

# Ministry of Defence



## **DC&L(F&S)CLAIMS Annual Report 1999/2000**

**July 2000**

**DC&L(F&S)CLAIMS ANNUAL REPORT 1999/2000**  
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## **DC&L(F&S)CLAIMS ANNUAL REPORT 1999/2000**

### **INTRODUCTION BY THE CHIEF CLAIMS OFFICER**

*“There is no better way of exercising the imagination than the study of law”*

This is the third Claims Annual Report. This year's report is in two parts. The first covers claims activity during financial year 1999/2000. The second deals with practice and procedure, and includes tables on the increase in the level of general damages.

The first two Annual Reports were warmly received and gave rise to renewed interest by Ministers and senior officials in the significant financial impact of settling claims for compensation as a result of the Department's negligence. In this connection, 2<sup>nd</sup> PUS has written to TLB holders and Chief Executives encouraging them to look at their working practices and procedures with a view to minimising risk and reducing the incidence of claims. It would, of course, be unrealistic to expect that such executive action will remove the risk of the Department being sued. It is extremely important, however, that colleagues throughout the Department become more focussed on the management of risk and the negligent acts or omissions that give rise to claims, and what action can be taken to reduce the number of claims brought against the Department. It is of paramount importance that such risk is minimised by sound management practices.

It is a sad fact of life that the negligent acts or omissions of Service personnel and MOD employees will sometime in the future personally affect others. Indeed, the very nature of the Department's core business suggests that its employees, particularly those in uniform, and those it comes into contact with, may suffer personal injury or damage to property. I have, however, undertaken to examine ways in which we can categorise the Department's activities, identify the most common risk areas and put forward remedial measures or alternative approaches. To carry this work forward I have established a Risk Management Working Group comprising members of my staff and other interested parties. A summary of the work done so far and future projects is included in the main body of this report.

As foreshadowed by the second Annual Report, the Claims division has been faced with the significant challenges presented by the greatest ever upheaval of the civil litigation process with the introduction of the Civil Procedures Rules in April 1999 – the so-called Woolf Reforms. Claims staff received intensive training and were therefore well prepared for the introduction of the Reforms. It is to the credit of all concerned that, in handling hundreds of claims, the Department has missed only one deadline set by the new Rules (and even that was successfully negotiated) and that we have not been subject to any sanctions by the Courts. I should therefore like to take this opportunity to thank all Claims staff for their splendid efforts in this regard. I would also like to thank all those in the Department who have responded equally well by their timely collection of evidence, provision of documentation and general assistance to my staff.

DC&L(F&S) total expenditure for 1999/2000 was about £83 million compared to £76 million in 1998/1999 and £70 million in 1997/1998. The Branch was responsible, directly or indirectly for 3537 new claims. The cost of claims will continue to rise. Leaving aside social trends which have made litigation more commonplace and increased the incidence of claims, the Court of Appeal has directed that the level of General Damages (i.e. the element of a claim for pain and suffering and loss of amenity) should increase by up to 30% in cases over £10,000. This means that the general damages element of, say, a brain damaged baby would increase from £150,000 to £195,000. At the other end of the scale general damages in a severe case of post traumatic stress disorder would increase from about £10,000 to £11,000. This judgment was less dramatic than was widely anticipated (the Law Commission had recommended increases between 50% and 100%) and in a witness statement that I provided for submission to the Court of Appeal I estimated that the increase to the Department's compensation budget would be about £7 million per annum if the full recommendations were adopted. Nevertheless the impact on claims expenditure as a result of the Court of Appeal judgment remains significant. In addition, the basis of calculating Special Damages, in particular the discount rate of return for calculating future losses, has also been under close scrutiny. The Court of Appeal considered this matter in the case of *Warren -v- Northern General Hospital Trust* on 20 March and ruled that the discount rate of return should remain at 3%. There is no indication that the Claimant in this case will seek leave to appeal the matter to the House of Lords. Had the Court of Appeal reduced the discount rate as many had predicted to 2% or 1.75% the effect would have been to increase a £2 million claim by about £100,000.

We have successfully continued to pursue settlements through Counsel to Counsel conferences. In 1999/2000, for example, 8 such conferences were held and compensation totalling £7.6M was agreed against claims totalling £10.8M. Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher. It is estimated that savings in legal costs of at least £200K were achieved.

As in previous years, this report will receive a wide circulation. I would be pleased to respond to any questions raised by this Report and to receive comments and observations on how future reports might be improved.

Additional copies are available from the DC&L(F&S) Claims Focal Point, Room 813, Northumberland House, Northumberland Avenue, LONDON WC2N 5BP (Tel no. 020 7807 0049/56 or Fax no. 020 7807 0051). Copies can also be e-mailed via CHOTS or supplied on floppy disk.

J T R MITCHELL  
Chief Claims Officer

**DC&L(F&S) CLAIMS ANNUAL REPORT 1999/2000**  
**EXECUTIVE SUMMARY**

1. Total DC&L(F&S) expenditure in the year 1999/2000 including legal fees of £16.49M was £83.4M of which £76.5M was claims expenditure.
2. 504 Service personnel employer's liability claims were settled at a total cost of £31 million.
3. 1333 civilian employer's liability claims were settled at a total cost of £14.9 million.
4. 494 public liability claims were settled at a total cost of £1.67 million.
5. 3050 third party motor claims were settled at a total cost of £7.03 million.
6. 79 clinical negligence claims were settled at a total cost of £9.6 million.
7. 14 Employment Tribunal cases were settled at a total cost of £217,000
8. A total of 1826 intentions to claim are registered for those alleged to be suffering from Gulf War Illness.
9. 240 claims have been received from Service personnel alleging Post-Traumatic Stress Disorder.
10. At 1 April 2000, the total number of claims lodged with DC&L(F&S) Claims or the Department's commercial claims handlers was 7724.
11. The cost of claims will increase following the Court of Appeal's judgment to increase by up to 30% the level of general damages in cases valued over £10,000.
11. The forecast claims expenditure for 2000/01 is around £90 million.
12. A Risk Management Working Group has been established to consider ways of reducing the incidence of claims.
13. Legal Aid for personal injury claims was withdrawn in April 2000. Individuals wishing to pursue such claims will in future enter into 'no win, no fee' arrangements with their legal representatives.
14. A new claims database, TAURUS 2000, is scheduled to be introduced in the autumn of 2000.

## **RISK MANAGEMENT – A STRATEGIC APPROACH**

*"That which gets measured gets better"*

1. The Ministry of Defence is a large, highly devolved organisation, with a wide range of differing types of risk against which it insures itself, in accordance with Government policy. The implementation of effective loss control measures and availability of information is vitally important if potential risks are to be managed.
2. There is no centralised risk management structure in the Department, nor is there a single risk manager in a central risk management group. Top Level Budget Holders and Agency Chief Executives are therefore responsible for the identification and management of risks in their own areas. 2<sup>nd</sup> PUS has stated that he would like to see more energy addressed to Risk Management in the MOD in general and for management to be reminded of their responsibilities.
3. With the increases in claims expenditure and the number of claims received, it is vitally important that we analyse the cause of claims and determine methods to reduce them. Twelve months ago we formed a small Risk Management team within our organisation to do just that.
4. Risk Management provides a framework – and a range of techniques - designed continually to identify, quantify and assess the risks facing an organisation and then ascertain the options or methods required to manage, control, reduce or remove them. Ultimately the aim is to balance the costs and benefits of reducing risk, if practicable, with achieving best value for money.
5. Risks are identified by the gathering of information and then measured (quantified) in terms of losses, costs, and in our case, claims. They are then ranked in terms of how frequently they occur, the probability of occurrence and the severity of loss.
6. For the MOD, this means that once a risk has been identified, we have to look at the financial, operational and business implications it could have on our organisation. This involves:
  - Identifying potential problems on which to focus risk control
  - Discussing the various options or methods required to manage, control, reduce or remove that risk
  - Appraising the costs and benefits of all the options/solutions available
  - Balancing the costs and benefits of the various options
  - Selecting and implementing the solution.
  - Deciding who is responsible for managing (controlling) that risk
7. Although our Risk Management strategy in DC&L(F&S)Claims is in its infancy, it does not mean to say that risks have not been managed (or prevented) in the past. Insurance policies are in place where appropriate and some risks are being handled by contracts with commercial companies. DC&L(F&S) Claims' total expenditure for financial year 99/00 was a

little over £76M. In the next financial year this could rise to £90M. We receive approximately 8,300 new claims a year. The hope is that once our Risk Management strategy takes effect it will help to reduce Claims expenditure and the number of claims we handle. This Annual Report highlights the areas on which risk management needs to be focused and raises the profile.

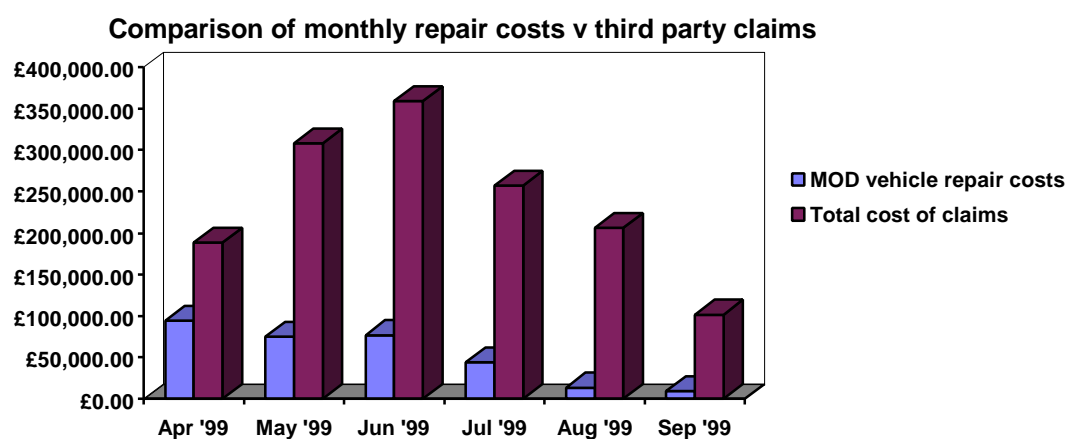
## Claims Risk Management in Practice

8. In the last six months our Risk Management team, along with the MOD's Road Safety team based in HQ QMG Andover, have begun to look into the causes and costs involved in road traffic accidents (RTAs). We have been gathering information on the types of accidents that are occurring and their causes and have sought to highlight trends. The hope is that by analysing this information and then disseminating it to all personnel we will be able to help reduce accidents, save lives and, subsequently, taxpayers' money.

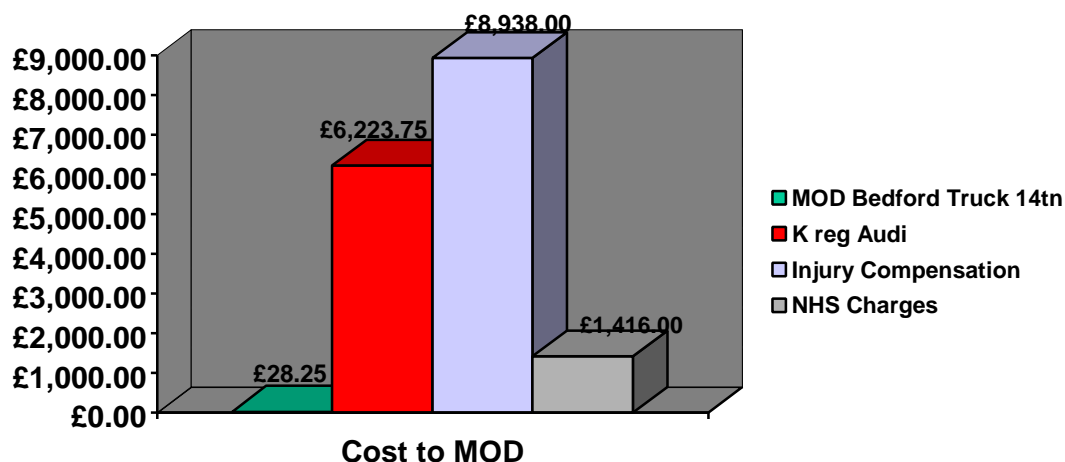
9. To do this we need to change attitudes, working practices and educate personnel to be aware of the risks to themselves and others on the roads. Since October 1999, we have attended various MOD Motor Transport (MT) conferences all over the UK and addressed over 1500 members of the MT community, promoting risk awareness and highlighting the hidden costs of RTAs. We have also encouraged and guided our colleagues in the Area Claims Offices to attend and present at similar events in their areas.

10. Units do not normally see and appreciate the full costs of a RTA to the MOD, which can include a third party claim, a RTA associated employer's liability claim and the repair cost of a MOD vehicle. What might look like a low cost and perhaps trivial road accident to the MOD Unit involved can, in fact, be a vast cost to the MOD Claims budget.

11. The graph below shows the difference between the repair costs to the MOD vehicle (which is usually paid from the local budget) and the unseen or hidden costs payable in cases involving third parties. These hidden costs are known commercially as the 'iceberg costs'. The repair cost being the tip of the iceberg with much larger costs hidden beneath the surface.



12. The next graph shows a particular example of this difference in the repair cost to the unit of a MOD vehicle compared to the cost of third party claims. This shows the repair cost of the MOD vehicle to be multiplied by around 580%!



13. We are working with the IMPACT Data Cell to produce a monthly report on the number of claims received and costs associated with RTA's. We hope shortly to produce a top ten list identifying the units and establishments incurring the greatest claims costs or involved in the most accidents. These will be published on a regular basis in the various MOD publications and on the MODWEB. Once again, this will be used to increase awareness and to disseminate information from the top to the bottom.

### Claims Risk Management – The Way Ahead

14. In the next twelve months, our team will focus their attention on identifying the causes of compensation claims in other areas such as Service Employers Liability, Public Liability and Medical Negligence. The formation of a 'Risk Management Working Group' with DC&L(F&S)Claims and members from other areas of the MOD has taken place and meetings have begun on a quarterly basis. The Group aims to ensure that lessons are learnt and that information on the causes and effects of losses is disseminated to the right areas so that action can be taken to prevent re-occurrence.

15. There is evidence to suggest from the work that we have done in a short space of time that further guidance is needed regarding best practice, new approaches and concepts on Risk Management. More effort needs to be put into identifying and managing risks and we must focus those efforts on limiting the major risks that face us and enforcing our strategy. It must be emphasised that DC&L(F&S)Claims are not responsible for Risk Management throughout the MOD. It is every member of staff's responsibility MOD-wide to be aware of risk and to help in the prevention of risk. It is obvious that a much more detailed review of the way that we manage risk is required. Advice from the private sector where companies have dedicated Risk Managers and advice from insurance experts such as Willis can help us to move in the right direction.

16. There must also be an improvement in recording methods, both in the type of information required and the way it is recorded. One of the biggest problems in the MOD is the vast number of IT systems used to record information, housed all over the country and unable to communicate with each other. This means that we are often unable to evaluate (without a great deal of effort) the total costs involved in an incident. Although this is an obstacle, we have begun to set up a database that is able to 'house' data from various sources (IMPACT and our claims handlers), to analyse and gain an overall picture of incidents and the costs involved. We can only get out what we put in, however, and Risk Management can only function properly if the information is recorded correctly and submitted promptly.

17. Lastly, with the availability of more information, we hope to be in a position to improve the communication of costs between D C&L(F&S)Claims and MOD Units and Establishments. It will enable us to make cost information available to budget holders by UIN, further promoting risk awareness.

## **DC&L(F&S)CLAIMS ANNUAL REPORT 1999/2000**

### **PART ONE SECTION ONE**

#### **DC&L(F&S)CLAIMS ORGANISATION AND RESPONSIBILITIES**

##### **Organisation**

1.1 DC&L(F&S)Claims is primarily responsible for processing common-law, non-contractual compensation claims against and on behalf of the Ministry of Defence at home and abroad. They are not responsible for contractual, quasi-contractual, sales or estates matters. DC&L(F&S)Claims is headed by the Chief Claims Officer (Band B2) and the Senior Claims Officer (Band C1). The Chief Claims Officer reports to DGSP Pol through DC&L(F&S). A summary of the staffing and work of the Claims organisation is at Annex A

##### **Responsibility**

1.2 DC&L(F&S)Claims, in addition to being responsible for processing common law compensation claims also has a number of other important responsibilities such as providing claims policy advice, handling Service personnel employment tribunal claims, handling claims against foreign forces based in the UK and providing advice on insurance and indemnities. It also has a variety of secretariat tasks and during the period of this report the Branch dealt with 104 Parliamentary Enquiries, 215 Official Action Letters and a handful of Parliamentary Questions.

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

1.4 It is important that staff at all levels within DC&L(F&S)Claims acquire the skills, knowledge and experience needed to enable them to contribute effectively to the goals of the division. Claims staff, therefore, attend a series of specialist training seminars covering all aspects of common law compensation. In recognition of the specialised nature of the work, consideration is being given to the development of functional competences for claims and legal staff.

##### **Policy and Procedures**

*“No poet has ever interpreted nature as freely as a lawyer interprets reality”*

1.5 When compensation claims are submitted from Ministry of Defence civilian and Service employees, former employees and members of the public, they are considered on the basis of

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

1.6 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, etc. Levels of compensation including these elements can vary greatly depending on an individual's circumstances. Advice is sought where necessary from Treasury Solicitor's Department for cases brought in England and Wales; the Crown Solicitor in Northern Ireland; and Robson McLean, the Department's legal advisers in Scotland. Junior and leading counsel are also consulted on high profile or complex cases or where a point of law needs to be explored. The majority of cases are settled amicably one way or the other and most payments of compensation are made without Claimants having to take the Ministry of Defence to court.

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. low flying claims; 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 rape and murder. There is no legal obligation and each case is decided on its merits, taking into account a number of factors including: the degree of infamy (the seriousness of the offence), the conduct of the injured party, the practice of the host country in identical circumstances, the degree of financial hardship to the Claimant as a result of the incident, the political implications - locally and nationally - on relations with the host country, and the availability and/or financial ability of the tortfeasor (wrong-doer) to make satisfactory restitution to the Claimant.

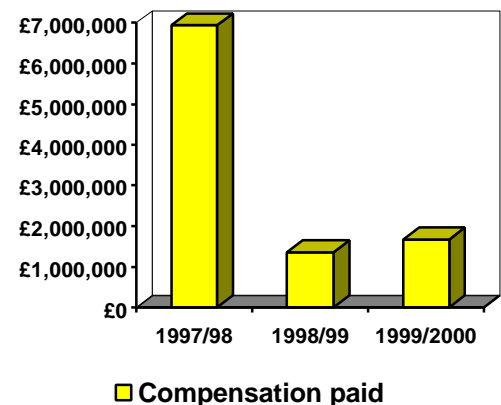
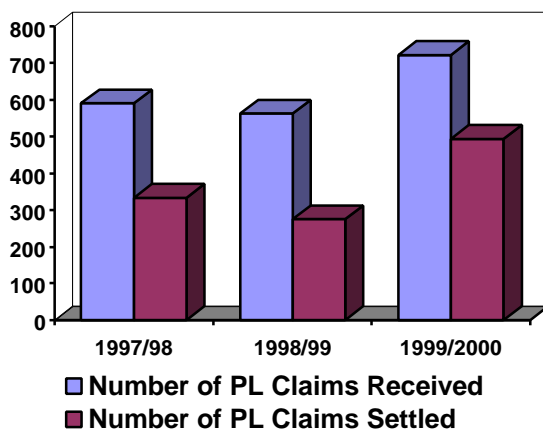
1.8 In addition to common law claims, DC&L(F&S)Claims also handle claims relating to Employment Tribunal applications brought by current or former Service personnel. These claims typically involve allegations of sexual/racial discrimination or sexual/racial harassment. Whilst the single Service secretariat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

**SECTION TWO**  
**CLAIMS HANDLED BY THE PUBLIC LIABILITY GROUP**  
**PUBLIC LIABILITY CLAIMS**

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

2.2 Property claims usually result from damage to private belongings on Ministry of Defence land or in married quarters, often because of a lack of maintenance resulting in buildings being flooded, moth infestation, falling roof tiles, falling trees, drain covers collapsing, etc.

**Public Liability (PL) Claims**



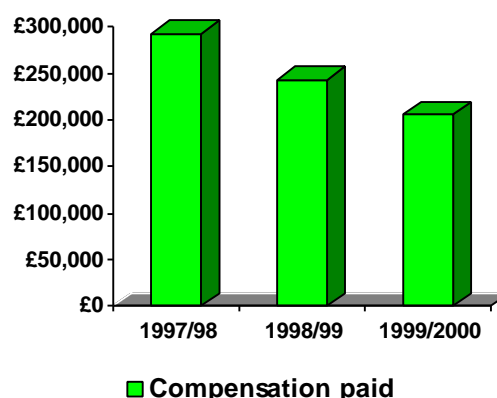
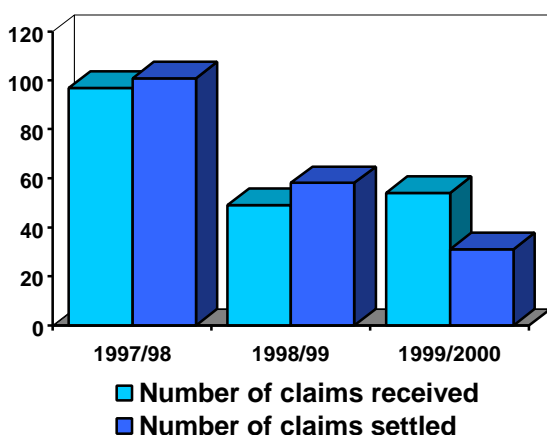
	1997/1998	1998/1999	1999/2000
Number of PL claims received	590	563	722
Number of PL claims settled	334	276	494
Compensation paid	£6,937,000	£1,357,000	£1,672,000

2.3 After paying compensation of some £5.163M in 1997/1998 to the families of those killed in the 1994 Chinook helicopter crash at the Mull of Kintyre, compensation payments returned briefly to levels previously experienced. However, 1999/2000 has witnessed an increase in claims activity and expenditure which can not be accounted for by any specific incident, and we draw the conclusion that following the introduction in England and Wales of the Civil Justice Reforms in April 1999, many solicitors have released a backlog of claims to

maximise the advantage of the strict time scales which the Rules impose on Defendants. Ironically perhaps, MOD Claims Managers have welcomed the changes and have sought wherever possible to seek settlement at an early stage.

### Public Liability Claims - Northern Ireland

2.3 DC&L (F&S) Claims handle all Northern Ireland public liability claims of a political and/or sensitive nature. Claims mainly result from the on duty contact which military personnel have with members of the public. The majority of claims are for assault, baton round injuries, harassment, shootings and wrongful arrest. Some claims are very high profile, such as the shooting of alleged terrorists by the Security Forces. Compensation payments are usually subject to a Terms Endorsed clause whereby each side agrees not to disclose specific details once settlement has been reached. Examples of claims settled in 1999/2000 are: £100 paid to someone unlawfully detained by the Security Forces; £7,000 paid to a person struck by a plastic baton round (shared 50/50 with the RUC), and £1,000 paid to an individual assaulted by the Security Forces.



**Public Liability Claims arising in Northern Ireland**

	1997/1998	1998/1999	1999/2000
Number of claims received	97	49	54
Number of claims settled	101	58	31
Compensation paid	£292,000	£243,000	£206,000

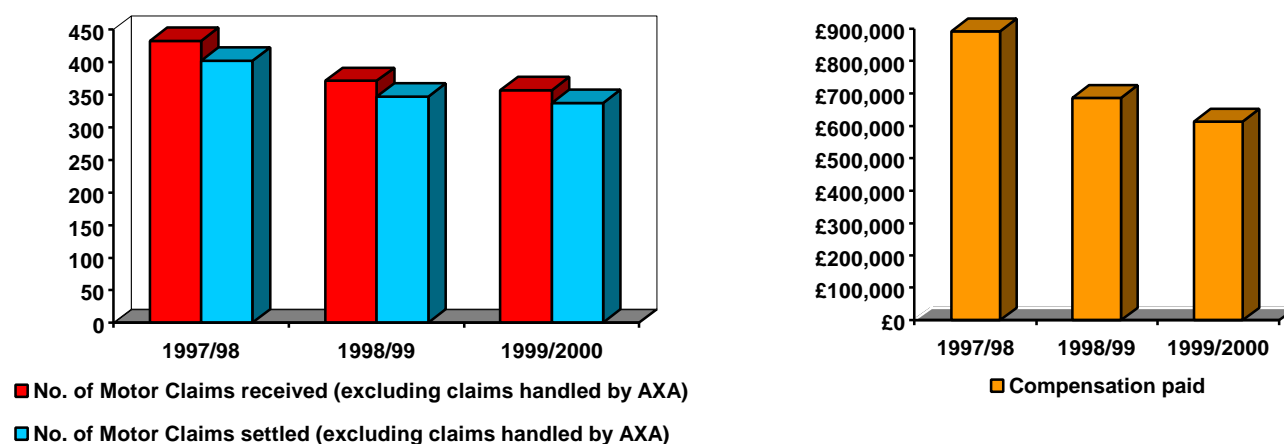
2.4 The number of claims received in 1999/2000 shows a slight increase on the previous year, but the overall trend is still downward, and this is most certainly due to the cease fire, which in turn has resulted in less military activity in support of the RUC.

## MOTOR CLAIMS

2.5 The majority of third party claims handled by DC&L(F&S)Claims are those involving Visiting Forces in the UK, and claims against the MOD in those non-EU countries not covered by an ACO. (AXA Global Risk Services Ltd handle under contract (as distinct from under an insurance policy) certain third party claims arising from the authorised operation of UK based vehicles in the UK, and in EU countries not covered by an Area Claims Officer (ACO)). Personal injury claims are handled in exactly the same way as other injury claims, and vehicle damage claims are settled on production of a bill or an expert's assessment. In certain cases loss of use and depreciation will also be paid. DC&L(F&S)Claims does not pay for damage to Ministry of Defence owned or hired vehicles as this is the responsibility of the unit involved. As DC&L(F&S)Claims' geographical area is so large, it is not unusual to receive claims from anywhere in the world where British Forces are based, on exercise or even when there is a single defence attaché with one car. 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 DC&L(F&S)Claims. But unfortunately this frequently does not happen and claims managers spend a considerable amount of time locating these essential documents.

2.6 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 graph below. The upward trend reported in financial year 1997/98 appears to have levelled off.

Motor Claims



	1997/1998	1998/1999	1999/2000
No. of motor claims received (excluding claims handled by AXA Global Risk Services UK Ltd)	432	371	357
No. of motor claims settled (excluding claims handled by AXA Global Risk Services UK Ltd)	402	347	337
Compensation paid	£893,000	£687,000	£613,000

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

## MARITIME CLAIMS

*“The sea has never been friendly to man”*

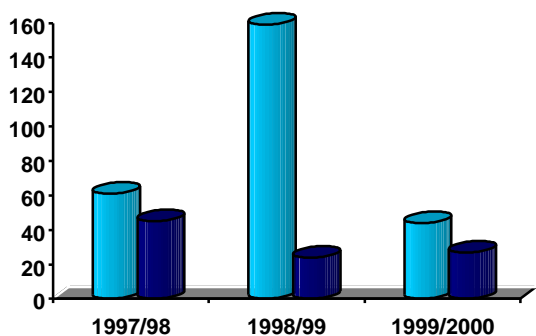
2.7 Maritime Claims by and against the Ministry of Defence result mainly from collisions, oil spillage, gunnery/missile firing incidents, damage to static property, wash damage, fishing gear damage and the salvage and recovery of RN property. Maritime law is complex and much of the legislation dealing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

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

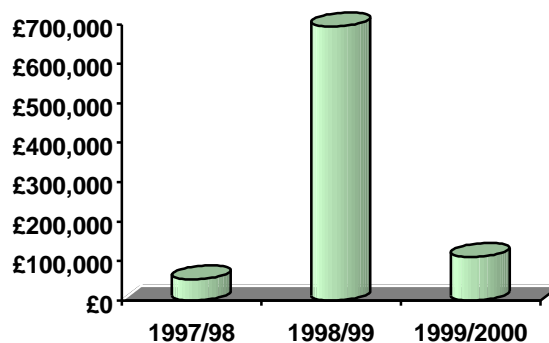
### Salvage

2.9 The Ministry of Defence provides assistance to ships in distress in UK waters and regularly helps in other parts of the world. If as the result of the assistance given by a Ministry of Defence owned ship or aircraft a vessel is salvaged, the Ministry of Defence is entitled to claim salvage based on the value of the ship and its cargo. Part of the amount in salvage is paid to the crew of the assisting ship or aircraft in accordance with the Merchant Shipping Act 1864. It is Ministry of Defence policy not to claim salvage when life saving has been the main aim of the assistance given.

Maritime/Salvage statistics for the last three years



■ Claims received ■ Claims settled

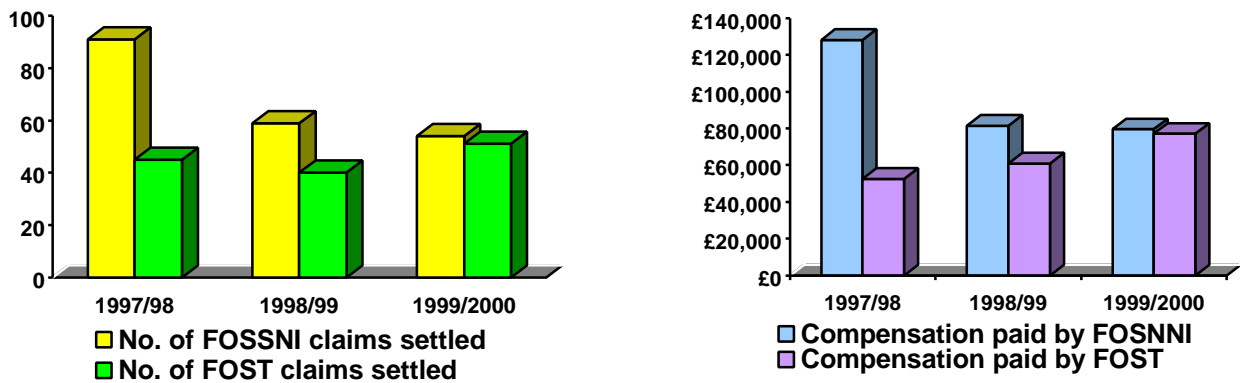


■ Compensation paid

	1997/1998	1998/1999	1999/2000
Claims received	61	159	44
Claims settled	45	24	27
<b>Compensation paid</b>	<b>£53,233</b>	<b>£698,934</b>	<b>£109,895</b>

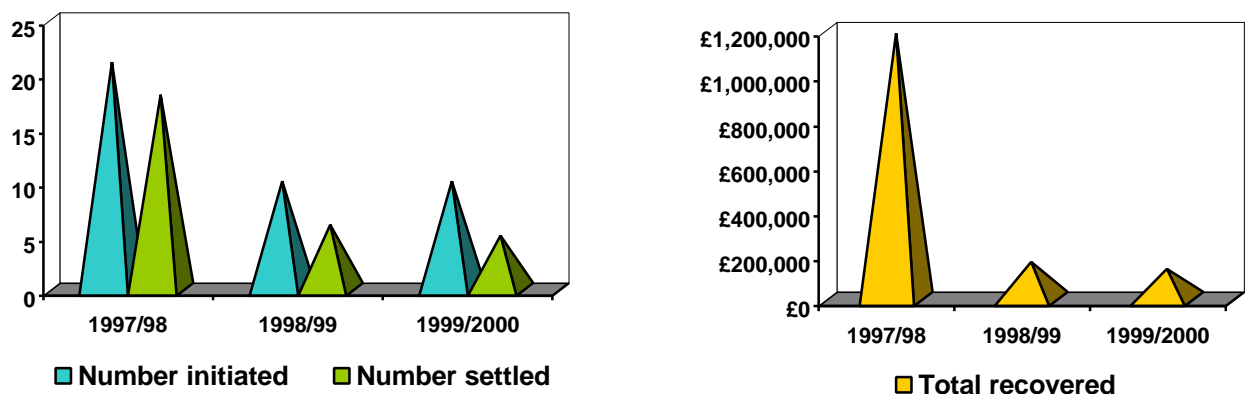
2.10 Last year has seen a return to normal levels of claims activity following 1998/99 when a high number were received as a result of one pollution incident and expenditure was high due to one particular collision incident reported in last year's Annual Report which together led to claims totalling £615,000.

#### Maritime claims settled by FOST and FOSNNI



	1997/1998	1998/1999	1999/2000
Number of FOSNNI claims settled	91	59	54
Compensation paid by FOSNNI	£128,040	£81,230	£79,394
Number of FOST claims settled	45	40	51
Compensation paid by FOST	£52,424	£60,859	£76,923
<b>Total compensation paid</b>	<b>£180,464</b>	<b>£142,089</b>	<b>£156,317</b>

#### Maritime Recoveries and Salvage claims on behalf of MOD



	1997/1998	1998/1999	1999/2000
Number initiated	21	10	10
Number settled	18	6	5
Total recovered	£1,182,706	£164,804	£134,164

## MILITARY LOW FLYING CLAIMS IN ENGLAND, SCOTLAND AND WALES

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

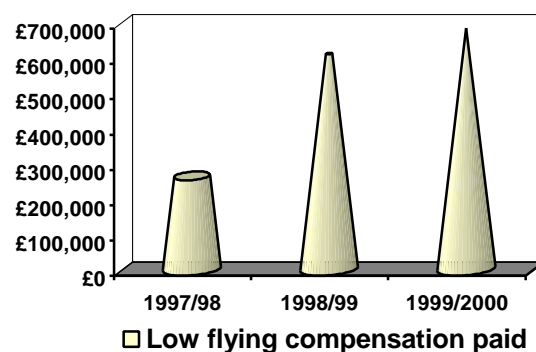
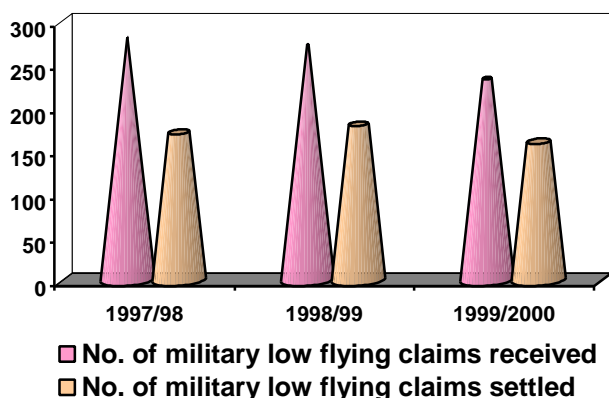
"... No remedies exist in law against any military aircraft flying by virtue of the Royal Prerogative for the purpose of the defence of the Realm or of training or of maintaining the efficiency of the Armed Forces of the Crown. The ... Ministry of Defence will, however, pay compensation on an ex gratia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

2.12 In June 1994, a procedure was introduced in consultation with various farming unions and landowners' associations for processing claims relating to death or injury of livestock. Meetings between DC&L(F&S) Claims and the National Farmers Union greatly assist in keeping both sides informed of developments and improve the procedures. Under this procedure farmers should report the incident promptly, provide veterinary evidence and a fully quantified claim. Following a round of consultations with the NFU, the Country Landowners Association and others, a revised procedure was introduced in December 1999.

2.13 Unfortunately, this is a category of work which requires careful monitoring to identify potentially fraudulent claims. We are, however, pleased to report that no investigations into fraud needed to be undertaken during 1999/2000.

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

### Low flying claims statistics for England, Scotland and Wales

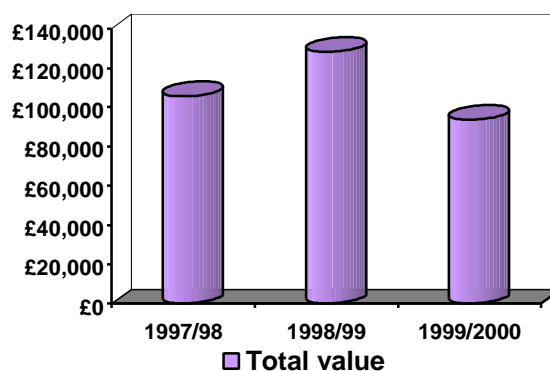
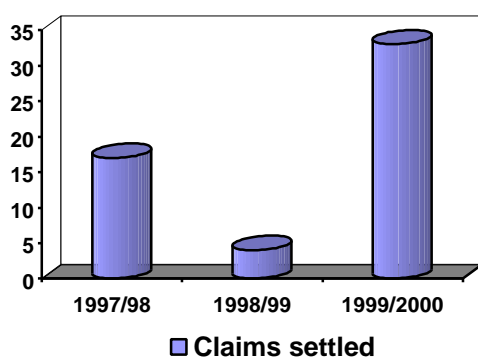


	1997/1998	1998/1999	1999/2000
Number of military low flying claims received	280	272	233
Number of military low flying claims settled	171	180	160
Low flying compensation paid	£263,000	£610,000	£682,000

2.15 The number of low flying claims received shows a slight fall which is a reflection of the reduction in military low flying over mainland Britain due to operational commitments elsewhere. It remains to be seen whether this trend will continue.

2.16 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.

### Air Crash claims settled by DE

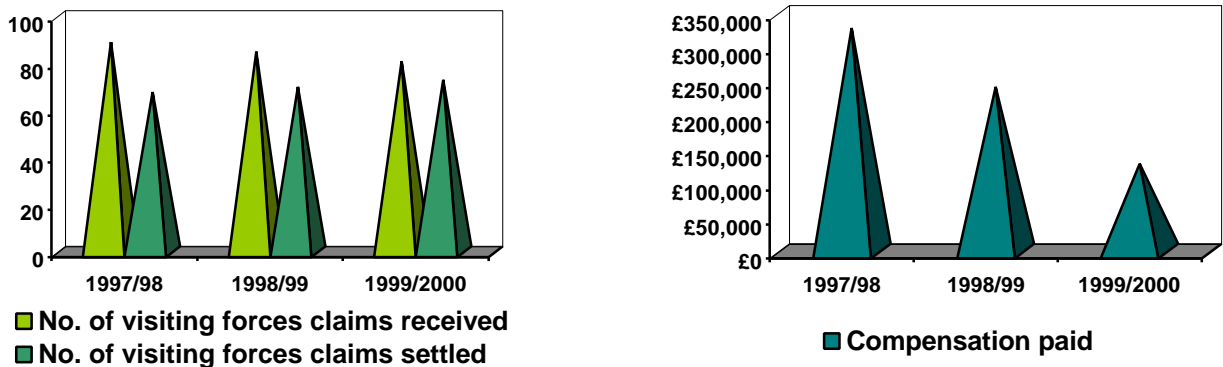


	1997/1998	1998/1999	1999/2000
Claims settled	17	4	33
Total value	£105,800	£128,300	£93,511

## VISITING FORCES CLAIMS

2.18 DC&L(F&S)Claims handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII of NATO SOFA and Section 9 of the Visiting Forces Act 1952. Such claims could be on behalf of any of the states who are signatories to the 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 generally billed for 75% of the amount paid, the United Kingdom paying the other 25%. The vast majority of Visiting Forces cases result from road traffic accidents.

**Visiting Forces Claims**



2.19 While the number of claims received and settled remains fairly constant, the level of compensation paid has continued to decrease steadily, although we are unable to offer any obvious explanation for this trend.

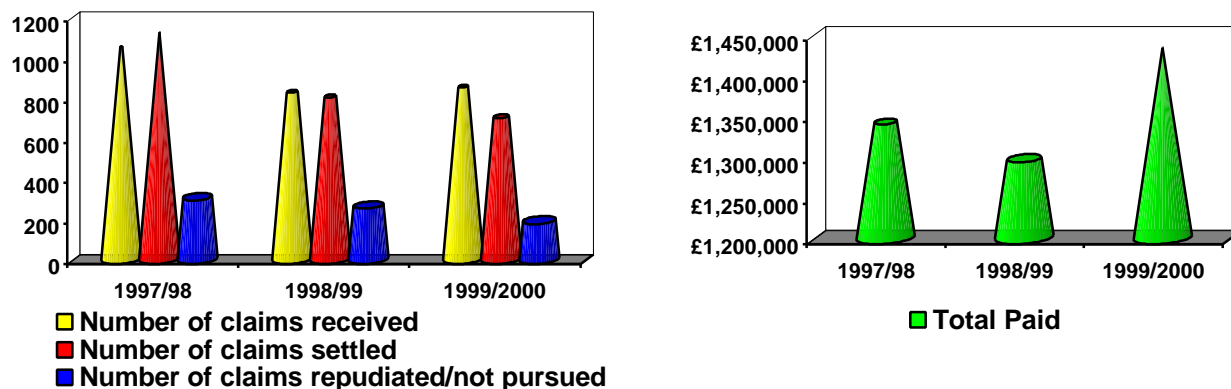
## AREA CLAIMS OFFICERS (ACO)

### ACO Northern Ireland

2.20 The majority of compensation claims handled by ACO Northern Ireland in 1999/2000 related to military helicopter activity. The main heads of claim were livestock, bloodstock and

property damage. The majority of the remaining claims related to personal injuries sustained on MOD property or caused by the negligence of MOD employees.

#### ACO Northern Ireland



	1997/1998	1998/1999	1999/2000
Number of claims received	1,052	834	858
Number of claims settled	1,122	809	708
Number of claims repudiated/not pursued	309	270	194
<b>Total Paid</b>	<b>£1,342,000</b>	<b>£1,297,000</b>	<b>£1,433,000</b>

#### ACO North West Europe

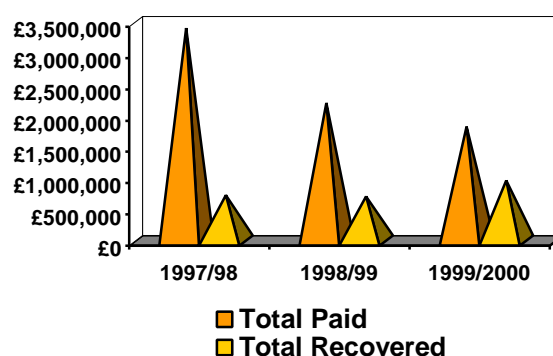
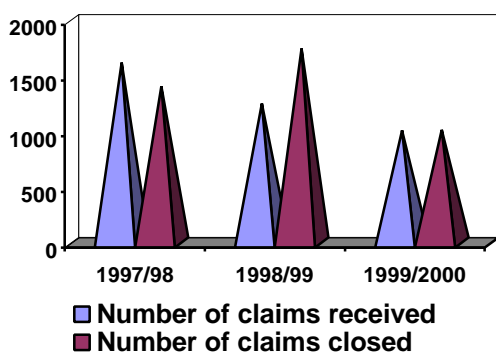
2.21 ACO NWE, part of the Civil Secretariat Headquarters based at JHQ Rheindahlen, is responsible for handling claims by and against the Ministry of Defence in Germany, Norway, Holland, Belgium, Luxembourg, France, Austria, Switzerland, Poland, Hungary and the Czech Republic. ACO NWE also acts as Claims agent for the Danish Government and all the Ministry of Defence sponsored organisations located in North West Europe. The organisation's major areas of claims work are road traffic accidents, training and manoeuvre damage, personal injury and miscellaneous damages. Claims are processed in accordance with Article VIII(5) of the NATO Status of Forces Agreement and Article 41 of the Supplementary Agreement. Within the territory of NATO member states, claims are dealt with by the appointed agency in each of the countries in accordance with their laws and regulations and in close liaison with the ACO NWE staff.

2.22 Settlements are negotiated by the host nation (if a NATO partner) which (if the British Forces alone were responsible for the damage) bills the UK for 75% of the total paid. It is therefore in the interest of the Host Nation to keep settlement costs as low as possible as they pay the remaining portion of the damages.

2.23 A large element of ACO NWE's recovery action arises from the pursuit of Loss of Service claims. Where British Forces Germany personnel or their dependants are injured by

the negligence of third parties, German law of subrogation entitles the MOD to recover its losses such as pay, invalidity pension, medical expenses, repatriation costs, etc., from those third parties or their insurers, and substantial sums of money can be involved.

#### ACO North West Europe



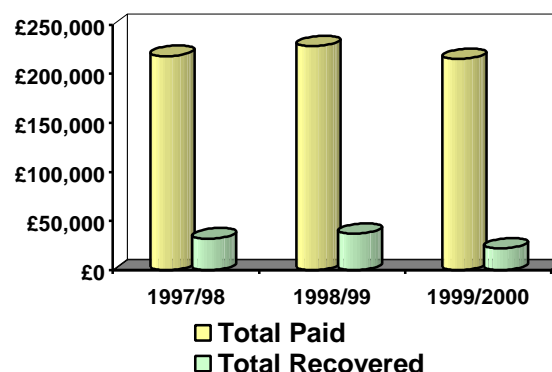
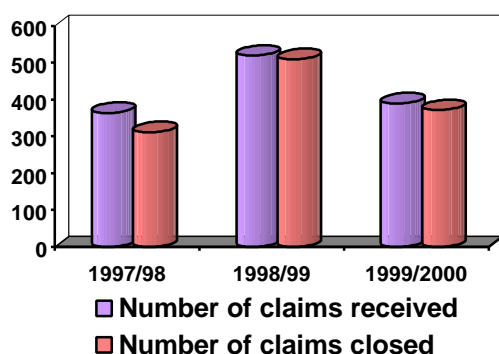
	1997/1998	1998/1999	1999/2000
Number of claims received	1,613	1,245	1,005
Number of claims closed	1,404	1,744	1,011
<b>Total Paid</b>	<b>£3.4M</b>	<b>£2.206M</b>	<b>£1.819M</b>
<b>Total Recovered</b>	<b>£726,000</b>	<b>£700,000</b>	<b>£963,000</b>

2.24 The continuing reduction in claims received reflects the continuing reduction in troop and vehicle numbers in theatre (often due to commitments in Bosnia and Kosovo), the closure of RAF Laarbruch and the generally reduced RAF presence in Germany.

#### ACO Cyprus

2.25 Two Claims staff are responsible for handling claims by and against the Ministry of Defence within the geographical area of Cyprus and its territorial waters. A similar range of claims are handled to those received by ACO North West Europe, but these are dealt with under the Cyprus Treaty of Establishment. Advice and assistance is provided by DC&L(F&S) Claims when requested and those claims where proceedings have been issued in the UK are transferred to DC&L(F&S) Claims to handle. Last year saw a reduction in the number of training damage claims as a number of planned exercises were cancelled due to the crisis in Kosovo.

#### ACO Cyprus

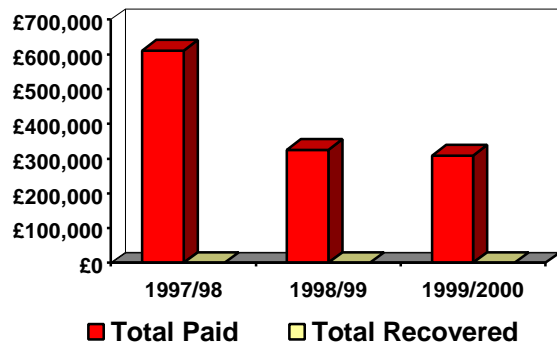
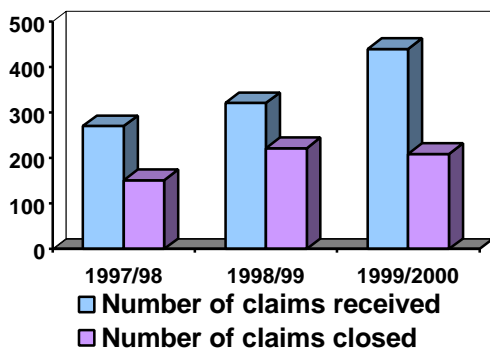


	1997/1998	1998/1999	1999/2000
Number of claims received	364	519	389
Number of claims closed	311	509	371
<b>Total Paid</b>	<b>£218,000</b>	<b>£228,000</b>	<b>£215,000</b>
<b>Total Recovered</b>	<b>£32,000</b>	<b>37,000</b>	<b>£22,000</b>

## ACO Bosnia

2.26 ACO Bosnia is based at HQ Multinational Division (South West) in Banja Luka and deals with all claims by and against the UK contingent of SFOR. The ACO has authority to settle third party claims up to £75,000. The area of responsibility includes Croatia, the Federation of Bosnia & Herzegovina (Republic of Srpska), Slovenia and Albania. Most claims result from traffic accidents, but there is also a large number of property damage and personal injury claims. The ACO also represents the UK at Claims Commission Hearings in Croatia, Bosnia & Herzegovina and Republic Srpska.

### ACO Bosnia



	1997/1998	1998/1999	1999/2000
Number of claims received	270	321	440
Number of claims closed	152	221	208
<b>Total Paid</b>	<b>£611,000</b>	<b>£325,000</b>	<b>£309,000</b>
<b>Total Recovered</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>

2.27 ACO Bosnia also supervises a Claims Officer in Macedonia who handles claim arising in Macedonia as well as those arising from incidents (e.g. traffic accidents) involving British Forces in transit through Albania and Greece. Claims Officer Macedonia also collates information on potential claims (66 by the end of the last financial year) arising in Kosovo. Currently MOD, as part of KFOR, is not liable to meet third party damage claims in Kosovo. It is anticipated that this situation will change if, as expected, the Kosovan authorities sign up

to a Technical or similar Agreement containing a clause on claims handling arrangements with those countries which comprise KFOR.

#### Claims Officer Macedonia

	1997/1998	1998/1999	1999/2000
Number of claims received	N/A	N/A	200
Number of claims closed	N/A	N/A	178
Total paid	N/A	N/A	£130,490
Total recovered	N/A	N/A	Nil

#### Claims Officer Falkland Islands

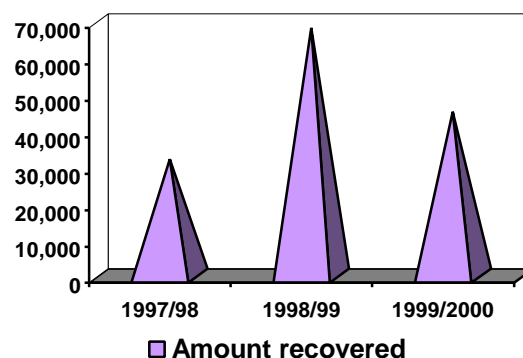
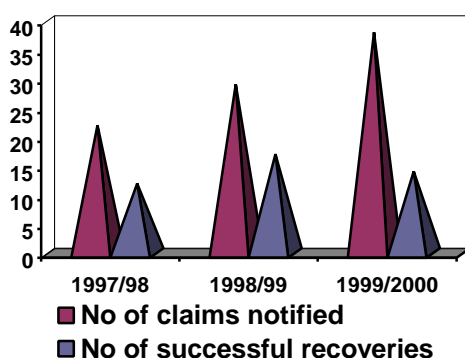
2.28 In the Falkland Islands, the Claims Officer has authority to handle common law property damage claims up to a value of £5,000. Claims are handled in accordance with local law which is in fact identical to English law. Less than 20 claims have been received and settled by the local claims officer (who, of course, also has many other responsibilities) in the last three years.

### FINANCIAL RECOVERIES

2.29 Where the Ministry of Defence sustains loss or damage to equipment which has been caused by a third party, DC&L(F&S)Claims seeks to recover those losses from the third party. The main causes for taking action against third parties are where MOD static property has been damaged by fire, negligence of a contractor, traffic accidents overseas and damage to Visiting Forces vehicles and static property in the UK. Recovery claims world-wide, except where there is an Area Claims Officer, are handled by DC&L(F&S) Claims. The exception to this is in the case of traffic accidents in the UK involving MOD vehicles where the third party is at fault. These make up the bulk of recoveries work and such claims are pursued on MOD's behalf by Willis Insurance Brokers under contract.

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

#### Recoveries



	1997/1998	1998/1999	1999/2000
No of claims notified	22	29	38
No of successful recoveries	12	17	14
<b>Amount recovered</b>	<b>£32,000</b>	<b>£68,000</b>	<b>£45,000</b>

In addition, Willis, received approximately 500 recovery actions arising from road traffic accidents in the UK in the last year and recovered approximately £500,000.

### **SECTION THREE** **CLAIMS HANDLED BY THE SERVICE PERSONNEL** **EMPLOYER'S LIABILITY GROUP**

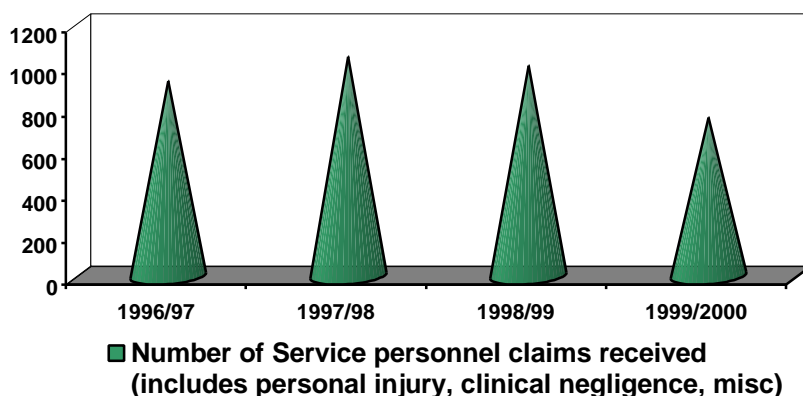
#### **Common Law Claims from Service Personnel**

3.1 Prior to May 1987, Service personnel were prevented from pursuing claims for compensation from the Ministry of Defence by Section 10 of The Crown Proceedings Act 1947. (Crown Immunity prevented claims from being made prior to 1947). However, Section 10 was repealed by The Crown Proceedings (Armed Forces) Act 1987. Since the change in the law, which was not made retrospective, Service personnel, and the dependants of deceased Service personnel, who suffer loss or injury (including illness) as a result of negligence by the Ministry of Defence have been entitled to make common law claims for compensation.

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

3.3 During financial year 1999/2000, Royal and Sun Alliance (RSA), (who since 1 July 1996 have been contracted to handle new personal injury claims from Service and ex-Service personnel), received 752 claims. Over the same period they settled 288 claims for approximately £8m, and a further 344 claims were either repudiated or withdrawn. Also during financial year 1999/2000, 216 employer's liability claims from Service and ex-Service personnel received before 1 July 1996 and handled 'in-house' by DC&L(F&S) Claims were settled for approximately £23m inclusive of legal costs.

#### **Service personnel Employer's Liability Claims Received over the last 5 Years**



	1996/97	1997/98	1998/99	1999/2000
Number of Service personnel claims received	924	1038	997	752

## **BRIEF SUMMARY OF GROUP CLAIMS**

### **Post Traumatic Stress Disorder**

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

3.6 Since May 1987, about 240 PTSD claims have been received from former members of HM Forces mainly relating to service during the Falkland Island conflict, the Gulf war, Bosnia and Northern Ireland. The main allegation in these claims is that the Ministry of Defence failed to recognise, diagnose and treat PTSD. Because of similarity in the allegations in many of these claims a Group Action was set up by the Supreme Court last year. A Group Action allows similar claims, such as these, to proceed as a group to Court, as opposed to being heard individually. In this case, the Group Action consists of two groups: Group 1 is where the earliest alleged failure by the Ministry of Defence occurred before 15 May 1987 (the repeal of Section 10 of the Crown Proceedings Act 1947) and Group 2 is where the earliest alleged failure took place after 15 May 1987. Approximately 15 lead cases from each Group will shortly be selected (the list having previously been agreed upon by both sides), as representative of all those cases in the Group Action. These lead cases will proceed to trial towards the end of 2001, when a Judge will hear evidence from both sides and rule on the issue of liability. The ruling in each of these lead cases will be binding in regard to the similar non-lead cases. In the meantime both sides are concentrating on obtaining evidence in preparation for the trial.

3.7 It is becoming common practice for claimants to allege PTSD as part of a much larger personal injury claim. However, as PTSD is not the prime allegation in such claims it is not possible easily to identify such cases on our Claims database.

### **Asbestos-Related Disease**

3.8 The number of former Ministry of Defence employees who have or will develop asbestos related disease is unknown. However, during financial year 1999/2000, 223 common law compensation claims for asbestos-related disease were received from Ministry of Defence

or former Ministry of Defence civilian employees. The Department receives, on average, about 13 claims from former Service personnel a year for asbestos-related disease.

3.9 Minister(Armed Forces), alongside the Under Secretary of State at the Department of Social Security (responsible for War Pensions), chaired a further meeting with interested MPs on 25 January to discuss compensation for ex-Service personnel suffering from asbestos related disease. Both Ministers agreed to take forward a number of actions, which are being handled by officials from their respective Departments.

### **Nuclear Test Veterans**

3.10 In June 1998 the European Court of Human Rights (ECHR) ruled in favour of the UK in the two test cases it heard on 26 November 1996. (McGinley and Egan -v- UK and LCB -v- UK). A subsequent appeal to the ECHR to revisit the judgement on the grounds of alleged new evidence was rejected by a panel of 5 judges on 20 March 2000.

### **Gulf Veterans' Illnesses – Intentions to Claim**

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

3.12 During the reporting year, DC&L(F&S)Claims received 123 notifications from Gulf conflict veterans, their families and civilians of an intention to claim compensation. The total number of such notifications as at 31 March 2000 was 1826.

3.13 Further information on Gulf veterans' illnesses issues is available from the Ministry of Defence's Gulf Veterans Illnesses Unit (Helpline number: Freephone 0800 169 4495, Fax 0207 218 4489); the Ministry of Defence's internal CHOTS web site at: 'Personnel/Military/Veterans/Gulf Veterans Illnesses' or on the Internet at: <http://www.mod.uk/policy/gulfwar/index.htm>. The postal address for enquiries is Gulf Veterans Illness Unit, Room 8270, Ministry of Defence, Main Building, Whitehall, London SW1A 2HB.

### **Radiation Compensation Scheme**

3.14 During financial year 1999/2000, the Scheme received 36 enquiries from former Ministry of Defence employees (military and civilian) who believe their illness is associated

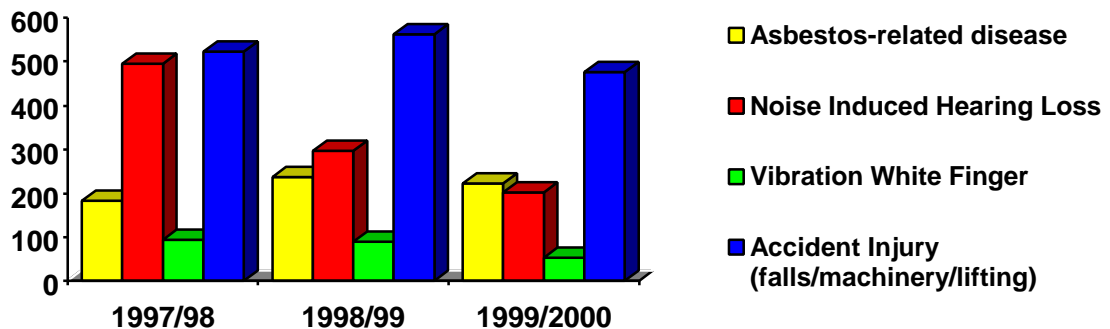
with exposure to occupational ionising radiation. Over the same period no claims were settled. (Since 1994 four Ministry of Defence cases have been settled under the Scheme).

#### **SECTION FOUR - MOD CIVILIAN EMPLOYEES EMPLOYER'S LIABILITY CLAIMS**

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

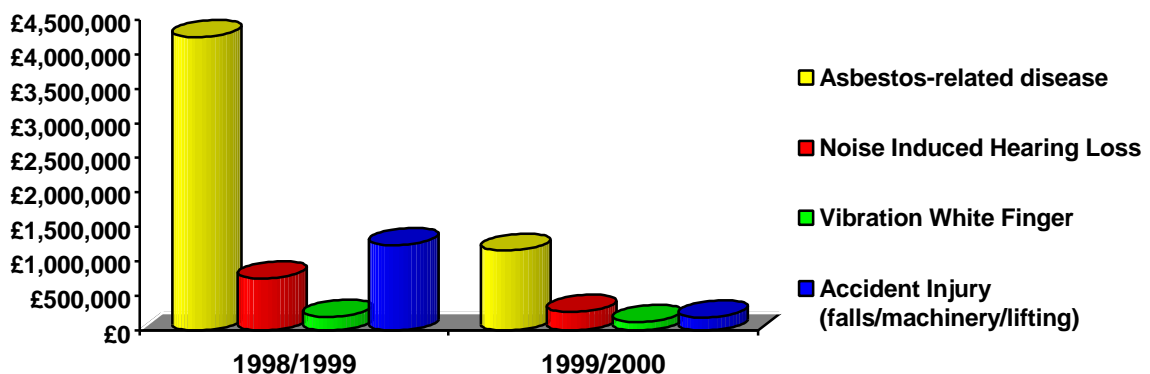
4.1 Civilian Ministry of Defence employees injured in the course of their official duties may be able to claim compensation. Details on how to submit a claim are contained in Volume 16, Section 7 of the Ministry of Defence Personnel Manual. The main types of claims received in the last three years from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

**Civilian Employees Employer's Liability Claims Received**



Type of Claim	Number of claims received in each financial year		
	1997/98	1998/99	1999/2000
Asbestos-related disease	183	237	223
Noise Induced Hearing Loss	494	297	202
Vibration White Finger	94	90	53
Accident Injury (Falls/Machinery/Lifting)	522	562	475
<b>TOTALS</b>	<b>1,293</b>	<b>1,186</b>	<b>953</b>

**Civilian Employees Employer's Liability Claims - Compensation Paid**



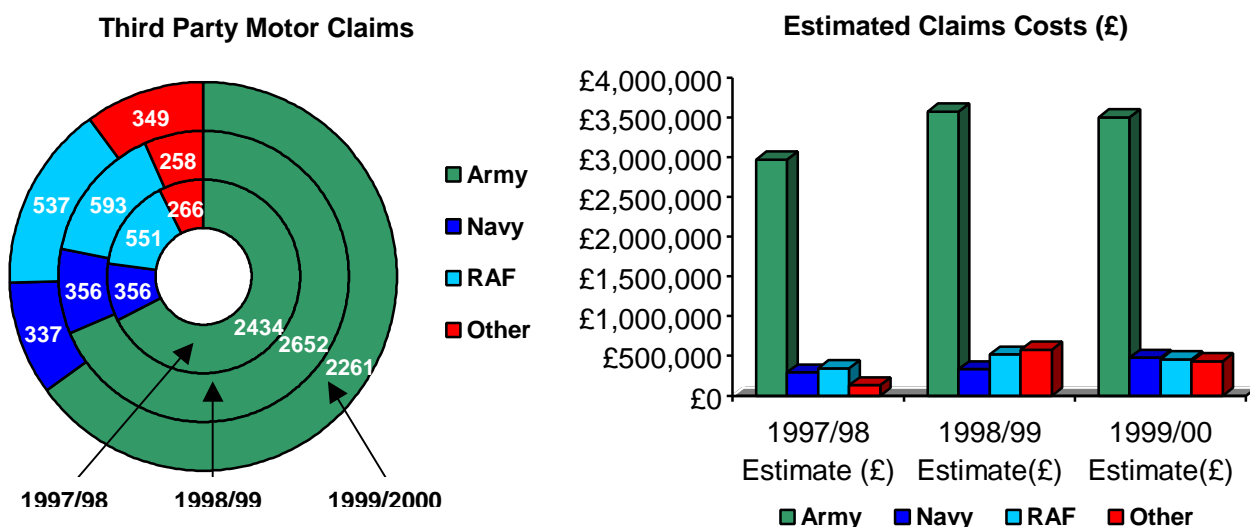
Type of Claim	Cost of Claims in each financial year			
	1998/99 (total paid)	1998/99 (outstanding estimate)	1999/2000 (total paid)	1999/2000 (outstanding estimate)
Asbestos-related disease	£4,247,777	£3,099,972	£1,151,621	£4,720,289
Noise Induced Hearing Loss	£748,202	£222,614	£270,979	£553,184
Vibration White Finger	£197,352	£67,500	£123,376	£156,252
Accident Injury (Falls/Machinery/Lifting)	£1,230,780	£3,213,923	£190,579	£4,713,487
<b>TOTALS</b>	<b>£6,424,111</b>	<b>£6,604,009</b>	<b>£1,736,555</b>	<b>£10,143,212</b>

## **SECTION FIVE**

### **THIRD PARTY MOTOR CLAIMS**

5.1 Since 1982, the Ministry of Defence has contracted out the handling of third party motor claims against the Department. Following a competitive tender exercise in 1997 the contract was awarded to Guardian Insurance Services (UK) Limited (now known as AXA Global Risk Services UK). Details were published in DCI GEN 1/98 which, has now been replaced by **DCI GEN 42/00**.

5.2 The majority of motor accidents involving Ministry of Defence vehicles occur within the UK, although AXA do handle around 40 third party claims each year from UK based vehicles travelling in mainland Europe. The number of third-party claims received by AXA and their value is shown in the charts below.



Service	1997/98		1998/99		1999/2000	
	Claims Received	Estimate (£)	Claims Received	Estimate (£)	Claims Received	Estimate (£)
Army	2,434	2,972,225	2,652	3,575,274	2,261	3,503,032
Navy	356	291,449	356	330,929	337	478,351
RAF	551	344,019	593	517,859	537	456,339
Other	266	131,112	258	578,183	349	431,638
<b>TOTALS</b>	<b>3,607</b>	<b>3,738,805</b>	<b>3,589</b>	<b>5,002,245</b>	<b>3,484</b>	<b>4,869,360</b>

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

## **SECTION SIX**

### **CLINICAL NEGLIGENCE CLAIMS**

6.1 The handling of clinical negligence claims continues to be a major part of DC&L(F&S)Claims' business. To succeed in a clinical negligence claim, the claimant must establish, as in any claim based on negligence, that he/she was owed a duty of care by the defendant, that the defendant was in breach of that duty and that he/she has suffered damage caused by that breach of duty.

6.2 Establishing a duty of care is not generally difficult. Any medical practitioner or hospital can foresee that breach of care on his/her part may cause harm to the patient. In practice there is rarely an issue as to duty of care in clinical negligence cases.

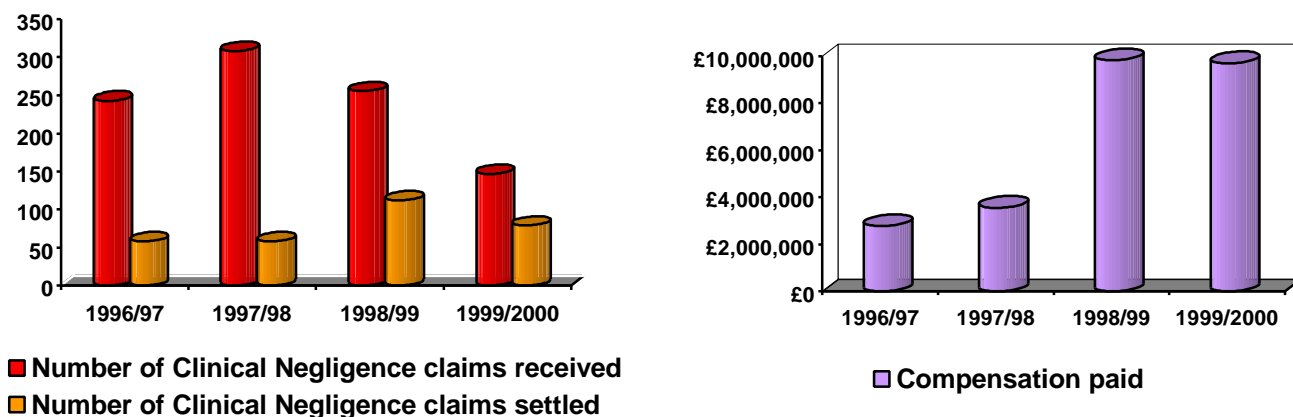
6.3 While the claimant may often be able to get over the hurdle of proving negligence and indeed the defendant may admit negligence, he/she often stumbles over the second hurdle of causation. Even if a medical practitioner or hospital is negligent it does not always follow that the negligence was causative of the claimant's injury or damage of which he/she now complains. The claimant must prove that it was the defendant's negligence act or omission, which caused the damage complained of. The requirement is of particular importance in clinical negligence claims because unlike other negligence claims a causation issue arises in a relatively high proportion of these claims. The issue can raise complex clinical, scientific and technical questions. Causation can therefore be particularly difficult in clinical negligence claims.

6.4 As mentioned in last year's Annual Report, clinical negligence claims, by their very nature, can take a long time to settle, as in many cases the claimant will not wish to agree settlement until the full extent of their disablement is known. In some particularly complicated cases the claimant may have instructed a number of experts in different disciplines to prepare reports on their behalf. This process can often take a long time as experts may not be readily available, especially those who specialise in rare areas of medicine.

6.5 During financial year 1999/2000 the Claims Section dedicated to the handling of clinical negligence claims managed to either repudiate or settle a large number of claims. Three claims were settled with a value of over £1M. Despite 147 new claims being received

during this period, the number of active clinical negligence cases at the end of financial year 1999/00 was 280. The comparative figure at the end of financial year 1998/99 was 399 active cases. Details covering the past four years are shown in the table below:

**Clinical Negligence Claims and Costs**



	1996/1997	1997/1998	1998/1999	1999/2000
Number of Clinical Negligence claims received	243	308	255	147
Number of Clinical Negligence claims settled	58	58	112	79
Compensation paid	£2,766,821	£3,545,060	£9,816,803	£9,688,420

## **SECTION SEVEN**

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

7.1 In addition to common law claims, DC&L(F&S)Claims also handles claims relating to Employment Tribunal ( ET ) applications brought by current or former service personnel. ET applications made by the Department's civilian employees are handled and settled by the appropriate Civilian Personnel Management Authority. There is no DC&L(F&S)Claims involvement with such claims.

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

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

7.4 In practice many ET applications made by Service personnel are withdrawn by the Applicant or 'struck out' at preliminary hearings by Tribunal Chairmen as the matters complained of, such as claims of unfair dismissal, are outside the jurisdiction of the Tribunal or the applications are made outside the statutory time limit. While there are limits in the amount of compensation a Tribunal can award in unfair dismissal cases, there is no upper limit in sex, race or disability discrimination cases.

### **Unfair Dismissal**

7.5 Personnel who are, or have been, engaged in the Armed Forces are debarred by s192 and Schedule 2 paragraph 16 Employment Rights Act 1996 from bringing claims of unfair dismissal in connection with their engagement in the Armed Forces. During 1999/2000, 24 new claims were received involving allegations of Unfair Dismissal. No compensation has been paid.

### **Equal Pay**

7.6 During 1999/2000, 4 new claims were received which involved equal pay, redundancy or pension matters. No claims were settled in this period, neither were any repudiated, withdrawn by the applicant or struck out by the ET.

### **Sex Discrimination**

7.7 During 1999/2000, 28 new claims were received alleging sexual discrimination. Eight of these claims also involved allegations of sexual harassment. Three sexual discrimination claims were settled during the period at a cost of £29,640.00 (see also section on "homosexuals" below). Thirteen cases were repudiated, withdrawn by the applicant or struck out by the ET.

### **Sexual Harassment**

7.8 During 1999/2000, 8 new claims were received alleging sexual harassment. Two sexual harassment cases were settled in the period at a cost of £31,000. Three cases were repudiated, withdrawn by the applicant or struck out by the ET.

### **Racial Discrimination**

7.9 During 1999/2000, 15 new claims were received alleging racial discrimination of which 3 also involved allegations of racial harassment. Three racial discrimination cases were settled during the period at a cost of £96,141. Three cases were repudiated, withdrawn by the applicant or struck out by the ET.

## **Racial harassment**

7.10 During 1999/2000 3 new claims were received alleging racial harassment. No racial harassment cases were settled during the year neither were any cases repudiated, withdrawn by the applicant or struck out by the ET.

## **Homosexuals**

7.11 The Ministry of Defence previously operated a policy which debarred homosexuals from serving in the Armed Forces. The Department's view continues to be 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. That view has been confirmed by the recent dismissal, on exactly the grounds advanced by the Ministry of Defence, of an Employment Tribunal claim brought by an ex-member of the RAF in the Edinburgh Employment Tribunal.

7.12 On 27 September 1999 The European Court of Human Rights (ECHR) ruled that in the four Ministry of Defence cases before it, (*Smith, Grady, Beckett and Lustig-Prean*), there had been a violation of those individuals' right to respect for their private life under Article 8 of the European Convention on Human Rights – the right to respect for private life. The Court further ruled that two of the applicants also had their rights violated under Article 13 – the right to an effective domestic remedy. In response to the ECHR ruling, the then Secretary of State made an immediate public statement, accepting the ruling of the ECHR and suspending the policy of discharging homosexual personnel. The Chief of the Defence Staff announced a thorough review of this policy on 30 September 1999. Subsequently, the Secretary of State for Defence made an announcement in the Houses of Parliament on 12 January 2000, to the effect that homosexuality was no longer to be a bar to recruitment or retention in the Armed Forces.

7.13 A number of individuals did, however, have Employment Tribunal applications already in train. The Department was advised against pursuing the present litigation to its end in the Employment Tribunal, and then having to deal with further litigation on the same facts but in a different legal context before the ECHR. Respected legal opinion suggested that the applicants would be successful in claiming a violation of their Convention rights before the ECHR. The Department therefore made a decision to make standard offers to all the claimants whose claims were already in train before the Employment Tribunal and whose account is accepted as being substantially factually true. These offers were made expressly in satisfaction of any potential claim to the ECHR and not in settlement of the Employment Tribunal proceedings. The written form of the settlement reflects this. It consists of two agreements, by one of which the Applicant agrees to withdraw their claim in the Employment Tribunal (without any mention of financial compensation) and by the other of which the Applicant accepts the compensation offered is in just satisfaction of any violation of their ECHR rights.

7.14 As at 31 March 2000, out of the approximately 60 applicants to whom the offer is believed to have been communicated (“believed” because of course we have to communicate with their solicitors), 6 have accepted and payments totalling £60,000.00 have been made. Negotiations are continuing in an attempt to reach amicable conclusions to the remaining cases.

## **SECTION 8**

### **INSURANCE AND INDEMNITIES**

#### **Insurance**

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

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

8.3 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**

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

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

8.6 DC&L(F&S) Claims issued approximately 120 indemnities in 1999/2000 and commented on approximately 120 other indemnity issues.

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

## **SECTION 9**

### **NOVEL AND CONTENTIOUS CASES 1999/2000**

9.1 Claims for compensation often lead to media interest; sometimes because of the high value of the settlement, and sometimes because the facts give rise to matters of public interest or concern. A summary of the top ten cases by value settled by DC&L(F&S) in financial year 1999/2000 appears later in this report. Details of the most high profile cases, or types of cases, settled during the period are given below.

#### **Claim relating to the issue of vicarious liability**

Claimant X claimed damages for personal injuries sustained as the result of an incident in which he was shot by an on duty soldier Trooper Y.

Trooper Y was found guilty of attempted murder, unlawful wounding and possession of a firearm with intent to endanger life. He was sentenced to 10, 8 and 7 years' imprisonment respectively, to be served concurrently.

The MOD defended this case on the basis that Trooper Y was not acting in the course of his employment when the offences were committed, and that the MOD was not therefore vicariously liable for his actions. The Judge did not share this view and found against the Department and awarded damages of £27,500.

A further 37 claimants have submitted a claim following this particular incident, each alleging psychological damage. The fact that the MOD has lost the case against Claimant X does not in itself mean that MOD must necessarily lose each of the others. Each case is dealt with on its own merits, and each claimant must demonstrate that any alleged loss or damage was caused by the shooting. The courts heard one "test case" in January of this year at which the Judge found against the Department and the test case claimant was awarded £8,000 general damages. Aggravated and exemplary damages were not awarded. The other remaining cases will be negotiated and settled according to their own merits.

### **Claim from former Serviceman injured as a result of horse-play**

Private X was standing beside a window on the ground floor of a Section Office when he was grabbed from behind by a Corporal who lifted him from the ground and tried to push him through the window. In the course of resisting the Corporal's attempts, Private X placed his right hand against a pane of glass in the window which broke causing him very serious injury. As a consequence of the injury, Private X subsequently developed psychiatric problems which included Post Traumatic Stress Disorder (PTSD), which manifested themselves in chronic schizophrenia. Private X was medically discharged from the Army in April 1991, and has not worked since then. Unfortunately this was a case of the "egg shell syndrome" (i.e. he was disposed towards developing schizophrenia) and a relatively innocuous incident triggered serious psychiatric problems for Private X.

Following legal advice from Counsel, MOD accepted liability for the injury in consequence of the failure of those present in the Section Office to prevent the incident, or to intervene. Following protracted negotiations the claim was eventually settled for £745,000 on 21 March 2000 without the need for the case to go to trial. The level of settlement was particularly high because of the claimant being unable to work for the rest of his life coupled with a high level of care that will be required throughout his life.

### **Claim from former Serviceman for unlawful detention**

Mr X, then a member of the Armed Forces, went absent without leave, in December 1992, while serving in Germany. He handed himself back to the Army authorities in July 1994 and was kept in custody until July 1995. He was then discharged from the Army following a German civil sentence being passed on him as a result of illegal drugs activities. Mr X alleged that he was never tried or convicted by the Army for desertion and that the period of detention between 20 July 1994 and 13 July 1995 was illegal.

Counsel's opinion on liability was sought following extensive enquiries into the allegations by the MOD. Counsel supported the Department's view that the claim should be defended. The case therefore proceeded to trial when, in May 1999, a Judge ruled in favour of the claimant but awarded him substantially less compensation than that being sought.

### **Claim from former Serviceman injured falling from a moving vehicle**

Former Guardsman X pursued a claim for compensation against MOD through the Civil Courts having sustained serious head injuries when he fell from the tailgate of a moving Army lorry returning from a night out in Portsmouth on or about 9 April 1995. The claimant was on the tailgate attempting to "windsurf". Allegations of negligence against the Ministry of Defence included that of failure to enforce discipline in the rear of the vehicle, failure to give a

specific command so as to prevent horseplay, and unnecessarily exposing the claimant to risk of injury.

Counsel's opinion on liability was sought following extensive enquiries into the incident by the MOD, including investigations by Claims officials. Counsel supported the Department's view that the claim should be defended. A Trial on liability only was held on 5 May 1999 in the Royal Courts of Justice, London. Judgment was handed down on 6 May in the Department's favour. The claimant was however given leave to appeal.

*Nb This case was heard by the Court of Appeal in May 2000. Contrary to the view of the lower Court, the Court of Appeal considered that MOD had breached its duty of care but that there was a significant element of contributory negligence on the part of the claimant to the extent that MOD would be liable for only 25% of the full value of the claim.*

### **Claim from Serviceman injured as a result of a fall**

Mr X brought a claim for compensation against the MOD following an incident that occurred while he was participating in a Royal Navy Mast Manning Display at the Royal Buckinghamshire County Show in September 1995. While descending from the mast at the completion of the display, Mr X fell from a height of about 30 feet, suffering severe injuries that rendered him paraplegic. On the basis of legal advice, centred mainly on the lack of safety apparatus at the display, the MOD accepted liability for the accident and, following negotiations between both parties, the claim was settled for almost £1.5 million.

### **Claim from Servicewoman who sustained eye injury**

In February 1995 Ms X, then serving in the Army, suffered injury to her left eye while carrying out physical training in the gymnasium at an Army barracks. The accident occurred when an elastic bungie which was being used to assist her to carry out 'dips' on the parallel bars became unattached. As a result, one end of the bungie struck her in the face, causing serious injury to her left eye. Ms X was subsequently medically discharged from the Army in November 1997 as a result of her injury. In April 1995 Ms X initiated a claim for damages against the MOD for her injury.

Investigations into the accident by the Unit concluded that although there had been instances of bungies being used to assist in 'dips' and 'heaves' during training on parallel bars, it was not recognised by the Army School of Training. The practice was considered dangerous, and the Regimental Board of Enquiry recommended that the PTI responsible for the training at the time of the accident be reprimanded for conducting unauthorised training. Following negotiations between both parties the case was settled for £132,000 on 28 March without the need for the case to proceed to trial.

### **Clinical Negligence - Claim from wife of Serviceman**

Mrs X brought a claim for compensation against the Department in relation to allegations of negligent medical treatment received during the time of her care at a military hospital in February 1994.

Briefly, Mrs X, who was pregnant at the time, claimed she suffered from psychiatric injury including severe post natal depression, as a result of the lack of care from hospital staff in refusing her an ultrasound scan and failing to examine her upon request. It should be noted that Mrs X later gave birth to a normal, healthy child.

On the basis that there was no evidence of clinical negligence the Ministry of Defence took the decision to defend this claim. A five-day trial on liability and causation took place between 11 – 16 July 1999, and at the conclusion the Judge found in favour of the Ministry of Defence. The Judge also awarded the Department costs which have been calculated to be in excess of £30,000. The Department is now in the process of recovering this sum from Mrs X, who was not legally aided.

### **Clinical Negligence - Service Personnel**

A claim for compensation was received from Mrs X, a member of the Royal Navy, who, in September 1995, it is alleged reported to the sickbay at her place of work suffering from a number of abdominal symptoms, including diarrhoea, vomiting and abdominal pain. A diagnosis of gastro-enteritis was made. Her condition did not improve despite continued treatment and she in fact got steadily worse over the following week. At a further medical consultation eight days later a diagnosis of appendicitis was made and Mrs X was admitted as an emergency patient for surgery, where a perforated appendix was discovered.

Mrs X brought a claim for compensation against the Ministry of Defence as a result of the mis-diagnosis of her condition. Expert medical evidence was obtained and on the basis of that evidence a decision was taken to defend the allegations of clinical negligence.

A trial, to decide the issue of liability, took place at Taunton County Court between 8-10 March 2000. At the conclusion of the trial the Judge found in the Ministry of Defence's favour. The Judge also awarded the Ministry of Defence costs and we are now in the process of ascertaining from Mrs X her proposals for meeting the Ministry's costs, which it has been estimated exceed £27,000.

### **Clinical Negligence - Handicapped Child**

Mrs X was admitted to a military hospital and gave birth to a baby boy on 31 March 1990. Following the birth the child underwent a routine blood test on 10 April 1990 and the sample

was sent away for testing. The sample was tested for phenylalamine and the report was reported as negative. Subsequent investigation proved that the report was incorrect and the sample was clearly positive. As a result of this error no steps were taken to place the child on an appropriate diet and as a result the child is now grossly handicapped.

Phenylektonuria (PKU) is one of the less common, but very severe forms of mental deficiency. It is due to the inability of the baby to metabolise the anti-acid phenylalamine. If it is diagnosed soon after birth and the infant is given a diet low in phenylalamine, the infant may grow up mentally normal. The phenylalamine – low diet, however, has to be continued permanently.

The Ministry of Defence admitted clinical negligence and during a Counsel to Counsel settlement conference on 23 July an amicable settlement of £1,475,000 was reached. A large proportion of this is to cover the cost of future care.

### **Clinical Negligence - Brain Damaged Baby**

Baby X was born at a Military Hospital overseas in January 1992. It is alleged that due to clinical mismanagement at the birth the baby suffered severe hypoxic-ischaemic encephalopathy, which resulted in serious and irreparable brain damage. A claim for compensation was subsequently received from the parents of the baby, in March 1993.

Due to the complexity of this type of claim, a number of expert medical reports needed to be obtained, and legal opinion sought. In view of the clinical evidence in this case the Department formally made an admission of liability in February 1997.

As further clinical and care reports needed to be obtained by both sides to place an accurate financial value on this claim, it was not until the late summer of 1999 that meaningful negotiations could take place with the claimant's legal representatives in an attempt to settle this claim. Eventually in September 1999 an amicable negotiated settlement of £1,840,000 was reached. A large proportion of this is to cover the costs of future care.

### **Sexual Discrimination**

In 1994, a number of Army chefs, including Mrs X, were selected for redundancy. At the time the Royal Marines were short of chefs and made conditional offers of transfer to over one hundred of the Army chefs. Inadvertently an offer was made to Mrs X, who expressed an interest in transferring to the Royal Marines General service, but was told this was closed to women. The offer was withdrawn and an apology made. However, Mrs X lodged a claim of sex discrimination and the case was heard at Norwich Employment Tribunal in March 1997.

The Equal Opportunities Commission, who supported Mrs X, claimed that the EC Equal Treatment Directive applied to the Armed Forces, and that the policy of excluding women from the Royal Marines was unlawful.

On the applicability of European Law, the Employment Tribunal stated that, in their view, this could only be properly determined by the European Court of Justice (ECJ), and an oral hearing before the ECJ was therefore held on 27 October 1998.

The judgment of the ECJ was made on 26 October 1999 and in a landmark ruling the judges said the Armed Forces do not fall altogether outside the scope of Community law. The Court ruled that the exclusion of women from service in the Royal Marines may be justified under the Equal Treatment Directive. This case must now go back to the Norwich Employment Tribunal in July 2000 to decide whether the policy of excluding women from the Royal Marines is proportional: i.e. is appropriate to the objective of ensuring combat effectiveness and necessary for that end.

### **Racial Harassment**

Guardsman X made an application to an Employment Tribunal alleging that during the period October 1997 – May 1998 he was subjected to racially motivated harassment from fellow soldiers, including racial abuse and racial assault, which resulted in him suffering significant health problems. Guardsman X was supported in his action against the Department by the Commission for Racial Equality.

Based on the available evidence, legal advice was that an Employment Tribunal would find the Department liable for the ill health and subsequent losses suffered by Guardsman X, by reason of its exacerbation of a pre-existing condition even if not the sole cause.

The Department's legal representatives made an admission that Guardsman X was subjected to racial harassment and an amicable settlement of this matter was reached in December 1999 without recourse to a full Tribunal hearing. Guardsman X received £32,000 in compensation.

**DC&L(F&S)Claims - Organisation**

The introduction of the new pay and grading arrangements provided an opportunity for us to look at the Claims organisation and to devise new titles which would be more meaningful to claimants, solicitors and others with whom we have contact. The basic structure of the organisation remains the same but individual functions are more clearly defined as follows:

**Policy & Finance Group (formerly Claims 1)**

**Staff**

Team Leader – Band C2  
Budget Manager – Band D  
Indemnities & Insurance Adviser – Band D  
Assistant Adviser Indemnities & Insurance – Band E1  
Policy & Contracts Adviser – Band D  
Assistant Adviser Risk Management & IT – Band E1  
Finance & IT Manager – Band D  
Budget Officer – Band E1  
Payments Co-ordinator – Band E2  
Focal Point Manager – Band E1  
2 Focal Point Administrators – Band E2

**Responsibilities**

**Financial Management**

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

**Information technology systems**

DC&L(F&S)Claims information technology (IT) systems (CHOTS, TAURUS, CHASP and TAURUS 2000).

**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.

## **MOD Civilian employees employer's liability and third party motor claims**

Policy relating to Ministry of Defence civilian employees employer's liability claims and Third Party motor claims handled on behalf of the Ministry of Defence by AXA Global Risks (UK) Ltd.

### **Risk Management**

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

Risk management statistics.

### **Regulatory claims policy**

Regulatory claims are received from employees for loss of or damage to personal property in the course of their employment. The Policy & Finance Group 1 is responsible for the claims handling policy.

### **DC&L(F&S)Claims administration**

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

### **Service Personnel Employer's Liability Group (formerly Claims 2)**

#### **Staff**

Team Leader – Band C2  
4 Case Managers – Band D  
1 Assistant Case Manager – Band E1  
1 Section 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 who have dealt with this type of claim since 1 July 1996.

## **Section 10 claims**

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

## **Radiation claims**

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

## **Gulf War illness**

Potential claims for alleged Gulf War illness.

## **Post Traumatic Stress Disorder**

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

## **Miscellaneous claims**

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

## **Public Liability Group (formerly Claims 3)**

### **Staff**

Team Leader – Band C2  
5 Case Managers – Band D  
4 Assistant Case Managers – Band E1

### **Responsibilities**

#### **Public liability claims**

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

## **Visiting Forces**

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

## **Low flying**

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

## **Northern Ireland claims**

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

## **Maritime claims**

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

## **Vehicle claims**

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

## **Overseas operations**

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

## **Ex-gratia payments**

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

## **Criminal injuries compensation**

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

## **Non-maritime recoveries**

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

**Clinical Negligence/Employment Tribunals Group (formerly Claims 4)**

**Staff**

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

**Responsibilities**

**Clinical Negligence**

Claims for compensation where MOD is deemed responsible for medical negligence.

**Employment Tribunals**

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

**DC&L(F&S)CLAIMS STAFF, PROGRAMME AND OPERATING COSTS -  
FINANCIAL YEAR 1999/2000**

**Costs**

Operating Costs	-	£0.94 million
Programme Costs	-	£75.57 million (compensation, legal costs, experts' fees, etc.)
Total Costs	-	£76.51 million

**DC&L(F&S) staffing as at 31 March 2000**

GRADE	ESTABLISHED POSTS	ROLE
B2	1	Chief Claims Officer
C1	1	Senior Claims Officer
C2	4	Team Leaders
D	16	12 Claims Managers 1 Budget Manager 1 Policy & Contracts Adviser 1 Insurance and Indemnities Adviser 1 IT & Finance Manager
E1	11	7 Assistant Claims Managers 1 Asst Adviser Risk & IT 1 Budget Officer 1 Asst Adviser Indemnities & Insurance 1 Focal Point Leader & Asst Adviser Risk
E2	3	1 Payments Co-ordinator 2 Focal Point Administrators

**ANNEX B**

**TOP TWENTY CASES (BY VALUE) SETTLED BY DC&L(F&S)CLAIMS IN  
FINANCIAL YEAR 1999/2000**

<b>CLAIMANT</b>	<b>TYPE OF INJURY/LOSS</b>	<b>COMPENSATION</b>
Civilian (child)	Negligent treatment during the birth, resulting in brain damage.	£2,363,484.39
Civilian (child)	Negligent treatment during the birth, resulting in cerebral palsy.	£1,846,204.85
Civilian (child)	Failure to provide correct results for Phenylektonuria test.	£1,485,989.80
Territorial Army	Tetraplegic. Abseiling accident.	£1,215,715.05
Army	Gunshot wound to the head due to accidental discharge of firearm whilst being cleaned.	£902,392.70
Army	Back injury sustained whilst lifting heavy items.	£760,000.00
Army	Arm injury caused by being pushed out of a window by colleagues. Now suffers severe mental illnesses.	£745,000.00
Army	Fatality. Chinook helicopter crash, Mull of Kintyre.	£700,000.00
Army	Negligent treatment arising from complications during the birth resulting in coma and death of Mrs X. Mr X (ex-Serviceman) suffers from severe depressive illness rendering him incapable of maintaining employment.	£607,500.00
Army	Paraplegic. Road Traffic Accident.	£600,576.69
Civilian	Negligent treatment during birth resulting in severe brain damage to infant.	£501,316.70
Royal Air Force	Fatality. Hercules crash.	£480,000.00

Army	Serious back injury incurred whilst on a parachute exercise.	£476,677.40
Royal Air Force	Fatality. Hercules crash.	£456,000.00
Army	Back injury sustained, due to extreme weather conditions on a mountain, whilst on exercise.	£451,432.10
Army	Killed whilst demonstrating a rifle launch grenade that exploded prematurely.	£420,000.00
Army	Injury to neck sustained when Lynx downdraft caused a fence to fall on claimant.	£415,159.01
Royal Air Force	Negligent medical discharge following injuries sustained during a winching operation.	£400,000.00
Army	Leg amputated as a result of stepping on a mine in Rwanda.	£400,000.00

In addition to the above lump sum awards, a structured settlement with a possible total value of £2.27M was reached last year in a case involving a soldier who suffered crush injuries leading to tetraplegia. The structure involves payment of £66,000 per annum for the remainder of the man's life.

**TOP TEN (BY VALUE) SERVICE PERSONNEL EMPLOYER'S LIABILITY  
CLAIMS SETTLED BY ROYAL AND SUN ALLIANCE IN FINANCIAL YEAR  
1999/2000**

<b>TYPE OF INJURY/LOSS</b>	<b>COMPENSATION</b>
Chronic Toxic Encephalopathy brought on by exposure to chemical cleaning solvents	£300,000
Allergy brought on by latex products	£279,5000
Severe back injury caused by lifting heavy weight	£275,000
Killed following an aircraft accident	£265,000
Killed as a result of a fire	£238,000
Killed following RTA	£235,000
Extensive burns to legs	£150,000
Struck by falling heavy object	£93,000
Injured as a result of RTA	£80,000
Exposure to toxic chemicals	£80,000

**TOP TEN (BY VALUE) CIVILIAN EMPLOYEE EMPLOYER'S LIABILITY CLAIMS  
SETTLED BY AXA GLOBAL RISKS IN FINANCIAL YEAR 1999/2000**

TYPE OF INJURY/LOSS	COMPENSATION
Asbestos Related	£118,129
Asbestos Related	£113,521
Asbestos Related	£111,707
Asbestos Related	£103,350
Asbestos Related	£96,243
Asbestos Related	£91,680
Asbestos Related	£89,044
Asbestos Related	£79,475
Asbestos Related	£78,614
Asbestos Related	£76,950

**DC&L(F&S)CLAIMS ANNUAL REPORT 1999/2000**  
**PART TWO - DEVELOPMENTS IN LAW AND PRACTICE**  
**SECTION ONE – CIVIL JUSTICE REFORMS**

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

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

The Courts have begun to take a pro-active approach to case management setting down directions which decide the order in which issues are to be resolved and fix 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.

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

### **Experts**

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**

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".

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.

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.

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**

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.

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.

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.

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**

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**

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**

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.

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.

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**

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.

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**

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.”

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.

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.

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.

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.

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.

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

### **Disclosure**

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.

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.

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**

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.

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**

The implementation of the reforms involved a massive change in working practices. Claims officials have undertaken additional specialist training to ensure they comply with the new rules. Units and Establishments have also become aware of how the new protocols and rules operate.

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

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.

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.

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.

### **Counsel to Counsel Settlement Conferences**

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

In 1999/2000, for example, 8 such conferences were held and compensation totalling £7.6M was agreed against claims totalling £10.8M. Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher. It is estimated that savings in legal costs of at least £200K were achieved.

### **Legal Aid**

#### ***“Justice is open to all – like the Ritz hotel”***

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 is 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).

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

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

claimants with conditional fee arrangements for our costs in the event that we are successful in defence of the claim

## **PART TWO SECTION TWO** **GENERAL DAMAGES**

The Judicial Studies Board (JSB) publishes guidelines on the level of General Damages awards (i.e. compensation for pain and suffering and loss of amenity). The Guidelines are intended to be indicative of the levels of award made in reported cases but are generally regarded as authoritative for the purposes of calculating General Damages. In March this year the Court of Appeal considered a number of cases to determine whether the level of General Damages should be increased in line with a Law Commission recommendation to uplift General Damages of over £3000 by between 50% and 100%.

Judgment was handed down on 28 March 2000. The Court of Appeal did not go as far as many commentators had expected and differed from the views of the Law Commission – ‘...in the case of the most catastrophic injuries .... the awards are most in need of adjustment and .... the scale of adjustment which is required reduces as the level of existing awards decreases. At the highest level, we see a need for awards to be increased by in the region of one third. We see no need for an increase in awards which are at present below £10,000’. Between those awards the adjustment should taper down. We are unaware of the intention of any of the claimants to appeal the decision.

Revised JSB guidelines should be published soon but an indication of the possible effect of the Court of Appeal’s decision on a random sample of injuries is shown below:

<b>Injury</b>	<b>Pre March 2000</b>	<b>Post March 2000</b>
Quadriplegia	£120,000 to £150,000	£152,000 to £200,000
Moderate Brain Damage	£65,000 to £90,000	£74,000 to £107,000
Severe PTSD	£28,500 to £40,000	£30,000 to £43,000
Total deafness	£40,000 to £47,500	£43,000 to £52,000
Mesethelioma/ Lung Cancer	£35,000 to £45,000	£37,000 to £49,000
Severe Neck Injury	£65,000	£73,500
Serious Leg Injury	£42,500 to £57,500	£46,000 to £64,000

While the rises are less dramatic than anticipated they will nevertheless have an impact on claims expenditure – probably around £1million per annum. The judgment is a compromise recognising, on the one hand, the inadequacy of awards at the upper end but taking due account on the other of the effect a more substantial and wider ranging increase would have on insurance premiums and the public purse.

### **PART TWO SECTION THREE** **STRUCTURED SETTLEMENTS**

A structured settlement normally consists of a conventional lump sum award coupled with an index linked periodic payment for the life of the claimant or some other specified time. The court without the consent of both parties to the action cannot order a structured settlement. The use of such settlements has been introduced in recent years in personal injury cases where the level of disability is extreme and the consequent level of damages is high. The purpose of the structure is to pay the claimant an annual sum to cover the cost of care and keep rather than make a lump sum payment which, without wise investment, might erode over time. There is a growing school of opinion that the courts should be given the power to order settlements.

Structured settlements are not as commonplace in the UK as they are in other countries but are gaining in popularity. Some claimants still favour a large, one-off payment while others prefer the security of specified periodic payments. The system is beneficial to both parties. For defendants the cost of the award of damages is spread over many years thus avoiding large capital outlays. In addition, there is the possibility that the claimant will not achieve the projected life expectancy which would mean that the defendant would not pay the full settlement unless the terms of the structure provided for a guaranteed period of payment. For the claimant the structured settlement is tax-free and provides a guaranteed income stream.

There are two types of structured settlement. A top down structure is little more than another investment option for the claimant, because a lump sum overall award needs to be agreed first with an element of that sum structured over a given period. This type of structure involves an element of risk for the defendant where there is doubt over the claimant's life expectancy because payments might continue at an unacceptable level after the claimant's death. For example, a structured settlement would normally include the cost of care and provide an income stream to cover loss of earnings. In the event of death the cost of care would cease with only payment of the loss of earnings required by dependants. To overcome the uncertainty of life expectancy a different method of calculating a structured settlement is often used. Such structures are known as 'bottom up' and avoids the need to arrive at an overall lump sum award by calculating the claimant's annual financial requirements and paying such a sum for the life of the claimant and where appropriate a lesser sum to his dependants following the claimant's death.

The MOD is required by HM Treasury to consider a structured settlement in all cases valued at £250,000 and above and will always propose a structured settlement in cases where a significant proportion of the damages is for the cost of care and there is a question over life expectancy. The Department would of course always respect the claimant's wishes if they

choose not to enter into such an arrangement. As mentioned in Annex B above, a structured settlement with a possible total value of £2.27 million was reached last year in a case involving a soldier who suffered crush injuries leading to tetraplegia. The structure involved payment of £66,000 per annum for the remainder of the man's life.

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