



MINISTRY OF DEFENCE
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CLAIMS
ANNUAL REPORT
2005/2006



Investor in People

JULY 2006

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INTRODUCTION BY THE CHIEF CLAIMS OFFICER

“He who thinks he can afford to be negligent is not far from being poor”

Samuel Johnson – 1709-1784.

The period covered by this report, our ninth, saw another busy year for the claims branch. Overall cash payments were £67.7M. Over the same period receipts of £6.6M was recovered. A detailed breakdown can be found at Annex A.

Although the overall cost of compensation claims against the Ministry of Defence is being kept under control it has to be recognised that it remains a significant burden on the Defence Budget and represents a significant diversion of resources away from defence priorities. As well as the compensation actually paid each year there are the legal costs to consider which will normally add about 15% to the cost of a claim. However more importantly there are many additional indirect costs that will arise from any accident including the cost of investigating the incident, damage to equipment, lost man days, the loss of skill and expertise, and the cost of recruiting and training replacement personnel. How much these will all add to the overall cost of a claim will vary according to the circumstances, but particularly where there is damage to expensive military assets, this may run into many millions of pounds. These indirect costs fall to individual Top Level Budgets as opposed to the Claims budget.

Compensation continues to attract much publicity in the national media, with claims against public bodies, in particular, being a magnet for articles suggesting that a compensation culture has developed in the country, where individual responsibility has been replaced by a culture of blame. In June last year the Lord Chancellor announced a programme of work entitled ‘Tackling the Compensation Culture’. Its purpose was to underline the Government’s determination to counter the widely held belief in some quarters that compensation should be available whenever someone suffers a loss, regardless of the merit of their claim. In doing so it recognises that, in line with the duty on individuals to take reasonable care towards each other, those with a genuine claim must be able to enforce their right to compensation. However, it seeks to discourage the view that seeking financial redress through litigation is always the answer, an attitude that may threaten confidence in the legal system and undermines the responsibility that individuals have to look after themselves and to mitigate any losses they might suffer.

In addition to normal core business, we have been involved in some legally challenging issues, particularly in respect of claims emanating from Iraq. The principles of combat immunity and rules of engagement, and their application in relation to claims from Iraqi civilians, as well as from members of HM Forces, have proved demanding.

Alternative Dispute Resolution in the form of Mediation or Counsel-to-Counsel conferences is used where there is some evidence to support a claim. Mediation involves the employment of an independent person, the mediator, to facilitate

negotiations between the parties in an effort to reach a mutually acceptable conclusion. The process is voluntary, flexible and can be entered into, or terminated, at the discretion of either party. Counsel-to-Counsel conferences, on the other hand, are generally used in those cases where liability is accepted but agreement needs to be reached over the level of damages. A round table consultation is arranged where the Department is represented by counsel, the Chief or Senior Claims Officer, and Treasury Solicitor.

I continue to place great onus on ensuring that Claims staff possess the appropriate skills and knowledge to be effective claims managers. To this end they attend a structured series of legal training courses during the year, provided by external legal training providers. With an eye on training, a joint Ministry of Defence and Treasury Solicitor conference was held on 31 March entitled 'Thinking Strategically'. Representatives from the Ministry of Defence's commercial claims handlers, panel solicitors, as well as subject experts from within the Ministry of Defence, were in attendance. Speakers from DS&C (Claims) and Treasury Solicitor provided a selection of informative presentations on a variety of topics, which received very positive feedback from those attending.

I commend the 2005/2006 Claims Annual Report to all readers. My objective in publishing the report is twofold. Firstly, to inform readers of the activities of DS&C (Claims) during the period of the report; secondly, and possibly more importantly, to underline the importance of risk management and health & safety, and the consequence to the individuals concerned, as well as the Department, of not getting it right. We all have a personal responsibility for health and safety, and it is incumbent on us all that accidents, which are often avoidable, do not occur.

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

EXECUTIVE SUMMARY

1. Total DS&C(Claims) cash payments in the year 2005/2006 was £67.7 million. Over the same period receipts of £6.6 million was recovered.
2. Highest claim settled in year was £6.0 million.
3. At 1 April 2006, the total number of new claims lodged with DS&C(Claims) or the Department's commercial claims handlers in year was 5665.
4. 621 Service personnel employer's liability claims were settled at a total cost of £26.3 million.
5. 1290 civilian employer's liability claims were settled at a total cost of £21.9 million.
6. 533 public liability claims were settled at a total cost of £8.25 million.
7. 3645 third party motor claims in the UK were settled at a total cost of £6.4 million.
8. 28 clinical negligence claims were settled at a total cost of £4.5 million.
9. 2047 intentions to claim are registered for those alleged to be suffering from Gulf Veterans' Illnesses.
10. ACO North West Europe closed 701 cases at a total cost of £1.09 million
11. ACO Cyprus closed 582 cases at a total cost of £273,000.
12. ACO Northern Ireland settled 182 cases at a total cost of £847,000.
13. ACO Balkans settled 41 cases at a total cost of £118,000.
14. ACO Falkland Islands settled 3 cases at a total cost of £4,500
15. ACO Iraq settled 393 cases at a total cost of £654,000.
16. ACO Afghanistan settled 15 cases at a total cost of £34,000.

SECTION ONE

INTRODUCTION

“An ounce of prevention is worth a pound of cure”
Victor Borge – 1909-2000

ORGANISATION

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

RESPONSIBILITIES

1.2 In addition to being responsible for processing common law compensation claims, Claims branch also has a number of other important responsibilities such as providing claims policy advice, handling some Service personnel employment tribunal claims, handling claims against foreign forces based in the UK and providing advice on insurance and indemnities. It undertakes a variety of secretariat tasks and during the period of this report dealt with a large number of Parliamentary Questions (23), Ministerial Correspondence (63), Treat Official Correspondence (80) and Freedom of Information requests (30).

1.3 Area Claims Officers (ACOs) and their staff are located in areas where there is a sizeable defence presence – Afghanistan, the Balkans, Cyprus, Iraq, North West Europe, Northern Ireland and the South Atlantic Islands. Area Claims Officers are accountable to their Command Secretary, but have a professional responsibility to the Chief Claims Officer.

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

POLICY AND PROCEDURES

1.5 When compensation claims are received they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid. To deal with cases on any basis other than legal liability requires difficult subjective 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. Junior and leading counsel 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.

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

SECTION TWO

PUBLIC LIABILITY CLAIMS

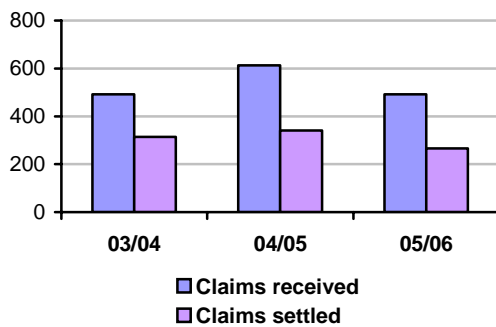
“Common sense is in spite of, not as a result of education”
Victor Hugo – 1802-1885

CLAIMS PUBLIC LIABILITY GROUP

2.1 The majority of claims submitted to the Public Liability Group are for personal injury or property damage from members of the public who have either been injured on Ministry of Defence property or have sustained injuries whilst taking part in the various public relations and recruiting activities run by the three Services e.g. injuries sustained on assault courses. The total paid this year is significantly less than that paid last year

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. The highest property damage claim settled this year was for £33,000. In the main, claims arise as a result of property damaged due to damp from poor insulation and vehicles damaged by pot holes, speed bumps and the improper operation of security barriers and ramps at check points. Whilst in excess of 250 claims of this nature were received this year, they are generally small in value, the average claim being settled at approximately £1,000.

	2003/04	2004/05	2005/06
Number of claims received	491	613	491
Number of claims settled	314	340	266
Amount paid	£6.9M	£7.4M	£2.7M



2.3 Whilst the number of property damage claims received this year is very similar to those received in FY 04/05 there has been a marked decrease in the number of personal injury claims received, a drop of some 35%. This is due, in

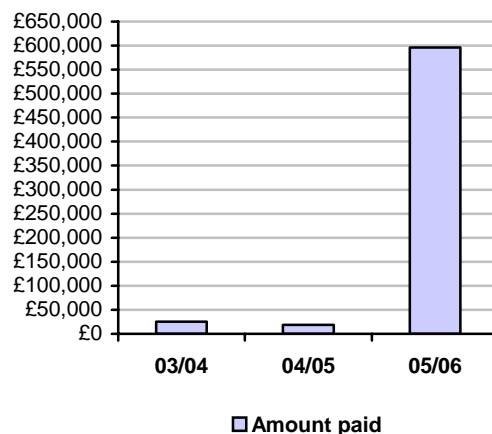
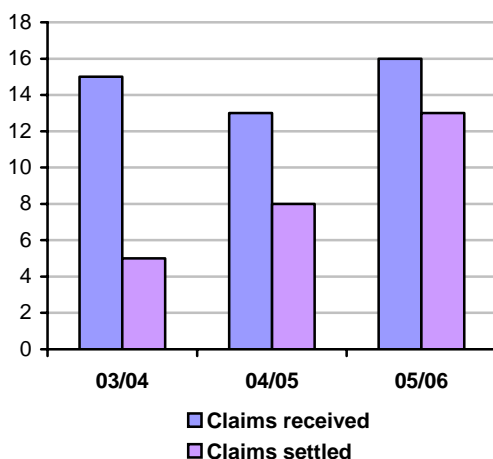
part, to a significant reduction in the number of claims received from Iraq this year.

2.4 The Public Liability Group continues to handle death and serious injury claims from Iraqi civilians. 48 new claims of this nature were received in this financial year. Due to the nature of the claims, their high profile 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 these claims should be handled by the Public Liability Group so that a consistent approach was taken and the claims handled in accordance with the Civil Procedure Rules. Less serious injury claims (e.g. those resulting from RTAs) and property damage claims emanating from Iraq, continue to be handled locally by the Area Claims Officer in Basrah.

PUBLIC LIABILITY CLAIMS - NORTHERN IRELAND

2.5 The Claims Public Liability Group also deals with public liability claims from Northern Ireland provided they are of a political and/or sensitive nature. Claims are normally received from members of the public who have had a dispute with members of the armed forces whilst in support of the Police Service of Northern Ireland (PSNI). The majority of claims are for alleged assault (including plastic baton round injuries), harassment or wrongful arrest. There was a slight increase in the number of claims received this year. The large increase in the amount paid was due to three high value claims, one of which settled at over £400,000 and related to a shooting incident in 1998.

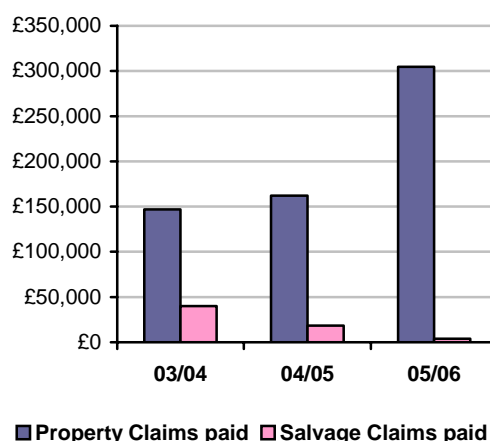
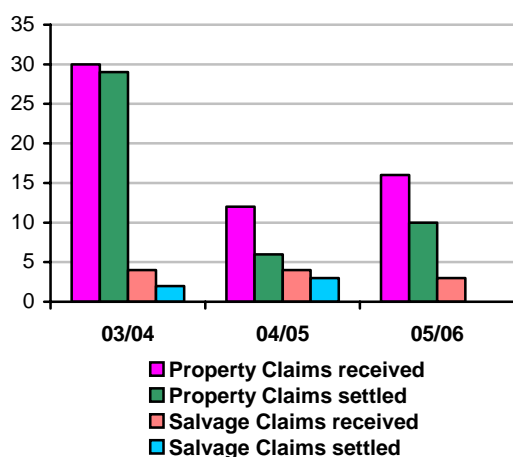
	2003/04	2004/05	2005/06
Number of claims received	15	13	16
Number of claims settled	5	8	13
Amount paid	£25,106	£18,700	£595,830



Maritime Claims

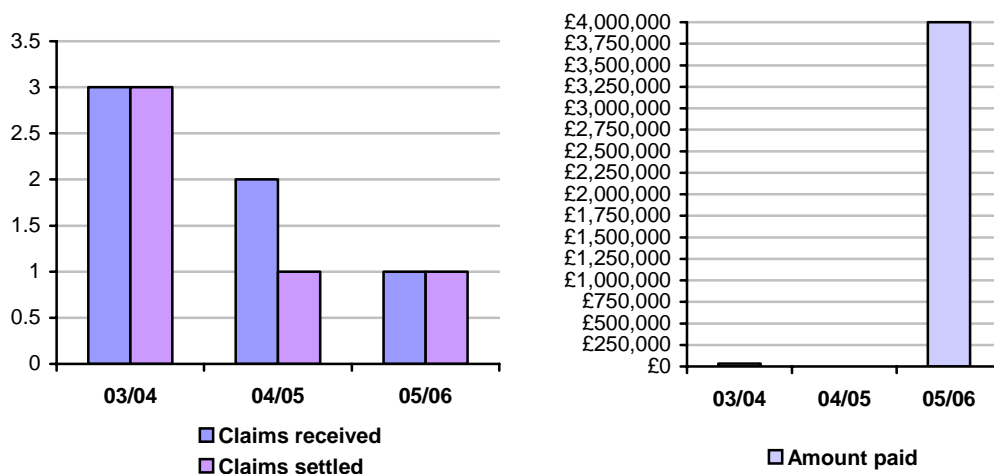
2.6 Maritime claims, by and against the Ministry of Defence, result mainly from collisions, oil spillage, gunnery/missile firing incidents, damage to static property, wash damage, fishing gear damage and the salvage and recovery of Ministry of Defence property. Maritime law is complex and much of the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

	2003/04	2004/05	2005/06
Number of property claims received by MOD	30	12	16
Number of property claims settled	29	7	10
Amount paid	£146,794	£162,051	£304,549
Number of salvage claims received by MOD	4	4	3
Number of salvage claims settled	2	3	0
Amount paid	£40,000	£18,293	£3,881



2.7 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.

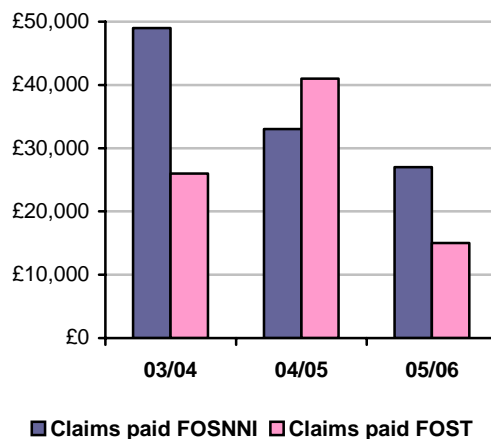
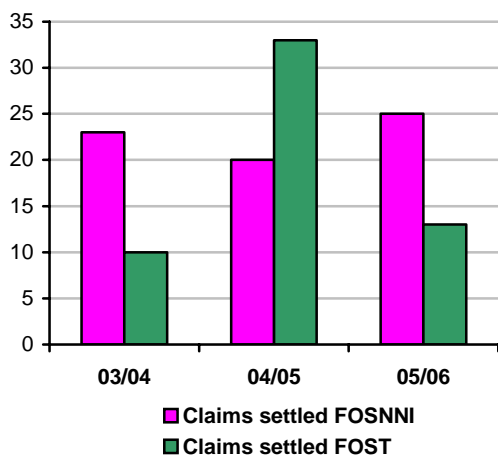
	2003/04	2004/05	2005/06
Number of maritime recovery and salvage claims initiated by MOD	3	2	1
Number of maritime recovery and salvage claims settled	3	0	1
Amount recovered	£34,000	£0	£4M



2.8 The large sum recovered in FY 2005/06 was as a result of a collision between a cross-channel ferry and HMS St Albans, a Type 23 frigate.

2.9 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.

	2003/04	2004/05	2005/06
Number of claims settled by FOSNNI	23	20	25
Amount paid by FOSNNI	£49,000	£33,000	£27,000
Number of claims settled by FOST	10	33	13
Amount paid by FOST	£26,000	£41,000	£15,000
Total amount paid	£75,000	£74,000	£42,000



LOW FLYING MILITARY AIRCRAFT CLAIMS

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

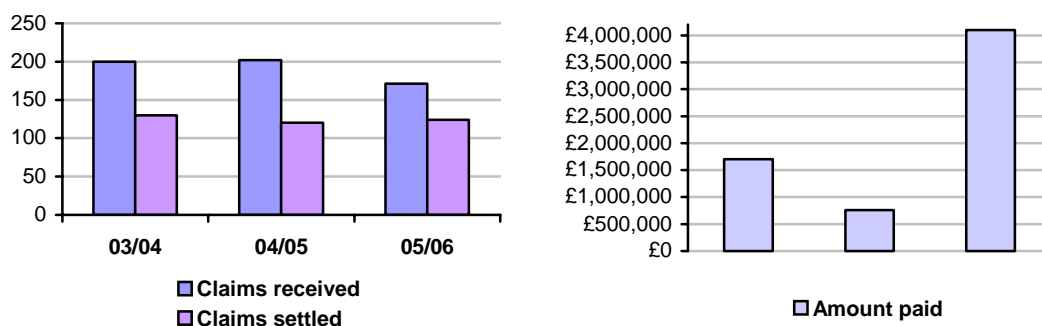
‘... No remedies exist in law against any military aircraft flying by virtue of the Royal Prerogative for the purpose of the defence of the Realm or of training or of maintaining the efficiency of the Armed Forces of the Crown. The ... Ministry of Defence will, however, pay compensation on an ex gratia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

2.11 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.

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

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

	2003/04	2004/05	2005/06
Number of claims received	200	202	171
Number of claims settled	130	120	124
Amount paid	£1.7M	0.759M	£4.1M

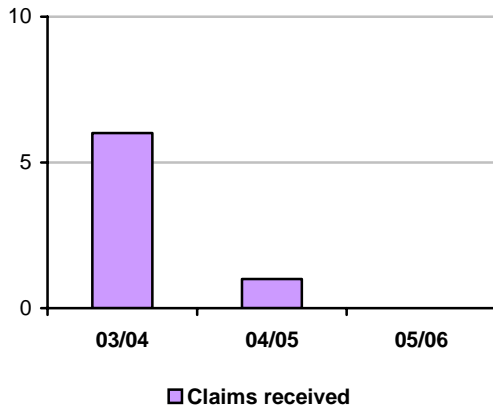


2.13 The significant difference in expenditure between FY 2005/6 and previous years can be largely explained by two high-value settlements.

AIR CRASH CLAIMS SETTLED BY DEFENCE ESTATES

2.14 The Defence Estates organisation (DE) has delegated authority to settle property damage claims arising from military aircraft crashes in the UK within delegated financial authority of up to £50,000 per claim. DE personnel perform valuable work in the aftermath of an air crash and have the expertise to assess many different types of damage from forestry to buildings. This was well illustrated following a RAF Hawk crash at Shap, Cumbria, in October 1999 where a number of properties were severely affected by debris from the crash. The total amount paid by DE in respect of this crash was in the region of £245,000. Fortunately no military aircraft crashes have resulted in any claims from the public this year.

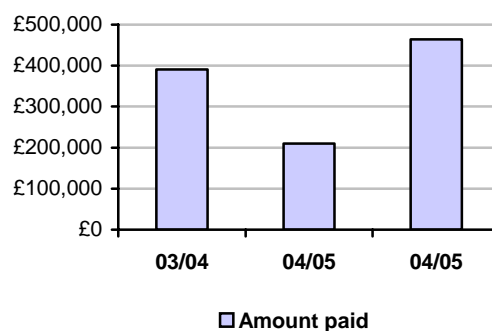
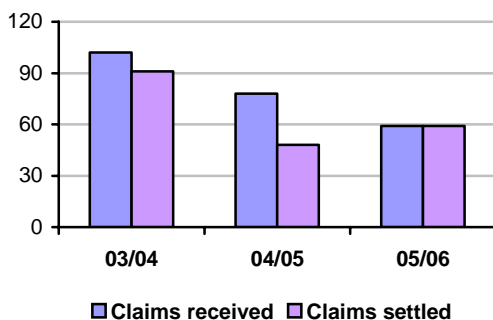
	2003/04	2004/05	2005/06
Number of claims settled by DE	6	1	Nil
Amount paid	£30,000	£500	Nil



VISITING FORCES CLAIMS

2.15 Claims PLG handles third party claims by and against Visiting Forces based in or visiting the United Kingdom under the provisions of Article VIII of 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, Holland, Belgium and Germany. Claims are investigated and handled in exactly the same way as if British Forces were involved and, if satisfied that the Visiting Force is liable, the Ministry of Defence pays compensation on 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%.

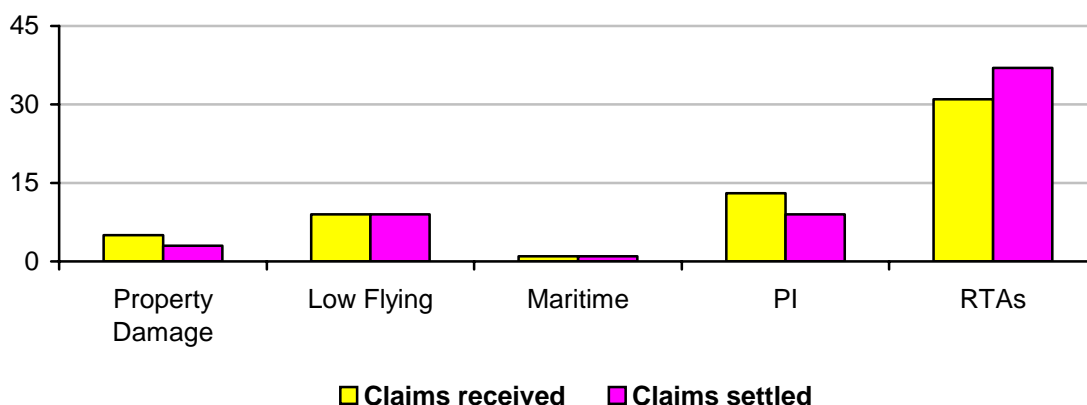
	2003/04	2004/05	2005/06
Number of visiting forces claims received	102	78	59
Number of visiting forces claims settled	91	48	59
Compensation Paid	£390,400	£210,000	£463,763



Visiting Forces claims can be categorised as follows:

2005/06	Property Damage	Low Flying	Maritime	Personal Injury	RTAs	Misc	Total
Claims Received	5	9	1	13	31	-	59
Claims Settled	3	9	1	9	37	-	59
Amount Paid	£6,598	£181,785*	£3,239	£230,247	£41,894	Nil	£463,763
MOD Contribution	£1,650	£45,446	£810	£57,562	£1,046	Nil	£106,514

* £150,000 of the total relates to two interim payments made to the widows of two pilots killed in a flying accident. The claims are on-going.



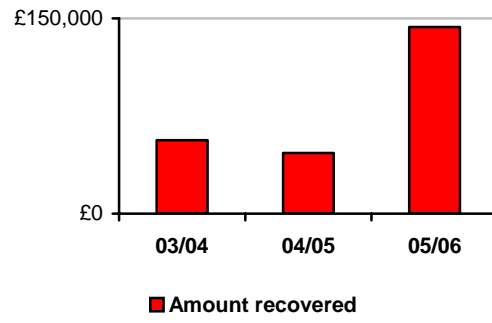
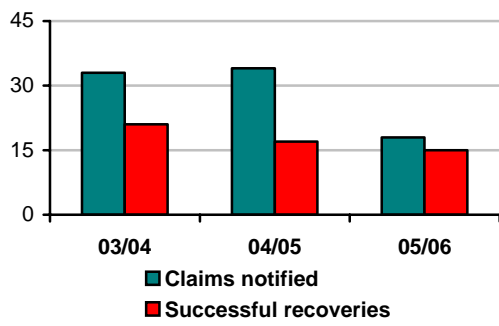
FINANCIAL RECOVERIES

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

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

2.18 The number of recoveries processed by Claims PLG in each of the last three financial years is shown in the table below. Two fairly large recoveries were made during the year, one of over £40,000 for damage to a Tucano aircraft at Carlisle Airport during an incorrect refuelling procedure and another of £56,000 from a contractor whose sub-contractor allowed a crane to be stolen while it was parked up overnight on a trailer whilst in transit from Marchwood Military Port to Yorkshire.

	2003/04	2004/05	2005/06
Number of claims notified	33	34	18
Number of successful recoveries	21	17	15
Amount recovered	£56,443	£46,553	£143,483



SECTION THREE

SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS

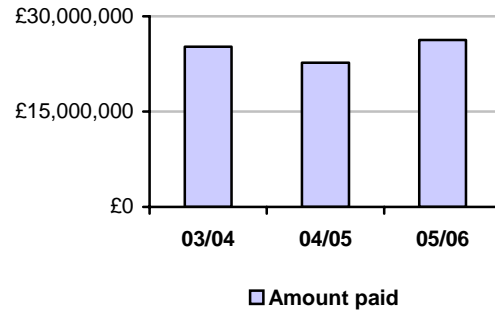
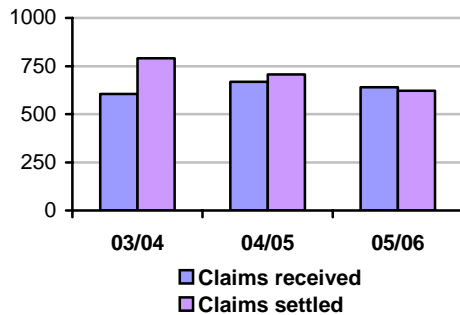
"We all know how the size of sums of money appears to vary in a remarkable way according as they are being paid in or paid out"

Sir Julian Huxley – 1887-1975

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, 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. See also the case of *Matthews v MOD* below at paragraph 3.32.

3.2 Royal and Sun Alliance plc have been handling most personal injury claims from Service and ex-Service personnel on behalf of the Ministry of Defence since 1 July 1996 when they were first awarded the contract following competition. RSA were re-awarded the contract for a further 5-year period as from 1 May 2002 following a competitive tender exercise. The Employer's Liability Group within DS&C(Claims) handles claims notified before that date, together with those of a political or sensitive nature. The number of claims and amounts paid are shown below:

	2003/04	2004/05	2005/06
Number of claims received	604	667	640
Number of claims settled	790	706	621
Amount paid	£25M	£22.7M	£26.3M



COMBAT IMMUNITY

3.3 Several claims being handled in-house relate to service during Op TELIC and have been examined to establish whether a legal defence on the basis of “combat immunity” was appropriate. Such a defence provides immunity for the Ministry of Defence in that a soldier does not owe his fellow soldier a duty of care in tort when engaging the enemy in battle conditions in the course of hostilities, nor is there any duty on the Ministry of Defence, in such a situation, to maintain a safe system of work. This ruling was made by the Court of Appeal in the case of *Mulcahy -v- Ministry of Defence*. This immunity was extended by Mr Justice Owen in the PTSD Group Action judgment in relation to immunity during the planning and preparation for military operations and during peacekeeping activities, but was narrowed in *Bici -v- Ministry of Defence* when the judge ruled that any threat must be imminent and serious.

3.4 Following investigation and legal advice, the vast majority of these cases have been accepted and some have now been settled whilst others are being progressed towards settlement. All claims in which a combat immunity defence must be considered are handled by DS&C(Claims) as opposed to the Department’s contracted claims handlers.

SUMMARY OF GROUP ACTIONS

NUCLEAR TEST VETERANS

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

3.6 A third National Radiological Protection Board report, carried out independently of the Ministry of Defence report, was published in early 2003. This 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 test 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.

3.7 Two firms of solicitors (Alexander Harris Solicitors in Altrincham and Clark, Willmot and Clark Solicitors in 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 Ministry of Defence for damages. They secured legal aid from the Legal Services Commission to pursue the matter. On 15 November 2004 they sent a Letter of Claim to the Ministry of Defence which indicated that they represented some 655 British Veteran Servicemen, 130 Fijian Veteran Servicemen and 213 New Zealand Veteran Servicemen who are potential claimants in a Group Action against the Ministry of Defence. Investigations into the allegations, which include failure to consider the health, safety and well being of the servicemen when planning and conducting the tests, failure to warn participants adequately of the potential damage and breach of statutory duty, are ongoing. A range of cancerous and non-cancerous pathologies are alleged to have been caused by exposure to radiation generated by the nuclear tests.

3.8 The Legal Services Commission withdrew funding from the Group Action in August 2005. No appeal against this decision was made and the two firms of solicitors who were involved have withdrawn from the action. Although some claimants have decided not to pursue their claims any further, the case is continuing with the remaining claimants being represented by two solicitors acting for individuals.

3.9 A stay, until 1 September 2006, for the claimants to issue proceedings has been agreed between the parties. Should proceedings be issued, detailed Particulars of Claim and supporting evidence will then have to be served by 8 January 2007. It has been further agreed that the Ministry of Defence will then have eighteen months from the service of the Particulars of Claim to serve a Defence.

RADIATION COMPENSATION SCHEME

3.10 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; it does not affect claimants' rights to seek legal redress. The scheme provides for the assessment of a case, on an agreed technical basis, in order to determine the probability that a cancer contracted by a worker could have been caused by occupational radiation exposure. The amount of compensation payable in a successful case is determined by negotiation between the solicitors representing the parties, based upon the same guidelines that would apply if the case had proceeded to Court. The scheme provides for payments to be made for lower levels of causation

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

3.11 During financial year 2005/06, the scheme received seventeen 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, 21 claims were repudiated as failing to meet the minimum 20% causation probability and one claim was settled.

PORTON DOWN

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

3.13 On 18 November 2002, the Lord Chief Justice ruled that the original inquest into the death of Mr Maddison be quashed and a new inquest held. Consequently on 5 May 2004, the new inquest was opened by the Coroner for Wiltshire & Swindon. The jury returned a verdict on 15 November 2004 stating that Mr Maddison had been Unlawfully Killed.

3.14 The Parliamentary Under-Secretary of State for Defence wrote to the solicitor acting for the Maddison family on 20 December 2004 apologising for the fact that Ministry of Supply employees at the Chemical Defence Experimental Establishment at Porton Down Wiltshire proceeded with a test involving Mr Maddison on 6 May 1953, which led to his death. A ministerial statement was made in Parliament on 21 December 2004, publicly announcing an apology.

3.15 In addition the Minister also indicated that the Ministry of Defence would consider favourably any claim for compensation from Mr Maddison's family on the basis of proceeding with a test on 6 May 1953, which led to his death and which had been undertaken despite the fact that an identical test on 4 May 1953 had resulted in an adverse blood test in one serviceman. The Ministry of Defence accepted that Section 10(1) of the Crown Proceedings Act would not afford legal protection to the Department because the tests were under the direction and control of civilians, and not members of the Armed Forces.

3.16 In the meantime, the Ministry of Defence announced a challenge to the inquest verdict by means of a Judicial Review. This challenge was set to take place on 13 February 2006 in the High Court. However, a matter of days before the hearing was due to commence, Counsel representing the Maddison family offered a possible resolution of the issues to be addressed at the Judicial Review. This proposal amounted to the Ministry of Defence agreeing that the Unlawful Killing verdict should stand. However, the grounds on which this verdict

was reached by the Jury should be varied so that the finding of Unlawful Killing rested solely on the acceptance of gross negligence in the conduct and planning of the experiment. In return, the Maddison family would agree that there was insufficient evidence for the Coroner to invite the Jury to decide whether Mr Maddison did, or did not, give his consent to take part in the experiment that killed him, or whether the Porton Down scientists were grossly negligent with regards to obtaining Mr Maddison's consent.

3.17 This proposal, which the Ministry of Defence found acceptable, was put to the presiding judges set to hear the Judicial Review who endorsed the terms of the agreement, commenting that it was 'a sensible and responsible compromise'.

3.18 With regard to the claim for compensation, the Ministry of Defence received notification from the solicitors acting for Mr Maddison's next-of-kin about the valuation they placed on this claim. A meeting, involving legal representatives of both parties, was held on 18 March 2005 in an attempt to resolve this specific claim and also to discuss potential claims from some 500+ other former Service volunteers relating to biological and chemical research tests at Porton Down in the 1950s and 1960s. Settlement of the compensation claim has since been achieved.

3.19 During FY 2005/2006 compensation totalling £10,000.00 was paid to three veterans in connection with their participation in other tests at Porton Down.

GULF WAR CLAIMS

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

3.21 As mentioned in previous Claims Annual Reports, DS&C(Claims) is aware that solicitors acting for Gulf veterans have received legal advice from Queen's Counsel about the prospects of successfully bringing claims for compensation against the Ministry of Defence. The Legal Services Commission, who had been providing public funding in the form of legal aid, dismissed the appeal for continued funding on 21 March 2006.

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

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

EUROPEAN COURT OF HUMAN RIGHTS JUDGMENT ROCHE v THE UNITED KINGDOM

3.24 The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of Judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in chambers of seven Judges or, in exceptional cases, as a Grand Chamber of seventeen Judges.

3.25 On 19 October 2005 the Grand Chamber delivered judgment in an important Ministry of Defence case. The case was brought by Mr T M Roche who joined the Army in 1953 and was discharged in 1968. In 1987 he developed high blood pressure, hypertension, bronchitis and bronchial asthma. Mr Roche maintained that his health problems were as a direct result of his participation in mustard and nerve gas tests conducted at Porton Down in 1962 and 1963.

3.26 From 1987, Mr Roche actively sought access to his records relating to events at Porton Down, but with only limited success. In 1991 he submitted a claim for a Service pension which was rejected in 1992 by the Secretary of State for Defence because he had not demonstrated a causal link between the tests at Porton Down and his medical condition.

3.27 After protracted attempts to recover the documents of which he sought disclosure, Mr Roche made an application to the European Court of Human Rights in 1996 complaining that he was being denied adequate access to information concerning the tests he underwent at Porton Down. He also complained that a Section 10 Certificate issued by the Secretary of State for Defence in 1995 (which effectively blocked any civil proceedings being pursued) constituted a violation of his right of access to court.

3.28 In its written judgment the ECHR upheld his complaint about the Department's failure to provide full and prompt disclosure, which in its view must have caused Mr Roche feelings of frustration, uncertainty and anxiety. Compensation and payment of his legal costs in the sum of approximately £36,000 was awarded. Importantly, the Court made no criticism with regards to the issuing of the Section 10 Certificate.

ASBESTOS CLAIMS

3.29 Prior to 15 May 1987, Service personnel were prevented from pursuing claims for compensation from the Ministry of Defence by Section 10 of The Crown Proceedings Act 1947 (Crown Immunity prevented claims from being made prior to 1947). However, Section 10 was repealed by The Crown Proceedings (Armed Forces) Act 1987. Since the change in the law, which was not made retrospective, Service personnel who suffer loss or injury as a result of negligence by the Ministry of Defence have been entitled to make common law claims for compensation. 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.

3.30 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 fifteen and 40+ years).

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

3.32 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 on 10 and 11 December 2001. Mr Justice Keith handed down judgment on 22 January 2002 in favour of the Claimant. The Department, however, secured leave to take this matter expeditiously to the Court of Appeal and the hearing took place on 22 and 23 April 2002. In their judgment, handed down on 29 May 2002, the Court of Appeal overturned Mr Justice Keith's decision, but granted leave for Mr Matthews to take the matter to the House of Lords. Their Lordships considered

the matter on 13 and 14 January 2003 and handed down a unanimous judgment on 13 February in favour of the Ministry of Defence. The five Law Lords agreed that there had never been the right in national law that Mr Matthews had 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.

3.33 Mr Matthews subsequently made an application to the European Court of Human Rights (ECHR). In light of the ECHR’s judgment promulgated in the case of *Roche v The United Kingdom* (detailed above), and which has significant bearing on this case, the solicitors acting for Mr Matthews indicated, in January 2006, that they were now going to withdraw Mr Matthews’s application to the ECHR. This effectively brings matters to a conclusion.

3.34 On a more general note, is the decision handed down by the Court of Appeal, on 26 January 2006, in the ‘pleural plaques test litigation’ case, *Grieves and others v FT Everard & Sons Ltd and others*. By a majority of 2:1 the Court of Appeal (headed by the Lord Chief Justice, Lord Phillips) found that there can be no compensation for asymptomatic pleural plaques which are accompanied by the usual risks of future asbestos related disease or feelings of worry. The Court of Appeal accepted that their decision went against 20 years of practice by courts at first instance, but as a matter of policy ruled:

- damages should not be recoverable where exposure produces physiological change which is neither visible or symptomatic and in no way impairs bodily function;
- there can be no free standing recovery of damages for the risk of developing future disease alone;
- there is no duty on an employer to take reasonable care not to cause worry or anxiety and there are control mechanisms which restrict the circumstances in which an employer can be liable for causing foreseeable psychiatric harm.

3.35 Permission was granted for an appeal to be made to the House of Lords on the issue of liability, given the difficult principles involved and the very large number of similar pleural plaques claims.

3.36 Whilst this judgment was not directly linked to a specific case involving the Ministry of Defence, the judgment does, however, have significant implications for all employers, including the Ministry of Defence, in relation to all claims brought by former employees with pleural plaques. In the light of the judgment, and pending the outcome of an appeal to the House of Lords, the Ministry of Defence, in line with the general position adopted by industry, has ceased making offers of damages to former employees diagnosed with pleural plaques. In order to address concerns by some claimants regarding limitation, and to ensure that no claimant is statute barred through delay caused by the House of Lords appeal, the Ministry of Defence has agreed to an extension to the period set out in the Limitation Act 1980 pending the outcome of the appeal.

ARMED FORCES COMPENSATION SCHEME

3.37 The Armed Forces Compensation Scheme, a new compensation package for members of the Armed Forces, became effective from 6 April 2005. The new legislation replaces the previous arrangements under the War Pensions Scheme and is administered and paid by the Veterans Agency. The new Scheme covers all Regular (including Gurkhas) and Reserve personnel whose injury, ill health or death is caused by their 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 since the new scheme affects only those who have suffered injury, ill health or death on or after 6 April 2005.

3.38 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. It is a 'no fault' scheme which means that individuals still have the option to sue the Ministry of Defence for negligence in common law.

3.39 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.

SECTION FOUR

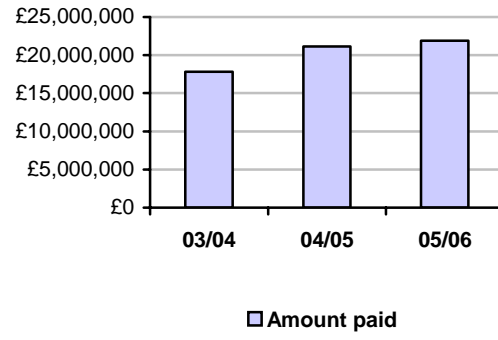
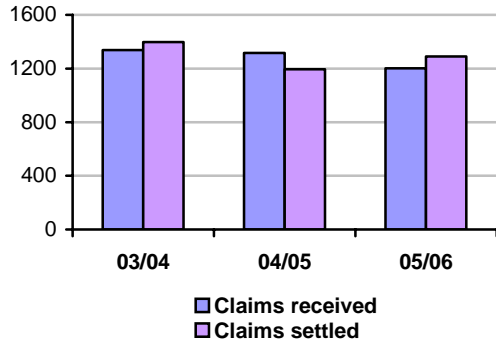
CIVILIAN STAFF EMPLOYER'S LIABILITY CLAIMS

"The chapter of accidents is the longest chapter in the book"
Lord Edward Thurlow – 1731-1806

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

4.2 Ministry of Defence civilian employees injured in the course of their official duties may be able to claim compensation. Details on how to submit a claim are contained in Volume 16, Section 7 of the Ministry of Defence Personnel Manual and further information is given in 2006DIN07-025 'Compensation Claims against MOD – Service and Civilian Employer's Liability and Clinical Negligence'. The increase in the number of claims received is mainly as a result of a large rise in asbestos-related claims. There was also a rise in accident injury related claims (trip/slip, lifting etc). Asbestos-related claims also account for the increase in the amount of compensation paid over the reporting period, which rose by £1,100,000 compared to last year. The increase in claims received and compensation paid against asbestos-related claims is a situation being experienced throughout the UK insurance industry. The most serious of these cases are those relating to mesothelioma. The Ministry of Defence receives about 50 such claims each year from former civilian industrial employees. However, given that measures were introduced in the early 1970s regarding the use of asbestos, and that mesothelioma can take up to 40 years to manifest itself, these are expected to tail off in about ten years. The average damages paid is about £80,000 (inclusive of legal costs).

	2003/04	2004/05	2005/06
Number of claims received	1337	1316	1202
Number of claims settled	1398	1195	1290
Amount paid	£17.9M	£21.1M	£21.9



SECTION FIVE

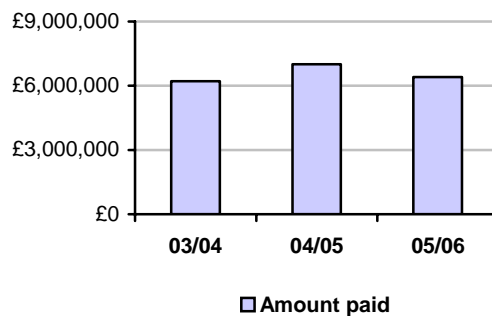
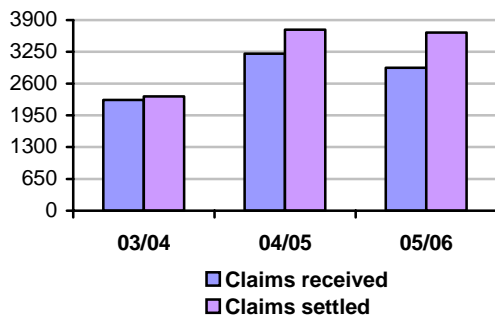
MOTOR CLAIMS

“Caution is not cowardly, carelessness is not courage”
Unknown

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. The contract for the period 2002 to 2007 is held by AXA Corporate Solution Services Ltd. DS&C works with the Defence Road Safety Officer to reduce the number of road traffic accidents experienced by the Department by raising awareness of the financial and human costs of accidents. To this end DS&C participates in presentations at the Motor Transport Road Shows organised by the DLO and RAF. DS&C is represented on the Defence Road Transport Regulation Working Group and the Defence Motor Transport Sub-Committee.

	2003/04	2004/05	2005/06
Number of claims received	2262	3216	2925
Number of claims settled	2334	3706	3645
Amount paid	£6M	£7M	£6.4M

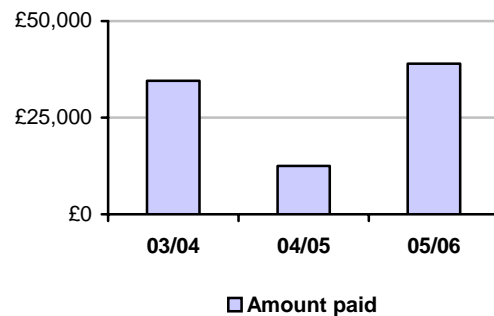


THIRD PARTY MOTOR CLAIMS - OVERSEAS (NOT DEALT WITH BY ACOS)

5.2 Claims arising from non-UK based vehicles overseas are handled by the appropriate Area Claims Officers (ACO), or DS&C(Claims) Public Liability Group (PLG), for that geographical area. The Claims PLG geographical area is so big, it is not unusual to receive claims from anywhere in the world where British Forces are based, on exercise, or even when there is a single Defence Attaché with one car. This year has seen claims from Gibraltar, Spain, Belize and Kenya. In accordance with JSP 341, units and organisations should send FMT 3-1 (the form submitted by the user unit notifying details of traffic accidents involving Ministry of Defence owned, or hired vehicles, and showing that the driver was on duty at the time of the incident) and supporting statements to DS&C(Claims).

5.3 Claims managers are required to establish that an authorised driver was driving the Ministry of Defence vehicle on an authorised journey and route. If these criteria are met and all the evidence suggests that the Ministry of Defence driver was liable for the accident, then compensation will be paid. Statistics for motor claims for the last three years are shown in the table below. After a significant drop in the number of claims received in FY 2004/05 the numbers appear to have now stabilised.

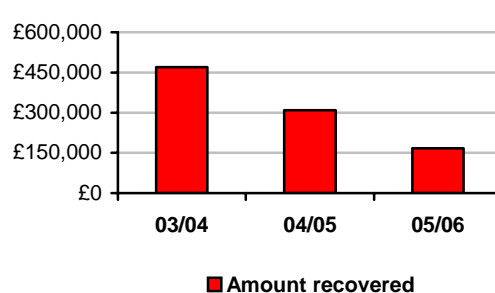
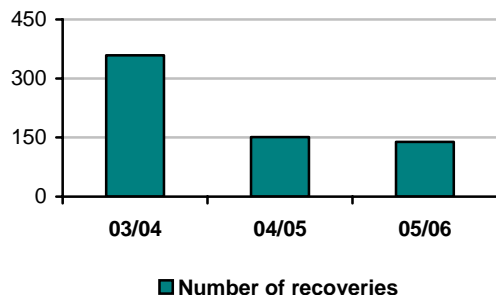
	2003/04	2004/05	2005/06
Number of claims received	26	17	18
Number of claims settled	24	14	23
Amount paid	£34,498	£12,469	£39,026



UNINSURED LOSS RECOVERY

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

	2003/04	2004/05	2005/06
Number of recoveries	359	151	139
Amount Recovered	£470,157	£308,825	£166,792



COST OF DAMAGE TO MINISTRY OF DEFENCE VEHICLES

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

SECTION SIX

CLINICAL NEGLIGENCE CLAIMS

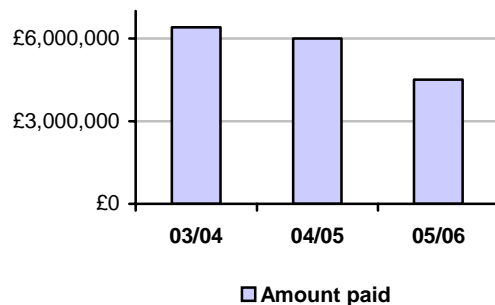
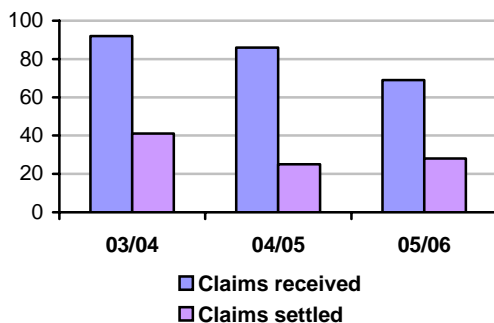
“It costs more to revenge injuries than to bear them”
Bishop T Wilson

6.1 Clinical negligence claims arise when a patient considers that the advice and/or treatment received fell below acceptable standards due to the negligence of the medical staff. To succeed in bringing a claim for negligence the claimant must establish that the defendant owed them a duty of care and that there was a negligent breach of that duty resulting in the claimant suffering damage. Due to their nature, clinical negligence claims can be very time consuming and expensive to settle. In many cases, experts in a number of different fields may be instructed by both parties to provide advice on liability, causation and quantum issues.

6.2 A number of factors underpin the rising costs of settling such claims including increases to the level of general damages, changes to the discount rate on which future losses are calculated, and higher labour rates for carers and therapists.

6.3 The table below shows expenditure on clinical negligence claims over the past three years. There is a continued, welcome, downward trend on the number of new claims received. During financial year 2005/06 the most expensive case settled was for £1 million as a result of the negligent treatment of a soldier’s head injury, following a fall from a military vehicle, resulting in brain damage, At the other end of the spectrum the lowest claim settled was for £500 as a result of negligent treatment of a wart on a soldier’s hand.

	2003/2004	2004/2005	2005/2006
Number of claims received	92	86	69
Number of claims settled	42	25	28
Amount Paid	£6.0M	£6.0M	£4.5M



6.4 In addition to the formal claims received, DS&C(Claims) dealt with 75 requests from solicitors for disclosure of medical and other information in anticipation of potential clinical negligence claims against the Department.

6.5 Staff from DS&C have, during the course of the year, been in discussion with Defence Medical Services staff with regard to the roll-out later this year of the Defence Management Information Capability Programme (DMICP) which, it is suggested, should, with the improved diagnostic aids available with DMICP, result in fewer instances of misdiagnosis/sub-optimal treatment, thus leading to a reduction of clinical negligence claims and compensation/legal costs paid. The extent to which these suggested benefits do actually materialise will need to be monitored over the coming years. As DMICP is not scheduled to be fully rolled out across the Ministry of Defence until 2010, it is not possible to attribute any immediate benefits relating to claims received/compensation paid.

SECTION SEVEN

SERVICE PERSONNEL EMPLOYMENT TRIBUNAL CLAIMS

“There is nothing more frightful than ignorance in action”
Johann Von Goethe – 1749-1832

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.

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

HOMOSEXUAL DISMISSAL CASES

7.3 The Department is attempting to reach amicable settlements in respect of claims for compensation brought in the Employment Tribunal, and/or European Court of Human Rights, by former members of HM Armed Forces. It has been accepted that they were dismissed from the Services as a result of the previously operated policy, which debarred homosexuals from serving in HM Armed Forces and they have also submitted their claims within stipulated timescales.

7.4 Whilst the Department maintains that 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, it does accept that in some cases 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. In those cases it is accepted that compensation should be paid. During financial year 2005/06 three such claims were settled and £52,000 compensation paid. The table below shows equivalent expenditure in the past three years:

	2003/2004	2004/2005	2005/2006
Homosexual Dismissal Cases Settled	9	Nil	3
Other ETs	-	-	1
Compensation Paid	£192K	Nil	£65K

7.5 DS&C(Claims) is in liaison with the solicitors acting for the remaining claimants and have asked them to provide detailed schedules of loss for our further consideration. Once all the necessary information has been received and considered, it is aimed to make appropriate offers of settlement to bring this tranche of claims to a satisfactory conclusion.

7.6 Attempts to reach settlement on these cases were delayed considerably by the case of *MacDonald -v- Ministry of Defence*. Mr MacDonald was a serving Flight Lieutenant, whose resignation from the RAF was compulsorily effected in 1997 because of his voluntary declaration of homosexuality. He lost a claim at a full ET hearing that he had been discriminated against unlawfully on grounds of sex, contrary to the Equal Treatment Directive and Section 6 of the Sex Discrimination Act 1975. Following the ET ruling Mr MacDonald took his case to the Employment Appeals Tribunal (EAT) which found that he had been discriminated against in terms of the Sex Discrimination Act 1975 and had been subjected to sexual harassment. He would be entitled to compensation in both respects and the matter was remitted back to the ET to consider compensation.

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

7.8 Mr MacDonald subsequently decided to appeal this decision to the House of Lords. The Law Lords considered the appeal on 22 and 23 January 2003 and handed down a unanimous judgment on 19 June 2003 in favour of the Ministry of Defence. The Department's attempts to reach amicable settlement with Mr MacDonald, including both substantial financial compensation and reinstatement into the RAF, have unfortunately not been successful and Mr MacDonald has now taken steps to have this matter considered, and determined, by the ECHR. The MOD accepts that, regrettably, this may now be the only way to finally resolve this matter.

SECTION EIGHT

AREA CLAIMS OFFICERS

"I prefer the folly of enthusiasm to the indifference of wisdom"

Anatole France – 1844-1924

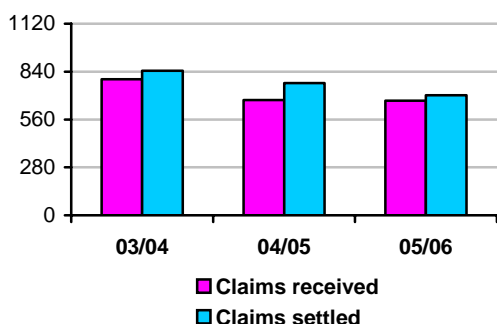
AREA CLAIMS OFFICE (NORTH WEST EUROPE)

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

8.2 Following a review undertaken last year by the ACO, a new ACO(NWE) structure has now been fully implemented. The ACO staffing complement has been reduced and all claims officers have been cross trained and are now able to handle every type of claim received. This has ensured continuity through periods of absence, better skilled claims officers and has also enabled a better focus on Loss of Service (LOS) recovery claims which are permissible under German law.

8.3 ACO(NWE) continues to place a strong emphasis on Risk Management and has been active throughout the last year in raising the profile of the organisation, roles and responsibilities. This has been achieved through a variety of mediums such as the ACO(NWE) Newsletter (issued in both English and German), presentations at Garrison SHEF seminars and Property Management staff seminars, together with visits to stakeholders such as RMP detachments and the German Government Claims organisation (SRB). The benefits seen from this work are an increased understanding of claims issues and willingness to provide assistance to claims investigations when required.

	2003/2004	2004/2005	2005/2006
Number of claims received	794	673	670
Number of claims closed	846	772	701
Total Paid	£1,070,612	£1,121,382	£1,094,802
Total Recovered	£590,929	£491,604	£531,036

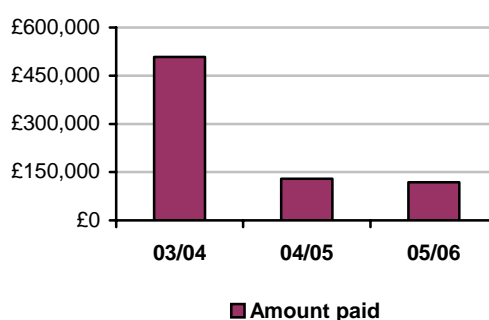
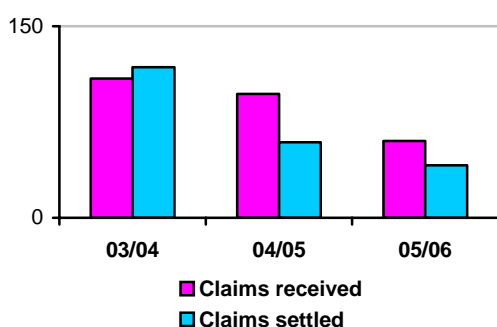


AREA CLAIMS OFFICE BALKANS

8.4 The ACO Balkans comprises three members of staff, a SO2 Commercial and one locally employed claims clerk, who are based in Banja Luka Metal Factory. There is also a locally employed claims clerk based in Kosovo.

8.5 There was a marked decline in the number of claims submitted this year, some 59% down on 2004/05, the vast majority of which were Road Traffic Accidents and property damage, including damage to beehives caused by helicopters.

	2003/04	2004/05	2005/06
Number of Claims Received	109	97	60
Number of Claims Settled	118	59	41
Amount Paid	£508,703	£129,546	£118,273
Amount recovered	Nil	£382	Nil



8.6 The highest settlement of £39,000 involved a negligent discharge from a weapon being confiscated by HM Forces, when an interpreter sustained a leg injury.

AREA CLAIMS OFFICE CYPRUS

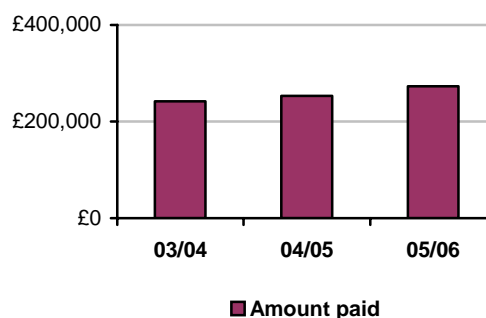
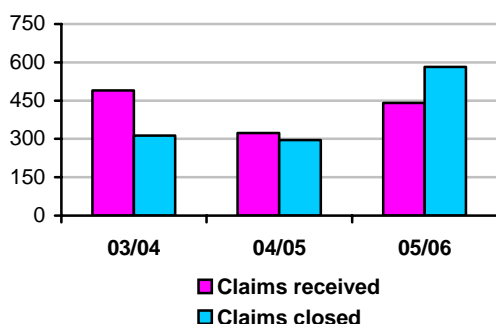
8.7 ACO Cyprus comprises two members of staff who are responsible for processing claims by and against the Ministry of Defence and the Sovereign Base Areas administration in Cyprus and its territorial waters. The range of claims dealt with is similar to that of ACO NW Europe (road traffic accident, public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

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

8.9 The rise in training and manoeuvre damage claims during 2003/04 was due to the receipt of 179 individual claims from householders who reside in a village adjacent to RAF Akrotiri. They alleged that their property had been damaged by vibration from military aircraft. These claims were repudiated in 2005/06 following noise surveys and specialist advice. If these are taken out of the equation, claims in respect of training and manoeuvre damage actually fell during 2003/04 and 2004/05. This was largely due to the cancellation of a number of exercises due to operational commitments elsewhere. The trend has reversed in 2005/06 as Units fulfil their training commitments with the number of claims reflecting this increased activity.

8.10 Expenditure during 2005/06 in settling employer's and public liability claims has increased despite a fall in the number received. This was due to the number of larger value claims settled from previous years.

	2003/04	2004/05	2005/06
Number of claims received	489	323	441
Number of claims closed	313	296	582
Amount paid	£242,000	£253,000	£273,000
Amount Recovered	£14,000	£18,000	£21,000



AREA CLAIMS OFFICE IRAQ

8.11 Based at Basrah Air Station alongside HQ Multi National Division (South East), ACO Iraq has experienced another busy year of operation. The ACO is manned by one x Band C2 and one x Band D Claims Officers and two locally employed Iraqi interpreters who manage all routine third party compensation claims made as a result of the British Forces' activities on Op TELIC.

8.12 The ACO comprises two adjoined portacabin units which have benefitted this year with improved communications to allow easier and faster electronic contact with the many agencies they deal with in the investigation of claims. The claims officers also work several times a week at the main gate of Basrah International Airport, three miles from the claims office, where they meet claimants in person to register new claims, update claimants on the progress of their claims and make settlement payments where appropriate.

8.13 Claims are only registered and investigated for incidents occurring since the declared end of war fighting on 1 May 2003, except for a small number of claims for loss of property from Prisoners of War captured during the war fighting phase. Due to the sensitive nature of death-related claims, and to ensure a consistent approach in handling such claims alongside those Iraqi claims registered in the UK Court system, all claims involving the death or serious injury of an Iraqi civilian (except those resulting from RTAs) are handled by DS&C(Claims) staff in London. For the purpose of this exercise a 'serious injury' is defined as those injuries arising from an incident where another individual was killed.

8.14 All claims received by the ACO are investigated on the basis of whether British Forces have a legal liability to pay compensation. Where there is a proven legal liability i.e. the actions of British Forces were negligent and, as a result, a third party has suffered injury to themselves or a family member or damage to their private property, compensation is paid. Rates of settlement are assessed by the ACO using local Iraqi quantum values.

8.15 Claims activity has continued to be high over the past year. The number of claims received is slightly lower than previous years but the number of cases being concluded has risen as some long term investigations have been finalized. The increase in settlements is, in part, due to the operation of a goodwill

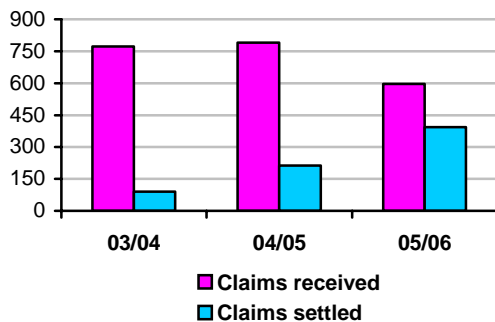
payment scheme for individuals who have suffered damage during an armed engagement between the British Forces and insurgent forces. Payment for such 'collateral damage' is assessed on the balance of probabilities and settled up to a maximum of 50% of the sum assessed by the ACO.

8.16 The types of claims received continue to be varied, ranging from fatal shootings, shooting injuries, property damage from search operations and RTAs, through to damage to fishing boats due to the firing of illumination mortars. Claims' trends for financial year 2005/06 indicate that 79% of claims received have been for property damage whilst the remaining 21% have been for personal injury. This compares with a three-year trend of 75% property damage and 25% personal injury.

8.17 Claims resulting from RTAs have reduced this financial year due, in some part, to the decrease in the number of vehicle movements. However, as Warrior tracked vehicles are being used more frequently the damage seen to civilian vehicles can be extensive.

8.18 The ACO made two recovery claims for damage to British Forces vehicles.

	2003/04	2004/05	2005/06
Number of claims received	773	790	596
Number of claims settled	90	214	393
Number of claims closed	531	668	965
Amount paid	£122,124	£377,204	£653,699
Amount recovered	0	0	£1,149



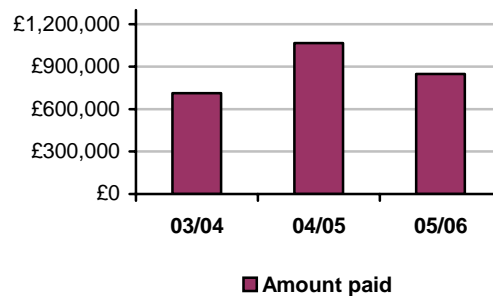
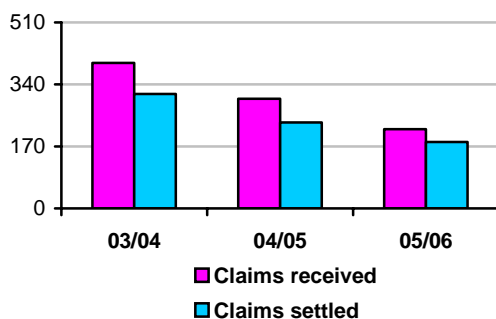
AREA CLAIMS OFFICE NORTHERN IRELAND

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

8.20 The majority of claims handled by the office are as a result of low flying helicopter incidents. There has been an increase in helicopter activity as the Army continue to deploy Chinooks in support of the operations to demolish hilltop sites in South Armagh. It was anticipated that this might result in an increased level of claims but, fortunately, this did not materialise.

8.21 Most property/livestock claims submitted as a result of helicopter damage are settled for under £2500. However, bloodstock or pedigree cattle claims can have a high value. The highest value claim settled this year was £126,565 for the loss of pedigree cattle. Of the next ten highest value claims, five were for bloodstock, four were for personal injuries and one was for damage caused to a crane. The crane, which had been hired by Army personnel, overturned when it was attempting to lift a heavy load. This claim was settled for £40,000. The highest value personal injury claim settled was £65,000, which was for a passenger who was injured in a Puma helicopter that crashed in South Armagh in 2002.

	2003/04	2004/05	2005/06
Number of claims received	399	301	217
Number of claims settled	314	236	182
Amount paid	£712,800	£1,066,500	£847,230
Amount recovered	Nil	£66,922	£6,590



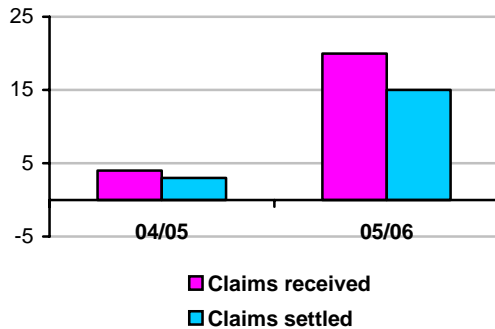
AFGHANISTAN

8.22 All compensation claims in Afghanistan are handled by the ACO in Kabul. However, following the increased force levels in the theatre with the opening of new British Camps in Helmand Province, the ACO will now be travelling around the country processing claims as they arise. Already there has been an increase in incidents and, from what was a part-time job along with other Civil Secretariat duties, the post is now becoming a 100% dedicated claims officer post.

8.23 During financial year 2005/06, a total of 20 claims were received of which fifteen were settled. One fatality claim was made following an incident allegedly involving British Forces. However, following investigation, it was decided that

there were no grounds for a compensation payment being made because British Forces did not commit any negligent act and neither were the Rules of Engagement breached. The remaining claims were as a result of road traffic accidents. The full details of the claims are detailed below:

	2004/05	2005/06
Number of claims received	4	20
Number of claims settled	3	15
Amount paid	£17,000	£34,000



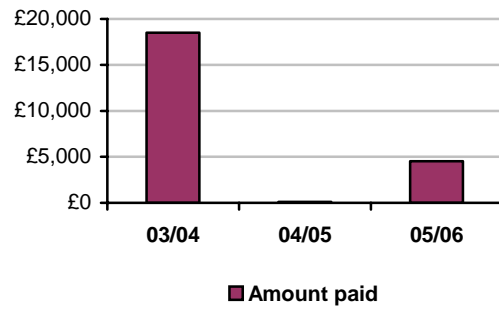
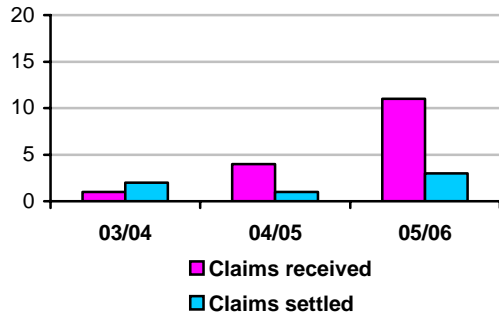
AREA CLAIMS OFFICE FALKLANDS ISLANDS

8.24 The ACO in the Falkland Islands has authority to handle common law property damage claims up to a value of £5,000 per claim, through the Command Secretariat British Forces South Atlantic Islands.

8.25 During financial year 2005/06, eleven claims were received for damage to vehicles and three were settled from 2004/05. The geographical peculiarities of life in the South Atlantic Islands mean that the repairs to damaged vehicles can take a considerable time when parts have to be ordered from UK, and delivered by ship. Also, due to the nature and terrain of the Falkland Islands, the local population generally accepts that the odd knock and 'fender bender' is a fact of life.

8.26 There was also one recovery made during the year.

	2003/04	2004/05	2005/06
Number of claims received	1	4	11
Number of claims settled	2	1	3
Amount paid	£18,498	£110	£4,524
Amount Recovered	Nil	Nil	£ 836



SECTION NINE

RISK TEAM

“Take calculated risks. That is quite different from being rash”.
General George S Patton – 1885-1945

9.1 The Risk Team’s role includes gathering information from a wide variety of sources covering accidents and incidents, claims, audits, inquiries and investigations, as well as the experiences of others, to enable the Ministry of Defence to identify, learn and share the lessons. We are also actively managing improvements in the systems used to gather the information.

9.2 We are responsible for the Incident Recording and Information System Project (IRIS) that will replace CHASP and RAPID, the Ministry of Defence’s ageing accident and incident recording database, and the claims handling database. The IRIS project successfully passed Initial Gate in Spring 2005, and we signed a Service Level Agreement with the Ministry of Defence’s Corporate Business Applications Integrated Project Team (DCBA) giving them responsibility for project managing delivery of the technology that will make up the Information System element of IRIS. Following some 50 expressions of interest resulting from the Ministry of Defence’s advertisement in the Official Journal of the European Union (OJEU) in September 2005, six consortia have been selected for the invitation to tender stage.

9.2 IRIS is aiming for full implementation by early 2008, with an interim capability during 2007 to enable data migration from legacy systems. IRIS will significantly enhance the Department’s ability to record, learn and share knowledge, not just data, and will enable claims handling to be directly linked to the causal event record and follow-up investigation. A crucial benefit will be the ability to gather meaningful data on hidden or indirect costs of accidents and incidents. The direct costs, which include the cost of compensation and legal costs, are easy to identify, but the indirect costs such as equipment losses, recovery and repair, retraining and medical treatment are often less clear, but no less a threat to defence capability.

9.4 Financial liability for any compensation claim is currently held centrally, rather than being charged to individual TLBs creating the risks. In the last quarter of 2005, a limited pilot study was conducted to test whether the systems and processes required to implement captive insurance arrangements were in place. Captive insurance is essentially a mechanism to create a set of financial incentives to reduce risk and for devolving funding so that each TLB pays a premium, based on claims historical data, into a compensation pool from which claims are paid. Premiums would be adjusted up or down to reflect the number of incidents giving rise to claims in individual TLBs. Improved risk management and health & safety standards leading to fewer accidents would result in lower premiums. The study concluded that many of the benefits of captive insurance

found in a commercial environment had already been implemented within the Department and that little additional benefit would be obtained by introducing captive insurance.

9.5 Learning lessons from the risk management work is of no value if it is not effectively shared. A number of papers have been produced and DS&C now produces a single newsletter 'Simply, Safety and Environment', to cover the breadth of environment, health and safety and claims issues. The newsletter is widely circulated in the Ministry of Defence on paper, by e-mail and on the Ministry of Defence Intranet ¹. Work is also progressing on an intranet site covering environment, health and safety best practice, as well as one to cover worst practice: we intend to share Crown notices issued against the Ministry of Defence.

9.6 Learning is not achieved just by gathering data, or simply by looking at what others do. We are therefore developing benchmarking to enable performance comparisons to be made internally and, in the longer term externally, as well as developing our ability to measure attitude amongst Service and civilian personnel. Both tools will enable some evidence-based assessment of the Department's management of risk, and will help the Ministry of Defence to ensure that its safety management systems are maintaining effective risk awareness and control, not generating risk aversion and thereby a threat to defence capability.

¹ http://centre.defence.mod.uk/newslettersps/simply_safety/index.htm.

SECTION TEN

INSURANCE AND INDEMNITIES

“Security is mostly a superstition. It does not exist in nature, nor do the children of men as a whole experience it. Avoiding danger is no safer in the long run than outright exposure. Life is either a daring adventure or nothing”.

Helen Keller – 1880-1968

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 activities.

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

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 DS&C(Claims) is responsible for all non-contractual indemnity matters, ranging from issuing indemnities to land owners who are letting the Armed Forces use their land for exercises, to commenting on different clauses within Defence Estates’ licenses, indemnity provisions within Memoranda of Understanding (MOUs) 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. DS&C(Claims) issued around 30 indemnities in 2005/2006. This figure is substantially down on previous years as the main users of Ministry of Defence property such as media organisations or charities are increasingly being treated as 'Wider Markets' activities. DS&C(Claims) also issued nearly 400 indemnities for the use of other organisations' property, equipment or personnel for the Ministry of Defence's benefit. The majority of these were for training exercises but also included the Ministry of Defence's participation in commemorations for Trafalgar 200 and the 60th Anniversary of the end of World War II. DS&C(Claims) also commented on 208 Memoranda of Understanding 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 Defence Procurement Agency (Central Services Group, Risk).

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. Instead customers may pay a Departmental Insurance Charge and any claims for compensation which may arise will then be paid by DS&C(Claims).

10.8 Advice about insurance and risk reduction may be obtained from DS&C(Claims) and from the Ministry of Defence's insurance brokers, Willis Ltd, in accordance with 2005DIN09-027. 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

NOVEL AND CONTENTIOUS CLAIMS

“In skating over thin ice our safety is in our speed”

Ralph Waldo Emerson – 1803-1882

SMOKERS ARE RESPONSIBLE FOR THEIR OWN HEALTH

11.1 In this case, which received coverage in the national press at the end of last year, the claimant, the widow of a former civilian dockyard worker, claimed damages against the Ministry of Defence following the death in 2002 of her 63 year old husband from lung cancer.

11.2 The deceased, Mr B, employed by the Ministry of Defence between 1954 and 1987, had smoked most of his adult life and before, and at the time of his death suffered from heart disease and emphysema. His widow alleged that during the course of his work with the Ministry of Defence he had been exposed to, and had inhaled, asbestos dust and fibres. As a consequence he developed asbestosis and lung cancer which ultimately proved fatal.

11.3 The Ministry of Defence admitted primary liability for the claim in 2003, but disputed causation. It was the Ministry of Defence’s case that since the lung cancer had been caused by exposure to asbestos and smoking, the level of damage should be reduced to reflect contributory negligence. The Ministry of Defence argued that Mr B had smoked when he knew, or ought to have known, that by continuing to smoke he risked harming his health.

11.4 In a ground breaking decision at the end of last year, a High Court judge ruled in favour of the Ministry of Defence on the issue of contributory negligence. Mr Justice Burnton said that no one could blame Mr B for starting to smoke in 1955 because at the time the risks were not widely known. However, he said that since 1971, when the first health warnings were put on cigarette packets, it was reasonably foreseeable for Mr B to have known that if he continued to smoke he risked damaging his health.

11.5 In determining the percentage reduction in the claim on account of contributory negligence, the judge apportioned the greater share of the blame on the Ministry of Defence, who had admitted breach of duty owed to Mr B when the dangers of asbestos were known. The judge concluded that while Mr B’s widow was entitled to compensation for her husband’s death, the award should be reduced by 20%.

11.6 Following the trial, lawyers including the judge, said that the ruling was the first in the High Court to consider the contributory effect of tobacco in negligence claims. Some lawyers gave warning that the decision could also hit

compensation claims for ill-health made by other groups, such as heavy drinkers and obese people.

CLINICAL NEGLIGENCE

11.7 A senior NCO in the Territorial Army, travelling in a military vehicle back to his unit at night in October 2001 fell from the vehicle, sustaining a significant head injury. He was put to bed by colleagues who did not raise the alarm that he was unconscious. It was not until some hours later that the severity of his injury was recognised and he was immediately transferred to hospital. He was eventually diagnosed with a significant brain injury and now suffers severe cognitive and neuro-behavioural sequelae. As a result he is now disabled and has been unable to return to his previous employment. He will require a significant degree of care for the rest of his life.

11.8 The claim submitted related to the alleged unsuitability of the vehicle in which he was travelling and also the negligent medical treatment he was afforded after the accident. Liability was conceded on both parts, on legal advice, and an amicable agreed settlement of £1 million was reached in October 2005.

BEE ATTACK

11.9 The claimant, while on exercise in Belize, was participating in a patrol through the jungle in a line behind his colleagues. The troop had stumbled upon a bees' nest and were attacked. As a result of the ensuing panic the claimant was knocked 20 or 30 feet down a ledge. He sustained a quite serious dislocation to his shoulder and a minor wedge fracture to a vertebra.

11.10 In his subsequent compensation claim he alleged that the route through the jungle had not been used before and therefore the directing staff should have sent someone ahead to check it for safety. He also alleged that he was forced to walk back to camp before being evacuated out of the jungle and this had an effect on the seriousness of the injury. He suggested that he should have been evacuated at the same time as his colleagues that had been stung. As a consequence of the incident the claimant's shoulder was prone to dislocate for no reason. This resulted in his medical discharge from the Army. He claimed in excess of £450,000.

11.11 After thorough investigation into the allegations, evidence was obtained which showed that the route had been walked by the senior jungle warfare officer together with his 2iC prior to the exercise and that nothing untoward had been found. The Ministry of Defence argued that the nature of the Belize jungle is such that there is no way such a nest could have been spotted as, due to their nature, they are not visible until they have been disturbed.

11.12 In relation to the severity of the injury DS&C(Claims) was able to show that the two and a half hour walk back to camp did nothing to cause the injury to worsen and that there was no need for the claimant to be air lifted out of the jungle. The men who were air lifted out were suffering anaphylactic shock and their lives were in danger. The claimant was in no such position.

11.13 In late December 2005, the claimant offered to settle the claim on a 50/50 basis to 'reflect the litigation risk to both parties'. This was rejected and the claimant was told that the Ministry of Defence would run the matter to trial for a ruling on liability. On 27 January 2006 the Ministry of Defence received a Notice of Discontinuance from the claimant.

AMPUTATION INJURY

11.14 The claimant, who was a technical storeman, took it upon himself to fix a wooden notice board that had broken as it was removed from a wall. The claimant said that he intended to cut four pieces of metal to shore-up the corners of the frame, using a circular saw located in the metalsmith's workshop. The claimant told the court that because of fumes created by painting that had recently been carried out in the workshop, he suddenly felt dizzy whilst using the saw and had to put his hand out to steady himself. He placed his hand in line with the blade of the saw and four fingers were amputated. The claimant's initial allegations were twofold: the first was that the Ministry of Defence was negligent in allowing him to work in an area that was affected by paint fumes; and the second was that the machinery was defective.

11.15 An engineer for each party visited the workshop where the accident occurred to view the circular saw. The Ministry of Defence also instructed a chemist to report on the likelihood of paint fumes affecting the claimant's senses. The chemist's report and both engineers' reports stated that they could see nothing that would have caused the accident. After receiving these reports the claimant amended his claim to abandon the defective machinery allegations and adopted an allegation that he had been trained, but not properly, in the use of the circular saw, and that the Ministry of Defence had not done enough to ensure that unauthorised users could not gain access to the machine.

11.16 Following a two-day trial, the court found that the Ministry of Defence had not done enough to ensure that unauthorised and incompetent users did not have access to the circular saw, and that the claimant believed that he had been trained in the use of the machine but, in reality, he had probably only been watching a metalsmith using the machine at some point in the past. The court found, however, that using the machine was neither part of the claimant's job nor was it expected that he would use the machine. In light of this it was clear to the court that it was unforeseeable that the claimant would then use the machine and suffer the injuries as a result. Judgment was given in favour of the Ministry of Defence and an order for costs was made against the claimant.

BACK INJURY

11.17 The claim arose out of a training accident at HMS RALEIGH, when the claimant injured his back jumping from an obstacle whilst carrying a spar on an obstacle course. The claimant alleged that he was ordered to jump whilst carrying the spar, contrary to health and safety advice. The claimant was medically discharged from the Royal Navy, and claimed that he had developed Fybromyalgia due to the injury and could not work again. The potential value of the claim was initially approximately £500,000. However, this figure was moderated after further medical evidence was obtained that did not support a diagnosis of Fybromyalgia. The claimant maintained that he had chronic pain but reduced his claim at trial to approximately £200,000 on the basis that he would partly recover with appropriate medical treatment.

11.18 Liability was disputed on the facts and upon the suitability of the obstacle course. Expert evidence was obtained from an engineer on the suitability of the landing surface. Causation was also disputed on the basis that there was no link between any injury that the claimant may have suffered in his fall and his subsequent disablement. Video evidence was also obtained which cast doubt on the extent of the injury, as well as casting doubt upon the honesty of the claimant's presentation of the injury. In addition, medical evidence was obtained from an orthopaedic surgeon, a psychiatrist, and an expert in Fybromyalgia/pain disorders to assist the court with the complex issues of the cause of the claimant's pain disorder.

11.19 The claim was dismissed by the Judge who felt that the claimant could not be considered a reliable witness. Video evidence obtained, not only cast doubt upon the level of disability claimed, but also assisted in casting doubt upon the credibility of the claimant's evidence as to liability.

EXAGGERATED CLAIM – COSTS IMPLICATIONS

11.20 The claimant, a seventeen year old Army recruit, suffered a serious injury to his right knee during training whilst jumping from a bridge into a river. His patella was fractured and two years later it had to be removed. He was left with variable pain in the joint and problems with kneeling, bending, prolonged standing and walking. He was discharged as medically unfit from the Army, but was capable of full-time work, albeit handicapped, in the labour market. The trial judge awarded him £40,000 for pain, suffering and loss of congenial employment and a further £30,000 for handicap on the labour market. There were further awards for past loss of earnings and employment benefits, including pension, which totalled £62,000.

11.21 The claimant's first schedule of loss had claimed more than £1 million. The Ministry of Defence disputed much of the claim which resulted in the claimant's final schedule of loss served about a year later at only £240,000. The Ministry of Defence made a Part 36 payment into court of £150,000 and attended a pre-trial Joint Settlement Meeting, but no settlement was reached between the parties.

11.22 At the subsequent trial, although substantial parts of his claim had been abandoned, the claimant gave evidence about his disability which went beyond the agreed medical evidence. In his costs ruling the judge said:

'He sought to paint a picture of significant residual disability, not only through the statements of case and manner in which the case was presented, but also, regrettably, when he gave evidence. I formed the view when he gave his evidence that there was a significant degree of exaggeration'.

11.23 The claimant only just beat the payment into court, which was much closer to the sum awarded than the amount claimed by the final schedule of loss. It was this, and the judge's finding that the claimant had exaggerated his disability and advanced a claim which went far beyond that to which he was entitled, which persuaded the judge to make a reduction of 25% from the costs to which the claimant would otherwise have been entitled.

11.24 The Ministry of Defence lodged an appeal which contended that it was the successful party and that the 25% reduction in costs did not reflect the fact that it had itself incurred costs in challenging a wholly exaggerated claim. The Court of Appeal emphasised, however, that the exercise of a judge's discretion will not usually be overturned and upheld the judge's ruling that a reduction of 25% was reasonable where a claimant had exaggerated his claim. The Court of Appeal found that the reduction must act as a considerable disincentive to claimants and their advisers in making exaggerated claims.

SECTION TWELVE

LAW AND PRACTICE

“Man blames fate for other accidents but feels personally responsible for a hole-in-one”
Martha Beckman

CIVIL JUSTICE REFORMS

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

CIVIL JUSTICE PROCEDURES

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

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

AIMS

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

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

12.4 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.

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

EXPERTS

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

PRE ACTION PROTOCOL

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

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

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

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

FAST-TRACK AND MULTI-TRACK

12.11 Personal injury claims will be assigned to either a fast-track or multi-track. Fast-track cases will be limited to a value up to £15,000 (soon to rise to £25,000 with an option for parties to extend jurisdiction by consent to £50,000) and will proceed to a hearing quickly.

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

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

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

LETTER OF CLAIM

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

DEFENDANT'S REPLY

12.16 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

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

with the requirements of the pre-action protocol, the claimant will be able to issue proceedings at the end of the three-month period.

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

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

PROCEEDINGS

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

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

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

STATEMENT OF TRUTH

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

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

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

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

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

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

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

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

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

DISCLOSURE

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

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

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

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

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

DISCLOSURE STATEMENT

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

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

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

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

12.35 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.

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

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

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

LEGAL SERVICES COMMISSION (LEGAL AID)

12.39 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).

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

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

ALTERNATIVE DISPUTE RESOLUTION

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

COUNSEL-TO-COUNSEL SETTLEMENT CONFERENCES

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

does not need to undergo the trauma of a court case to secure compensation for an injury or loss caused by the Department's negligence.

12.44 In 2005/06, nineteen such conferences were held and compensation totalling £13,735,000 was agreed against claims totalling £23,101,000. Had these cases run to court, the legal costs payable by the Ministry of Defence would have been significantly higher.

MEDIATION

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

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

12.47 A number of claims made against the Ministry of Defence have been successfully concluded through the mediation process and this year £4,000,000 was recovered from insurers by this process, in respect of a Ministry of Defence claim for damage to one of its ships.

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

CONTRIBUTORY NEGLIGENCE

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

12.50 The following are some examples of Contributory Negligence:

- Driver or pedestrian failing to keep a proper lookout;
- Claimant failing to turn off a machine before cleaning it;
- Failure of motorcyclist to wear a crash helmet;
- Failure to wear seat belt while travelling in a vehicle;

- Riding in a vehicle as a passenger with a driver who is known to be under the influence of alcohol or drugs.

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

REHABILITATION

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

12.53 DS&C(Claims) aims to utilise rehabilitation where appropriate when compensation claims are made. To this end, Royal and Sun Alliance, our commercial claims handlers with responsibility for Employer's Liability claims, have offered rehabilitation in some cases, although to date the uptake has been disappointing. However, 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

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

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

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

PERIODIC PAYMENTS

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

12.58 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 28 periodic payment arrangements in high value cases which, up to 1 April 2005, needed the consent of both the defendant and the claimant.

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

12.60 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.

	2003/04	2004/05	2005/06
Total number of periodic payments	25	26	28
Total payments each year	£790,000	£1,026,000	£1,243,000

THIRD PARTY ACCIDENT SCHEME (TOPAS)

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

12.62 Although on the face of it the policy seems harsh, it is consistent with the approach adopted by many large private sector companies. The reason why the Ministry of Defence cannot support staff in such circumstances is that the Ministry of Defence, in common with all other Government departments, may only pay compensation, or become involved in pursuing claims, where it has a legal liability to do so. Any other policy would involve the misuse of public funds and the making of subjective judgments which could give rise to inequitable

treatment of claimants. Under common law the Ministry of Defence has no standing or vicarious liability in these cases and it does not have the authority to pay compensation to such claimants nor to fund the cost of legal action on their behalf.

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

12.64 ToPaS also offers a free advice and help line service for victims of accidents abroad. 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 and ToPaS can assist in locating a lawyer in such circumstances.

ASSISTANCE WITH APPLICATION FOR CRIMINAL INJURIES COMPENSATION

12.65 Betesh Fox won a very important victory in court for an ex-Royal Marine who was almost killed in the 1989 Deal Bombings. The Criminal Injury Compensation Board (CICB) awarded him £750,000 following the re-opening of his case. Mr X originally submitted an application in 1990 for Criminal Injuries Compensation as he had suffered psychological trauma as a witness to the aftermath of the IRA's bombing of the RM School of Music in Deal on 22 September 1989. He was approximately 100 yards away from the scene of the bomb blast and was involved in providing immediate assistance at the scene, not only trying to rescue injured people, but trying to identify the bodies of those killed.

12.66 In 1992 he was awarded the sum of £17,500 by the CICB as a result of suffering from a severe psychiatric condition. However, his condition subsequently deteriorated and he was granted voluntary redundancy from HM Forces.

12.67 His symptoms continued to deteriorate until the beginning of 1996 when he suffered a complete mental breakdown, later being diagnosed as suffering from severe Post Traumatic Stress Disorder (PTSD). Betesh Fox were subsequently instructed, and a request was made to what is now known as the Criminal Injuries Compensation Authority to re-open the original application. The case was re-opened and the award was considerably increased.

12.68 If you would like more information about ToPaS or would like a presentation to be made, please contact:

Carl Crawley
ToPaS Development Director
Tel: 0870 998 9999
E-mail: carl.crawley@topas.org.uk

ANNEX A

DS&C(CLAIMS) ORGANISATION

CHIEF CLAIMS OFFICER - BAND B1

SENIOR CLAIMS OFFICER (POLICY) - BAND C1

Responsible for Policy Group

STAFF:

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

RESPONSIBILITIES:

NON-CONTRACTUAL INSURANCE

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

THIRD PARTY MOTOR CLAIMS

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

DIRECTORATE ADMINISTRATION

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

CONTRACTUAL MATTERS

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

HEAD OF BUDGETS – BAND C1

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

STAFF:

Head of Business Finance	Band C1
Finance Manager	Band D
2 Finance Officers	Band E1

RESPONSIBILITIES:

FINANCIAL MANAGEMENT

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

SENIOR CLAIMS OFFICER (CLAIMS) - BAND C1

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

EMPLOYER'S LIABILITY, LOW FLYING AND MARITIME GROUP

STAFF:

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

RESPONSIBILITIES:

SERVICE PERSONNEL EMPLOYER'S LIABILITY CLAIMS

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

CIVILIAN PERSONNEL EMPLOYER'S LIABILITY CLAIMS

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

SECTION 10 CLAIMS

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

RADIATION CLAIMS

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

MISCELLANEOUS CLAIMS

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

LOW FLYING

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

MARITIME CLAIMS

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

PUBLIC LIABILITY GROUP

STAFF:

Team Leader	Band C2
3 Case Managers	Band D
3 Assistant Case 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 Armed Forces in Northern Ireland. These range from unlawful detention to shootings.

VEHICLE CLAIMS

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

OVERSEAS OPERATIONS

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

EX-GRATIA PAYMENTS

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

CRIMINAL INJURIES COMPENSATION

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

NON-MARITIME RECOVERIES

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

CLINICAL NEGLIGENCE GROUP**STAFF:**

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

RESPONSIBILITIES:**CLINICAL NEGLIGENCE**

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

EMPLOYMENT TRIBUNALS

Co-ordination of the Ministry of Defence's response to claims put to Employment Tribunals 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.

POST TRAUMATIC STRESS DISORDER

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

PORTON DOWN

Claims from Porton Down veterans

DS&C(CLAIMS) STAFF, PROGRAMME AND OPERATING COSTS - FINANCIAL YEAR 2005/06

CLAIMS EXPENDITURE 2005/06

IN YEAR EXPENDITURE	£ MILLION
Compensation payments and associated legal costs	67.7
DS&C(Claims) Legal Costs	11.1
Operating costs	1.1
Receipts	- 6.6
TOTAL	73.3

The figure for total in-year payments of £73.3million is not directly comparable with those shown in previous Claims Annual Reports because of changes to the Ministry of Defence's accounting system and organisation.

ANNEX B

TOP 10 CASES SETTLED BY DS&C(CLAIMS) **2005/06**

CLAIMANT	TYPE OF INJURY/LOSS	COMPENSATION*
Public Liability	Death following Air Crash	£6.0M
Army	Clinical Negligence – Head Injury	£1.175M
Public Liability	Aircraft Noise	£641K
Public Liability	Personal Injury – Northern Ireland Shooting Incident	£487K
Public Liability	Personal Injury – Slip	£186K
Royal Navy	Clinical Negligence – Fractured Ankle	£140K
RAF	Clinical Negligence - Depression	£100K
Public Liability	Personal Injury - Asbestos	£88K
Public Liability	Personal Injury - Asbestos	£87K
Public Liability	Personal Injury – Asbestos	£84K

*Inclusive of claimant's costs

ANNEX C

TOP 10 SERVICE PERSONNEL CASES SETTLED BY RSA **2005/06**

TYPE OF INJURY/LOSS	COMPENSATION *
Injured in fall	£1.3M
Injured in road traffic accident	£726K
Hand Injury	£496K
Fatality due to negligent discharge	£493K
Repetitive strain injury	£484K
Cold weather injury	£361K
Skiing Accident	£356K
Injured in road traffic accident	£353K
Cold weather injury	£319K
Fatal gunshot wounds	£317K

* Inclusive of claimant's legal costs

ANNEX D

TOP 10 CIVILIAN PERSONNEL CASES SETTLED BY AXA AND RSA 2005/06

TYPE OF INJURY/LOSS	COMPENSATION *
Asbestos related disease	£485K
Slip/Trip	£280K
Asbestos related disease	£216K
Asbestos related disease	£191K
Asbestos related disease	£191K
Asbestos related disease	£183K
Asbestos related disease	£179K
Asbestos related disease	£169K
Asbestos related disease	£167K
Asbestos related disease	£161K

* Inclusive of claimant's costs

DISTRIBUTION LIST

APS/Secretary of State	AD IRU
APS/Minister(AF)	AD2 CEDU
APS/Minister(DP)	D CP HRM
APS/USofS	D CP PA
Parliamentary Branch	AD CP Allowances
	D CB(Pers)
DPSO/CDS	D CPM 1
PS/VCDS	D CPM 2
CNS	
CGS	DGMO
CAS	DGS&S
CDL	DGRP
	D P&A
DCDS (C)	DG Info
DCDS (EC)	DGCC
DCDS (Pers)	DCCS
DCDL	DCC(N)
DCDS (Health)	DCC(A)
CinC Fleet	DCC(RAF)
CinC Naval Home Command	
CinC Land	DGLS
AG	JAF
GOC NI	JAG
AOCinC(STC)	CNJA
AOCinC(PTC)	DALS
CJO	DLS(RAF)
CE/DPA	DGNPSP
	DPS(A)
	COS/AMP
PS/PUS	
PS/2 nd PUS	Hd NP Sec
PS/CSA	Hd NMA Sec
Policy Director	APC Secretariat (2 copies)
Personnel Director	APC (Litigation)
Finance Director	Hd AMP Sec
Science & Technology Director	PMA (CS) (RAF)
	PM(N)
DG SP (Pol)	PM(A)
D SP Pol(P&W)	DAS
D SP Pol(Man)	DFCIT
D SP Pol(MW)	CESO(Navy)
D SP Pol(PA)	CESO(Army)
D SP Pol(SC)	CESO(RAF)
	Ship Safety Management Office
	H&S FOSF

DGCP	CE/DCSA
D CP Pol	CE/DDA
D CP ER	CE/DE
	CE/DGIA
D Fin Pol	CE/DHE
D RP(Centre)	CE/DISC
D Navy RP	CE/DMTO
D Army RP	CE/DSA
D Air RP	CE/DSCA
DCDS(Health) (2 copies)	CE/DSDA
SGD AD BM	CE/DSTL
Medical Director General (Navy) – SO1	CE/DTMA
AMD(Navy)	CE/DVA
AMD (Med Leg) (2 copies)	CE/HO
AMD (Legal) (RAF)	CE/JARIC
Med Org 2(RAF)	CE/MSA
SO1 Prev Med UKSC(G)	CE/Met O
	CE/MDPA
CIVSEC/HQNI	CE/NMA
CS/HQ UKSC(G)	CE/NRTA
CS HQ BF Cyprus	CE/PPA
CS HQ BFSAI	CE/RAF PMA
CS/Gib	CE/SCE
CS/Iraq	CE/TGDA
CS/Afghanistan	CE/WSA
Hd Def Admin (BDSW)	
	AD SC Ops(Tpt)4
Area Claims Officer NI	SC Ops(Tpt)4d
Area Claims Officer North West Europe	SC Ops(Tpt)4d1
Area Claims Officer Cyprus	SC Ops(Tpt)4d2
Area Claims Officer Balkans	SC Ops(Tpt)4d3
Area Claims Officer South Atlantic Islands	SC Ops(Tpt)4d4
Area Claims Officer Iraq	WSA/620
Area Claims Officer Afghanistan	HQ Land Log Spt (Tpt)
	HQ STC S&M Pol 3e
Command Secretary Fleet	HQNI CSS(Tpt)
Command Secretary Naval Home	HQ BFC J4(Tpt & Mov)
Command	
Command Secretary Land	CSV (IPT)
Command Secretary AG	LAIT RO2A
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