Ministry of Defence

DC&L(F&S)CLAIMS Annual Report 2000/2001

July 2001

Investor in People

DC&L(F&S)CLAIMS ANNUAL REPORT 2000/2001
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DC&L(F&S)CLAIMS ANNUAL REPORT 2000/2001

INTRODUCTION BY THE CHIEF CLAIMS OFFICER

"All of us here know that there is no better way of exercising the imagination than the study of law"

This is the fourth Claims Annual Report. The report is again in two parts. The first covers claims activity during financial year 2000/01. The second deals with practice and procedure and is largely for new readers who may be unfamiliar with the subject.

Claims continue to be of concern to Ministers and senior officials and of interest to the media. The cost of claims against the MOD is on an upward path and in a few short years claims expenditure has risen from £25million in 1992/93 to £88.5million in the last financial year. This in many ways reflects society at large and the uplift in the award of damages generally, but I believe there are things that we can do to slow down the trend. As a result of submissions to the Permanent Secretary, supported by DUS(CM), I have put in place the Claims Risk Management Group (RMG) who have been charged with the responsibility of analysing the data, identifying the most common risk areas, and putting forward remedial measures or initiatives to bring about change. This is a significant body of work which the RMG is tackling with great vigour and enthusiasm. There are, however, no quick fixes and the benefits of this enterprise are unlikely to be seen for some years. I am, however, confident that we are adopting the right approach. A report by the RMG Team Leader can be found in Part One Section Two.

The work in Claims can be complex and requires claims managers to acquire a thorough knowledge of the law. In recognition of this, a Claims and Legal Functional Competence Framework was introduced in the year 2000. The Framework sets out the basic skills and knowledge required to become an effective member of the Claims team. The framework is backed by a broad training package, incorporating specialist legal training by recognised bodies as well as refresher training kindly provided by our commercial claims handlers. In order to broaden our experience of commercial best practice, we arranged the first secondment into MOD Claims of a member of a commercial colleagues' MOD team. This proved to be a great success and I fully intend to take the initiative further by offering secondments out to industry as well as to claims organisations in other government departments.

We continue to pursue settlement through Counsel to Counsel conferences. In 2000/01 9 such conferences took place and compensation of £7.5M was agreed against claims totalling £12.03M. The savings in court time and legal costs were significant.

Claims should not, however, be considered simply in the light of their cost. There is very often real human tragedy behind the figures which are perhaps best exemplified by the facts

surrounding the highest claim in MOD Claims history paid in financial year 2000/01. The case concerns a soldier deployed on duties involving the transport of army trucks in railway wagons in Germany. The claimant was loading a vehicle on to a train and was told to retrieve a piece of equipment which had been left on top of the vehicle. As he did so, he stood up and hit the live overhead power cable. The resultant electric shock threw the claimant from the train. He sustained 60% burns to the body, damage to the skull, electrocution cataracts and a leg had to be amputated. He now suffers tetraplegia and will need 24 hour nursing care for the rest of his life. The Department admitted liability in the case and substantial damages have been paid.

This report will receive a wide circulation. I should be pleased to respond to any questions on the report and to receive comments or observations on how future reports might be improved or presented.

Additional copies are available from the DC&L(F&S) Focal Point, 6th Floor, St Giles Court, 1-13 St Giles High Street, LONDON WC2H 8LD (Tel no 020 7807 0049/0056 or Fax no 020 7807 0051). Copies can also be e-mailed via CHOTS or supplied on disc.

DC&L(F&S) CLAIMS ANNUAL REPORT 2000/2001
EXECUTIVE SUMMARY

1. Total DC&L(F&S) expenditure in the year 2000/2001 including legal fees of £21.05 million was £97.01 million of which £88.5 million was claims expenditure including legal costs.

2. 948 Service personnel employer's liability claims were settled at a total cost of £36.60 million.

3. 1028 civilian employer's liability claims were settled at a total cost of £14.72 million.

4. 310 public liability claims were settled at a total cost of £2.524 million.

5. 4566 third party motor claims were settled at a total cost of £8.78 million.

6. 79 clinical negligence claims were settled at a total cost of £10.6 million.

7. 17 Employment Tribunal cases were settled at a total cost of £176,000

8. 1866 intentions to claim are registered for those alleged to be suffering from Gulf War Illnesses.

9. 290 claims have been received from Service personnel alleging Post-Traumatic Stress Disorder.

10. Highest ever claim settled at £3.675 million

11. At 1 April 2001, the total number of claims lodged with DC&L(F&S) Claims or the Department's commercial claims handlers was 8956

12. The forecast claims expenditure for 2001/02 is about £100 million.

13. A Risk Management Working Group was fully established in January 2001

14. The contract for a new claims database TAURUS 2000 was let in March 2001.

15. ToPaS introduced November 2000

DC&L(F&S)CLAIMS ANNUAL REPORT 2000/2001

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 B1) 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 106 Parliamentary Enquiries, 213 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 structured specialist training seminars covering all aspects of common law compensation. In recognition of the specialised nature of the work, a functional competence framework has been introduced to focus on the key skills and training required. In addition, staff have studied for common law diplomas and professional insurance examinations.

1.5 As part of our efforts to learn and maintain best practice in claims management, DC&L(F&S)Claims arranged for a secondment from one of our commercial claims handlers to fill a short term vacancy in our clinical negligence group. This provided not only an opportunity to learn from our commercial colleagues but also a chance for the individual concerned to engage in an area of business which he might not otherwise encounter. Our secondee was of the highest calibre and we learned a lot from each other. It is our intention to

repeat this exercise at the next opportunity. We have also taken steps to forge links with claims colleagues from other government departments with a view to establishing best practice in government and, we hope, to arrange short-term staff exchanges or longer-term secondments.

1.6 The year 2000/01 also saw the finalisation of the functional requirement for a new claims database under the name TAURUS 2000. A contract for development and introduction into service was let to Software Solutions for Business of Swindon in March 2001. We expect to have the new system in place by the end of this year and regular project management meetings are being held with the company to ensure that the development is kept on track.

Policy and Procedures

1.7 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.

1.8 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.

1.9 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. While there is no legal obligation, each case is decided on its merits. A number of factors are taken into account 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

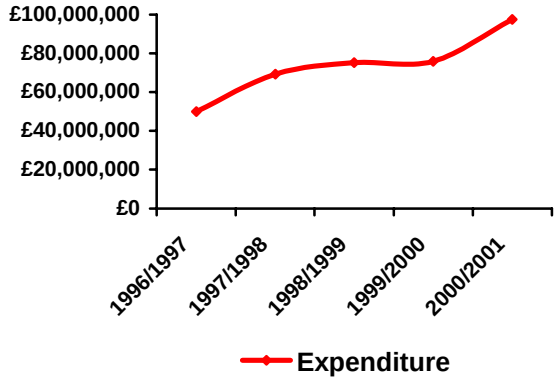
nationally - on relations with the host country, and the availability and/or financial ability of the tortfeasor (wrong-doer) to make satisfactory restitution to the Claimant.

1.10 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. While 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. The Claims section dealing with these ET cases has this year been heavily involved with the claims for unfair dismissal lodged by former Service personnel discharged by reason of their homosexuality. In this connection as a result of a judgment in the European Court of Human Rights, the Secretary of State for Defence authorised that settlement negotiations be entered into with the individuals concerned who had Employment Tribunal applications already in train and whose account has been accepted as being substantially factually true. We are currently managing 83 such cases. Over 60 offers of settlement have been made and, to date, 15 individuals have accepted those offers and payments have been made.

SECTION TWO
CLAIMS RISK MANAGEMENT

All staff can play their part in claims risk management.

2.1 Since the 1999/2000 DC&L(F&S)Claims Annual Report was published, the Risk Management Group (RMG) has been formed within Claims as a separate section. The Group consists of a Team Leader, an IT Advisor, a Policy Advisor and an Assistant Policy Advisor.



2.2 The graph above illustrates the increase in claims expenditure over the past five years and the background against which the Risk Management Group has been set up. With a greater emphasis on risk management within the MOD in general and the large increases evident in claims expenditure in particular, it is clear that action needs to be taken to reduce the incidence of claims wherever possible. It is also important to identify ways of keeping handling costs to a minimum when claims are made. Compensation payments in respect of pain and suffering are determined by Judicial Studies Guidelines and apply to all compensators, but legal and

other associated costs can be reduced if good records are kept and relevant evidence can be assembled quickly to enable an efficient investigation into a claim.

Claims Risk Management Working Group and Objectives

2.3 As the Risk Management paper in the last Annual Report predicted, a Claims Risk Management Working Group (CRMWG) has been formed. A number of meetings have been held to discuss the objectives for the RMG and to monitor progress being made. The Chief Claims Officer, Senior Claims Officer, Claims Team Leaders and the RMG team are permanent members of the Working Group with other personnel from within and outside MOD invited to attend meetings as appropriate.

The objectives of the RMG are as follows:

a. Produce a viable database for Claims risk management.

b. Carry out a preliminary analysis of trends and develop options for addressing problem areas.

c. Produce progress reports to PUS.

d. Produce quarterly Claims Newsletters

e. Devise and implement a system for following up risk management aspects of settled claims through liaison with claims handlers and solicitors.

f. Liaise with training establishments and explore the possibility of claims RMG input into training courses.

g. Give presentations and prepare statistics as requested.

h. Prepare working papers for the Claims Risk Management Working Group and carry out follow-up work in line with Working Group endorsement.

i. Investigate the possibility of recovering sums paid to injured Service and civilian personnel during their absence from duty/work from the third parties causing the injuries.

2.4 Central to the work of the team is the first objective which is to construct a risk management database containing details of all the claims handled within DC&L(F&S)Claims and those handled by AXA and Royal & Sun Alliance on MOD's behalf. It will also include data from IMPACT which is a record of all RTAs involving MOD transport. Once the database is up and running, work can begin on the second objective to carry out a preliminary analysis of trends and develop options for addressing problem areas.

2.5 Of the other objectives, some are already in hand while others will be taken up in the following months. The first progress report was delivered to PUS in October 2000 and was favourably received. Quarterly Newsletters are now being produced and sent out on a wide distribution and are also to be found on MoDWeb. Two Working Papers on the subjects of Claims Risk Management in the Defence Secondary Care Agency and MOD Personnel Claims Risk Management Training have already been presented to the CRMWG and endorsed. Work is progressing in these areas. A further two Working Papers relating to workplace stress claims and road traffic accidents are in preparation.

2.6 As well as spreading the message of claims risk management through publications such as the Annual Report and Newsletters, the RMG has continued to give presentations to various conferences and interested groups. To begin with, presentations were mostly made to audiences with an interest in road safety matters, but more recently the Senior Claims Officer and the RMG have spoken at Chiefs of Staff meetings, the International DERA Accident Symposium, DSDC staffs at Donnington, Devonport Dockyard, Safety Health Environment & Fire Seminars and to staff at Defence Management Training. In each case the presentations were designed to highlight the cost of claims and the value of risk awareness for all personnel. Presentations are tailored to the requirements of the audience and, where possible, statistics relating to the TLB or establishment concerned are included to assist with local risk management.

2.7 Although the risk management database is still in development, some early information has emerged:

About 1 in every 113 civil servants presented a claim to MOD in 2000/2001.

About 1 in every 225 Service personnel presented a claim to MOD in 2000/2001.

44% of all claims received during 2000/2001 were attributed to industrial diseases such as mesothelioma (caused by exposure to asbestos) and noise induced hearing loss which develop over time.

216 Service Personnel Employers Liability claims received, with an estimated cost of £4.44 million, were attributed to unsafe environment and working practices.

38% of all claims expenditure during 2000/2001 were Service Personnel Employers Liability claims.

2.8 It is hoped that once the RMG can identify trends and hotspots they will provide feedback to the areas and establishments concerned. From this feedback action can be taken to try and ensure that similar accidents are not repeated and that systems are put in place to foster

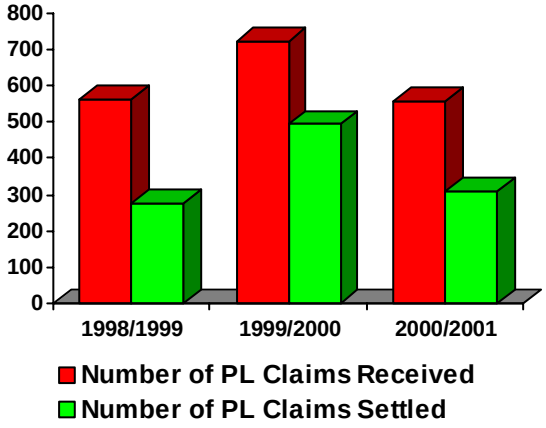
safe environments and practices for MOD employees and members of the public visiting MOD sites.

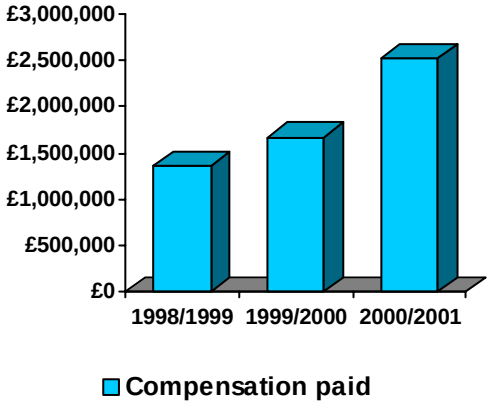
SECTION THREE
CLAIMS HANDLED BY THE PUBLIC LIABILITY GROUP
PUBLIC LIABILITY CLAIMS

3.1 Most claims submitted to the Public Liability Group are for personal injury or property damage. The majority of personal injury claims are from members of the public who have either been injured on MOD property e.g. trips and slips, or have sustained injuries whilst taking part in the various public relations and recruiting activities run by the three Services e.g. assault courses.

3.2 Property damage claims usually emanate from personnel working and living in service accommodation who have had their belongings damaged by the poor maintenance of the properties they occupy. In the past year these have included water damage from burst pipes, damp from poor insulation, pot holes in roads, insecure rubbish bins blowing into vehicles and soot emissions from boiler room chimneys damaging the paint on vehicles.

Public Liability (PL) Claims





	1998/1999	1999/2000	2000/2001
Number of PL Claims Received	563	722	556
Number of PL Claims Settled	276	494	310
Compensation Paid	**£1,357,000**	**£1,672,000**	**£2,524,000**

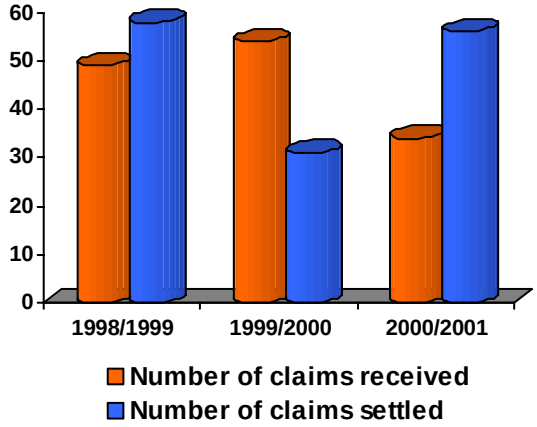
3.3 While there was an increase in the number of claims submitted in 1999/2000 due, we believe, to a backlog of claims released by solicitors once the new Civil Justice Reforms came into force in April 1999, personal injury claims this year have fallen off slightly from the 1998/99 figures. Whilst there is no obvious reason for this, it is thought that it may be due to the fact that since the abolition of Legal Aid for personal injury claims and the advent of "no win no fee" arrangements, solicitors are only submitting claims where there is a good chance

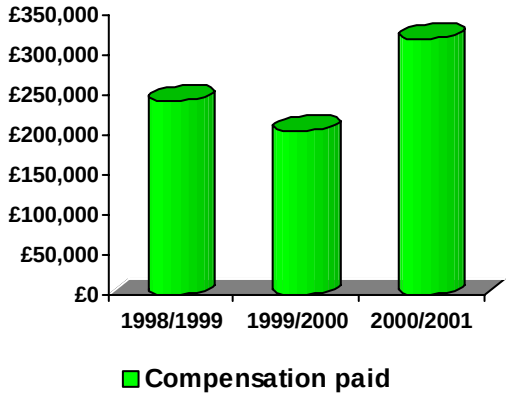
they will succeed and therefore some of the more spurious claims are weeded out at an early stage. The large increase in the amount of compensation paid out this year is due to one claim, involving the Disposal Sales Agency, which amounted to £630,000.00.

Public Liability Claims – Northern Ireland

3.4 The Claims PLG also deals with public liability claims from Northern Ireland provided they are of a political and/or sensitive nature. Claims are normally received from members of the public who have had some contretemps or other with members of the armed forces whilst in support of the RUC. The majority of claims, therefore, will be for alleged assault, harassment or wrongful arrest, quite often at vehicle checkpoints. As can be seen from the table below, the number of claims has decreased due to the cease fire in Northern Ireland which has resulted in less military activity in support of the RUC.

Political/Sensitive Public Liability Claims Arising in Northern Ireland





	1998/1999	1999/2000	2000/2001
Number of Claims Received	49	54	34
Number of Claims Settled	58	31	56
Compensation Paid	**£243,000**	**£206,000**	**£320,000**

MOTOR CLAIMS

"What Englishman will give his mind to politics as long as he can afford to keep a motor car?"

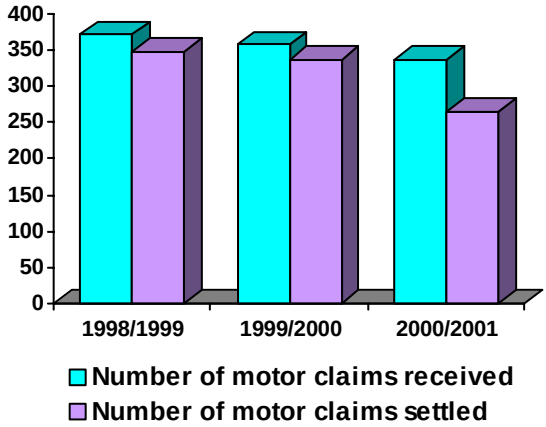
3.5 DC&L(F&S) Claims deals with claims involving Visiting Forces in the UK, and claims against the MOD in those non-EU countries not covered by an Area Claims Officer (ACO). (AXA Corporate Solutions handle under contract (as distinct from under an insurance policy) certain third party claims arising from the authorised operation of UK based vehicles in the UK, and in EU countries not covered by an (ACO)). These 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. DC&L(F&S) Claims does not pay for damage to Ministry of

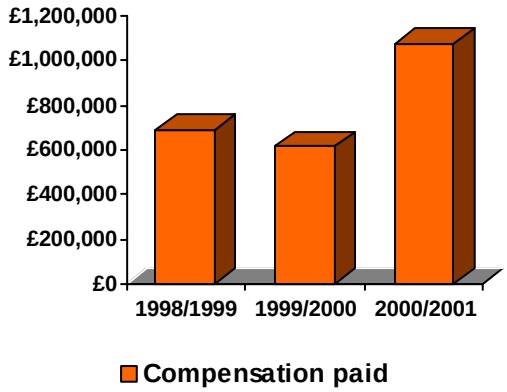
Defence owned or hired vehicles as this is the responsibility of the unit involved. From 1 April 2001 units are also responsible for claims resulting from "loss of use" and for the "write off" of any vehicles damaged beyond economic repair – DCI Gen 108/01 refers.

3.6 It is not unusual for DC&L(F&S)Claims 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 (to be updated later this year), units and organisations should send an F/MT 3 (Initial Accident Report Form) and an 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 the relevant Departmental Claims Handler or Area Claims Office. Unfortunately, this frequently does not happen and claims managers spend a considerable amount of time locating these essential documents.

3.7 Claims managers are required to establish that an authorised driver was driving the Ministry of Defence vehicle on an authorised journey and route. If these criteria are met and all the evidence suggests that the Ministry of Defence driver was liable for the accident, then compensation will be paid. Statistics for motor claims for the last three years are shown in the table below. The number of claims received in financial year 2000/2001 shows the overall trend is still downward. We believe that this could be because fewer visiting forces have been on exercise in the UK and the majority of motor claims emanate from this source. It will be noted that despite the downward trend, the level of compensation paid has increased dramatically, this being due to one visiting forces claim which was settled for over £600,000.

Motor Claims





	1998/1999	1999/2000	2000/2001
No. of motor claims received (excluding claims handled by AXA Global Risk Services UK Ltd)	371	357	336
No. of motor claims settled (excluding claims handled by AXA Global Risk Services UK Ltd)	347	337	265
Compensation paid	**£687,000**	**£613,000**	**£1,076,000**

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

"A man who is not afraid of the sea will soon be drownded for he will be going out on a day he shouldn't. But we do be afraid of the sea, and we do only be drownded now and again"

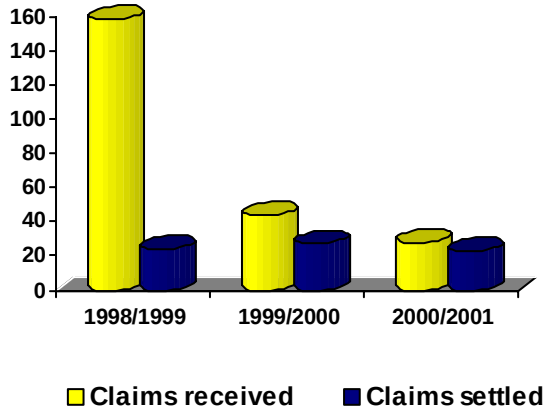
3.8 Maritime claims by and against the Ministry of Defence result mainly from collisions, oil spillage, gunnery/missile firing incidents, damage to static property, wash damage, fishing gear damage and the salvage and recovery of MOD property. Maritime law is complex and much of the legislation dealing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

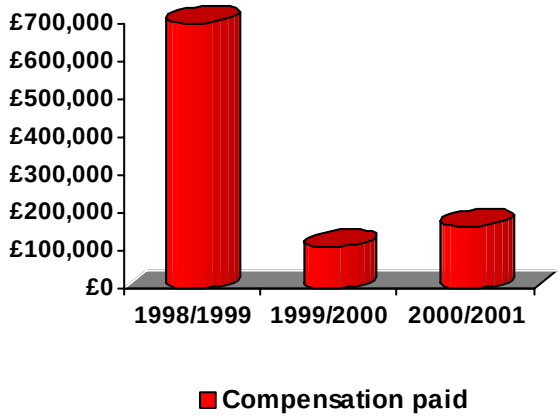
3.9 In addition to the work undertaken by DC&L(F&S) Claims, Flag Officer Scotland, Northern England and Northern Ireland (FOSNNI) and Flag Officer Sea Training (FOST) have delegated authority from the Chief Claims Officer to settle claims of up to £8,000 per fishing gear claim, £5,000 per collision claim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

Salvage

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

Maritime statistics for the last three years

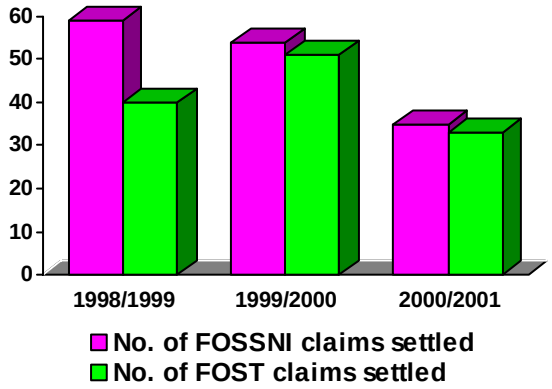


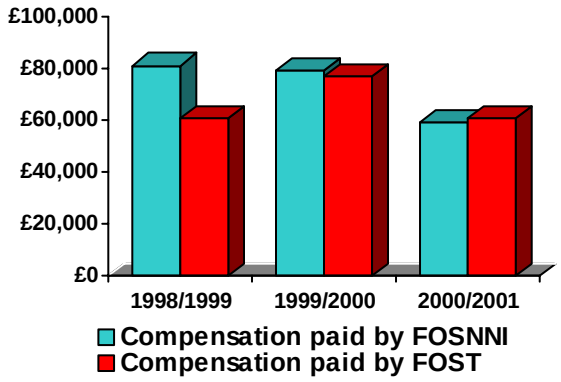


	1998/99	1999/2000	2000/01
Claims received	159	44	28
Claims settled	24	27	23
Compensation paid	**£698,934**	**£109,895**	**£165,733**

Last year has seen a continuation of normal levels of claims activity following the unusually high numbers recorded in 1998/1999.

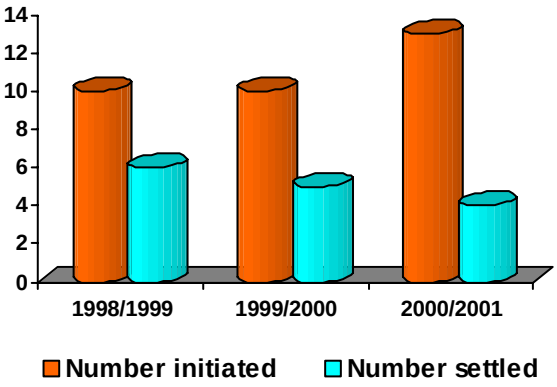
Maritime claims settled by FOST and FOSNNI

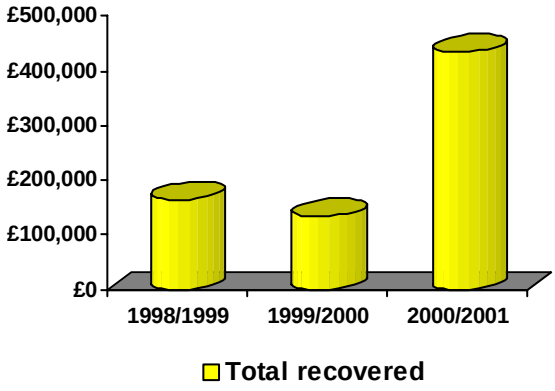




	1998/1999	1999/2000	2000/01
Number of FOSNNI claims settled	59	54	35
Compensation paid by FOSNNI	£81,230	£79,394	£59,154
Number of FOST claims settled	40	51	33
Compensation paid by FOST	£60,859	£76,923	£60,558
Total compensation paid	**£142,089**	**£156,317**	**£119,712**

Maritime Recoveries and Salvage claims on behalf of MOD





	1998/1999	1999/2000	2000/01
Number initiated	10	10	13
Number settled	6	5	4
Total recovered	**£164,804**	**£134,164**	**£434,099**

The amount recovered last year which is a significantly above the previous two years, is primarily the result of one particularly high value salvage claim.

MILITARY LOW FLYING CLAIMS IN ENGLAND, SCOTLAND AND WALES

3.11 The activities of low flying military aircraft can sometimes give rise to claims for compensation from members of the public. The most common claims are those involving injury to or death of livestock and/or damage to property although claims are sometimes received for personal injury. Many of the claims are for relatively small amounts but low flying military aircraft activity is an emotive issue in some areas of the country. Claims arising from low flying military aircraft activity are handled on an ex gratia basis but are investigated in the same way as if the principles of legal liability applied. The foundation of this approach is the Royal Prerogative which gives an absolute right for all military flying activity and, therefore, an injured party has no legal rights of redress for compensation. 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."*

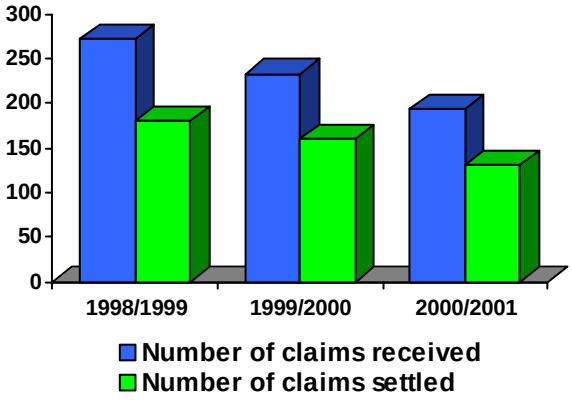
3.12 A procedure has been in place since 1994, following consultation with various farming unions and landowners' associations, for dealing with claims relating to death or injury to livestock. The procedure was most recently updated in December 1999 after a round of consultations with the NFU, Country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

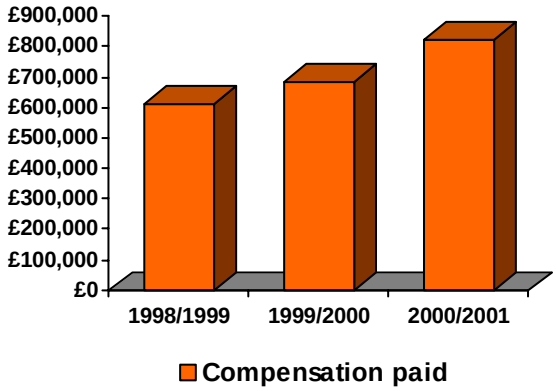
3.13 Unfortunately, this is a category of work which requires careful monitoring to identify potentially fraudulent claims. Once again, however, we are happy to report that no investigations into fraud were initiated during 2000/2001.

3.14 On a local level, where public relations play an important role, RNAS, AAC and RAF Station Commanders have delegated authority to settle straightforward claims up to the value of £200 where the claimant lives within two miles of the airfield. The Regional Community

Relations Officers (RCROs) have been given authority from the Chief Claims Officer to recommend fast track settlements for simple straightforward claims up to £250.

Low flying claims statistics for England, Scotland and Wales



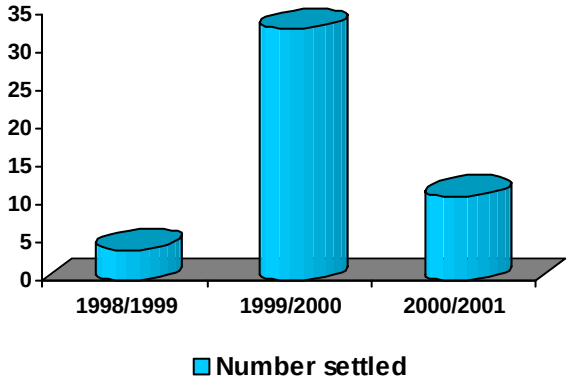


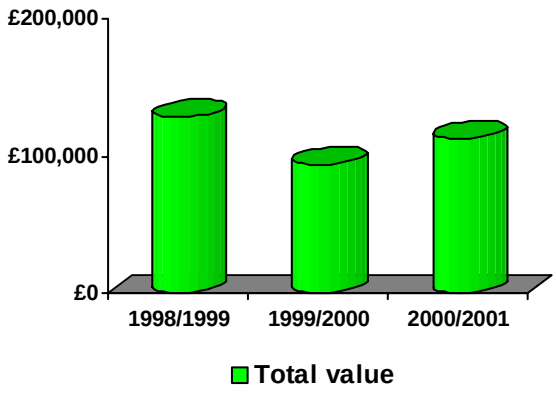
	1998/1999	1999/2000	2000/2001
Number of military low flying claims received	272	233	194
Number of military low flying claims settled	180	160	131
Low flying compensation paid	**£610,000**	**£682,000**	**£822,000**

Once again there has been a slight decrease in the number of claims received. This again reflects the overall general, and continued, reduction in the number of low level sorties over mainland Britain due to operational commitments elsewhere.

3.15 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. This was well illustrated following a RAF Hawk crash at Shap, Cumbria in October 1999 where a number of properties were severely affected by debris from the crash.

Air Crash claims settled by DE



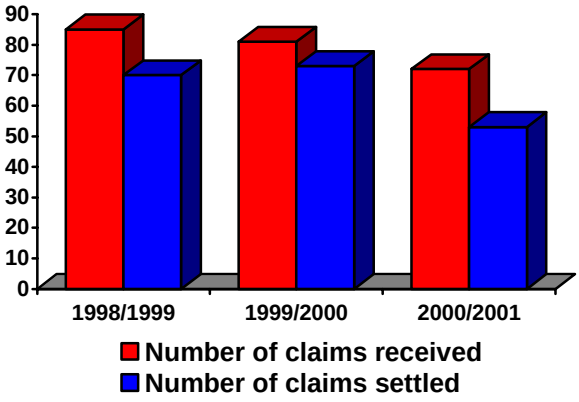


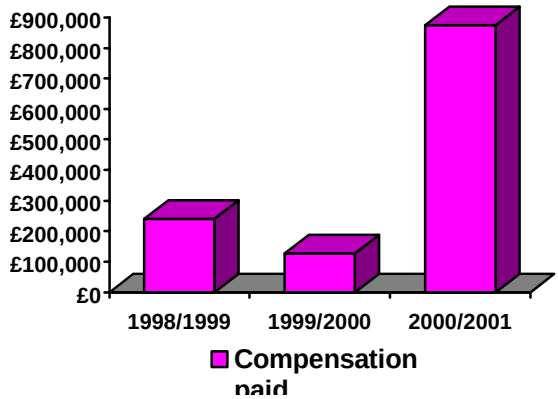
	1998/1999	1999/2000	2000/2001
Claims settled	4	33	11
Total value	£128,300	£93,511	£112,458

VISITING FORCES CLAIMS

3.16 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





	1998/1999	1999/2000	2000/2001
Number of visiting forces claims received	85	81	72
Number of visiting forces claims settled	70	73	53
Compensation paid	**£241,000**	**£128,000**	**£875,000**

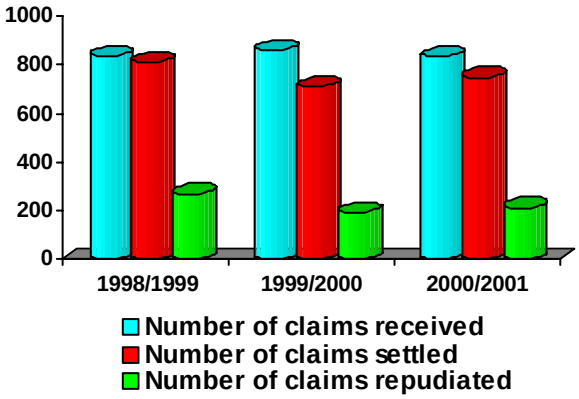
While again the number of claims received shows a downward trend, the level of compensation paid has increased dramatically due to the one motoring claim mentioned in paragraph 3.7.

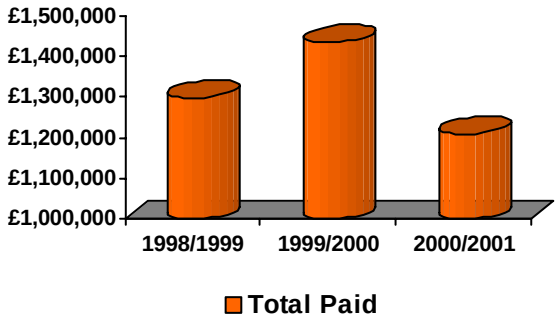
AREA CLAIMS OFFICERS (ACO)

ACO Northern Ireland

3.17 The majority of claims handled by the Area Claims Office in 2000/2001 were as a result of helicopter activity. The main heads of claim were livestock, bloodstock and property damage. The outbreak of foot and mouth in February 2001 had the effect of reducing the number of claims being received from the affected area of South Armagh as low flying in this area was curtailed. Claims settled during the year ranged from £28 for a blouse blown off a clothesline to £9,500 for damage to an astro-turf hockey pitch.

ACO NI





	1998/1999	1999/2000	2000/2001
Number of claims received	834	858	832
Number of claims settled	809	708	747
Number of claims repudiated	270	194	212
Total paid	**£1,297,000**	**£1,433,000**	**£1,210,000**

ACO North West Europe

3.18 ACO NWE is part of the Civil Secretariat, United Kingdom Support Command (Germany) based at JHQ Rheindahlen. It 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. The Area Claims Officer has 10 staff dealing with claims and related issues.

3.19 2000/01 has been a particularly busy year for ACO NWE. Although Road Traffic Accidents continue to form the bulk of the work of the office, claims coverage of exercises in Poland, increasing volumes on Personal Injury cases and achieving record recovery levels have been the main features of the year.

3.20 **Poland** ACO staff have attended every major British Forces exercise in Poland since 1996. The aim has been to assess the condition of the training area on take-over; monitor damages during the exercise and settle claims at the end. Until Poland joined NATO the

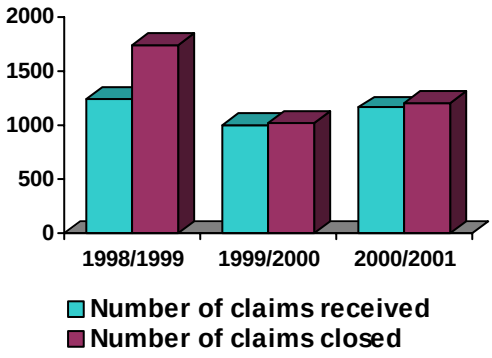
provisions contained within the NATO Status of Forces Agreement did not apply and therefore the UK was responsible for settling all damages claims, including training area damage. Exercise Prairie Eagle 2001 is the first exercise to be conducted under the NATO SOFA banner and ACO staff have been involved in the MOU negotiations and are working closely with the British and Polish forces to develop new systems for handling claims. At the time of writing Prairie Eagle 2001 has gone well and all parties are happy with the new arrangements although claims for the exercise have yet to be finalised.

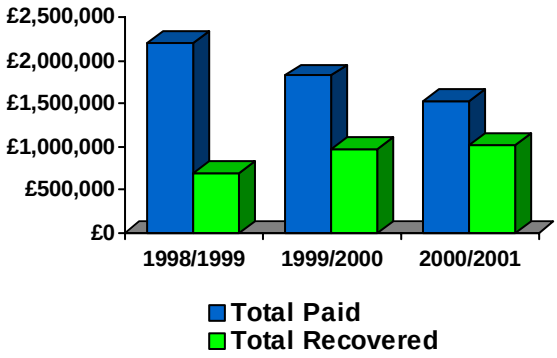
3.21 **Personal Injury Claims** ACO NWE has responsibility for handling all Personal Injury (PI) claims from dependent employees of the Force in Germany and for any claims involving children attending Service Children Education establishments in Germany. Claims are on the increase although it has to be said that an increasing number of claims are being repudiated. All PI claims are handled in accordance with the Civil Procedure Protocols and ACO staff are visiting more incident scenes in order to conduct full investigations in a bid to establish liability.

3.22 **Recoveries** 2000/01 has been a record year for the ACO NWE in terms of recovery action, with over £1Million of MOD losses being recovered. This is mainly due to the successful conclusion of court action which the Force brought against a major German insurer. The decision of the German Supreme Court in July 2000 was the conclusion of 8 years litigation and finally established the British Forces' right to recover costs when Service personnel passengers are injured in all road traffic accidents. The decision resulted in around 80 outstanding claims being settled and almost £500,000 being recovered. Much credit for this outcome must go to ACO staff, particularly Mr John Hawkins who has worked on the case since the beginning and saw it through to a successful conclusion.

3.23 One other significant court decision remains outstanding although ACO NWE remains hopeful that the judgement will be in its favour, with MOD seeking to recover around £200,000 of losses. Attempts to maximise recoveries will continue throughout 2001.

ACO NWE





	1998/1999	1999/2000	2000/2001
Number of claims received	1,245	1005	1158
Number of claims closed	1,744	1011	1208
Total paid	**£2,206,000**	**£1,819,000**	**£1,528,000**
Total recovered	**£700,000**	**£963,000**	**£1,008,000**

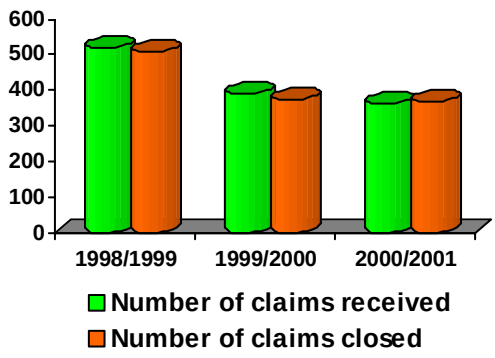
ACO Cyprus

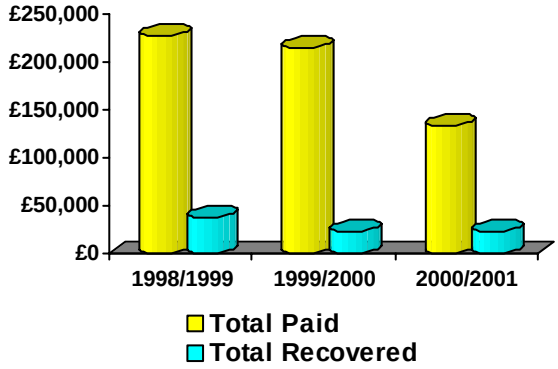
3.24 ACO Cyprus comprises two members of staff who are responsible for processing claims by and against MOD and the Sovereign Base Areas Administration in Cyprus and its territorial waters. The range of claims dealt with is similar to that of ACO NW Europe (road traffic accidents, public and employer's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

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

3.26 ACO seeks to reduce the risk of damage being caused and to that end routinely briefs all exercise reconnaissance officers prior to training taking place. It is of course impossible to quantify the savings made with any certainty, but there can be no doubt that the raising of awareness of local issues and concerns has contributed at least in part to a continuing reduction in claims against MOD. It should also be borne in mind that the British forces' sensitivity to the needs and wishes of the local population has led to more and more training over the last year taking place on those pockets of land which are relatively uncultivated and contain fewer livestock, although of course a significant factor in the reduction in claims is due to the fact that MOD's various operational commitments throughout the globe continue to reduce the armed forces' capacity to train in Cyprus at all.

ACO Cyprus





	1998/1999	1999/2000	2000/2001
Number of claims received	519	389	364
Number of claims closed	509	371	365
Total paid	**£228,000**	**£215,000**	**£134,000**
Total recovered	**£37,000**	**£22,000**	**£22,000**

ACO Bosnia

3.27 ACO Bosnia is based at HQ Multinational Division (SW) in Banja Luka and deals with all claims by and against the UK contingent of SFOR. The majority of claims continue to be as a result of road traffic accidents, which often include personal injuries. However, property damage claims continue to be submitted and as more people return to their properties, claims for compensation for roads built on their property are being made. Claims from Municipalities (local authorities) for damage to longer stretches of existing roads and bridges by tracked and heavy vehicles are increasing.

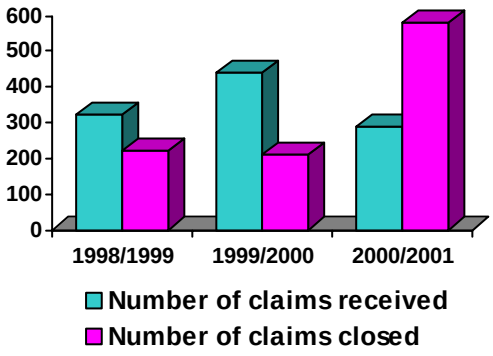
3.28 The situation in Kosovo remains unchanged with no claims policy in place. ACO Bosnia continues to hold potential claims and as further action cannot be taken at present the claims have been recorded as "closed". If a claims policy is agreed as a result of the Technical Agreement being signed there could be a substantial liability to the UK contingent.

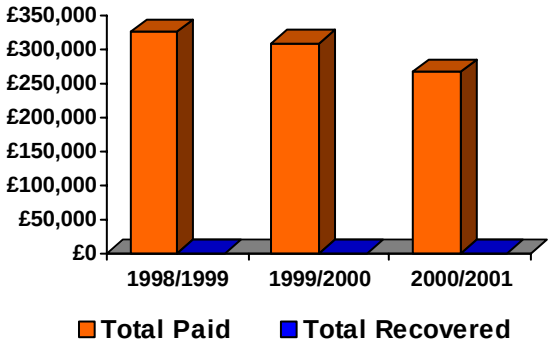
3.29 Also included in the "closed" figures are those claims passed to the Legal Adviser for MND(SW). These claims relate to properties situated on the Glamac Firing Range that were destroyed by Multinational Contingents when using the range for live firing. Should these claims become a future liability, they would not all fall to the UK Contingent to settle.

3.30 While the figure for sums recovered remains at Nil, a claim has been registered with the Ministry of Justice in Sarajevo. ACO Bosnia has continued to press for the claim to be assessed and a meeting will take place with a Judge who will adjudicate the case.

3.31 The ACO post in Macedonia was withdrawn this year with the responsibilities transferring to ACO Bosnia. The figures reported for this year therefore include those transferred from ACO Macedonia.

ACO Bosnia



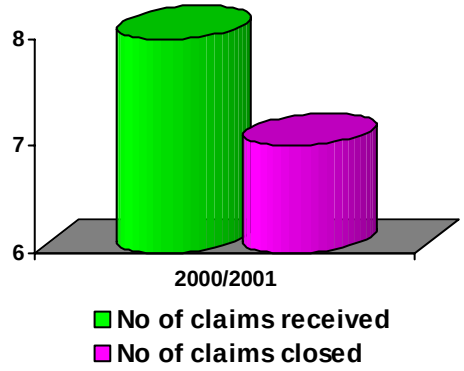


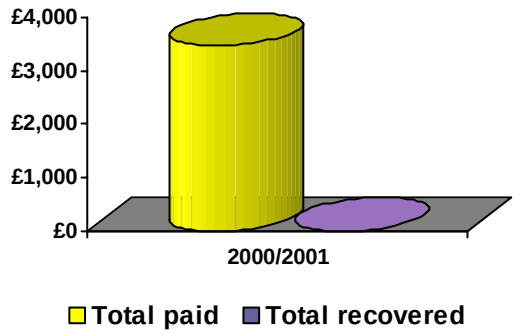
	1998/1999	1999/2000	2000/2001
Number of claims received	321	440	288
Number of claims closed	221	208	578*
Total paid	**£325,000**	**£309,000**	**£265,356**
Total recovered	**£NIL**	**£NIL**	**£NIL**

* Includes 125 Kosovo claims to be actioned when a claims policy is in place in the future and 241 claims passed to Legal Adviser MND(SW).

Claims Officer Falkland Islands

3.32 Claims Officer Falkland Islands has authority to handle common law property damage claims up to a value of £5,000 per claim. Claims are handled in accordance with local law which is identical to English law. In the last year claims have included damage to Landrovers involved in RTAs with service vehicles, damage to a contractor's carpet caused by a burst pipe and a claim for time spent gathering sheep that had escaped through a gate left open by service personnel. The ACO undertakes a range of other duties for the Civilian Secretary.





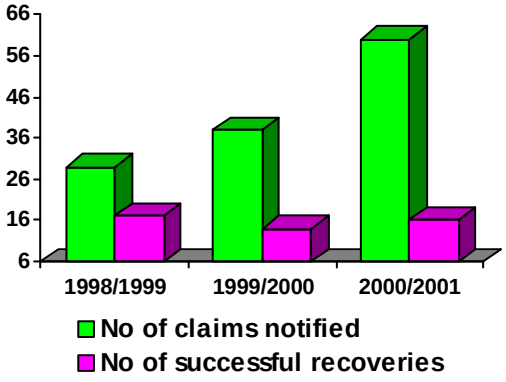
	00/01
Number of claims received	8
Number of claims closed	7
Total paid	**£3,471**
Total recovered	**£NIL**

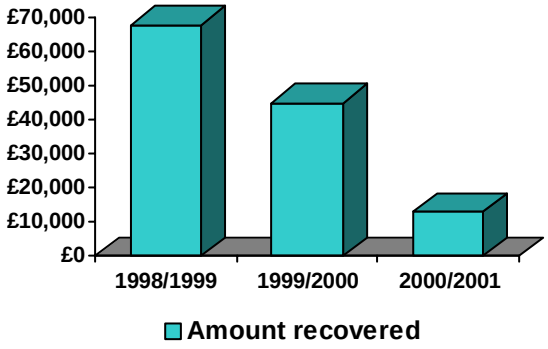
FINANCIAL RECOVERIES

3.33 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, the 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 where a road traffic accident involves a MOD-owned vehicle in the UK. Where the

third party is at fault, recovery is pursued, under contract to MOD, by Willis Insurance Brokers; this comprises the bulk of recoveries.

3.34 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:

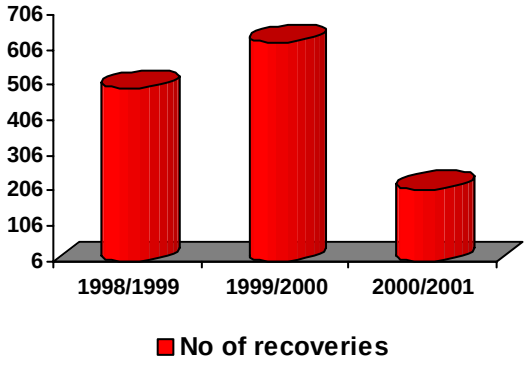


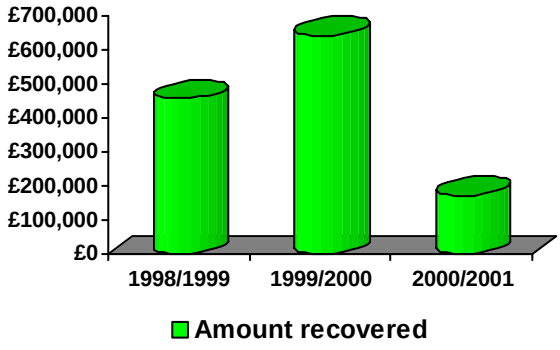


	1998/1999	1999/2000	2000/2001
No of claims notified	29	38	60
No of successful recoveries	17	14	16
Amount recovered	**68,000**	**45,000**	**13,000***

* A further £16,000 was recovered during March although the payments were too close to the end of the financial year to be processed.

3.35 Willis Ltd recover on behalf of the Ministry of Defence the cost of damage caused to its vehicles in accidents which are the fault of a third party. The number of recoveries and the amounts received are shown in the charts below.





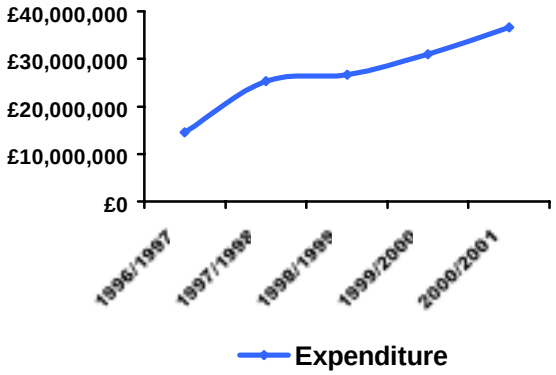
1998/99		1999/00		2000/01	
Number of recoveries made	**Amount recovered (£M)**	**Number of recoveries made**	**Amount recovered (£M)**	**Number of recoveries made**	**Amount recovered (£M)**
495	0.458	626	0.645	208	0.173

SECTION FOUR
CLAIMS HANDLED BY THE SERVICE PERSONNEL EMPLOYERS LIABILITY GROUP

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

4.2 Compensation in the form of a war pension and associated benefits is, also available to all former members of HM Forces suffering from Service attributable illness or injury. War Pensions are administered and paid by the Department of Social Security's War Pensions Agency and are non-discretionary, not means-tested and are made on a no-fault, tax free and retrospective basis. They are uprated annually. Most pension and related benefit rates vary depending on the degree of physical disability and do not reflect actual financial losses or hardships.

4.3 During the last financial year 924 employer's liability compensation claims were received from Service and ex-Service personnel. During the same period 948 cases were settled for approximately £36.6 million (including adverse legal costs) and a further 397 were either repudiated or withdrawn. These on the whole consisted of personal injury cases which were handled by Royal and Sun Alliance who, since 1 July 1996 have been contracted to handle such claims. The contract for this work was extended for one year to bring its term in line with our claims handling contract with AXA enabling us to mount a single competition for the work.



F/Y	Compensation paid (£M)
00/01	36.6
99/00	31.0
98/99	26.7
97/98	25.3
96/97	14.5

BRIEF SUMMARY OF GROUP CLAIMS

Post Traumatic Stress Disorder

4.4 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 MOD has been negligent. The Department does, however, have a duty to ensure that Service personnel receive proper treatment and where we fail in this respect, and the individual suffers some loss or damage as a result, then that individual may be entitled to compensation.

4.5 About 290 claims have been received from former members of the Armed Forces mainly relating to service during the Falkland conflict, Gulf conflict, Bosnia and Northern Ireland. Because many of the claims contain similar allegations a Group Action was set up by the Supreme Court last year. The allegations in general terms are that the Department was negligent in that it failed to properly recognise, diagnose and treat those said to be suffering from post traumatic stress disorder. The Group Action consists of two groups: Group 1 where the earliest alleged failure by the MOD occurred before 15 May 1987 (the date on which section 10 of the Crown Proceedings Act 1947 was repealed) and Group 2 where the earliest alleged failure took place after 15 May 1987.

4.6 At the direction of the High Court solicitors acting for the claimants have been permitted to 'advertise' the Group Action for a six month period commencing April 2001 to ensure that all those who believe they may have been treated similarly have the opportunity to join the action.

4.7 The case comes before the High Court in February 2002 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. A pre trial review will be held before the trial judge sometime between 1 June and 31 July 2001.

Asbestos-related Disease

4.8 The legal position is that even if an ex-Serviceman only now discovers he has an asbestos related disease, he cannot sue for compensation if exposure was before the repeal of Section 10 of The Crown Proceedings Act 1947. Given that controls over the use of asbestos were introduced in 1970, this is and will be the case for the vast majority of ex-Service claimants. (The time between exposure to asbestos dust and fibre and the first signs of disease is typically between 15 and 40 plus years). This legal restriction does not apply to civilians who are entitled to claim compensation if they were exposed after 1 January 1948 by virtue of the 1947 Act. Former member of HM Forces suffering from asbestos related illness associated with their service are, however, eligible for compensation in the form of a war pension and associated benefits.

4.9 The issue of the apparent unfairness in compensation arrangements for ex-MOD employees with asbestos related disease has already been highlighted by MPs. Minister (AF), alongside the Under Secretary of State at the Department of Social Security (then responsible for War Pensions), chaired a meeting with interested MP's at the beginning of last year, to discuss compensation for ex-Service personnel suffering from asbestos related disease.

Nuclear Test Veterans

4.10 There have been no significant developments in this area since March 2000 when the European Court of Human Rights (ECHR) rejected a request for the revision of the judgment in 2 test cases (McGinley and Egan -v- UK and LCB -v- UK) where the ECHR had ruled in favour of the UK.

Gulf Veterans' Illness - Intentions to claim

4.11 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.

4.12 During the reporting year, DC&L(F&S)Claims received 40 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 2001 was 1866.

4.13 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 020 7305 2374); 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 6/75, Ministry of Defence, St Christopher House, Southwark Street, London SE1 0TE

Radiation Compensation Scheme

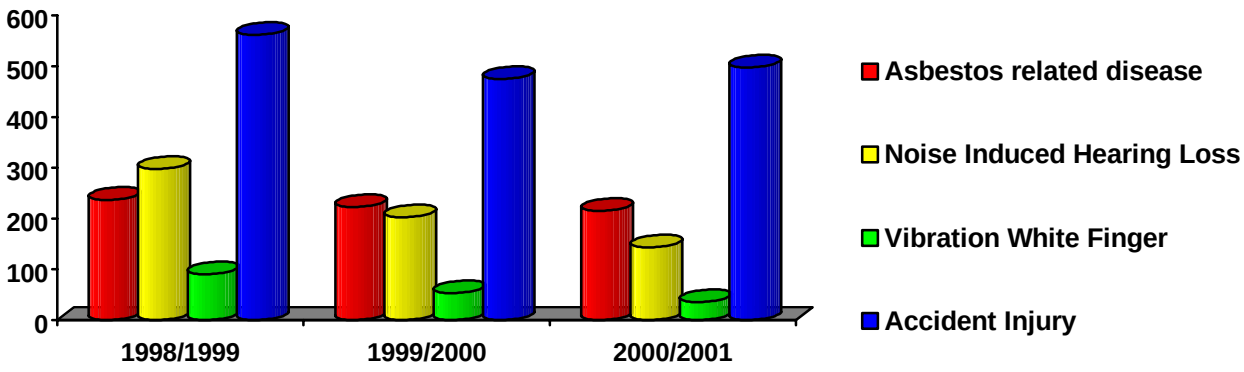
4.14 The MOD is a member of the nuclear industry's Compensation Scheme for Radiation Linked Diseases. This is a no fault scheme where there is no requirement for claimants to prove negligence on the part of the Department in order to receive compensation. The Scheme, which MOD joined in 1994, was set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

4.15 During financial year 2000/01, the Scheme received nine new claims from former Ministry of Defence employees (military and civilian) who believe their illness is associated with exposure to occupational ionising radiation. No claims were settled during the period. (Since 1994 four Ministry of Defence cases have been settled under the Scheme).

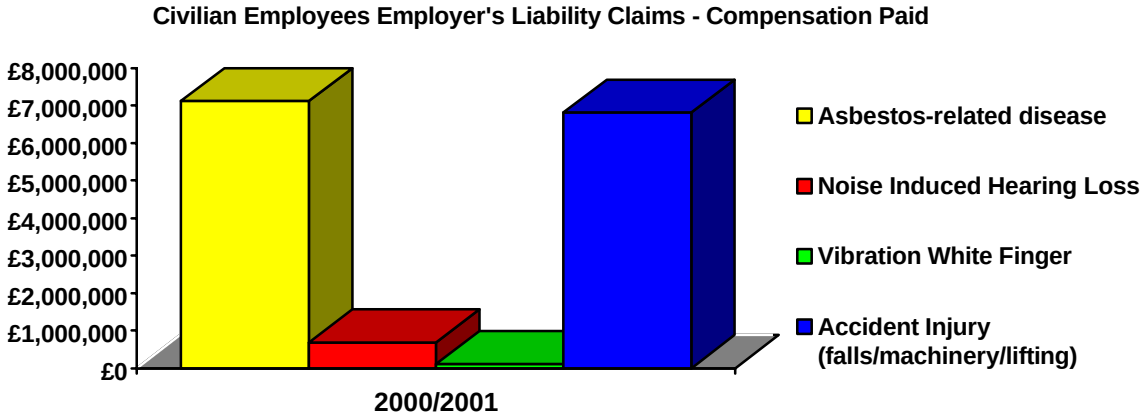
SECTION FIVE - MOD CIVILIAN EMPLOYEES
EMPLOYER'S LIABILITY CLAIMS

5.1 Since 1982, the Ministry of Defence has contracted out the handling of its civilian employee's employer's liability claims. AXA Corporate Solution Services Ltd hold the current contract, which expires in 2002. A follow-on contract to last for a period of five years will be awarded by competitive tender.

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



Type of Claim	Number of claims received in each FY		
	1998/99	**1999/00**	**2000/01**
Asbestos-related disease	237	223	215
Noise Induced Hearing Loss	297	202	143
Vibration White Finger	90	53	35
Accident Injury (Falls/Machinery/Lifting)	562	475	498
TOTALS	**1186**	**953**	**891**

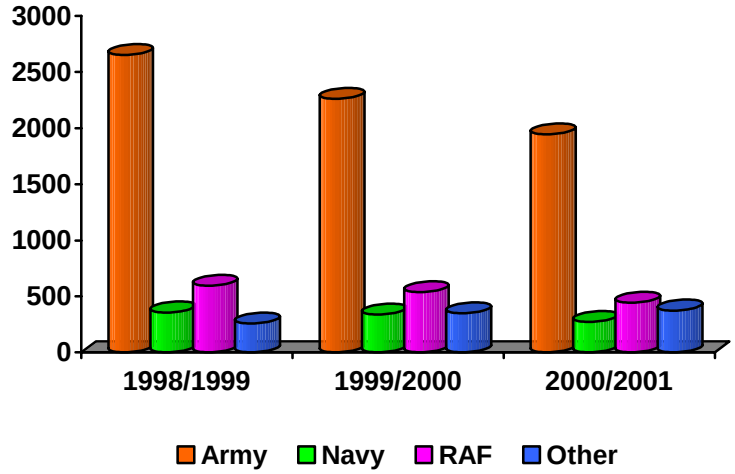


Type of Claim	Cost of Claims	
	2000/01 total paid	**2000/01 outstanding estimate**
Asbestos-related disease	£7.115	£4.331
Noise Induced Hearing Loss	£0.682	£0.362
Vibration White Finger	£0.115	£0.123
Accident Injury (Falls/Machinery/Lifting)	£6.806	£4.220
TOTALS	**£14.718**	**£9.036**

SECTION SIX
THIRD PARTY MOTOR CLAIMS

6.1 Since 1982, the Ministry of Defence has contracted out the handling of third party motor claims against the Department. The current contract, which expires in 2002, is held by AXA Corporate Solution Services Ltd. A follow-on contract to last for a period of five years will be awarded by competitive tender. Details of MOD's liabilities in respect of motor vehicles can be found in **DCI GEN 42/00**.

6.2 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 is shown in the charts below.



Service	1998/99	1999/00	2000/01
Army	2652	2261	1944
Navy	356	337	271
RAF	593	537	443
Other	258	349	373
TOTALS	**3589**	**3484**	**3031**

6.3 In Financial Year 2000/01, AXA settled claims worth £8.777M, on behalf of MOD, in relation to Third Party Motor Claims against the MOD.

6.4 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.

6.5 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. 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 SEVEN
CLINICAL NEGLIGENCE CLAIMS

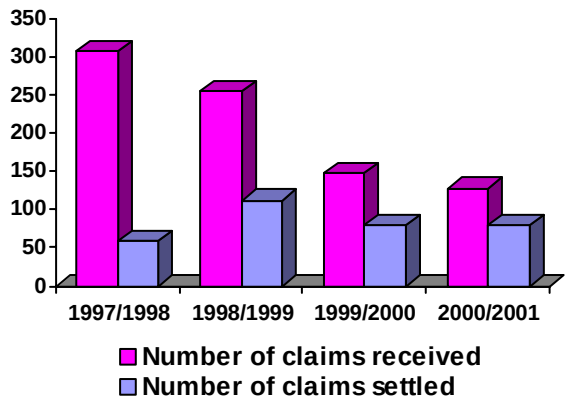
"When religion was strong and medicine weak, men mistook magic for medicine"

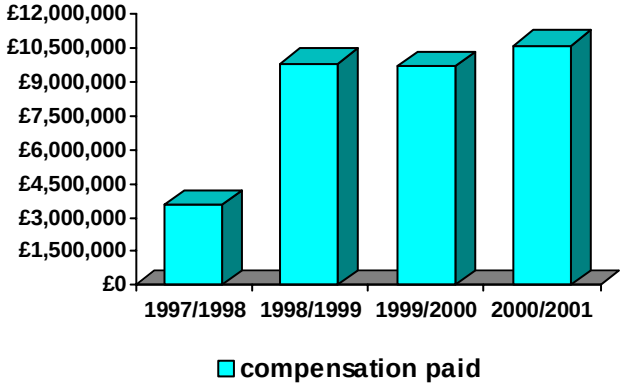
7.1 In a clinical negligence case the Claimant is not home and dry by merely proving negligence. He or she must successfully overcome the hurdle of causation. Even if a medical practitioner or hospital has been negligent it does not always follow that the negligence was causative of the claimant's injury or illness now claimed. Causation issues arise in a relatively high proportion of clinical negligence claims, and those submitted to the Department by their

very nature tend to be long drawn out affairs, involving clinical experts in different specialisms preparing reports for both parties.

7.2 If some solicitors are to be believed, a very large percentage of personal injury and clinical negligence actions are pursued successfully. Defending such claims is an inherently complex business, but we estimate that about half of clinical negligence claims submitted to the Department are successfully repudiated, withdrawn or not pursued.

7.3 During financial year 2000/2001 the Claims Section dedicated to the handling of clinical negligence cases received 128 new claims. The number of active clinical negligence claims at the end of the financial year was 244 compared to 280the previous year. 79 claims were settled during the period at a value of £10,617,263 which included two claims which settled in excess of £1.5 million each. Details covering the past four years are shown below:





	1997/1998	1998/1999	1999/2000	2000/2001
Number of Clinical Negligence claims received	308	255	147	128
Number of Clinical Negligence claims settled	58	112	79	79
Compensation plus cost of claims settled	£3,545,060	£9,816,803	£9,688,420	£10,617,263

7.4 The rate of new claims received continues to fall compared with previous years, probably due to the closure of some service hospitals. The variety of clinical negligence claims is wide ranging and includes allegations of wrongful or late diagnosis of medical conditions, fractured limbs, incorrect or negligently performed medical procedures by military clinicians and brain damaged babies at birth.

7.5 During financial year 2000/01, a number of claims for compensation were received from members of the 1st Battalion, the Parachute Regiment who allege that they contracted malaria, as a result of clinical failure to ensure they had proper anti-malaria protection prior to their deployment to Sierra Leone in May 2000. These claims are ongoing.

7.6 In addition, we received notification of a small number of claims involving NHS patients who were treated by Service clinicians in NHS Trust hospitals. Service clinicians regularly work in NHS hospitals and under the terms of a Service Level Agreement between the Department and the respective NHS Trusts, these claims are handled by the Trust's solicitors. However, the NHS Trust will look to the Department to meet the costs in full where negligence is established on the part of the Service clinician or contribute to the costs where there is partial liability.

SECTION EIGHT
SERVICE PERSONNEL EMPLOYMENT TRIBUNAL CLAIMS

8.1 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 .Employment Tribunals provide a forum in which most legal disputes between employer and employee are resolved. They are intended to be relatively simple and informal without the absolute need for lawyers to represent applicants..

8.2 Service personnel have the right to submit complaints to ETs under the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976 and the Equal Pay Act 1970. 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.

8.3 Claims brought typically involve allegations of unfair dismissal, sexual/racial discrimination or sexual/racial harassment. While the single service secretariat branches will initially receive and investigate Employment Tribunal applications, they have no delegated financial authority to pay such claims which can only be settled by agreement of DC&L(F&S) Claims who hold funds centrally.

8.4 Legal Aid is not available for representation at Tribunals, but some applicants do receive financial assistance in bringing their claims from organisations such as the Equal Opportunities Commission or the Commission for Racial Equality. The issue of costs is different from common law claims. A party cannot normally expect a Tribunal to award costs if they win nor will they generally be ordered to pay the other side's costs if they lose. A Tribunal can exceptionally award costs, if, in its opinion, a party (Applicant or Respondent) has, in bringing or conducting the proceedings, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably.

8.5 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. Tribunals

tend to exercise their powers to make higher and higher awards – particularly where the Respondent is a large well-funded organisation, such as the Ministry of Defence. In such cases it has been suggested that Tribunals make higher compensation awards because it is felt such organisations should have the resources to ensure that internal policies and procedures are such that acts of discrimination/harassment do not occur in the first place.

8.6 It has been reported in the Press recently that research carried out by the Trades Union Congress (TUC) suggested that awards for sex discrimination in Employment Tribunals across the country have almost doubled in the past year to an average of £17,000. The TUC also pointed out that Unions are winning or settling more Tribunal cases then ever before with total compensation of £14M being awarded. In addition, the TUC claim that about 95% of cases taken up by a trade union are won at Tribunal or settled beforehand by the employer.

8.7 The following facts and figures give a flavour of the increasingly difficult legal environment in which the Department is required to work.

Unfair Dismissal

8.8 Service Personnel are debarred from bringing unfair dismissal claims against the Department. 19 claims were however received in this period and 12 claims were either withdrawn by the Applicant or struck out by the ET.

Equal pay

8.9 During 2000/2001, 10 new claims were received which involved equal pay, redundancy or pensions matters. No claims were settled in this period and 1 claim was struck out by the ET.

Sex Discrimination

8.10 During 2000/2001, 21new claims were received alleging sexual discrimination, 2 of which also involved allegations of sexual harassment. 7 sexual discrimination claims were settled during the period at a cost of £63,500. 8 cases were withdrawn by the applicant or struck out by the ET.

Sexual Harassment

8.11 During 2000/2001, 2 new claims were received alleging sexual harassment. 3 sexual harassment cases were settled in the period at a cost of £15,000. 3 cases were either withdrawn by the applicant or struck out by the ET.

Racial Discrimination

8.12 During 2000/2001, 12 new claims were received alleging racial discrimination of which 4 also involved allegations of racial harassment. 6 racial discrimination cases were settled during the period at a cost of £47,500. 7 cases were either withdrawn by the applicant or struck out by the ET.

Racial Harassment

8.13 During 2000/2001 4 new claims were received alleging racial harassment. 1 racial harassment case was settled during the period at a cost of £50,000. No cases were withdrawn by the applicant or struck out by the ET.

Homosexuals

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

8.15 This policy was challenged in the European Court of Human rights (ECHR) by four ex-Service personnel dismissed on the grounds of their homosexuality. On the 27 September 1999 the ECHR ruled that in relation to these cases, there had been a violation of those individuals' right to respect for their right to private life under Article 8 of the European Convention on human rights. The Court further ruled that two of the applicants also had their rights violated under Article 13 – the right to an effective domestic remedy.

8.16 In response to the ECHR ruling, the Secretary of State made an immediate public statement, accepting the ruling of the ECHR and suspending the policy of discharging personnel on the grounds of homosexuality. Following a thorough policy review the Secretary of State made an announcement in the Houses of Parliament on12 January 2000, to the effect that homosexuality was no longer to be a bar to recruitment or retention in the Armed Forces.

8.17 Meanwhile the ECHR still had to decide what level of compensation to award the four ex-Service personnel. Separate submissions to the ECHR were made by both the United Kingdom Government and the legal representatives acting for the four applicants. On 25 July 2000, after considering all the submissions, the ECHR promulgated its decision. The compensation sums varied from £59,000 to £113,875. Legal costs were also awarded, which is normal practice, bringing the total cost to the Department of the four claims to £406,075. The compensation sums awarded were higher then the sums offered by the United Kingdom government, but were significantly lower then the sums claimed by the four applicants. Five

similar cases are currently being considered by the ECHR and a decision on the awards of compensation is expected during financial year 2001/2002.

8.18 Following the ECHR decision on 27 September 1999, a decision was taken at ministerial level that attempts should be made to settle those claims from ex-service personnel who had been discharged as a result of their homosexuality, whose claims were already in train before an Employment Tribunal and whose accounts of the events leading up to their dismissal were accepted as being substantially factually true. 5 such claims were settled during the financial year 2000/2001, and compensation of £79,250 paid. Negotiations are continuing in an attempt to reach amicable settlements in the remaining cases. 31 new ET applications were received during Financial Year 2000/2001.

SECTION NINE
INSURANCE AND INDEMNITIES

Insurance

9.1 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.

9.2 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.

9.3 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

9.4 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.

9.5 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. A frequent example is the Services' participation in charity fund-raising events eg inviting members of the public to take part in assault courses, or giving rides to prize-winners in service helicopters. 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.

9.6 DC&L(F&S)Claims issued around 155 indemnities in 2000/2001 and commented on a similar number of other indemnity issues.

9.7 Indemnities that arise from the Department's contractual business are the responsibility of the appropriate Commercial Branch, with policy guidance provided by the Defence Procurement Agency (Defence Commercial Policy2).

Wider Markets

9.8 Income-generating activity under the Government's initiative for Selling Government Services into Wider Markets is an exception to the rule that the Ministry of Defence does not purchase insurance. Budget Holders undertaking this work must obtain a full range of relevant business insurances. The cost of the insurance premium should be recovered in the charges raised from customers. The purchasing of insurance is necessary in order to ensure that the full cost of undertaking commercial activities is borne by the customer, rather than the taxpayer, and that the Ministry of Defence does not have an unfair financial advantage over commercial companies which are in competition for the same work.

9.9 Advice about insurance and risk reduction may be obtained from DC&L(F&S) Claims and from the Ministry of Defence's insurance brokers, Willis Ltd, in accordance with DCI Gen 254/98. Willis have created a specialised package of insurance policies offering a full range of business insurances for Budget Holders undertaking income-generating activity.

SECTION TEN
NOVEL AND CONTENTIOUS CLAIMS

Electrocution Injuries

10.1 While serving with the Army in Germany, the Claimant was loading vehicles onto railway wagons in a marshalling yard, when he was ordered to climb onto the roof of one of the wagons to retrieve an oil can that inadvertently had been left there. While on the roof of the wagon he came into contact with a live overhead power cable which he had been assured

had been made safe. The resultant electric shock threw him to the ground. He sustained 60% burns to the body, damage to the skull, electrocution cataracts and a leg had to be amputated. He suffers tetraplegia and needs 24hrour nursing care for the rest of his life. The MOD admitted liability and the case was settled for £3,675,000 by way of a Counsel to Counsel settlement conference- the highest amount of compensation ever paid by MOD Claims.

Horseplay

10.2 A former member of HM Forces pursued a claim for compensation through the Civil Courts having sustained serious head injuries while serving in the Army, when he fell from the tailgate of a moving Army lorry returning to camp from a night out in a local town. 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.

10.3 Following a trial on liability in the Royal Courts of Justice, London. judgement was handed down in the Department's favour. The claimant was, however, granted leave to appeal.

10.4 The Appeal was heard in the Court of Appeal where the Judges found in favour of the claimant but stated that contributory negligence played an important part in this case. Liability was therefore split 75% claimant to 25% MOD. Following subsequent negotiations between the two parties, the claim was settled for £75,000 (£225,000 less than the value of the claim had it been on the basis of 100% liability).

Head injury

10.5 The Claimant, then serving in the Royal Corps of Transport in Munster Germany, suffered serious head injuries when, on 1 May 1988, he fell from a window ledge on the top floor of his accommodation block, while cleaning a window in preparation for an inspection. He submitted a claim for compensation against MOD alleging that the accident, and subsequent injury was the result of MOD negligence.

10.6 On legal advice MOD accepted liability on a two thirds/one third split in favour of the Claimant. However, as neither party had been able to agree on the level of damages payable, the case proceeded towards trial where a Judge sitting in the Royal Court of Justice, would rule on the matter. However, the claim was settled on the steps of the Court for £85,000 (£42,500 less than the value of the claim had it been on the basis of 100% liability).

Smoke inhalation

10.7 The action arises out of a incident off Gibraltar when on 1 December 1987 a missile on board HMS Brazen was accidentally discharged causing a fire. The Claimant, who was then a serving member of the Royal Air Force Ordnance Disposal Team in Gibraltar, was ordered to attend the incident in order to deal with the missile warhead, which fortunately had not detonated. The conditions in which he had to work , without proper breathing apparatus, caused him to inhale smoke and fumes leading to the development of asthma. Subsequently he

made a claim against the Ministry of Defence for compensation, alleging that as a result of his asthma he was unable to progress his military career and was obliged to seek lower-paying civilian work after his discharge from the Royal Air Force at an earlier time than he would otherwise have been discharged.

10.8 The Ministry of Defence accepted liability on legal advice. The case was settled for £160,000 following negotiations between the two parties.

Crush Injury

10.9 The Claimant was a volunteer with the RAF Reserve and instructed cadets in glider flying. At the end of a day's flying while attempting to place the glider trailer onto the tow-bar at the rear of a 4 ton truck, he trapped his head between the chassis and trailer when the vehicle, which the driver had left in gear, moved back.. The Claimant sustained severe head injuries, which included epilepsy, facial paralysis and a total loss of taste and smell.

10.10 Prior to the accident, he worked in the City as a Senior Broker. However, as a result of his injuries he was unable to continue with his job and was eventually made redundant on medical grounds. A significant compensation claim totalling £1.2 million was submitted. However, the claim was eventually settled for £500,000.

Motor Bike Accident

10.11 The Claimant was a member of a TA motor cycle display team. During the course of a public display he was one of a group whose job it was to lie down in front of a motorbike that would mount a ramp and attempt to jump over the group. Unfortunately, the rider misjudged the jump, landing on the Claimant rendering him paraplegic.

10.12 As a result of the accident he was unable to continue with his job as a fitter. A claim against MOD was made alleging that the accident was the result of an 'unsafe system of work', and compensation was sought for loss of earnings and future care. The case was eventually settled for £320,000 through negotiation without the issue of legal proceedings.

Gunshot Injury

10.13 The Claimant sustained a serious gunshot injury to his leg when a fellow soldier negligently discharged his weapon while on exercise in Kenya, resulting in his medical discharge from the Army.

10.14 A claim for future loss of earnings was submitted. The MOD claims handlers instituted a rehabilitation programme shortly after his discharge. He fully engaged in the programme and so impressed the rehabilitation company that they offered him a permanent job. This enabled a prompt return to the labour market, thereby capping the potential value of the claim.

Accident in Rough Seas

10.15 The Claimant, a submariner, submitted a compensation claim against MOD alleging that he suffered personal injury as a result of the submarine, of which he was a crew member, being struck by a large wave during a surface patrol. His solicitors argued that the MOD had breached its duty of care as the surface patrol was too dangerous given the rough sea conditions. Enquiries by the MOD claims handlers established that he was provided with adequate personal protective equipment including waterproofs and a harness. Moreover, while the boat surfaced during rough seas the force of the storm did not exceed the maximum possible permitted guidelines for surface patrol.

10.16 Consequently, the claim was repudiated and subsequently withdrawn without recourse to legal proceedings.

MacDonald -v- MOD (Homosexual Dismissal)

10.17 Mr MacDonald was a serving Flight Lieutenant, whose resignation from the RAF was compulsorily effected in 1997 because of his voluntary declaration of homosexuality. He lost a claim at a full hearing at an Employment Tribunal (ET) that he had been discriminated against unlawfully on grounds of sex, contrary to the Equal Treatments Directive 76/207/EEC and section 6 of the Sex Discrimination Act 1976. However, following the ruling by the ET, Mr MacDonald was granted leave to take his case to the Employment Appeals Tribunal (EAT).

10.18 Mr MacDonald's EAT hearing took place in Edinburgh on 19 September 2000 before His Lordship Lord Johnstone, a Judge of the Court of Session. A decision was given on 25 September 2000 that the EAT found in favour of Mr MacDonald in respect of his claim that he had been discriminated against unlawfully on grounds of sex, contrary to the Equal Treatments Directive 76/207/EEC and section 6 of the Sex Discrimination Act 1976. The EAT overturned the original judgement of the Employment Tribunal (ET) and gave a radical interpretation of the Sex Discrimination Act, which appeared to run contrary to the European Court of Justice's previous judgements.

10.19 The judgement of the EAT was radical in that it overturned the previously accepted interpretation of the Sex Discrimination Act 1975: it found that the word "sex" should be interpreted to include not just gender but also sexual orientation. At a meeting in October 2000 with legal advisers from a number of government departments, it was agreed that the decision of the EAT should not go unchallenged, as it would have wide implications, far beyond those relating to the termination of the service of members of the armed forces on the grounds of homosexuality. In particular, in widening the scope of liability under the Sex Discrimination Act, the EAT's decision could give rise to claims under that Act against private employers as well as those bodies providing education and those providing goods, facilities and services in the commercial sector. Moreover, such a decision, if it remained unchallenged, would also extend the scope of liability in respect of claims for indirect sex discrimination.

10.20 Although the appeal was lodged in January the judgment was not handed down until 1 June. The Inner Court of the Court of Session (equivalent to the Court of Appeal in England and Wales) ruled in favour of the Ministry of Defence and ordered that the decision of the Employment Tribunal be restored.

Sex Harassment /Victimisation

10.21 An Employment Tribunal application was made by an Acting Sgt (Male) who claimed that he was sexually harassed by his female superior Officer (Sgt.) during a period when they worked together. He claimed that he was subjected to both verbal and physical harassment from the female Sgt who it was claimed admitted she wanted to have a sexual relationship with him. Furthermore he claimed that when he rejected her advances their working relationship deteriorated and he was, against his wishes, posted away from the unit.

10.22 The Army's Equal Opportunities Investigation Team investigated these matters and concluded that there was independent evidence to confirm the version of events made by the Acting Sgt. The female Sgt readily admitted to harassment during interview but claimed she was confused as she was taking the anti-depressant drug Prozac at the time and this effected her judgement. There was no evidence however that the Acting Sgt's posting away from the unit was for any reason other then poor performance.

10.23 An amicable settlement of £2000 was arranged with the Acting Sgt prior to a full Tribunal hearing in December 2000.

Racial Discrimination

10.24 An Employment Tribunal application was made by an RAF Sqn Ldr, a serving Medical Officer, (of ethnic origin) who claims that he had been discriminated against, in that he was not considered for specialist registrar training, and the failure to allow his appeal against this decision. The applicant also alleged that he had been racially harassed by a colleague making racially derogatory comments. The outcome of the applicant's redress of complaint upheld the racial harassment element allegations, but the major complaint over the specialist training was not upheld.

10.25 Legal advice, obtained from Counsel, suggested that despite the findings of the internal investigations into the applicant's complaints the Department had only a 40% chance of successfully defending this case at the 6 day ET hearing. Employment Tribunals recognise that racial discrimination is rarely blatantly carried out and that where it is apparent that individuals of an ethic minority have been disadvantaged in comparison with their white colleagues inferences of racial discrimination can be, and are often, made. It was decided that in the circumstances that the Department should seek an amicable settlement of this claim, prior to the ET hearing – on a strict without admission of liability basis.

10.26 The applicant originally sought the sum of £3 million by way of compensation, but eventually informed the Department that he would accept £30,000 in settlement. The Department offered the sum of £6,000 which was accepted.

Racial Discrimination

10.27 An Employment Tribunal application was made by a former member of the Jamaican Defence Force who alleged that he had been subjected to racial discrimination by members of the staff at the Royal Military Academy, Sandhurst (RMAS) while undergoing training there as an Officer Cadet in 1998. The allegations included, verbal abuse, victimisation, and being wrongfully accused of theft. He was discharged early from RMAS on 5 November 1998.

10.28 The Army's Equal Opportunities Investigation Team investigated thoroughly the complaints made, but found no evidence to support the contention made by the applicant that he had been discriminated against because of his race.

10.29 The applicant failed to bring his case within the statutory time limits and the Department argued that the Tribunal had no jurisdiction to hear this case. This issue was resolved at a preliminary hearing before London South ET on 13 November 2000. The Tribunal agreed with the Department and unanimously dismissed this case on the jurisdiction point.

Clinical Negligence

10.30 The Claimant joined the Army in August 1996. He reported to his training establishment to commence fitness training. During basic training he developed pain in his groin and left thigh and as a result was unable to complete his Basic Fitness Test. A medical examination took place and he was prescribed a painkiller and physiotherapy. The pain got worse and at a subsequent medical examination he was given crutches and sent home on sick leave. At home he suffered a fall down some stairs and was taken to hospital where a medical examination found that he had originally suffered a stress fracture to the neck of his femur (thigh bone) which had displaced as a result of his fall at home. As a result of these injuries the Claimant was discharged from the Army.

10.31 The allegations of clinical negligence surrounded the alleged negligent medical treatment he was initially given, i.e. the failure to take an X ray of his leg and properly diagnose his condition, and to send him home when it was quite unsafe to do so. Independent clinical advice was obtained and the advice of Counsel. It was felt that the Department would be found liable should this claim go to court. Consequently an amicable out of court settlement was negotiated with his solicitors. His legal advisers originally claimed £308,000 in compensation, a significant proportion to cover future loss of earnings. This was opposed and the claim was eventually settled for the sum of £95,000 in January 2001.

Clinical Negligence

10.32 The Claimant, the wife of a serviceman, underwent a hip replacement operation in August 1984. She claimed that the surgery, carried out by Service doctors, was performed negligently in relation to the manner of insertion of the prosthesis into the femur which caused her ongoing pain and suffering. There are also allegations concerning the failure to advise and counsel her about the outcome of the operation and to discuss with her the option of re-operation of the hip. This claim was first intimated in 1989. Numerous medical and care reports were sought and the legal advice received was clear that liability should be conceded. However the Department argued strongly that she had failed to mitigate her pain and suffering by not having a further operation to correct the failures of the original operation. The Claimant's solicitors put forward an offer to settle the claim in the sum of £395,000. The claim was settled amicably in January 2001 for £300,000.

Clinical Negligence

10.33 The Claimant suffered from the condition of osteoid osteoma in his right shin. In November 1993 he was seen by a Service clinician who eventually carried out an operation on the leg in January 1994. Unfortunately the procedure (a 13.5 en bloc bone resection) used by the clinician did not resolve the problem and the leg became infected which resulted in a below knee amputation. The Claimant was medically discharged from the Army and since that time has suffered serious drug abuse problems and depressive illness.

10.34 The allegations of clinical negligence focused on the actions of the Service clinician and the operation he performed. Independent medical opinion was that the operation had been carried out negligently. In fact serious questions were raised as to why the clinician even attempted to carry out this type of surgery, which was described by medical experts as "extremely aggressive". Liability was conceded. The Department did however highlight the fact that he was a heavy smoker and this may have had an adverse effect on matters. This claim was amicably settled in February 2001 for £490,000.

Exaggerated Claim

10.35 Following an alleged accident in the course of his employment, the Claimant issued proceedings against MOD and served a schedule of loss valuing his claim in excess of £100,000. In an attempt to further promote his claim, he advised a local newspaper of his case. The local paper obliged with a double page spread including a large colour photograph of the Claimant posing with his crutches. It later transpired that the crutches were for "decoration purposes only". The claim was forcefully repudiated . The Claimant withdrew his claim, incurring liability for his own solicitor's costs.

Visiting Forces Claim

10.36 The Claimant brought a claim against the United States of America following a RTA when the Claimant's vehicle was struck head on by a US Government owned vehicle

attempting to overtake a parked vehicle. The Claims Public Liability Group adjudicated the claim under the terms of NATO SOFA. The claimant, a scientist, suffered severe injuries which resulted in his temporary paralysis and short term memory loss. The claimant's predicament was exacerbated by the fact that he had just completed a dissertation which, during the crash, was scattered to the four winds. The claim was settled at £667,000 with a large proportion covering care costs and future loss of earnings.

ANNEX A

DC&L(F&S)Claims - Organisation

Chief Claims Officer Grade B1

Senior Claims Officer Grade C1

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
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.

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 Corporate Solution Services Ltd.

Regulational claims policy
Regulational 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 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 activity 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.

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 it is alleged that MOD has acted negligently.

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

Risk Management Group

Staff

Team Leader – Band C2
1 Risk Policy Adviser – Band D
1 RISK & IT Manager – Band D
1 Assistant Adviser Risk & IT - Band E1

Risk Management
Development and implementation 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. Secretariat to the Claims Risk Management Working Group. Risk management statistics. Claims and risk presentations

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

DC&L(F&S)CLAIMS STAFF, PROGRAMME AND OPERATING COSTS - FINANCIAL YEAR 2000/2001

Costs

Operating Costs	-	£0.97 million
Programme Costs	-	£87.53 million (compensation, legal costs, experts' fees, etc.)
Total Costs	-	£88.5 million

DC&L(F&S) staffing as at 31 March 2001

GRADE	ESTABLISHED POSTS	ROLE
B1	1	Chief Claims Officer
C1	1	Senior Claims Officer
C2	5	Team Leaders
D	17	12 Claims Managers 1 Budget Manager 1 Policy & Contracts Adviser 1 Insurance and Indemnities Adviser 1 Risk Policy Adviser 1 Risk & IT Manager
E1	11	7 Assistant Claims Managers 1 Asst Adviser Risk & IT 1 Budget Officer 1 Asst Adviser Indemnities & Insurance 1 Focal Point Leader
E2	4	1 Payments Co-ordinator 1 Administrator Service Personnel Claims 2 Focal Point Administrators

ANNEX B

TOP TWENTY CASES (BY VALUE) SETTLED BY DC&L(F&S)CLAIMS IN FINANCIAL YEAR 2000/2001

"A lawyer with his briefcase can steal more than a thousand men with guns"

CLAIMANT	TYPE OF INJURY/LOSS	COMPENSATION
ARMY	Received electric shock and left quadraplegic	£3,650,000.00
ROYAL NAVY	Negligent treatment of cancer	£1,950,000.00
CIVILIAN (child)	Negligent treatment of Downs Syndrome child.	£1,650,000.00
ROYAL NAVY	Claimant left paraplegic when fell from the top of a mast	£1,408,771.63
ARMY	Abseiling incident left claimant tetraplegic	£1,215,715.05
ARMY	Claimant received electric shock after banging head on cable	£978,250.00
CIVILIAN	Driver of a vehicle hit head on by a U.S. military vehicle. Injuries led to loss of qualification and employment opportunity.	£667,422.00
ARMY	Shot in leg, leading to amputation	£639,957.27
ARMY	Fatality, due to helicopter collision.	£575,000.00
ARMY	Suffered head injuries when jumping from a vehicle which experienced brake failure.	£502,158.91
CIVILIAN	Operation on right arm that caused claimant to lose the use of the arm.	£490,000.00
ARMY	Negligent treatment of bone tumour leading to Deep Vein Thrombosis (DVT)	£490,000.00
CIVILIAN	Negligent treatment of Diabetes resulting in impaired vision.	£480,000.00
ROYAL AIR FORCE	Fatality in Hercules crash	£475,000.00
ARMY	Fatality in helicopter crash	£475,000.00
ARMY	Negligent treatment of a rectal fissure	£470,000.00
ARMY	Injured in a Road Traffic Accident	£395,508.50
ARMY	Claimant sustained chest injury	£387,000.00
ARMY	Negligent treatment of warts	£382,999.42
ARMY	Frostbite to feet in Canada, Inadequate protection provided.	£377,348.15

ANNEX C

TOP TEN (BY VALUE) SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS SETTLED BY ROYAL AND SUN ALLIANCE IN FINANCIAL YEAR 2000/2001

TYPE OF INJURY/LOSS	COMPENSATION
Struck by motor vehicle while on march	£1,360,000
Serious back injury following RTA	£1,325,000
Injured following aircraft collision	£776,130
Fell from cliff face	£650,000
Disease from solvent exposure	£545,880
Injured back as a result of slipping on oil	£541,346
Serious head injury as a result of being crushed	£529,109
Killed following aircraft crash	£505,651
Injured following aircraft crash	£480,500
Injured in RTA	£420,000

ANNEX D

TOP TEN (BY VALUE) CIVILIAN EMPLOYEE EMPLOYER'S LIABILITY CLAIMS SETTLED BY AXA GLOBAL RISKS IN FINANCIAL YEAR 2000/2001

TYPE OF INJURY/LOSS	COMPENSATION
Serious multiple injuries	£423,868
Severe injury to right forearm	£308,463
Asbestos related - Mesothelioma	£261,482
Fractured skull	£224,565
Very serious injuries to left leg and right forearm	£202,878
Asbestos Related – Mesothelioma	£181,144
Serious knee injury	£175,863
Injury to wrist	£172,140
Asbestos Related – Mesthelioma	£162,223
Back injury	£161,014

DC&L(F&S)CLAIMS ANNUAL REPORT 2000/2001
PART TWO - LAW AND PRACTICE
SECTION ONE – CIVIL JUSTICE REFORMS

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

Civil Justice Procedures

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

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

In keeping with the reforms the Courts have continued to take a pro-active approach to case management setting down directions which decide the order in which issues are to be resolved and 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 plays an important part in the new system and the courts will consider whether the potential benefit of taking a particular step justifies the cost.

Experts

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 persons to sign the Statement of Truth or verify the Defence will be the Chief Claims Officer or the Senior 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. At the outset, and indeed some time before the changes took place, Claims officials undertook additional specialist training to ensure they would comply with the new rules. Updating and refresher courses and workshops have been undertaken during the last year. The acquisition of new and specialist skills has been recognised by the introduction of the Claims & Legal Functional Competence Framework.

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

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

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.

Legal Aid

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

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
ALTERNATIVE DISPUTE RESOLUTION AND COUNSEL TO COUNSEL CONFERENCES

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

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 2000/2001, for example, 9 such conferences were held and compensation totalling £7.5M was agreed against claims totalling £12.03M Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher.

PART TWO SECTION THREE
THIRD PARTY ACCIDENT SCHEME (ToPaS)

If MOD civil servants or Service personnel are injured by a third party while on duty it is the individual's own responsibility to pursue a claim for compensation without any assistance or involvement by the Department. The only exception to this has been that civil servants injured in road traffic accidents can have their legal costs underwritten by their TLB. This arrangement does not, however, apply to Service personnel or to civil servants injured in other circumstances. This position has long been a cause of considerable dissatisfaction to staff and led to heated correspondence about it in Paperclips in late 1998.

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

In order to relieve concerns expressed by MOD staff (both Service and civilian), the Third Party Accident Scheme -ToPaS - was devised to provide legal assistance to staff in the UK on a conditional fee basis (so-called no win, no fee). The scheme is operated by Betesh Fox & Company, a firm of solicitors which specialises in personal injury claims.

In the event of injury caused by a third party while on duty, be it a road traffic accident, assault, or any other form of accident, MOD staff (Service or civilian) will be able to contact the solicitors direct and obtain immediate advice and assistance free of charge. All legal costs will be reclaimed as part of the compensation awarded by the insurance company or, in the event that the matter proceeds to trial, by the courts. If the action is unsuccessful there will be no charge to the MOD or the individual concerned.

The proposal was subject to formal consultation and has the support of the industrial and non-industrial trade unions. Details of the scheme were published in a DCI Gen 273/00. A wide ranging publicity campaign, including an eye catching poster for general distribution, has been mounted and a number of presentations have been given at key MOD sites.

Anyone wishing to use the scheme should contact Betesh Fox & Co on 0161 832 6131. E-mail ToPaS@beteshfox.co.uk Website: www.beteshfox.co.uk

PART TWO SECTION FOUR
HUMAN RIGHTS ACT and SECTION OF THE CROWN PROCEEDINGS ACT 1947

Many commentators believed that the enactment of the Human Rights Act would lead to an increase of claims generally by virtue of the 'right to a fair trial'. In particular, in the Ministry of Defence, it was considered likely that claimants would use the Act to challenge Section 10 of the Crown Proceedings Act 1947.

Some solicitors representing former Service personnel barred by Section 10 of the Crown Proceedings Act 1947 from pursuing common law claims against MOD have argued that a Section 10 defence is an infringement of their clients Human Rights. The Department's position on this matter is that although the Human Rights Act 1998 incorporates the European Convention on Human Rights into domestic law, it does not give rise to any new rights under the Convention.

Article 6.1 of the Convention provides that everyone is entitled to a fair hearing in the determination of his civil rights. It does not, however, define what constitutes a civil right. That is a matter, according to the case law of the European Court of Human Rights, to be decided by domestic legislatures and courts. Section 10 of the Crown Proceedings Act 1947 therefore remains compatible with the European Convention on Human Rights.

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