2

## **RESPONSIBILITIES:**

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

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

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

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

### **SECTION 10 CLAIMS**

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

### **RADIATION CLAIMS**

Claims for compensation due to illness alleged to have been caused by exposure to radiation, including Nuclear Test Veterans.

### **MISCELLANEOUS CLAIMS**

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

### **LOW FLYING**

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

### **MARITIME CLAIMS**

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

## **PUBLIC LIABILITY GROUP**

### **STAFF:**

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

### **RESPONSIBILITIES:**

#### **PUBLIC LIABILITY CLAIMS**

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

#### **VISITING FORCES**

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

#### **NORTHERN IRELAND CLAIMS**

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

#### **VEHICLE CLAIMS**

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

#### **OVERSEAS OPERATIONS**

Claims policy relating to overseas operations and advice to Area Claims Officers in Bosnia, Cyprus, Falklands, Germany, Iraq and Northern Ireland.

#### **EX-GRATIA PAYMENTS**

Responsible for ex-gratia payments, including the human volunteer research no-fault compensation scheme.

#### **CRIMINAL INJURIES COMPENSATION**

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

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

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

## CLINICAL NEGLIGENCE GROUP

### STAFF:

Team Leader	Band C2
3 Case Managers	Band D
1 Assistant Case Manager	Band E1
1 Assistant Case Manager (part-time)	Band E1

### RESPONSIBILITIES:

#### CLINICAL NEGLIGENCE

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

#### EMPLOYMENT TRIBUNALS

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

#### GULF VETERANS' ILLNESSES

Potential claims for alleged Gulf War illnesses.

#### POST TRAUMATIC STRESS DISORDER

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

## DS&C(CLAIMS) STAFF, PROGRAMME AND OPERATING COSTS - FINANCIAL YEAR 2004/05

### CLAIMS EXPENDITURE 2004/05

DESCRIPTION	£ MILLION
<b>IN YEAR EXPENDITURE</b>	
Compensation payments and associated legal costs	63.5
Receipts	-1.4
Operating costs	1.5
<b>TOTAL</b>	<b>63.6</b>

The figure for total in-year payments of £63.6 million is not directly comparable with those shown in previous Claims Annual Reports because of changes to the Ministry of Defence's accounting system and organisation.

### DS&C(CLAIMS) STAFFING AS AT 31 MARCH 2005

GRADE	ESTABLISHED POSTS	ROLE
B1	1	Chief Claims Officer
C1	2 1	Senior Claims Officers Head of Budget
C2	3	Team Leaders
D	12	8 Claims Managers 1 Budget Managers 1 Policy & Contracts Adviser 1 Insurance and Indemnities Adviser 1 Motor Tpt Liabilities Adviser
E1	10	6 Assistant Claims Managers 2 Budget Officer 1 Asst Adviser Indemnities & Insurance 1 Focal Point Leader
E2	3	1 Section Administrator 2 Focal Point Administrators



## ANNEX B

### TOP 10 CASES SETTLED BY DS&C(CLAIMS)2004/05

CLAIMANT	TYPE OF INJURY/LOSS	COMPENSATION*
Army	Personal Injury – Brain damage following RTA	£3.0M
Public Liability	Clinical Negligence – Failure to supervise birth resulting in cerebral palsy	£1.6M
RAF	Clinical Negligence – Failure to diagnose impending brain haemorrhage	£1.3M
RN	Clinical Negligence – Failure to provide appropriate treatment resulting in death	£860K
RN	Personal Injury – Diving Injury resulting in death	£402K
Army	Personal Injury – Head injury	£346K
Army	Personal Injury – Head and upper body injury	£341K
Army	Clinical Negligence – cardiac arrest following negligent treatment resulting in death	£325K
RN	Clinical Negligence – Incorrect diagnosis and treatment of knee injury	3184K
Public Liability	Personal Injury – Injured following tripping incident	£153K
Army	Clinical Negligence – Incorrect diagnosis and treatment of fractured wrist	£140K

\* Inclusive of claimant's costs

**TOP 10 SERVICE PERSONNEL CASES SETTLED BY**  
**RSA 2004/05**

TYPE OF INJURY/LOSS	COMPENSATION *
Multiple Injuries in helicopter incident	£1.5M
Multiple Injuries in boat accident	£950K
Fatality in road traffic accident	£748K
Injured in fall	£640K
Fatality in road traffic accident	£614K
Injured in parachuting accident	£583K
Injured in fall	£537K
Injured in road traffic accident	£502K
Injured in road traffic accident	£466K
PTSD	£457K

\* Inclusive of claimant's costs

**TOP 10 CIVILIAN PERSONNEL CASES SETTLED BY  
AXA AND RSA 2004/05**

TYPE OF INJURY/LOSS	COMPENSATION *
Leg Injury caused by explosion	31.4M
Asbestos related disease	£309K
Asbestos related disease	£259K
Asbestos related disease	£250K
Asbestos related disease	£244K
Asbestos related disease	£235K
Asbestos related disease	£207K
Asbestos related disease	£195K
Asbestos related disease	£195K
Asbestos related disease	£187K

\* Inclusive of claimant's costs

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