



Ministry of Defence
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Claims
Annual Report
2008/2009



Investor in People

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Introduction by the Head of Common Law Claims & Policy

This, our twelfth annual report, covers another busy year for the Common law Claims & Policy Division. Overall cash payments were £83.77M. Over the same period recoveries of £668,690 were achieved.

As I have said in my introduction to previous Claims Annual Reports, in addition to providing an overview of the activities of this branch, my second and probably more important aim in publishing the report is to increase the awareness amongst all Service personnel and civilian employees, of the importance of sound risk management. If one were to believe some of the headlines in the media, health and safety is about stopping all activities that may lead to harm. This is not so. I am certainly not advocating a climate of risk averseness, but one of risk awareness. Not only will this reduce the number of incidents that give rise to expensive compensation claims, it will also reduce the less quantifiable hidden costs of incidents such as loss of equipment, personnel and reputation. That said the greatest benefit would be to reduce the incidents where our people are injured or killed.

Legal costs across the UK have attracted attention grabbing headlines with cases reported in the national press where the levels of legal costs were disproportionate to the level of damages paid. The Ministry of Defence therefore welcomed Lord Justice Jackson being given the task by the Master of the Rolls to report on reforming civil litigation costs with the main objective being to introduce greater proportionality into lawyers' costs. Lord Justice Jackson's preliminary report, which was published in May this year, is now undergoing a period of consultation, and his recommendations are expected to be delivered by Christmas. However, the challenge he faces in considering reform of civil costs is balancing the ability of claimants to have access to justice, while at the same time controlling the costs currently incurred by claimants' solicitors – there are no simple answers.

We often ask our stakeholders to assist in the production of documents and perhaps it is worth mentioning why we do so. In simple terms the documents provide part of the evidence used to defend or settle a claim. The Civil Procedure Rules specify the type of documents that one party must disclose to the other party in the litigation process. This matter is addressed in some detail at Section Eleven of this report. Requests for disclosure relate to 'hard copy' documents as well as 'electronic' documents. The latter clearly raises unique challenges, and recent Court judgments have provided some guidance on the extent of what is required of a defendant in complying with such requests for disclosure. Cooperation between the parties, key word searches and reasonableness are all issues that have a bearing on the matter. We must also ensure that the Ministry of Defence adopts a consistent approach to the disclosure of documents across the board.

In November 2008 the Common Law Claims & Policy Division and the Treasury Solicitor's MOD Private Law Litigation Team co-hosted a seminar entitled 'MOD a Unique Defendant?' The increasingly large number of MOD personnel involved in inherently risky training and operational activities presents those dealing with common law claims brought against the Department with unique and often novel challenges. The purpose of the seminar was to explore some of these challenges, in front of an audience of about 100 from within and outside MOD, through presentations from a selection of speakers who handle such cases on a daily basis. The general consensus was that MOD is indeed a unique defendant.

As part of streamlining the Directorate of Safety & Claims underwent major restructuring and with effect from 3 November 2008 Claims Branch became a standalone 1 star Division reporting to the 2 star Directorate of Business Resilience. This reflected the high profile nature and complexity of the work undertaken by Claims. The new title of Common Law Claims & Policy (CLC&P) also better describes what we do. Although streamlining leaves us a smaller division we continue to face some very big challenges such as claims from the Nimrod and Hercules incidents, Iraq abuse and torture claims, and the Nuclear Test Veterans' High Court Group Action to name but a few.

I should like to thank all those who assist my team in handling the claims brought against the Department. We tap into the tremendous wealth of knowledge of our subject matter experts and rely on them to produce the evidence, medical reports, pay and career forecasts and other ad hoc reports that assist us in forming the correct decision in relation to liability.

Lastly, the work of the Area Claims Officers in operational theatres warrants special mention. Notwithstanding the restrictions imposed on them due to the security situation in country, they have carried out their role in an exemplary manner in very difficult conditions.

Additional copies of this report are available from CLC&P Focal Point, Zone A, 7th Floor, St George's Court, 2-12 Bloomsbury Way, London WC1A 2SH (Tel: 020 7305 3349/3334, or Fax: 020 7305 4166. Copies can also be found on the Defence Intranet, the internet and can be supplied on Disk.

Jef Mitchell
Head of Common Law Claims & Policy

Executive Summary

1. Total CLC&P cash payments in the year 2008/2009 were £83.77M. Over the same period recoveries totalling £668,690 were achieved.
2. The highest claim settled in year was £3.64M
3. The total number of new claims lodged in year with CLC&P or the Department's commercial claims handlers was 4,732
4. 657 Service personnel employers' liability claims were settled at a total cost of £38.5 million.
5. 809 Civilian employer's liability claims were settled at a total cost of £21.5 million.
6. 557 Public liability claims were settled at a total cost of £12.1 million.
7. 2642 Third Party motor claims in the UK were settled at a total cost of £3.0 million.
8. 22 clinical negligence claims were settled at a total cost of £8.1 million.
9. 130 Porton Down claims were settled at a total cost of £3.87M (to include legal costs of claims settled in previous financial year).
10. ACO Iraq settled 20 cases at a total cost of £143K.
11. ACO Afghanistan settled 736 cases at a total cost of £452K.
12. ACO North West Europe settled 655 cases at a total cost of £1.12 million.
13. ACO Cyprus settled 118 cases at a total cost of £434K.
14. ACO Kosovo settled 3 cases at a total cost 2865 euros (approx £2.7K).
15. ACO South Atlantic Islands settled 4 cases at a total cost of £3.8K.

Section One

Introduction

Organisation

1.1 As part of the wider streamlining exercise carried across the whole of the MOD Headquarters, the Directorate of Safety & Claims (DS&C (Claims)) underwent a major restructuring and with effect from 3 November 2008 became a stand alone Division headed by a 1* and is now part of the new 2* Directorate of Business Resilience. This reflects the high profile nature and complexity of the work undertaken by Claims. Our new title is now Common Law Claims & Policy (CLC&P) that better describes what we do. CLC&P will remain in its current offices in St George's Court, but is scheduled to move to Main Building in about March 2010.

1.2 CLC&P is still primarily responsible for processing common-law, non-contractual compensation claims against and on behalf of the Ministry of Defence at home and abroad. It is not responsible for contractual, quasi-contractual, sales or estates matters. Head of CLC&P is a member of the Senior Civil Service. Details of the staffing and work of the Claims branch are at Annex A.

Responsibilities

1.3 In addition to being responsible for processing common law compensation claims, CLC&P also has a number of other important responsibilities such as providing claims policy advice, handling some residual Service personnel employment tribunal claims, handling claims against foreign forces based in the UK and providing advice on insurance and indemnities. It undertakes a variety of secretariat tasks and during the period of this report continued to deal with a large number of Parliamentary Questions, Ministerial Correspondence, Treat Official Correspondence and Freedom of Information requests.

1.4 Area Claims Officers (ACOs) and their staff are located in areas where there is a sizeable defence presence – Afghanistan, Cyprus, Iraq, Kosovo, North West Europe, and the South Atlantic Islands. ACOs are accountable to the appropriate Civil Secretary, but have a professional responsibility to the Head of CLC&P.

Policy and Procedures

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

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

Section Two

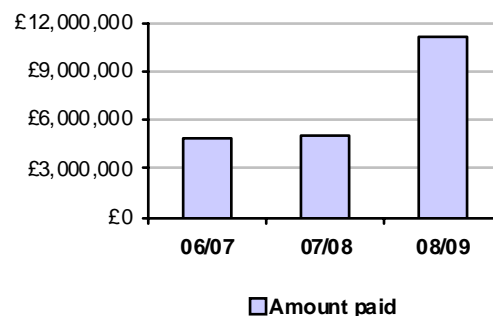
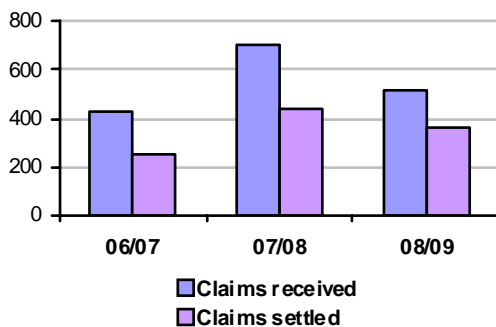
Public Liability Claims

Claims Public Liability Team

2.1 The majority of claims submitted to the Public Liability Team (PLT) are for personal injury or property damage from members of the public who have either been injured on Ministry of Defence property or have sustained injuries whilst taking part in the various external events run by the three Services e.g. injuries sustained on assault courses.

2.2 Property damage claims usually emanate from personnel working and living in service accommodation who, for example, have had their belongings damaged by the poor maintenance of the properties they occupy.

	2006/07	2007/08	2008/09
Number of PL Claims Received	429	705	512
Number of PL Claims Settled	256	441	353
Amount Paid (£)	£4.8M	£5.0M	£11.1M



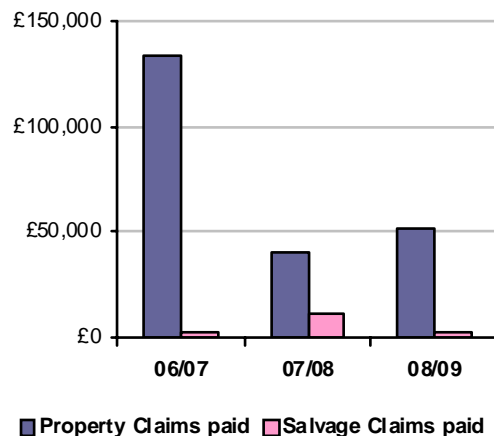
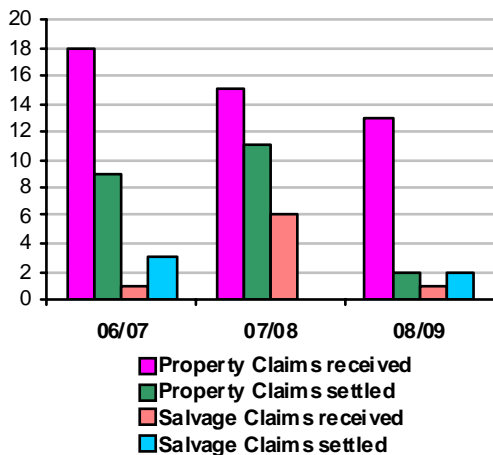
2.3 PLT continues to handle death and serious injury claims from Iraqi and Afghan civilians. Due to the complexity and high profile nature of the claims, and the fact that two British law firms have been instructed to handle a number of the claims, a decision was taken in 2004 that such claims should be handled by the PLT in London to ensure that a consistent approach was taken and the claims handled in accordance with the Civil Procedure Rules. Less serious injury claims (e.g. those resulting from RTAs) and property damage claims continue to be handled locally by the ACOs in Basrah and Lashkar Gah although the Basrah office is due to close this summer following the draw down of British forces from Iraq.

2.4 The increase in the compensation paid by the PLT in this financial year includes compensation and legal costs paid to Iraqi civilians of about of about £5.4 million who were the victims of torture and abuse whilst held in detention by British Forces during Operation TELIC.

Maritime Claims

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

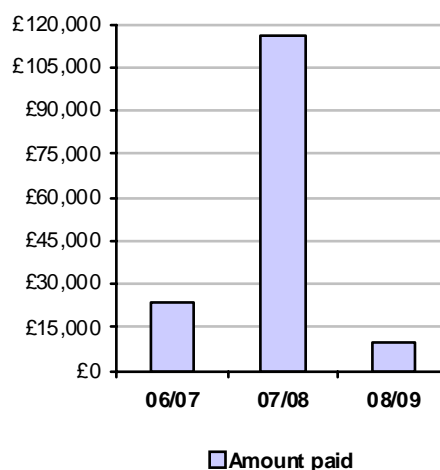
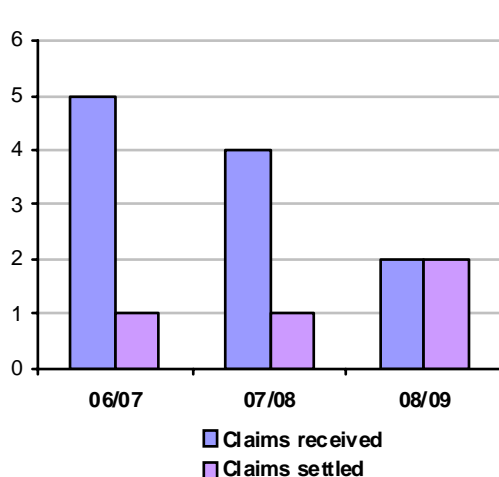
	2006/07	2007/08	2008/09
Number of property claims received	18	15	13
Number of property claims settled	9	11	2
Amount paid (£)	£133,123	£40,038	£51,535
Number of salvage claims received	1	6	1
Number of salvage claims settled	3	0	2
Amount paid (£)	£2,802	£11,693	£2,158



2.6 The Ministry of Defence provides assistance to ships in distress in UK waters and regularly helps in other parts of the world. If as the result of the assistance given a vessel is salvaged, the Department is entitled to claim salvage based on the value of the ship and its cargo. Part of the amount in salvage is

paid to the crew of the assisting ship or aircraft in accordance with the Merchant Shipping Act 1864. It is Ministry of Defence policy not to claim salvage when life saving has been the main aim of the assistance given. Although uncommon, salvage claims by members of the public for the successful recovery of our property can likewise be made against the Department. The figures for salvage claims reflect the net effect of salvage claims paid by Ministry of Defence and a successful recovery.

	2006/07	2006/07	2008/09
Number of maritime recovery and salvage claims initiated	5	4	2
Number of maritime recovery and salvage claims settled	1	1	2
Amount recovered (£)	£23,281	£115,676	£9,751



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

	2006/07	2007/08	2008/09
Number of claims settled by FOSNNI	33	14	16
Amount paid by FOSNNI	£53,000	£29,000	£33,570
Number of claims settled by FOST	28	10	9
Amount paid by FOST	£50,000	£12,000	£10,863
Total amount paid	£103,000	£41,000	£44,433

Low Flying Military Aircraft Claims

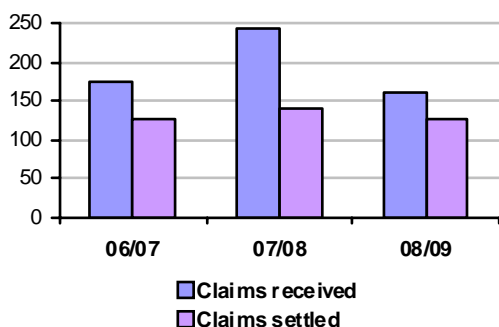
2.8 The activities of low flying military aircraft can give rise to claims for compensation from members of the public. The most common claims are those involving injury to, or death of, livestock and/or damage to property although claims are sometimes received for personal injury. Many of the claims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

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

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

2.10 Unfortunately, this is a category of work that requires careful monitoring to identify potentially fraudulent claims. Cases are referred to the Ministry of Defence Police if the evidence indicates there is a potential problem.

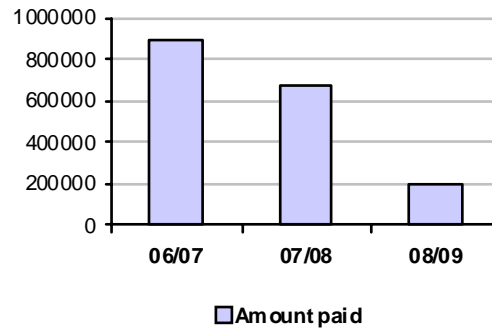
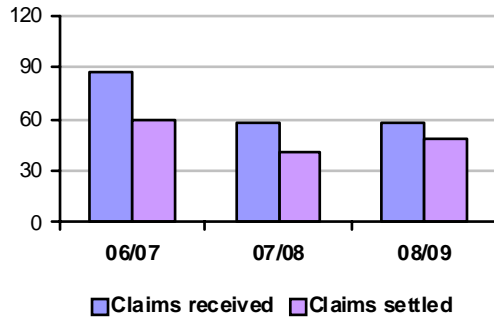
	2006/07	2007/08	2008/09
Number of claims received	175	244	161
Number of claims settled	126	141	126
Amount paid (£)	£0.86M	£1.93M	£0.69M



Visiting Forces Claims

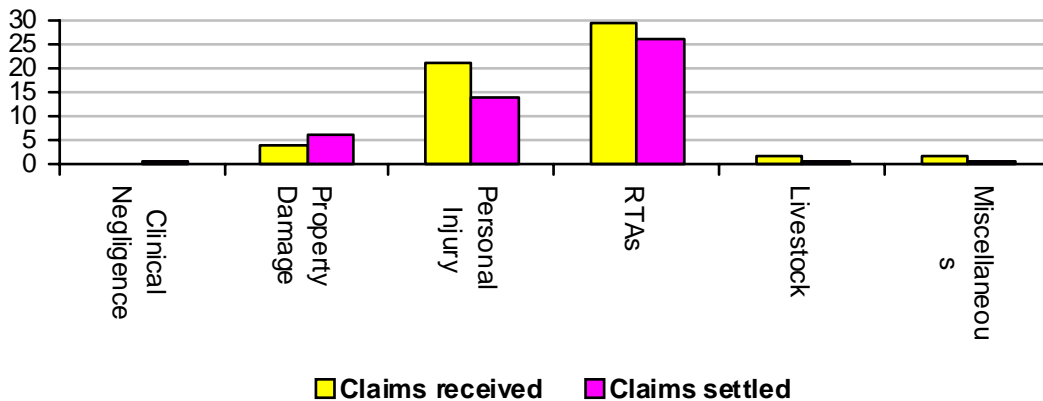
2.11 PLT handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII of the NATO Status of Forces Agreement (SOFA) and Section 9 of the Visiting Forces Act 1952. Such claims could be on behalf of any of the states who are signatories to the agreement or who are invited to train in the UK, but primarily involve the USA, the Netherlands, 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 its behalf. In the case of NATO countries, the Sending State is billed for 75% of the amount paid, the United Kingdom paying the other 25%.

	2006/07	2007/08	2008/09
Number of visiting forces claims received	87	58	58
Number of visiting forces claims settled	59	41	49
Compensation paid (£)	£895,755	£677,269	£219,275



Visiting Forces claims can be categorised as follows:

2008/09	Clinical Negligence	Property Damage	Personal Injury	RTAs	Livestock	Misc	Total
Claims Received	0	4	21	29	2	2	58
Claims Settled	1	6	14	26	1	1	49
Compensation Paid (£)	£5,000	£6,768	£142,855	£64,236	£330	£0	£219,275



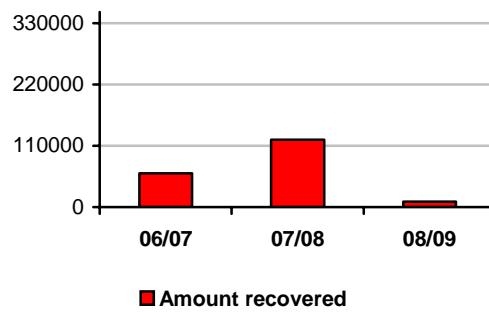
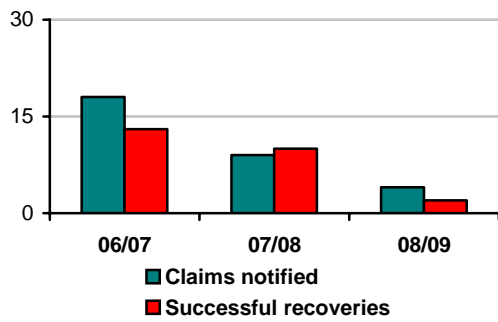
Financial Recoveries

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

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

2.14 The number of recoveries processed by PLT in each of the last three financial years is shown in the table below.

	2006/07	2007/08	2008/09
Number of claims notified	18	9	4
Number of successful recoveries	13	10	2
Amount recovered (£)	£60,591	£120,854	£9,995



Section Three

Service Personnel Employer's Liability Claims

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

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

3.3 Mr Matthews, an ex-serviceman suffering from an asbestos related disease, challenged this position on the basis that Section 10 of the Crown Proceedings Act 1947 is incompatible with the European Convention of Human Rights. Mr Matthews alleged a breach of Article 2 (right to life) and Article 6 (due process rights) of the Human Rights Act. The case under Article 2 was that by exposing him to asbestos dust the Crown was in breach of its obligation to take positive steps to safeguard his health. The case under Article 6 was that Section 10 of the Crown Proceedings Act is a 'blanket' immunity, which deprives him of his right of access to the Court. The matter was heard in the High Court in December 2001 and judgment handed down by Mr Justice Keith on 22 January 2002 in favour of the claimant. The Department, however, secured leave to take this matter expeditiously to the Court of Appeal and the hearing took place in April 2002. The Court of Appeal overturned Mr Justice Keith's decision on 29 May 2002, but granted leave for Mr Matthews to take this matter to the House of Lords. Their Lordships considered this matter in January 2003 and handed down a unanimous judgment on 13 February in favour of the Ministry of Defence. The five Law Lords agreed that there had never been the right in national law that Mr Matthews sought to assert i.e. that a member of the Armed Forces could sue the Crown in tort, and that he has no “civil right” that Article 6 of the European Convention on Human Rights can operate to protect.

3.4 The Armed Forces Compensation Scheme, a new compensation package for members of the Armed Forces, became effective on 6 April 2005. The new legislation replaces the previous arrangements under the War Pensions Scheme and is administered and paid by the Service Personnel & Veterans Agency. The scheme covers all Regular (including Gurkhas) and Reserve personnel whose injury, ill health or death is caused by service on or after 6 April 2005. Ex-members of the Armed Forces who served prior to this date, or who are receiving a current War Disablement Pension or War Widows' Pension, are not affected by the new scheme. They will continue to receive their War Pension or War Widows' pension and any associated benefits in the normal way.

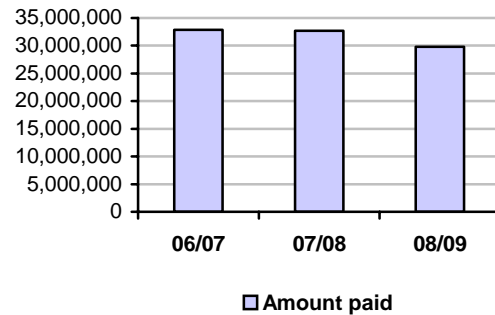
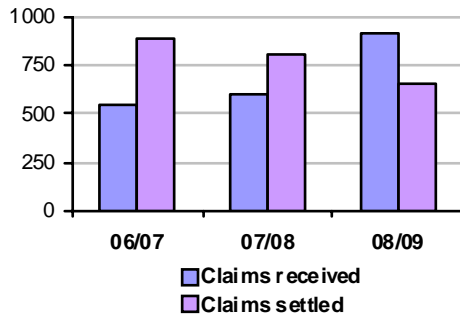
3.5 The Armed Forces Compensation Scheme provides modern, fair and simple arrangements and will focus help on the more severely disabled. It will provide compensation for significant injuries, illness and death that are caused by service. It will also cover injury, illness or death that results from warlike incidents or terrorism.

3.6 Under the terms of the Scheme a lump sum is payable to Service or ex-Service personnel based on a 15-level tariff graduated according to the seriousness of the condition. A graduated Guaranteed Income Payment (GIP), payable for life, will also be paid to those who could be expected to experience a significant loss of earning capacity. A GIP can also be paid to surviving partners (including unmarried and same sex partners) where the service person's death was caused by service. The lump sum element of the AFCS was doubled in 15 November 2008.

3.7 The handling of routine personal injury claims from Service and ex-Service personnel was contracted out with effect from 1 July 1996. Royal & Sun Alliance held the contract until 30 April 2007, at which time Gallagher Bassett International Limited were awarded a five-year contract following a competitive tender exercise. Claims of a political or sensitive nature are handled by in house the Employer's Liability Group within CLC&P.

3.8 The number of claims and amounts paid are shown below:

	2006/07	2007/08	2008/09
Number of claims received	550	603	922
Number of claims settled	889	812	657
Amount paid (£)	£32.9M	£32.7M	£29.8M



Combat Immunity

3.9 Among the claims being handled in-house are several which relate to service in Afghanistan and Iraq. It is open to the Ministry of Defence to plead a defence of combat immunity in those claims where the injury was sustained engaging the enemy in the course of hostilities. The Court of Appeal handed down this ruling on 21 February 1996 in *Mulcahy - v- MOD* when it was held:

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

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

3.10 The *Mulcahy* judgment was clear, but this ruling was expanded in *Bell & Others -v- MOD* (the PTSD High Court Group Action) when Owen J ruled:

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

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

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

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

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

3.11 In *Bici -v- MOD*, Elias J narrowed the judgment in *Bell & Others* by stating:

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

Summary of Group Actions

Nuclear Test Veterans

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

3.13 A third National Radiological Protection Board report carried out independently of the MOD was published in early 2003 and supported the conclusions reached in the previous reports published in 1988 and 1993 which concluded that overall levels of mortality and cancer incidence in the nuclear weapons tests participants have continued to be similar to those in a matched control group, and for overall mortality to be lower than expected from national rates.

3.14 Two firms of solicitors (Alexander Harris Solicitors, Altrincham and Clark Willmot and Clark Solicitors, Bristol) announced in July 2002 that they had been jointly instructed by British, New Zealand and Fijian nuclear test veterans to act on their behalf in an action against the MOD for damages. They secured legal aid from the Legal Services Commission to pursue the matter, but the funding was withdrawn in August 2005. No appeal was made and the two firms of solicitors withdrew from the action. The veterans are now represented by Rosenblatt Solicitors and legal proceedings were served on 29 December 2006 on behalf of over 1,000 veterans.

3.15 The issue of limitation involving ten lead cases was heard as a preliminary issue over a three-week period at the Royal Courts of Justice from 18 January 2009. Mr Justice Foskett handed down his Judgment on 5 June 2009 and decided that in his opinion, five cases were time-barred and the other five were not. He exercised the Court’s discretion to permit the out-of-time cases to proceed to trial with the effect that all 1,011 cases in the Group Action can proceed. He did, however, express concern as to whether the claimants can prove their case on causation, particularly in respect of whether any of them can prove that they have a condition caused by exposure to ionising radiation at the tests. He said that he did not want the Claimants to be misled by his judgment

into thinking that they will be successful at trial, which he refers to as a 'false dawn'. He adds that on the evidence as it stands in terms of apparent strength the claims are arguable, but not overwhelmingly so.

3.16 MOD has been granted permission to take the matter to the Court of Appeal.

Porton Down

3.17 As highlighted in last year's Claims Annual Report claims for compensation were received in March 2007 from solicitors representing 360 former volunteers who took part in non-therapeutic human trials at Porton Down. The claimants alleged either short term injury arising immediately after the trial in question, or long-term injury whereby an illness had arisen later in life, which they believed was directly due to the trials, they participated in.

3.18 The majority of the claims related to experiments involving nerve agents (including sarin), mustard gas and riot control agents such as CS gas. All the claimants claimed they suffered personal injury resulting from participating in these trials.

3.19 The Department indicated to the claimants' solicitors in September 2007 that it was willing to explore a settlement by way of mediation and two mediation meetings took place on 21 December 2007 and 11 January 2008.

3.20 As a result of these mediation meetings amicable settlement was reached in respect of these claims. The settlement was made without admission of liability by the Ministry of Defence and involved the global payment of £3M in full and final settlement of all claims made by the group, together with an apology by the Department; USofS made a written statement in the House of Commons on 31 January 2008. In addition, as is normal practice, the Ministry of Defence agreed to meet the claimants' reasonable legal costs in connection with these claims.

3.21 Following settlement of the Group Action claims, additional veterans, not part of the original Group Action, came forward seeking compensation. The Ministry of Defence recognised that more veterans, some of whom decided against joining the Group Action, might come forward. This is despite being assured by the claimants' solicitors that the Group Action had been well publicised and that those who remained in the group had been carefully selected on the basis that each had a meritorious claim for personal injury said to have been caused by exposure to a specific chemical warfare or treatment agent which was supported by expert evidence.

3.22 Against this background, the Ministry of Defence decided that it would consider any additional meritorious claims that were made on or before 30 June 2008; after that date, the Ministry of Defence reserved the right to plead a defence based on the provisions of the Limitation Act 1980.

3.23 A second tranche of Porton Down claims has been submitted and are now being considered by the Ministry of Defence. The numbers of additional claims is

in the region of 470, but the exact number will be subject to amendment as more documentary evidence is obtained about attendance and actual injury sustained at Porton Down. Staff at Dstl Porton Down are heavily involved in this exercise.

3.24 Rather than await receipt of all the claims and deal with them together, it was agreed that MOD would settle claims in tranches just as soon as all the necessary confirmatory evidence was received and considered. The first tranche of 130 claims were settled in December 2008 and it hoped that the remaining claims will be settled amicably during 2009/2010. Each claimant will receive a standard compensatory sum together with a fixed sum in respect of their legal costs.

3.25 Details of compensation payments made in relation to Porton Down claims over the past three years are shown below. The payment in 2008/2009 also reflects the payment of agreed legal costs of those claimants whose claims were settled in 2007/2008.

	2006/07	2007/08	2008/09
Number of Claims Settled	4	360	130
Compensation Paid (including legal costs)	£142,300	£4,700,000	£3,873,294

Gulf War Claims

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

3.27 Over a number of years the Ministry of Defence has received approximately 2,000 notifications of “intentions to claim” from Gulf War Veterans or their dependants, but as yet no writs have been served or claims made of sufficient detail for the Department to be able to start considering these claims.

3.28 Gulf War veterans can, and do, receive compensation in the form of war pensions and attributable armed forces pensions.

Radiation Compensation Scheme

3.29 The Ministry of Defence is a member of the nuclear industry’s Compensation Scheme for Radiation Linked Diseases. This is a no-fault scheme where there is no requirement for claimants to prove negligence on the part of the Department in order to receive compensation. The Scheme, which the

Ministry of Defence joined in 1994, was set up and is run jointly, by the participating employers and Trade Unions and does not affect a claimant's right to seek legal redress.

3.30 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.

3.31 The Scheme provides for payments to be made for lower levels of causation probability than would be allowed by the Courts. In addition the Scheme provides "full" payment of compensation at a level of 50% causation probability and lesser payments down to a level of 20% causation probability. In this way the assessment of a case recognises that even below the balance of probability there is a chance that exposure to occupational ionising radiation played a role in the disease.

3.32 During financial year 2008/09, the Scheme received 16 new claims from former Ministry of Defence employees (military and civilian) who believe their illness is associated with exposure to occupational ionising radiation. Over the same period 12 claims were repudiated as failing to meet the minimum 20% causation probability and no claims were settled.

Asbestos Claims

3.33 Claims from former Service Personnel and civilian employees of the Department are handled by the Department's claims handlers – Gallagher Bassett International Ltd or Royal & Sun Alliance plc.

3.34 Prior to May 1987, Service personnel were prevented by law from pursuing claims for compensation from the Ministry of Defence by Section 10 of The Crown Proceedings Act 1947 (Crown Immunity prevented claims from being made prior to 1947). This point of law applies to all Service personnel and has no bearing on rank, status or place of employment. However, Section 10 was repealed by The Crown Proceedings (Armed Forces) Act 1987. Since the change in the law, which was not made retrospective, Service personnel who suffer loss or injury as a result of negligence by the Ministry of Defence have been entitled to make common law claims for compensation. When compensation claims are submitted, they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a legal liability to pay compensation we do so.

3.35 In the case of members of the Armed Forces being exposed to asbestos dust and fibre during service before 15 May 1987, they are prevented by law from receiving compensation from the Ministry of Defence. 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+ years).

3.36 When Parliament debated the repeal of Section 10, the question of retrospection was considered and motions to allow all past and present members of HM Forces or their dependants to pursue compensation claims for injury or death were moved. They were defeated or withdrawn. The view then, as it is now, was that there is no logical point at which to draw a line, short of trying to cover all types of injury, and this would create more examples of unfairness and injustice. The Government, therefore, has no plans to introduce legislation to allow ex-Service personnel suffering illness or injury before 1987 to be paid common law compensation.

3.37 Compensation in the form of a War Pension is available, however, to all former members of HM Forces suffering from Service attributable illness or injury. War Pensions are paid by the Service Personnel Veterans Agency, are non-discretionary, not means-tested and are made on a no-fault and retrospective basis. They are up-rated annually and are tax-free. The Service Personnel Veterans Agency also makes provision for the widows of Service and ex-Service personnel whose death is attributable to service in the form of a War Widows Pension.

3.38 Former civilian employees, who are not bound by the provisions of Section 10 of the Crown Proceedings Act 1947, are, of course, able to pursue common-law claims for compensation. Some Service claimants believe that this is not a fair situation.

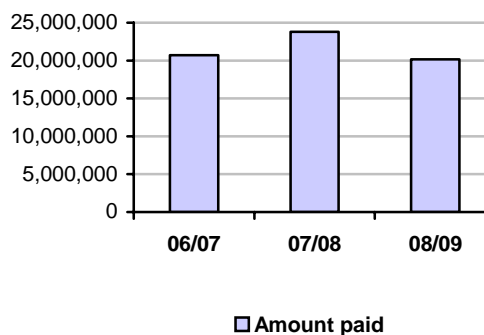
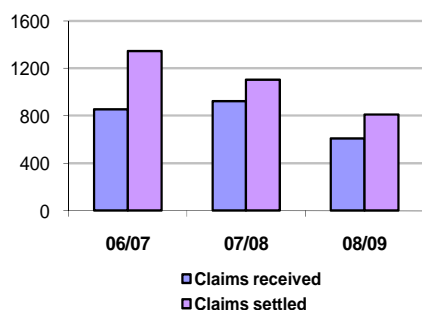
3.39 The perceived unfairness and the scope for providing former members of HM Armed Forces with additional help was the subject of an internal review in 2001. The review, demonstrated that compensation by way of war pensions and associated allowances or in common law can be shown to be broadly comparable over time, and that there is no general unfairness in the way in which these claims are handled. As it would be inequitable to treat this group in isolation in terms of common law compensation, thereby creating many examples of unfairness and injustice, ministers decided not to make any changes to the current arrangements.

Section Four

Civilian Staff Employer's Liability Claims

4.1 Since 1982, the Ministry of Defence has contracted out the handling of its civilian employee Employer's Liability claims. Up until 1 May 2002 such claims were handled by AXA Corporate Solution Services Ltd. Royal and Sun Alliance plc then handled civilian Employer's Liability new claims notified up to 30 April 2007. Following a competitive tender exercise Gallagher Bassett International Ltd were awarded a five-year contract to handle all newly notified civilian Employer's Liability claims from 1 May 2007. Many of the claims relate to asbestos related illnesses and noise exposure.

	2006/07	2007/08	2008/09
Number of claims received	854	924	610
Number of claims settled	1348	1105	809
Amount paid (£)	£20.7M	£23.8M	£20.1M



Section Five

Motor Claims

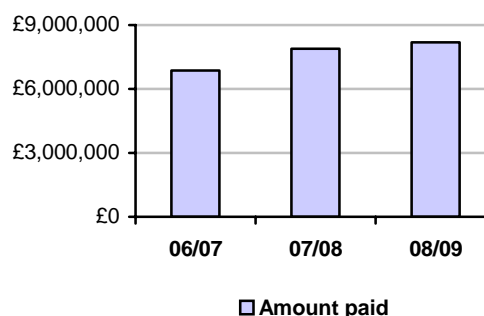
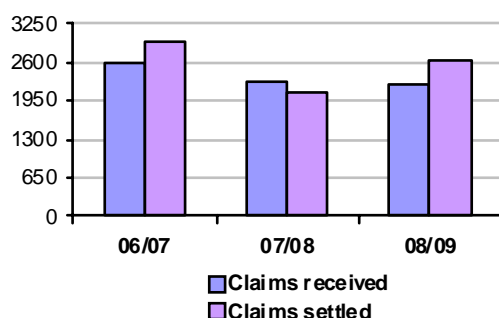
Third Party Motor Claims - UK

5.1 Since 1982 the Ministry of Defence has contracted out the handling of claims made against the Department by other road users. Up to 30 April 2007 the contract was held by AXA Corporate Solutions Services Ltd. However following a further competitive tendering exercise the contract was let to Gallagher Bassett International Ltd for a period of five years from 1 May 2007 to 30 April 2012.

5.2 CLC&P works closely with the Defence Road Safety Officer to reduce the number of road traffic accidents involving Ministry of Defence employees by raising awareness of the financial and human costs of accidents. To this end CLC&P provides close support to the Defence Motor Transport Policy Group and attends the Defence Road Transport Regulation Working Group and the Defence Motor Transport Sub-Committee.

5.3 Statistics for motor claims over the last three financial years are shown below:

	2006/07	2007/08	2008/09
Number of claims received	2595	2263	2236
Number of claims settled	2972	2084	2642
Amount paid (£)	£6.9M	£7.9M	£8.1M

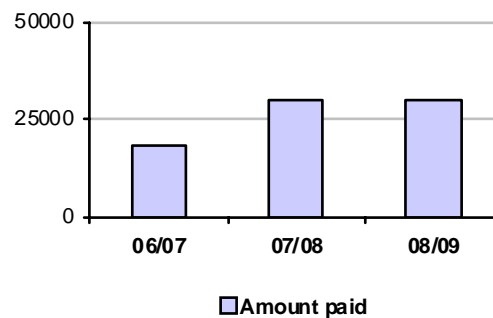
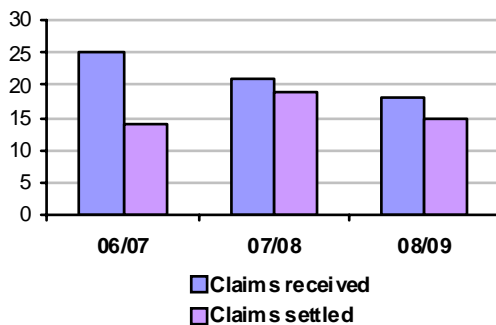


Third Party Motor Claims - Overseas (not dealt with by ACOs)

5.4 Claims arising from non-UK based vehicles overseas are handled by the appropriate ACO or by PLT, where the geographical area is not covered by one of the ACOs.

5.5 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 overseas motor claims for the last three financial years are shown in the table below:

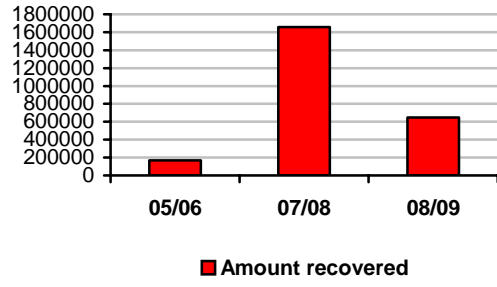
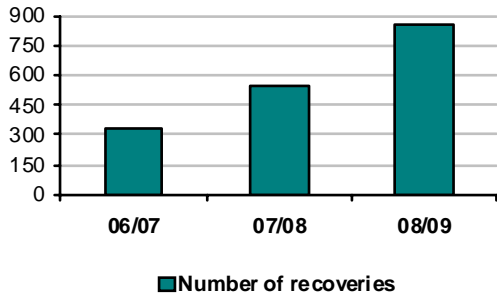
	2006/07	2007/08	2008/09
Number of claims received	25	21	18
Number of claims settled	14	19	15
Amount paid (£)	£17,950	£29,642	£30,259



Uninsured Loss Recovery

5.6 With effect from 1 May 2007 Gallagher Bassett recovered, on behalf of the Ministry of Defence, the cost of damage caused to its vehicles in accidents that are the fault of a third party. The number of recoveries made by AXA and Gallagher Bassett, and the amounts received are shown below.

	2006/07	2007/08	2008/09
Number of recoveries	329	549	856
Amount recovered	£540,163	£1.6M	£648,953



Section Six

Clinical Negligence Claims

6.1 CLC&P handles clinical negligence claims brought by current or former members of HM Armed Forces and the small number of claims brought by their dependants treated in MOD medical facilities. The number of new claims received during 2008/2009 was fewer than previous years.

6.2 For a claimant to bring a successful clinical negligence case he or she must prove a causal link to the injury or illness suffered as well as proving negligence. It is not sufficient to prove negligence alone.

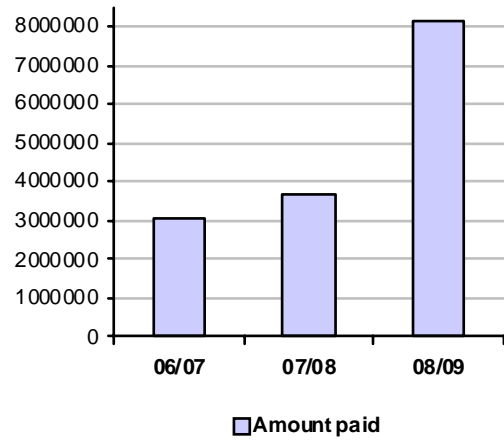
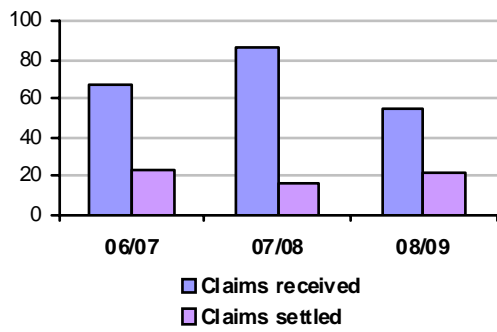
6.3 As observed in previous reports, clinical negligence claims can be very time consuming, complex and expensive to settle. Experts in a number of different fields may need to be instructed by both parties to provide advice on liability, causation and quantum. Finding suitable experts willing to provide opinions in such cases within fairly short timescales remains an ongoing problem.

6.4 A number of comparatively high value long running claims were successfully settled in 2008/09.

6.5 In addition to the number of formal claims received, the Clinical Negligence Team actioned 51 requests from solicitors for disclosure of medical records and other documentation, in anticipation of potential clinical negligence claims against the Department being submitted.

6.6 Details of expenditure on clinical negligence cases over the past three years are shown below.

	2006/07	2007/08	2008/09
Number of claims received	67	86	55
Number of claims settled	23	16	22
Amount Paid (£)	£3.0M	£3.7M	£8.1M



Section Seven

Service Personnel Employment Tribunal Claims

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

7.2 Any enquiries relating to such cases, or Service Employment Tribunal cases in general should be directed to the respective single Service personnel branches.

Homosexual Dismissal Cases

7.3 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.

7.4 In 1999 the European Court of Human Rights (ECHR) ruled that in four cases against the Ministry of Defence (*Smith, Grady, Beckett and Lustig-Prean v MOD*), there had been a violation of those individuals' right to respect for their private life under Article 8 of the European Convention on Human Rights. It found that there had not been a violation of Article 3; the applicants had not been subjected to inhuman or degrading treatment or torture. Compensation was awarded to each of the four applicants by the ECHR. Compensation has also been paid in a number of additional cases subsequently determined by the ECHR.

7.5 In light of the Court's judgement on 27 September 1999, the Department took legal advice on how to deal with claims from other individuals who had been dismissed. As a result, a decision was taken to enter into settlement negotiations with those who had already submitted Employment Tribunal applications and whose accounts were accepted as factually correct. A number of these claims were subsequently settled quite quickly.

7.6 The bulk of these claims, however, were not settled until financial year 2007/08, following awards determined by the ECHR. The awards made by the ECHR were, in each and every case, in line with the Ministry of Defence's valuation of these claims, rather than the figures claimed by the applicants.

7.7 Compensation for the bulk of these claims was paid during financial year 2007/2008. One additional claim settled in 2008/09 and the two remaining claims are under consideration by the ECHR; it is hoped that the compensation in these two cases (totalling about £58K) will be paid during FY 2009/10. All claims of this nature will then have been concluded. The attached table shows expenditure over the past three years.

	2006/07	2007/08	2008/09
Homosexual Dismissal Cases Settled	5	57	1
Compensation Paid	£234K	£3.7M	£90K

Section Eight

Area Claims Officers

Area Claims Office Iraq

8.1 Based at Basrah Air Station alongside HQ Multi National Division (South East), MOD staff manages all third party compensation claims made as a result of British Forces' activities on Op TELIC.

8.2 Over the last year new claims have reduced significantly. This is a result of the reduced requirement for British Forces to patrol outside the Air Station and to the general drawdown of British Forces at the COB Basrah. The majority of claims received are for Road Traffic Accident and property damage.

8.3 Claims surgeries are run weekly, and will continue to be held until the 4th May 2009 in line with British troop withdrawal from the COB.

	2006/07	2007/08	2008/09
Number of claims received	689	309	82
Number of claims settled	238	190	20
Number of claims closed	566	434	99
Amount paid	£573,651	£2,303,803	£143,398
Amount recovered	0	0	0

8.4 Area Claims Office Iraq will close in the summer of 2009.

Area Claims Office Afghanistan

8.5 The Area Claims Office, along with the Provincial Reconstruction Team (PRT) and HQ Task Force Helmand, is currently located in Lashkar Gah, capital of Helmand province. The ACOs visit Forward Operation Bases, usually hosted by the CIMIC team, when the security situation allows, whilst a permanent presence is maintained in Lashkar Gah. In addition, visits of a shorter duration are rotated to the Support Base at Kandahar Air Facility. All movements are by air.

8.6 A total of 2,120 claims were received of which 736 were settled, 5 transferred to other Troop Contributing Nations within Regional Command (South), and 1,154 were denied or repudiated, leaving 245 still under investigation at the end of the year. The increase in number of claims reflects a significant increase in the number of rural, subsistence farmers claiming for

damage to crops during routine patrolling in areas with poor, if any, roads and tracks. Most of these are low value claims.

8.7 The claims process is complicated in Afghanistan by the conflict between expectations of the local nationals, who use local custom and religious law to settle damages, and the definition of legal liability practised by the Ministry of Defence in UK civil litigation. As this conflict has the potential to affect the way the population feels towards the ISAF mission, with direct bearing on UK troop casualty levels and the ultimate success of the mission, and thus its ultimate success, a compromise of the process has evolved which will assist “civil effect” and contribute to the effort in winning the consent of the local population.

	2006/07	2007/08	2008/09
Number of claims received	105	994	2120
Number of claims settled	42	300	736
Amount paid	£136,361	£1,249,289	£452,707

Area Claims Office (North West Europe) (ACO (NWE))

8.8 ACO (NWE) is part of the Civil Secretariat, Headquarters United Kingdom Support Command (Germany) (HQ (UKSC (G))), located at JHQ, Rheindahlen. The ACO has six civilian staff responsible for handling claims by and against the Ministry of Defence in Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Luxembourg, Norway, Poland, The Netherlands and Switzerland. Claims handled include RTAs, Training and Manoeuvre Damage, Public Liability and Loss of Service.

8.9 The vast majority of ACO (NWE) business, approximately 90% of claims received relates to vehicle movements and is handled in accordance with Article 8.5 of the NATO Status of Forces Agreement (SOFA). Claims processed under Article 8.5 are negotiated by the host Nation, and the costs incurred are apportioned between Ministry of Defence and the Host Nation on a 25%/75% basis. The host Nation therefore has a vested interest in keeping costs as low as possible.

8.10 ACO (NWE) continues to recover significant sums to the public purse; this year over £650,000. The sums recovered come mainly from the pursuit of claims under German law for MOD incurred expenses where members of HM Forces and/or their dependants have sustained injury as a result of third party liability in RTAs. The heads of claim, which typically contribute to these recoveries, are loss of earnings and medical related expenses, such as those for ambulance services together with physiotherapy and rehabilitation costs.

8.11 Significantly this year ACO (NWE) reached an agreement with the Austrian authorities over the handling of claims brought against the British MOD

within the national borders of Austria in accordance with Article 8.5 of NATO SOFA. This agreement came into effect from the 1 April 2009 for all British forces visiting Austria and will remove the current requirement for commercial insurance.

8.12 ACO (NWE) remains active in promoting the role of the claims office within BFG by raising its profile with a view to reducing the number of claims received and, more importantly, the associated hidden costs incurred to the GOC HQ UKSC (G) Budget. ACO action in this area in the last year has included briefings and presentations to key stakeholders, such as the RMP, Garrison SHEF focal points and the DE GWA aimed at highlighting the role of the ACO (NWE) ensuring the vital flow of information and stakeholder support.

	2006/2007	2007/2008	2008/2009
Number of claims received	646	666	527
Number of Claims closed	493	545	655
Total Paid	£1,021,061	£1,186,710	£1,128,740
Total Recovered	£508,211	£614,698	£680,118

Area Claims Office Cyprus

8.13 ACO Cyprus is part of the Command Secretariat, Headquarters British Forces Cyprus located in Episkopi Garrison in the Western Sovereign Base Area of Cyprus. The ACO has 2 civilian staff (1 x Band C2 MOD Civil Servant and 1 x Local Employed Executive Officer) responsible for handling claims for and against UKMOD and the Sovereign Base Areas Administration in Cyprus and its territorial waters. The types of claims investigated range from road traffic accidents, training and manoeuvre damage, property damage, public liability and employer's liability for locally employed civilian staff. Claims are handled in line with the Cyprus Treaty of Establishment (ToE).

8.14 The Cypriot climate and terrain continues to provide excellent training opportunities for the British forces, both in the air and on land. Most training activity for the latter takes place on privately owned land under access rights afforded by the ToE. The majority of the ACO's work continues to involve inspecting and investigating training and manoeuvre damage claims arising from military exercise or associated helicopter activity. These claims are predominantly for crop damage or the loss of livestock, such as goats or sheep, which sustain injury or abort their unborn kids/lambs if panicked by low flying helicopters or dry firing/pyrotechnics.

8.15 The ACO is also frequently involved in assessing fruit and vegetable loss claims from farmers whose private land is affected by live-firing exercises. During

such exercises landowners are prevented from accessing their land and this leads to claims being received for items such as oranges, peaches, figs, and cucumbers which are lost due to the inability to water growing crops or harvest them when ripe resulting in over-ripe produce unable to be sold at market.

8.16 The ACO staff visit and inspect all claims received and in doing so contribute to the good relations between UKMOD/SBAA and the local community, a vital ingredient in maintaining local consent to the UK's training activities in Cyprus. The ACO also seeks to reduce the risk of damage or losses being caused and routinely briefs exercise reconnaissance parties prior to training taking place.

8.17 This year has seen the conclusion of two long running claims for personal injury, which has seen expenditure significantly increase when compared to previous years.

8.18 The temporary reduction in the number of UK based units visiting Cyprus for training purposes as reported in last year's report continued throughout this reporting year. However, on-island training by the Resident Infantry Battalions in preparation for their operational role as Theatre Reserve Battalion for Operations TELIC and HERRICK has ensured a busy time on the local training areas for the ACO. UK based units are due to re-commence Cyprus based training exercises from April 2009.

	2006/07	2007/08	2008/09
Number of claims received	310	151	114
Number of claims closed	264	292	118
Amount paid	£171,000	£167,712	£434,574
Amount recovered	£39,000	£14,235	£5,617

Area Claims Office Kosovo

8.19 With effect from 3 May 2005 responsibility for all Balkan claims rested with either SO2 Commercial at Banja Luka or SO3 Commercial at Pristina (Kosovo). Since the closure of the Banja Luka Metal Factory on 27 June 2007, all outstanding and new claims from Bosnia are being handled by CLC&P. Civ Sec Kosovo (SO3 Commercial) continues to handle the very small number of claims arising in Kosovo.

	2006/07	2007/08	2008/09
Number of Claims Received	42	1*	1*
Number of Claims Settled	44	2*	3*
Amount Paid	£89,907	£18,000	£2,700
Amount recovered	0	0	0

* Claims from Kosovo only.

Area Claims Office South Atlantic Islands

8.20 The Command Secretariat in the BFSAI has delegated Functional Authority to settle Common Law Claims against the MOD. The ACO in the Falkland Islands is responsible for collating all claims for approval or passing claims over the value of £5,000 to CLC&P.

8.21 During FY08/09 a total of five new claims were received. Four have been settled in year and details are awaited from Ascension to resolve the remaining one.

8.22 The driving conditions in the Falkland Islands are demanding and in an effort to reduce accidents all military Landrovers have been fitted with engine limiters set at a maximum speed of 40 MPH.

8.23 Additionally a number of accidental damage claims which included Fox Bay Jetty, Air Atlanta B747 damage and British International Helicopter from 2006 have been passed to CLC&P for settling.

	2006/07	2007/08	2008/09
Number of claims received	4	2	5
Number of claims settled	4	1	4
Amount paid	£1,714	£159	£3,865
Amount Recovered	£1,075	Nil	Nil

Section Nine

Incident Recording Information System (IRIS)

9.1 IRIS addresses one of the recommendations of the National Audit Office in their report of 2003 into the effectiveness of MOD arrangements for recording and thereby providing the tools to help prevent incidents that give rise to claims for compensation. IRIS, which also provides a claims handling management facility, was designed to replace a plethora of separate and unlinked Health and Safety incident recording software systems.

9.2 The “Go Live” date for the Project was December 2007 and IRIS is available to users through a Web-based Restricted LAN Interconnect (RLI) system, it is accredited to the “Restricted” domain and contains safeguards on personal data. Data can be recorded in a variety of ways that includes to a Call Centres in some TLBs (Land, Navy Command) or by trained safety specialists (e.g. Air Command).

9.3 The key deliverables from IRIS are:

- Identifying the cost of claims and relating these costs to accidents and incidents. This provides a significant step forward in understanding the true cost of accidents and incidents to the MOD and will help identify where best to use resources to improve health and safety performance.
- Enabling monitoring and analysis of injuries and cases of work-related ill health. Recording events on IRIS contributes to developing a more robust and effective ‘corporate memory’, ensuring sharing of data and improved learning leading to better safety performance.
- Assisting in measuring the achievement of the Defence Board health and safety performance targets. These include a zero target for health and safety fatalities and a 2.5% year on year reduction in major injuries.
- The capability to record environmental incidents and provide an indication of how well the Department is doing in improving environmental performance.

9.4 Further work is underway with the main contractor, Logica, and stakeholders across the Department to realise the full business benefits of IRIS.

Section Ten

Insurance and Indemnities

Insurance

10.1 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 business activities.

10.2 CLC&P is 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.

10.3 Willis (Aerospace) provides 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

10.4 CLC&P 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 Memoranda of Understanding (MOU) and other international agreements.

10.5 The Ministry of Defence always seeks an indemnity against claims arising from activities or events that do not further the interests of the Department. Examples include participation by Service personnel or Ministry of Defence civilian staff in non-core fund raising or social activities, work experience for students over the age of sixteen, or the use of Ministry of Defence personnel or equipment by other organisations for activities, which have no direct benefit to the Ministry of Defence. The Ministry of Defence must seek an indemnity in such

instances as there is no provision in the Defence Estimates to meet claims, which are not defence related. Indemnities must be backed by insurance or a guarantee from those companies/organisations that self-insure. The only exception to the requirement for indemnity is when the Ministry of Defence is dealing with other Government Departments. This is because of the principle of indivisibility of the Crown. CLC&P issued around 136 indemnities in financial year 2008/09 and commented on 206 MOU during the year.

10.6 Indemnities that arise from the Department's contractual business are the responsibility of the appropriate Commercial Branch, with policy guidance provided by the Director General Defence Commercial as appropriate.

Wider Markets

10.7 Income-generating activity under the Government's initiative for 'Selling Government Services into Wider Markets' is also an exception to the rule that the Ministry of Defence does not purchase insurance. However, because of the unusual and hazardous nature of the activities the Ministry of Defence undertakes, commercial insurance may not always be available to cover these activities, or may not be cost effective. Therefore, alternatively customers may pay a Departmental Insurance Charge and any claims for compensation, which may arise, will then be paid by CLC&P.

10.8 Advice about insurance and risk reduction may be obtained from CLC&P and from the Ministry of Defence's insurance brokers, Willis Ltd, in accordance with 2008DIN08-014. Willis has created a specialised package of insurance policies offering a full range of business insurances for Budget Holders undertaking income-generating activity.

Section Eleven

Law and Practice

Civil Justice Procedures

11.1 The greatest upheaval ever in the Civil Litigation process occurred when the New Civil Procedure Rules were introduced on 26 April 1999. The Rules, which 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. 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.

Aims

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

- 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

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

11.4 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

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

Pre Action Protocol

11.6 Lord Woolf in his final 'Access to Justice' report of July 1996 recommended the development of pre-action protocols 'to build on and increase the benefits of early but informed settlement that genuinely satisfy both parties to dispute'. The 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*'.

11.7 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.

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

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

Fast-Track and Multi-Track

11.10 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 (£25,000 from 6 April 2009) and will proceed to a hearing quickly.

11.11 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.

11.12 Multi-track cases currently will generally involve claims with a value in excess of £15,000 (£25,000 from 6 April 2009) 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.

11.13 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

11.14 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

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

Claim Investigation

11.16 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, is denied, or there is a partial admission. If the defendant denies liability they should enclose with the letter of reply documents 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.

11.17 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.

11.18 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

11.19 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.

11.20 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

11.21 Under the 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.

11.22 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.

11.23 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.

11.24 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.

11.25 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 Head of CLC&P or a Senior Claims Officer.

Disclosure

11.26 The 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.

11.27 Under the 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.

11.28 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

11.29 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.

11.30 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.

11.31 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 rules. Updating and refresher courses and workshops have been undertaken during the last year. The acquisition of new and specialist skills has been recognised in the CLC&P Functional Competence Framework.

11.32 Units and Establishments have also become far more aware of how the 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.

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

11.34 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.

11.35 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 the deployment of key witnesses overseas.

Legal Services Commission (Legal Aid)

11.36 It is well over 50 years since the Legal Aid and Advice Act was enacted. For the first time, it gave access to justice to a range of people who beforehand could not afford to bring a case in criminal or civil law. Eligibility for legal aid depended on the applicant's disposable income and capital but anecdotal evidence is plentiful about how legal aid was wrongly or rightly distributed and it therefore came as no surprise that Legal Aid for Personal Injury claims was abolished in April 2000. The majority of such claims are now likely to be the subject of a conditional fee whereby a claimant's solicitor can uplift his normal

charging rate by 100% if successful (providing the success fee does not exceed more than 25% of the total compensation).

11.37 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.

11.38 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 the defence of the claim

11.39 A small number of claimants still however manage to obtain Legal Aid to pursue their claims. In some cases the claimant may at some point wish to discontinue his/her claim for whatever reason. In these circumstances the Department's legal advisers will always strongly advise against trying to recover costs in the High Court. The Legal Aid Act 1988 governs this area. The Legal Aid Act prevents a defendant from recovering any money against a legally aided person without the leave of the Court. In deciding whether to order payment of costs, the Court will decide whether payment is likely to cause undue "financial hardship" to the legally aided person. The fact that a claimant is in receipt of legal aid, already means they are technically within this category or they would not have qualified for Legal Aid in the first place.

Alternative Dispute Resolution

11.40 In accordance with a pledge made to the then Lord Chancellor Alternative Dispute Resolution/mediation is considered in all appropriate cases, usually where there is some evidence to support a claim of negligence. In cases where there is currently no evidence it is not deemed appropriate.

Counsel-to-Counsel Settlement Conferences

11.41 In cases where liability is not an issue, counsel-to-counsel settlement conferences are an innovative and financially attractive way of settling cases without going to trial or settling at the courtroom door. A round table consultation is arranged with the Department represented by counsel, the Head of CLC&P 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 need not undergo the trauma of a court case to secure compensation for an injury or loss caused by the Department's negligence.

Mediation

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

11.43 The mediation process employs an independent person (the mediator) to facilitate negotiations between parties in a dispute in an effort to reach a mutually accepted resolution. The process is voluntary, flexible, confidential and non-binding, and can be entered into and terminated at the discretion of either party. A number of claims made against the Ministry of Defence have been successfully concluded through the mediation process.

11.44 In financial year 2008/09, 40 Joint Settlement Meetings and Mediation Conferences took place resulting in savings to the Department of some £14.7 million. In addition had these cases run to court, the legal costs payable by the Ministry of Defence would have been considerable.

11.45 The Head of CLC&P and Senior Claims Officer (Claims Handling) are accredited mediators and members of the Chartered Institute of Arbitrators. The Team Leader for Clinical Negligence claims is also an accredited mediator.

Contributory Negligence

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

11.47 The following are some examples of Contributory Negligence:

- Driver or pedestrian failing to keep a proper lookout
- Claimant failing to turn off a machine before cleaning it
- Failure of motorcyclist to wear a crash helmet

- Failure to wear seat belt while travelling in a vehicle
- Riding in a vehicle as a passenger with a driver who is known to be under the influence of alcohol or drugs.

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

Rehabilitation

11.49 Rehabilitation, as a method of assisting injured or ill people back to work, is a matter that is attracting an increasing level of support amongst various bodies in Government, the Judiciary and the legal profession. It is claimed that at present the UK's track record in getting injured or ill people back to work falls well behind that of other Western countries.

11.50 CLC&P aims to utilise rehabilitation where appropriate when compensation claims are made. Rehabilitation is expected to assume far greater prominence in the claims handling process with the revision of the Civil Procedure Rules pre-action protocol on the handling of Personal Injury claims.

Fraud

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

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

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

Periodic Payments

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

11.55 A periodic payment normally consists of a conventional lump sum to the claimant together with a regular payment made on a monthly, quarterly or annual basis. The periodic payment can be made by way of an annuity purchased in the marketplace or, in the case of Government Departments and the National Health Litigation Service, on a self-funded basis. The Ministry of Defence has entered into 29 periodic payment arrangements in high value cases, which, up to 1 April 2005, needed the consent of both the defendant and the claimant.

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

11.57 The changes have been introduced to ensure a guaranteed income stream for those facing long-term care needs and future loss of earnings. The Court will also have the power to make a variable order to alter the terms of the periodic payment in cases where the claimant suffers some serious deterioration or, indeed, significant improvement. In a landmark case of *Thompstone v Thameside & Glossop Acute Services NHS Trust* the health authorities appealed against the first instance decisions that periodical payments in respect of future care be indexed in accordance with the Annual Survey of Hourly Earnings (ASHE 6115) rather than RPI. The Court of Appeal considered the circumstances in which it would be appropriate to award some part of the damages due to the Claimants on a periodical payments basis and also gave consideration to the appropriate index to be applied if different from RPI. The Court of Appeal ruled that indexation for future care costs on the basis of the ASHE 6115 were appropriate. This ruling will make such payments considerably more expensive for Defendants.

	2006/07	2007/08	2008/09
Total number of periodic payments	29	29	29
Total payments each year	£1,388,506	£1,400,364	£1,433,281

Third Party Accident Scheme (ToPaS)

11.58 If Ministry of Defence Civil Servants or Service Personnel are injured in any type of accident caused by a third party (e.g. a member of the public or a contractor) whilst they are on duty, it is the individual's own responsibility to pursue a common law claim for compensation against that third party without any assistance or involvement by the Department. The reason for this is that the law does not recognise the Department's involvement in such cases and therefore the Ministry of Defence does not have authority to incur expenditure in such circumstances. The only exception to this is that Civil Servants injured in road traffic accidents can have their legal costs underwritten by their TLB (see 2008DIN01-012) but this does not apply to Service Personnel or to Civil Servants injured in other circumstances.

11.59 In order to alleviate these concerns, a scheme called ToPaS (Third Party Accident Scheme) has been in operation since November 2000, which provides legal advice and assistance to Ministry of Defence Civil Servants and Service Personnel who have been injured whilst on duty and who consider the injury to be the fault of a negligent third party. Ralli Solicitors (formerly called Betesh Fox and Co), a firm of solicitors who specialise in personal injury claims, operates the scheme on behalf of the Ministry of Defence. The scheme works on a conditional fee basis (commonly known as “no-win, no-fee”). This means that any legally sustainable claim that Ministry of Defence personnel submit to Ralli will be free of charge to the individual. If the claim is successful, in addition to the compensation that has been paid, all legal costs including any money that has been paid for by Ralli will be recovered separately from the party at fault. If the claim is unsuccessful there will no charge to the Ministry of Defence or to the individual concerned, as the costs will be borne by an insurance policy that is placed and paid for by Ralli.

11.60 Generally, ToPaS will offer free advice and a help line for victims of accidents abroad, who should in the first instance call 0870 998 9000. There are many occasions when, although the accident occurred abroad, a claim can still be made within the UK and appropriate compensation can be recovered. On the other hand, Ministry of Defence personnel who suffer injury as a result of the negligence of a foreign national when abroad may need to obtain the services of a local lawyer. ToPaS can assist in locating a suitable legal representative in such circumstances.

11.61 Under the Fifth EU Motor Insurance Directive a claimant who is resident (“domiciled”) in England and who has been injured in a road traffic accident in another EU country, may issue court proceedings against the foreign third party in an English County Court or the High Court. Claimants have the choice of issuing court proceedings in their home court or, alternatively, in the country in which the accident occurred.

11.62 Since May 2004 hundreds of unit visits/meetings have been conducted using the opportunity to brief key unit personnel, discuss how to advertise the scheme and hand out ToPaS information packs and posters. Without doubt presentations have been the most effective way of getting this important message across to all Ministry of Defence personnel, and they have also provided an ideal opportunity for questions and feed back. The response from those units who have made contact has been excellent. Enquiries have come from Canada, the South Atlantic Islands, Germany, Northern Ireland and from across mainland UK. Should you require further information regarding ToPaS, or you would like to arrange either a short briefing or presentation, or you wish to make a claim under the scheme then please contact:

Mr Carl Crawley
ToPaS Development Director
Tel: 0870 998 9999
Mobile: 07960 258 664
E-mail: carl.crawley@topas.org.uk or Website: www.topas.org.uk

Common Law Claims & Policy - Organisation

As a result of the streamlining exercise CLC&P underwent significant change throughout 2008/2009, with a number of staff leaving the Department under the various Early Release schemes. Several other staff are scheduled to leave during 2009/2010. We have also taken this opportunity to re-structure the Branch to ensure maximum efficiency. The new structure is shown below:

Head of CLC&P - SCS

Senior Claims Officer (Policy) - Band C1

Responsible for Policy Group

Staff:

1 Indemnities & Insurance Adviser	Band D
1 Policy & Contracts Adviser	Band D
1 Budget Manager	Band D
1 Finance Officer	Band E1
2 Focal Point Administrators	Band E2

Responsibilities:

Non-contractual Insurance

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

Third Party Motor Claims

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

Directorate Administration

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

Contractual Matters

Liaison with contractors working for CLC&P and the MOD's commercial branch on contractual issues.

Financial Management

Budget management, financial planning and bill paying for CLC&P.

Senior Claims Officer (Claims Handling) - Band C1

Responsible for Employer's Liability Team, Public Liability Team and Clinical Negligence Team.

Employer's Liability, Low Flying and Maritime Team

Staff:

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

Responsibilities:

Service Personnel Employer's Liability Claims

Handling of Service personnel and ex-Service personnel Employer's Liability claims received before 1 July 1996. Managing the contracts with Royal and Sun Alliance, which has dealt with the majority of this type of claim since 1 July 1996 and, with Gallagher Bassett International Ltd since 1 May 2007.

Civilian Personnel Employer's Liability Claims

Managing the contracts with AXA which deals with claims of this type notified before 1 May 2002, Royal and Sun Alliance which deals with claims of this type notified between 1 May 2002 and 30 April 2007, and Gallagher Bassett International Ltd which deals with this type of claim notified since 1 May 2007.

Combat Immunity Claims

Claims relating to service in Iraq and Afghanistan in which it is open to MOD to plead a defence of combat immunity where injury was sustained engaging the enemy in the course of hostilities.

Nuclear Test Veterans

Claims from veterans of the Nuclear Tests of the 1950s and 1960s in respect of the health problems suffered by them, their children and grandchildren, alleged to have resulted from their participation in the tests - now the subject of a Group Action.

Section 10 claims

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

Miscellaneous claims

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

Low flying

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

Maritime claims

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

Public Liability Team**Staff:**

Team Leader	Band C2
2 Case Managers	Band D
3 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).

Northern Ireland Claims

Politically sensitive claims from members of the public arising from the activities of the HM Forces in Northern Ireland.

Vehicle Claims

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

Overseas Operations

Claims policy relating to overseas operations and advice to ACOs in Afghanistan, Cyprus, Iraq, NW Europe, and the South Atlantic Islands.

Radiation Claims

Claims for compensation due to illness alleged to have been caused by exposure to radiation – Compensation Scheme for Radiation Linked Diseases only.

Criminal Injuries Compensation

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 Team**Staff:**

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

Responsibilities:**Clinical Negligence**

Claims for compensation from Service personnel and their dependants where it is alleged that the MOD has acted negligently.

Post Traumatic Stress Disorder

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

Employment Tribunals

Co-ordination of the MOD's response to claims put to Employment Tribunals and then the European Court of Human Rights by former Service personnel dismissed as a result of their homosexuality.

Gulf Veterans' Illnesses

Potential claims for alleged Gulf War illnesses.

Porton Down

Claims from Porton Down veterans.

Ex-gratia Payments

Ex-gratia payments, including the human volunteer research no-fault compensation scheme.

Annex B

Top 10 Cases Settled **2008/09**

Claimant	Type of Injury /Loss	Compensation*
Service	Helicopter crash. Claimant sustained serious spinal injuries	£3,640,230
Service	Vehicle rolled over causing claimant to suffer paraplegic injury	£2,599,893
Service	Road traffic accident causing head injury	£1,587,254
Service	Multiple injuries to claimant when his tank was struck by round fired from another tank	£1,560,075
Service	Head injuries when a four wheel drive vehicle rolled over	£1,126,203
Service	Road traffic accident causing head injury	£1,005,587
Service	Claimant died in air crash	£906,526
Service	Pilot of aircraft died in crash	£883,160
Service	Fell from height when undertaking aircraft maintenance causing head injury	£760,000
Civilian	Mesothelioma case. HM Naval Base, Portsmouth	£747,766

* Inclusive of claimant's legal costs

Distribution List

APS/Secretary of State	DCDS Pers-PCV-Pen Comp Vets
APS/Minister (AF)	DCDS Pers-PCV-Legacy Health
APS/Minister (IDS)	
APS/Minister (DES)	
APS/USofS	DGMO
Parliamentary Branch	DBR
DPSO/CDS	DRP
PS/VCDS	D P&A
CNS	D Info
CGS	DGCC
CAS	DCCS
CDM	DCC(N)
DCDS (C)	DCC(A)
DCDS (EC)	DCC(RAF)
DCDS (Pers)	DGLS
DCDL	JAF
DCDS (Health)	JAG
CinC Fleet	CNJA
CinC Naval Home Command	DALS
CinC Land	DPS(A)
AG	COS/AMP
GOC NI	Director of Naval Personnel - RN _
	Terms of Service Personal Injury
	Litigation
AOCinC(STC)	Naval Service Incident Notification
	Cell Manager
CJO	APC Secretariat (2 copies)
CDM	APC (Litigation)
PS/PUS	PM(N)
PS/2 nd PUS	PM(A)
PS/CSA	DAS
DG Policy	DFCIT
DG Strategy	
DG HR&CS	CESO(Navy)
DG Finance	CESO(Army)
DG Science & Technology	CESO(RAF)
DCP	Ship Safety Management Office
Hd CP Pol	H&S FOSF
Hd CP ER	CE/DCSA
Hd Fin Pol	CE/DDA
Hd RP(Centre)	CE/DE
Hd Navy RP	CE/DGIA
Hd Army RP	CE/DHE
Hd Air RP	CE/DISC

DES SE Air – D	CE/DMTO
SGD AD BM	CE/DSA
Medical Director General (Navy) – SO1	CE/DSCA
Head of AMD Med Legal	CE/DSDA
AMD (Med Leg) (2 copies)	CE/DSTL
RAF Med Legal (RAF)	CE/DTMA
Med Org 2(RAF)	CE/DVA
SO1 Prev Med UKSC(G)	CE/HO
CS/HQ UKSC(G)	CE/JARIC
CS HQ BF Cyprus	CE/MSA
CS HQ BFSAI	CE/Met O
CS/Gib	CE/MDPA
CS/Iraq	CE/NMA
CS/Afghanistan	SC Ops(Tpt)4d1
Area Claims Officer North West Europe	SC Ops(Tpt)4d2
Area Claims Officer Cyprus	SC Ops(Tpt)4d3
Area Claims Officer Kosovo	SC Ops(Tpt)4d4
Area Claims Officer South Atlantic Islands	CE/TGDA
Area Claims Officer Iraq	CE/WSA
Area Claims Officer Afghanistan	AD SC Ops(Tpt)4
Command Secretary Fleet	SC Ops(Tpt)4d
Command Secretary Naval Home Command	
Command Secretary Land Forces	WSA/620
Command Secretary AG	HQ Land Log Spt (Tpt)
Command Secretary Air Command	HQ STC S&M Pol 3e
Civil Secretary PJHQ	HQNI CSS(Tpt)
CE/ABRO	HQ BFC J4(Tpt & Mov)
CE/ABSDA	CSV (IPT)
CE/AFPAA	LAIT RO2A
CE/APC	LSTS SMTW RAF HALTON
CE/ATRA	DTMA Bus Tvl Man (Sfc)
CE/BFPO	HQRM WO1d
CE/DAC	Command Master Driver HQ LAND
CE/DASA	Command Master Driver HQNI
Queen Victoria School	Master Driver HQ 2 SE Brigade
Duke of York's Military School	Master Driver HQ 49 Inf Brigade
RLC Training Group	SO3 Log Sp Catterick Garrison
PMA CS1b	CE/DARA
3AF - UK/JA RAF Mildenhall	CE/DBA
MOD Library	OC Log Sp Unit Colchester
DFSHQ DFS CFO	TCWO HQ 42 Brigade
All CLC&P Staff	S4(F)Sqn

External:

Royal & Sun Alliance plc (5 copies)
Willis Ltd

Gallagher Bassett (5 copies)
AXA Corporate Solution Services

Beachcroft LLP (London 5 copies)	Dominic Regan
Beachcroft LLP (Winchester 5 copies)	House of Commons Library
Morgan Cole Solicitors	House of Lords Library
Berryman Lace Mawer (Liverpool 5 copies)	Chairman – CCSU
Kennedys Solicitors (Chelmsford)	Health & Safety Executive
Ralli Solicitors	CE/NHS Litigation Authority
Association of Personal Injury Lawyers (5 copies)	HM Treasury – DDI Team
Charles Gibson QC (2 copies)	Royal British Legion (3 copies)
Justin Fenwick QC (2 copies)	Crown Solicitor (3 copies)
Derek Sweeting QC (2 copies)	Morton Fraser Solicitors (3 copies)
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