

## CHAPTER 23

# CLAIMS AND COMPENSATION

### SECTION 1 – GENERAL

#### **J1800. Introduction.**

*Sponsor: : DBR CLCP*

This chapter deals with claims at common law made against the MOD or its servants in respect of damage to or loss of property and for personal injury or death caused or alleged to be caused by the MOD or its servants. It also deals with common law claims brought by the MOD against other parties. It does not deal with claims arising from purchase or other contracts, claims for awards under Royal Warrant, Order in Council or Order of Her Majesty relating to disablement or death, or claims and recoveries allowable under Departmental Regulations Nor does it deal with claims arising from hirings and requisitions which are dealt with by DE&S.

#### **J1801. Mutual Waiver of Claims.**

*Sponsor: DBR CLCP*

Claims for compensation in respect of loss or damage, if received from or proposed to be made against other forces, other governments or other government departments, may be the subject of a special agreement or mutual waiver and should be referred to the MOD DBR CLCP with all supporting documents before any action is taken.

#### **J1802. Division of Responsibility.**

*Sponsor: DBR CLCP*

Within the MOD responsibility for handling all common law claims lies with DBR CLCP and the appropriate Area Claims Officers overseas, except those types of claims which have been contracted out to commercial claims handlers. Responsibility for handling claims arising from training and manoeuvres (except low flying) within the United Kingdom, lies with the local Defence Infrastructure Organisation (DIO) Office under delegated authority from the Head of CLCP.

#### **J1803. Method of Reporting.**

*Sponsor: DBR CLCP*

(1) **Traffic Accidents.** Traffic accidents involving MOD owned vehicles and leased vehicles are to be reported in accordance with JSP 800, Vol 5.

(2) **Aircraft Accidents.** Accidents involving MOD aircraft are to be reported in accordance with the following separate Service instructions:

Royal Navy and Army JSP550

AP 3207 Manual of Flight Safety Royal Air Force

(3) **Maritime Accidents.** Maritime accidents involving MOD ships and marine craft accidents occurring on board such vessels whilst at sea or under way are to be reported in accordance with the following separate Service instructions:

Royal Navy: Article 5928 for ships operated by the RN, including Royal Fleet Auxiliaries and other ships or craft in the naval service.

Army: Army Maritime Instructions for marine craft.

(4) **Hovercraft Accidents.** Accidents involving MOD hovercraft are to be reported to DBR CLCP Claims 2 using special accident report forms (MOD Forms 95 and 95A).

(5) **Accidents and Miscellaneous Occurrences.** Accidents and miscellaneous occurrences not falling under paragraph **J1808** (1)-(4) are to be reported as mandated by JSP 375, Volume 2, Leaflet 14 “Accident/Incident Reporting and Investigation”. Details of which can be found at:

[http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/02/32\\_jsp375\\_vol2\\_leaf14.pdf](http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/02/32_jsp375_vol2_leaf14.pdf)

If at any time a compensation claim for death or personal injury, sustained in any theatre and reported in accordance with the above procedures, is made or intimated by a MOD employee whether Service personnel or United Kingdom Based Civilian (UKBC) Non Industrial and Industrial Civil Servant, should be forwarded to, or the claimant be instructed to write, as follows:

Gallagher Bassett International Ltd  
Westcott House  
4 Ferrymuir  
South Queensferry  
EH30 9QZ

Any other claims against the MOD arising from incidents occurring in the UK, resulting in death or personal injury to third parties or loss or damage to property where it is alleged that the MOD was negligent should be forwarded to:

Ministry of Defence  
DBR CLCP PLT  
Ministry of Defence  
Level 1, Spine 3, Zone I  
Main Building  
Whitehall  
London SW1A 2HB

(6) **Overseas Areas.**

(a) When an incident occurs which results in injury to or death of, or in loss of or damage to the property of MOD locally employed civilian personnel arising out of and in the course of their employment, any claim should be submitted to the local civilian establishment branch or Claims Office in accordance with individual theatre regulations. Any claim made by a local employee or third party at common law should be sent to the appropriate Claims Office responsible for the country. (See Appx 36).

(b) The appropriate Claims Office will handle claims resulting from injury to or death of persons or animals, or in loss of or damage to property, other than those covered in previous paragraphs.

(7) **Training and Manoeuvre Damage.**

(a) In the UK any claims for damage occasioned to private property, including livestock, during training and manoeuvres will be investigated and settled by the local Defence Infrastructure Organisation (DIO) Office in accordance with the delegated authority from the Head of CLCP.

(b) In overseas areas the local Area Claims Officer, where there is one, or DBR CLCP manage training and manoeuvre damage claims.

**J1804. Writs and Summons.***Sponsor: DBR CLCP*

On receipt of a writ or summons naming a member of the Services as defendant in a common law claim by a third party, or if other urgent matters arise in respect of any common law claim made against the MOD, it is to be reported immediately by telephone or other available means to the appropriate authority.

**J1805. General.***Sponsor: DBR CLCP*

(1) Claims which fall within this section are to be negotiated and settled only by the authorities mentioned, except where powers of settlement have been specifically delegated by the Head of CLCP. All personnel are forbidden to enter into correspondence or discussions with any person in connection with an incident likely to lead to a third party claim, or to do anything which might be interpreted as an admission of liability.

(2) New Civil Procedure Rules were introduced on 26 April 1999. The Rules significantly change the way common law claims are handled, include pre-action protocols and govern the conduct of litigation. Any letter of claim (which 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) received from a claimant, insurance company, solicitor or other interested party is to be forwarded immediately by facsimile to DBR CLCP as the appropriate authority, and no reply or acknowledgement whatsoever is to be sent to the writer. Failure to meet the protocol requirements can lead to sanctions being imposed by the courts. It follows that only DBR CLCP may interpret what constitutes a letter of claim and how an acknowledgement should be phrased.

(3) Units, ships and establishments will be notified by a Claims Officer if any statement or supplementary statement from a witness, or the attendance of such a witness is required. Any requests from a Claims Officer or insurer acting for the MOD to obtain such a statement will be taken as referring solely to a statement required for claims purposes and not to one for disciplinary purposes. The evidence of police and civilians required solely for disciplinary purposes may, however, be obtained direct by the quickest possible means.

(4) Units, ships and establishments are reminded that any requests made by Claims officers or the Department's commercial claims handlers for additional information, which may include BOI reports, Service Police reports and unit enquiries, are made both in the interest of the Ministry of Defence and of the Service and is for the purpose of ensuring that a claim by or against the MOD, or the initiation of a claim, is properly considered. All personnel should also be aware that legal proceedings are frequently served and Claims Officers are frequently called upon to prepare a case for Court Hearing. All Claims Officers are obliged to comply with the Rules of Disclosure and no information is disclosed without authority from the appropriate authorising branch. Units, ships and establishments are therefore to comply fully and promptly to such requests.

(5) Personnel who receive claims for compensation addressed to them personally should forward them to the Ministry of Defence (DBR CLCP) for handling and settlement. The Ministry of Defence is liable in law to pay compensation for the negligent actions of its employees which they may have committed in the course of their official duties, and there is no requirement for personnel to purchase insurance to cover against being sued whilst at work. If, however, personnel commit actions which are grossly outside the requirements of the service and which result in injury or damage to property, they may be held personally liable and may have to pay compensation for themselves.

**J1806. Off Duty Claims.***Sponsor: DBR CLCP*

(1) In the UK the MOD does not accept responsibility for claims against Service personnel arising from off duty incidents and claimants are expected to seek redress against the individuals responsible for the injury or loss.

(2) Overseas there is provision in certain international agreements (eg NATO Status of Forces Agreement) for the MOD to consider claims arising from off duty incidents on an ex gratia basis and DBR CLCP or the local Area Claims Officer, as appropriate, should be contacted when any such claim arises.

**1807-1809.** (*Omitted*)

## SECTION 2 - INDEMNITIES

### **J1810. General.**

*Sponsor: DBR CLCP*

As a general rule, when a facility or service is granted to another party which does not materially benefit the MOD, or where the balance of benefit is to the other party, steps should be taken to ensure that the MOD is indemnified against risks which might arise. The purpose of an indemnity (which is sometimes incorporated into an insurance policy, licence or contract) is to transfer to another party the financial consequences of the Department's legal liability together with any other expenses which may be incurred, and which would otherwise fall to be paid from funds authorised by Parliament for Defence purposes. Instructions on the more typical circumstances in which indemnities are required are given in this section.

### **J1811. Authority.**

*Sponsor: DBR CLCP*

No amendment is to be made to an approved form of indemnity without the agreement of the appropriate MOD authority.

### **J1812. Other Parties.**

*Sponsor: DBR CLCP*

On occasions indemnities may be sought by other parties when facilities or services are granted by them to the MOD. In such circumstances reference is to be made to the appropriate MOD authority before any agreement is entered into.

### **J1813. Referrals.**

*Sponsor: DBR CLCP*

The MOD authorities to whom questions concerning indemnities should be referred are:

- (1) DBR CLCP - General policy for the Services.
- (2) DIO - Use of MOD land and property.
- (3) CLS - Repayment, MOD civilian and MOD(DE&S) matters.
- (4) DGDC – Procurement contract matters.

### **J1814. Passengers in Service Transport.**

*Sponsor: DBR CLCP*

Passengers whose carriage in Service transport is clearly in the interests of the MOD may be regarded as MOD sponsored. Examples of MOD sponsored passengers are as follows:

- (1) Service personnel, MOD civilians and other Crown servants carried in the course of duty.
- (2) Persons engaged in a MOD contract whose carriage is necessary to the contract. (Such carriage should normally be subject to the conditions of the relevant Defence contract).
- (3) Persons whose carriage is officially approved by DNR, DAR or DofR(RAF) with a view to future recruitment.

- (4) Persons carried in an emergency or on urgent compassionate grounds.
- (5) Persons carried for public relations reasons which have been approved by the DMC staff or the relevant Front Line Command.
- (6) Representatives of the news media where their carriage is of public relations benefit to the Services and where their carriage has been approved by DMC.
- (7) Families carried in vessels on Royal Navy Families Days.
- (8) Representatives of the media where a charge representing the equivalent of full commercial costs is raised against the employer or person concerned.

**J1815. Carriage by Land.***Sponsor: DBR CLCP*

Further instructions covering the carriage of passengers in Service vehicles are given in JSP 800, Vol 5 Defence Road Transport Regulations.

**J1816. Non-MOD Sponsored Passengers.***Sponsor: DBR CLCP*

Passengers whose carriage in Service transport is not sponsored by MOD must pay a charge which must include an insurance element in accordance with the *MOD Guidelines on Income Generation*.

**J1817. Visitors to Service Establishments.***Sponsor: DBR CLCP*

No indemnity is required from persons wishing to enter Service establishments, units, ships or other MOD premises in the course of duty, on approved business (eg for recruiting, welfare, open days or other purposes connected with the Services) or in order to make bona fide visits to persons serving in establishments, units, ships, etc. However, because the MOD may be liable to pay compensation in the event of accidents occurring to visitors whilst on MOD premises, action is to be taken, where this is practicable, to ensure that visitors are not exposed to any obvious hazards. This is particularly important when visitors are in an unfamiliar environment such as ship, dockyard, workshop etc.

**J1818. Visits by Contractors.***Sponsor: DBR CLCP*

Liabilities arising from visits by contractors' personnel should be covered in the terms and conditions of the appropriate Defence contract.

**J1819. Unofficial and Recreational Activities.***Sponsor: DBR CLCP*

When approval is given for the use of Service facilities including transport (other than road transport - see para **J1815**) for unofficial or recreational purposes then an indemnity is normally required. Reference should be made to the following instructions:

- (1) By non-Service organisations for activities such as dances, sports meetings, driver training and testing, rallies etc - see JSP 362, DIO Handbook.
- (2) For civil flying, use of MOD airfields, including civil participation in Open Day and At Home air displays - see JSP 360, Regulations for Civil Flying at MOD Airfields and charges for non military aircraft using MOD airfields.
- (3) By Service clubs and Service personnel for unofficial activities - see JSP 362, DIO Handbook.

Further advice may be obtained from DBR CLCP or from the appropriate DIO Office.

**J1820. Testing and Evaluation of Commercial Equipment.***Sponsor: DBR CLCP*

Where a commercial organisation offers equipment to a Service establishment for testing and evaluation with a view to furthering sales or in the hope of influencing subsequent Ministry of Defence Procurement, it will usually be appropriate for the Department to seek an indemnity from the supplier against accidents which might occur during or as a consequence of the trials. The indemnity requirements will normally be included in a formal loan agreement, but in the absence of such an agreement the establishment's finance officer is to be notified and DBR CLCP and DGDC is to be consulted as necessary.

**J1821. Use of MOD Property by the Media.***Sponsor: DBR CLCP*

When MOD DMC staff are considering approval for representatives of the media to be admitted onto MOD property for the purpose of producing feature films, documentaries or drama series, then advice on indemnities is to be sought from DBR CLCP at an early stage. No indemnity is required when representatives of the media are admitted onto MOD property for the purpose of covering the normal activities of the Services, eg for news reports or similar. If any doubt exists about the necessity for indemnification, DBR CLCP is to be contacted.

**J1822. Adventurous Training Expeditions.***Sponsor: DBR CLCP*

Details of insurance requirements for Adventurous Training Expeditions. are contained in AP 3342. Further advice is published in Defence Instructions and Notices.

**J1823. Service Participation in Non-Service Band Engagements, Air Displays etc. *Sponsor: DBR CLCP***

(1) Service Bands. Reference is made to paras 1880-1899 for details of indemnity and insurance requirements which apply when Service bands participate in engagements for the benefit of non-Service organisations, ie Category II and Category IV engagements.

(2) Air Displays. The indemnity and insurance arrangements with which organisers of non-Service air displays are required to comply are contained in JSP 550- R335.110 Military Flight Safety Regulations.