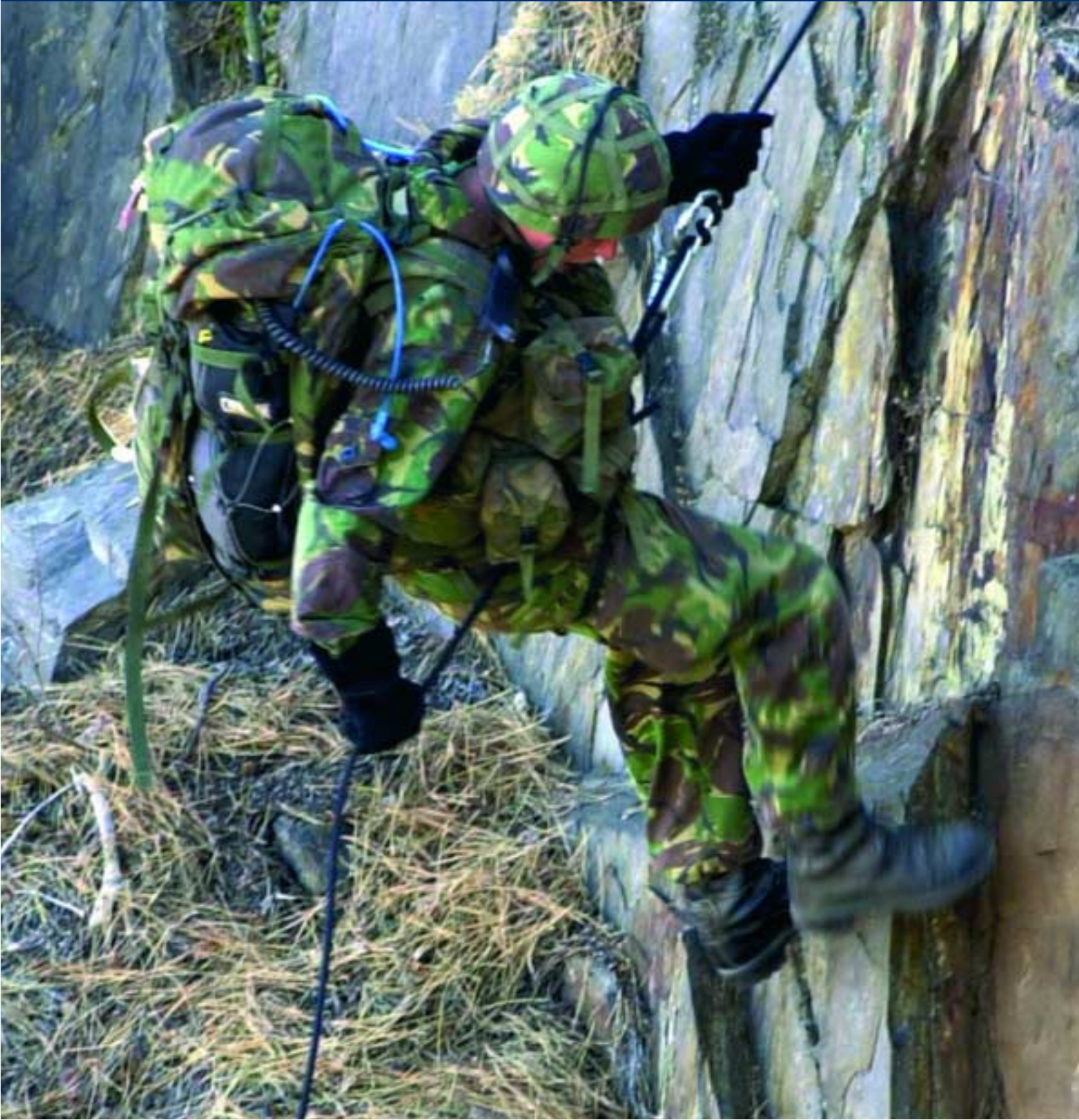
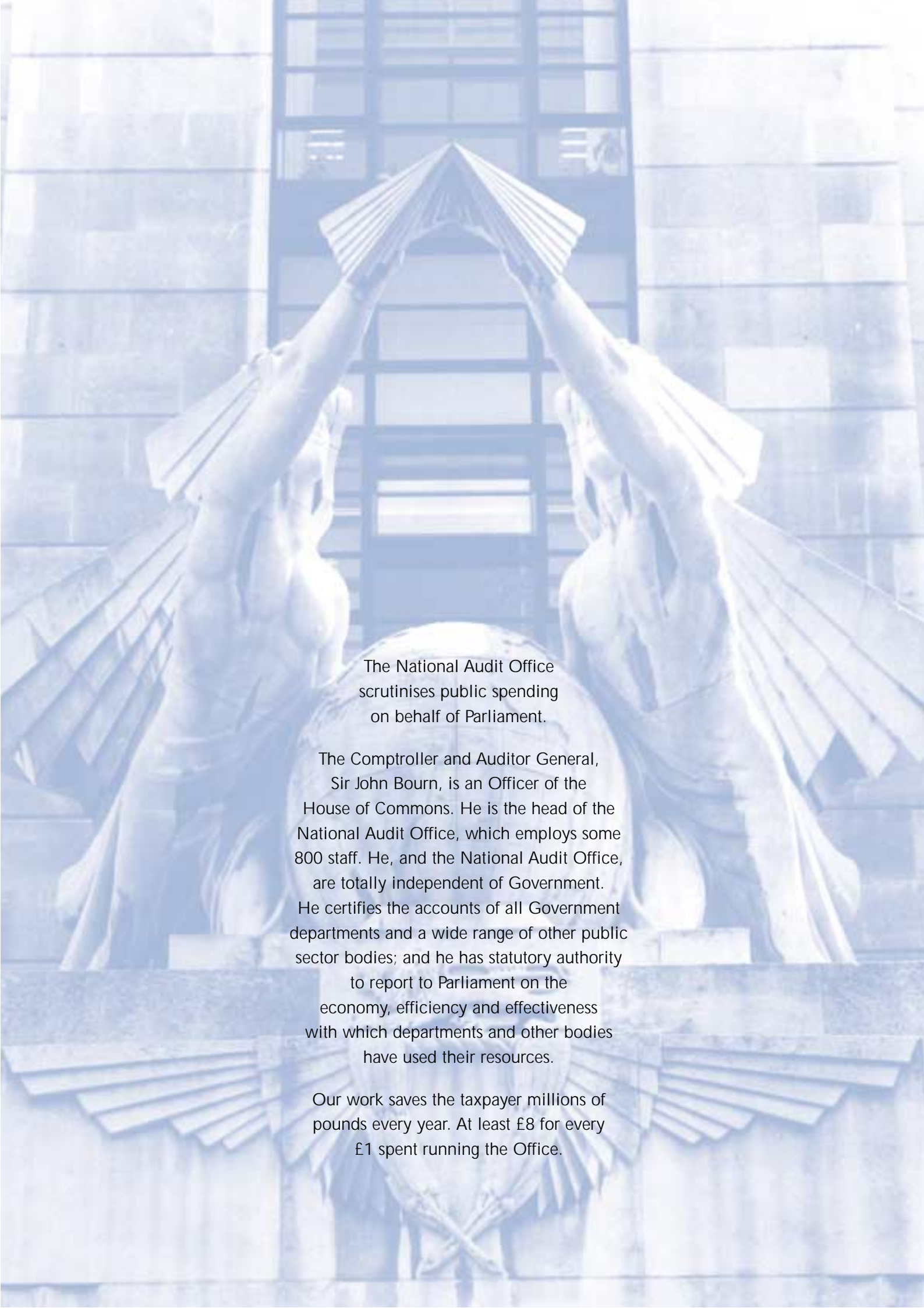


Ministry of Defence
Compensation claims

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 957 Session 2002-2003: 18 July 2003





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Ministry of Defence
Compensation Claims



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HC 957 Session 2002-2003: 18 July 2003

This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

John Bourn
Comptroller and Auditor General

National Audit Office
11 July 2003

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executive summary

- 1 In 2001-02 the Ministry of Defence (the Department) paid £97 million in respect of claims for personal injury or loss resulting from negligence. Although that amount is not a large proportion of the total annual defence budget of over £20 billion, many incidents represent a personal tragedy for claimants and their families. Moreover, the cost of claims represents a significant and increasing diversion of resources away from defence priorities for no benefit to the Department. Deaths and injuries to personnel can also have a direct impact on operational effectiveness, as well as damage the Department's reputation. Although some of the Department's activities, such as combat, and assault course and riot training, involve a greater than normal risk of injury, many incidents that result in compensation are avoidable.
- 2 Many of the factors that impact on the cost of claims are outside the Department's control. The level of compensation awarded by the courts for personal injury has dramatically increased over the last ten years. There has also been a large number of reforms and initiatives within the civil justice system aimed at improving the handling of claims. Further reforms are in the pipeline, which will impact on the Department's claims-handling. For example, the Government is expected to issue a Consultation Paper proposing reforms to the way that clinical negligence claims are dealt with. Also, in December 2002 a framework was agreed for fixing legal fees on simple, low value traffic accident claims.

<p>Key facts</p> <p>Despite the risks involved in military activity the Department's health and safety record is in line with other organisations</p>		<p>Key facts</p> <p>The Department paid 7,700 claims in 2001-02</p>
<p>The Department's database recorded almost 9,300 incidents in 2001-02</p>		<p>Claims cost £25 million in 1992-93, rising to £97 million in 2001-02¹</p>
<p>But the database is incomplete as some incidents are not recorded</p>		<p>Five years ago the typical compensation payment for paraplegia was £750,000. Now it costs £2 million</p>
<p>There are 4,000 road traffic accidents involving MoD vehicles each year</p>		<p>The record settlement, reached in May 2002, is for £4 million paid to a naval cadet injured when ordered to jump into a canoe</p>
<p>New areas of claims are potentially in the pipeline. 2,032 intentions to claim have been registered in respect of Gulf Veterans' Illnesses</p>		<p>Recorded costs are the tip of the iceberg. They do not include many of the costs of investigating and dealing with incidents. The Department estimates that these hidden costs of a claim are about six times the size of the compensation paid</p>

NOTE

1. Service personnel only obtained the right to sue the Crown for compensation in May 1987 and many of the catastrophic injury and clinical negligence claims received in the late 1980s would not have been settled by 1992-93.

- 3 This Report examines the effectiveness of the Department's arrangements for preventing incidents that lead to claims, and for handling claims that do arise in a timely and efficient manner. It is not concerned with seeking reductions in the amount of compensation properly due to those affected by death or injury, rather to ensure that such recompense is provided by the Department in a timely and efficient way. Cases dealt with by the Department range widely from simple road traffic accidents through claims for unfair dismissal to complex cases involving clinical negligence. The claims that we examined were in respect of personal injury or loss resulting from the Department's alleged negligence. Military personnel injured other than through the Department's negligence during, for example, combat or internal security operations are compensated by the Veterans' Agency, the subject of a separate National Audit Office study¹. Appendix 1 gives the administrative context, and Appendix 2 the methodology we used.
- 4 The Department is improving the way that it prevents incidents that could lead to claims and the way it handles claims. There is scope, however, for it to do more to reduce the time and costs involved in handling claims and to improve the way it addresses claimants' non-financial concerns, for example by offering apologies and providing claimants with explanations. It should also do more to improve awareness among line managers of their health and safety responsibilities. The Department recognises that risk, incident and claims-handling form a cycle and that success in reducing the number and cost of claims depends partly on thorough risk assessment and incident prevention and investigation. It should do more, however, to increase awareness of this risk-incident-claim cycle, for example by ensuring that those responsible for preventing incidents occurring bear at least some of the cost of compensation paid.

The Department has taken steps to improve its handling of claims but further improvements should be made

- 5 We found that the time taken to handle claims varied according to the category of claim, but was broadly comparable with other organisations. The Department was also meeting new fast-track deadlines for claims under £15,000 introduced in 1999. The Department's claims-related legal costs increased by 45 per cent from £10.4 million in 1998-99 to £15.1 million in 2001-02. This increase was in the main due to higher charging rates, the introduction of conditional fee arrangements, and pre-trial costs in the Post Traumatic Stress Disorder Group Action High Court trial. This compares with an increase of 11 per cent in the level of compensation payments made in the same period. This increase is attributable to changes in the level of general damages recommended to the courts by the Judicial Studies Board and a change in the multiplier used to calculate future losses as directed by the Lord Chancellor. The Department has taken a number of steps to improve performance, and claimants' solicitors have confirmed that there have been improvements in the Department's performance in, for example, the time it takes to handle claims, the settlement of claims without recourse to the courts, and improved communications.



¹ C&AG's report "Improving Service Delivery: The Veterans Agency" (HC522 2002-03, March 2003).




- 6 Despite these improvements, the Department should do more to reduce the time and cost involved in handling claims. We identified a number of instances where it had encountered extra costs or delays by not applying good practice. For example, it had sometimes had problems in locating and providing documents required as evidence and prior to September 2000 had sometimes made unrealistic initial offers to claimants, thereby causing delay. All the legal work on claims carried out for the Department by the Treasury Solicitor has been allocated to it without competition.
- 7 The Department should do more to monitor claims handling performance and use performance information to drive down costs and the time taken. In January 2002 Claims Branch introduced a new database, which has improved the information available to management. To date, Claims Branch has not used this database fully but intends to do so. For example, it does not prepare regular returns showing the age distribution of claims or the legal costs of individual claims. It also makes little use of the contractors' own management information which it already receives. Nor has it carried out any survey of claimants or their solicitors for their views on its performance.
- 8 When asked by the National Audit Office claimants reported that they were not only seeking financial compensation. For example, 57 per cent of claimants told us that they also wanted an apology from the Department. The Department, however, rarely satisfies non-financial wants. For example, only 33 per cent of claimants said that they had received an admission of liability from the Department and only 14 per cent that they had received an apology. The Department told us that, in its experience, very few claimants had ever asked for anything other than financial compensation. Other public bodies, within the National Health Service, for example, have recognised the importance of non-financial aspects of claims.

Sound policies and systems are in place for preventing incidents that give rise to claims but these are not always well implemented

- 9 The Department has recently taken steps to improve its management of health and safety, to prevent incidents which give rise to claims. These steps include new arrangements for auditing and measuring performance. The Department's performance has improved, with falls in the number of reported incidents, and compares well to the performance of other organisations, as reported by the Health and Safety Executive.





10 Managers require accurate information if they are to take action to prevent incidents occurring. There are problems, however, with the completeness and quality of the Department's data on incidents. The Department's own health and safety audits suggest that only about 40 per cent of incidents were recorded on the Department's health and safety database. According to Health and Safety Executive statistics, the scale of this under-reporting of incidents is in line with national figures. Some health and safety staff in the Department raised concerns that this failure to record incidents could put the Department in breach of its statutory obligations to report accidents to the Health and Safety Executive. Some health and safety staff also considered that the database did not allow for easy analysis of the data it contained, especially by managers at the lower levels of the Department. Access to the database is also limited, with some parts of the Department having no access at all to the database's terminals. As a result, some line managers maintain their own incident databases. The Department has set up a working group to address these problems.

11 Despite good guidance, the quality of the risk assessments that the Department undertakes to prevent incidents and its investigations of incidents when they occurred was mixed. According to health and safety staff we interviewed, while serious incidents were properly investigated and risk assessments consequently updated, the investigation of less serious incidents, which depends on line management, was not so rigorous. Risk assessments were unlikely to be reviewed after minor incidents or were, in the case of some, more routine activities, of poor quality. It is, however, often minor incidents that can finish someone's career and lead to compensation claims worth hundreds of thousands of pounds.

Promoting awareness of the risk-incident-claim cycle could help reduce costs

12 More should be done to strengthen the links between those parts of the Department which deal with risks, incidents and claims. For example, investigations of incidents are currently not carried out with a view to the handling of a possible claim at a later date. Also, unlike in other organisations, the cost of any compensation paid does not fall on the budgets of those in the Department responsible for preventing the occurrence of incidents in the first place. The hidden costs associated with such claims, which can be about six times the level of compensation paid, do, however, fall on the individual budgets but are not linked to the incident; so the budget-holder is not directly aware of the full cost of the incident. Budget-holders thus have little financial incentive to invest in measures to reduce the risk of incidents, as they see none of the resulting savings in compensation paid.



Recommendations

Handling claims

- 13** a) The Department should develop a more proactive approach in the management of claims, aimed at adopting best practice, and provide appropriate training in this approach for its claims staff. Relevant practice includes:
- The agreement of the claimant to obtaining a joint medical opinion in appropriate cases.
 - The provision of Departmental records within agreed timescales to assist the speedy processing of a claim.
 - The prompting of claimants' solicitors for the timely provision of necessary information and the disallowance of any claimants' costs arising from their solicitors' delay.
 - The making of higher initial offers, where justified after careful assessment of the facts in each case.
 - The early acquisition of independent medical advice to supplement preliminary internal medico-legal opinion in clinical negligence cases.
- b) The Department should seek to exert greater competitive pressure on the Treasury Solicitor by benchmarking its service against that of other legal service providers and, if necessary, market-testing the service.
- c) The Department should make greater use of its claims database and the management reports from the insurance companies to monitor performance, to develop performance indicators and targets on, for example, the time taken to handle claims and the associated costs. Measures could include, for example, the time taken to provide claimants' solicitors with key documentation and, for each type of claim, claimants' legal costs as a percentage of compensation paid. The Department should also seek the views of claimants and their solicitors as to the quality of its handling of claims.

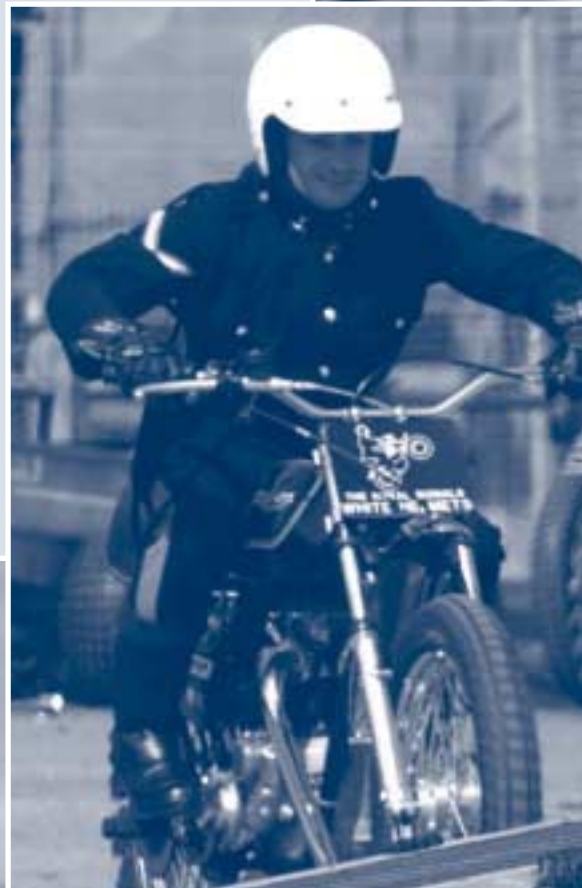
- d) The Department should do more to satisfy claimants' non-financial expectations. Offering an apology, for example, could help avoid litigation and increase claimants' satisfaction. Such an apology would need to make clear that it did not include an admission of liability.

Preventing incidents

- e) The Department should address the problems of its health and safety database to ensure that more incidents that occur are recorded. It should also revise the structure of the database and improve access to it so that the data it contains can be analysed as required by staff. It should also provide staff with the training they need to carry out such analyses.
- f) The Department should seek to improve the quality of the risk assessments and incident investigations carried out by its line managers by reminding these staff of their health and safety responsibilities and setting them specific targets in this area.

Understanding the risk-incident-claim cycle

- g) The Department should seek to reinforce the risk-incident-claim cycle in its operations by strengthening the links between its health and safety staff and Claims Branch and improving their co-operation. Health and safety staff need to ensure that they compile incident investigation reports with a view to the handling of a possible claim in the future, and that records are accessible and retrievable.
- h) The Department needs to do more to establish the total cost of incidents, including the hidden costs, and make these more widely known among line managers so that they can make more informed assessments of risks to health and safety. It should also encourage line managers to invest in measures to reduce the risk of incidents by ensuring that their budgets bear at least some of the cost of any compensation paid.



Part 1

Handling claims

1.1 This Part of the Report looks at the way the Department handles claims for negligence. It first examines the types of claims made and considers the steps the Department takes to control the time and costs involved in handling claims, including the performance of those other bodies it uses to assist with the claims. We conclude that improvements have been made, but more should be done to keep the costs of claims down, reduce the time taken, and improve service to claimants.

The Department handles a wide range of claims, and the time and costs of handling these varies, depending on the type of claim

1.2 The Department currently handles a wide range of claims and potentially faces a number of new types of claims in the future. The time taken to handle cases varies by category of claim, but is broadly comparable with the time taken by other bodies and appears reasonable for low value claims. The Department's legal costs have been rising at a faster rate than the increase in the level of compensation payments themselves.

The Department currently handles a wide range of claims and potentially faces a number of new types of claims in the future

1.3 The Department is responsible, as are all employers, for the health and safety of its employees while at work. It is legally liable if its employees are injured at work due to its negligence. Civilian employees have been able to bring legal proceedings against the Department, under the Crown Proceedings Act, since 1947. This right was extended to members of the Armed Forces in 1987, but was not retrospective. The Department is also responsible for claims for clinical negligence against its medical staff and for public liability claims, that is, claims by members of the public arising from incidents involving either its employees or its property.

1.4 The Department issues guidance to staff in annual Defence Council Instructions, Queen's Regulations and the Personnel Manual about what may be claimed in the event of accidents, or what other incidents may give rise to claims. The Department also issues a regular newsletter to staff containing details of recent claims which were either paid or dismissed.

1.5 **Figure 1** shows the cost, and the types, of claims that the Department paid in 2001-02. This includes the main categories of claims but occasionally there are other types. The Department has outsourced the handling of some categories of claim to two commercial insurance companies, AXA Corporate Solutions and Royal & SunAlliance.

1.6 The largest claims the Department handles involve personal injury and clinical negligence, and many of these arise from incidents that were preventable (**Figure 2**). Appendices 3 and 4 detail the largest, and most novel and contentious, individual claims that the Department has resolved in 2000-01 and 2001-02.

1.7 The Department faces the possibility of a large increase in the number of claims against it in the near future. There is a number of group actions currently in the pipeline which, if judgement goes against the Department, could result in claims worth hundreds of millions of pounds (**Figure 3**).

The time taken by the Department to handle cases varies by category of claim

1.8 The Department's Claims Branch did not have data on the time taken to deal with cases because, before January 2002, its database did not have sufficient capacity to carry such management information. We therefore estimated this information ourselves, based on a sample of 259 claims whose case files we examined. We did not draw this sample from all claims handled by the Department, but concentrated on those categories of claims where expenditure was highest - employer's liability for Service and civilian employees, clinical negligence and public liability claims. These claims

1 Types of compensation claims against the Department

The Department deals with a wide variety of different types of claims although over half, by value, relate to employer's liability.

Type of claim	Compensation paid in 2001-02 (£ million)	Claim Handler
Service Personnel Employer's Liability ¹		
■ Mainly those arising before 1 July 1996	10.5	Department's Claims Branch
■ Those arising after 1 July 1996	21.8	Royal & SunAlliance
Civilian Personnel Employer's Liability ²	12.8	Royal & SunAlliance
Public Liability ³	11.4	Department's Claims Branch
Motor Vehicles ⁴	11.0	AXA Corporate Solutions
Clinical Negligence ⁵	8.9	Department's Claims Branch
Miscellaneous overseas	3.2	Department's Area Claims Offices ⁶
	1.3	Department's Claims Branch ⁷
Employment Tribunals	0.2	Department's Claims Branch
Maritime	0.2	Department's Claims Branch
	0.1	Specialist Naval Branches
Property damage from military aircraft crashes in UK:		
- Over £50,000	-	Department's Claims Branch
- Under £50,000	0.1	Defence Estates
TOTAL	81.5	

NOTES

- These are claims from Service personnel for injuries caused by the Department's negligence. The Department awarded a contract for the handling of these claims to Royal & SunAlliance on 1 July 1996. The Department therefore only handles claims before this date plus certain sensitive claims, such as those involving Special Forces, which arose subsequently.
- These are claims from civilian personnel for injuries caused by the Department's negligence. The Department awarded a contract for the handling of these claims to Royal & SunAlliance in 2002. Prior to this, these claims were managed by AXA Corporate Solutions.
- Public Liability claims arise from injuries received by the general public or damage to their property whilst on Departmental property.
- These consist of third party claims arising from the authorised operation of UK based vehicles in the UK and in EU countries not covered by an Area Claims Office.
- Clinical negligence claims arise from the negligent actions of Service medical personnel.
- There are separate Area Claims Offices for Northern Ireland, North West Europe, Cyprus, Bosnia, and the Falkland Islands. Claims include road traffic accidents, public and employer's liability, and training and manoeuvre damage in these areas.
- These claims include those involving other countries' Forces in the UK (including third party claims by and against these Forces) and claims against the Department in those non-EU countries not covered by an Area Claims Office. These claims are made under the provisions of Article VIII of the NATO Status of Forces Agreement and Section 9 of the Visiting Forces Act 1952.

Source: The Department

2 Examples of high value claims where the incidents were preventable

Electrocution Injuries

The claimant was loading vehicles onto railway wagons in a marshalling yard, when he was ordered to climb onto the roof of one of the wagons. While on the roof of the wagon he touched a live overhead power cable which he had been assured had been made safe. He sustained 60% burns to the body, damage to the skull, electrocution cataracts and a leg had to be amputated. He is tetraplegic and will need 24 hour nursing care for the rest of his life. The case was settled in September 2001 for £3,675,000.

Slip Injury

The claimant seriously injured his right leg after slipping on some liquid beside a drinks machine at the top of a flight of stairs. Following the incident, the claimant suffered irregular muscular spasms, extreme sensitivity and persistent pain in his right leg. The injury led to the claimant being medically discharged from HM Forces. It was alleged that the Department failed to clear up the spilt liquid or to give adequate warning of the presence of the liquid on the stairs. The level of damages paid to the claimant was reduced by 20% to reflect his contribution to the accident. The claim was settled in June 2001 for £800,000.

Horseplay

An ex-member of the Army claimed compensation for serious head injuries sustained when he fell from the tailgate of a moving lorry returning to camp from a night out in a local town. The claimant was on the tailgate attempting to "windsurf". Allegations of negligence against the Department included that of failure to enforce discipline in the rear of the vehicle, failure to give a specific command to prevent horseplay, and unnecessarily exposing the claimant to risk of injury. The Department was found 25 per cent liable and paid £75,000 in January 2001.

NOTE

Further details are given in Appendix 3.

Source: The Department

3 Possible future claims

The Department faces the possibility of a large increase in the number of claims against it.

Gulf Veterans' Illnesses

As at 31 March 2002 the Department had received from Gulf conflict veterans, their families and civilians 2,032 notifications of an intention to claim compensation. As at January 2003, however, the Department had not received any writs or claims of detail stating specific allegations of negligence. The Department has not accepted either cause or negligence but has acknowledged less than satisfactory handling of a number of matters.

Post Traumatic Stress Disorder

The Department received approximately 2,000 claims from former members of the Armed Forces alleging that, between 1969 and 1995, the Department had been negligent in relation to the prevention, management and treatment of the acute and chronic psychological reactions to combat, and that they suffered some loss or damage as a result. Ruling on a Group Action in May 2003, the High Court found that, except in a number of very minor respects, the Department had not been in breach of its duty of care to the claimants. The Court found that the Department was in breach of duty in four of the 22 lead cases but emphasised that these failings were not due to faults in the Department's systems and policies but arose because of failures by individuals. The claimants may seek leave to appeal. The Department does not consider that allegations of individual fault can be sustained in other than a small minority of the remainder of the cases notified to it. The Department has always accepted that some members of the Armed Forces may suffer stress as a result of being subjected to traumatic experiences and that this should be treated when identified. It intends to keep abreast of improvements in the treatment of this disorder.

Pre 1987 Service Personnel Claims

Prior to May 1987, when section 10 of the Crown Proceedings Act 1947 was repealed, Service personnel were prevented from pursuing compensation claims against the Department. Crown immunity prevented claims from being made before 1947. An ex-Serviceman claimed that Section 10 of the Crown Proceedings Act 1947 breached Articles 2 and 6 of the Human Rights Act. Whilst the Department won in the Appeal Court and then the House of Lords in February 2003, the claimant is now taking his case to the European Courts. If the claimant were to win, it could open the way for many other claims from ex-Service men and women who may have been negligently dealt with by the Department between 1947 and 1987.

Source: The National Audit Office

represented 80 per cent of the value of the claims paid in 2001-02. We did not look at other types of claims, such as those for motor vehicles and maritime claims, as they were relatively routine, of low monetary value, or were handled by specialist teams. Further details on how the sample was selected can be found in Appendix 2.

- 1.9 Our analysis of claims handled by the Department in 2001-02 shows that the time taken to handle claims varied according to the category of claim (Figure 4 and Figure 5). For example, claims for clinical negligence took longer than other categories of claim, due to uncertainties over such things as long-term prognosis and life expectancy.
- 1.10 The Department's performance was broadly comparable with that of other organisations. For example, the average time taken by the Department to settle clinical negligence claims was 3.2 years in 2001-02, less than the 3.89 years we found for the National Health Service

in England². For personal injury cases, the average time taken by the Department to settle claims involving members of the public was 1.5 years in 2001-02 and 2.4 years for claims from Service personnel. In 1996 Lord Woolf found in his review of the civil justice system that personal injury cases took, on average, 4.6 years to complete³. Since then, as a result of his reforms, the time taken on such cases has fallen. The Metropolitan Police told us that it took it two to three years on average to complete an employee's personal injury claim, although it could take five to seven years for more complex cases, especially where a long term prognosis of the effects of an injury was awaited. Also, in the Metropolitan Police's experience, its own performance was in line with the time taken to deal with such cases across the industry. London Underground told us that its average time for completing personal injury cases was 1.4 years, although it had less complex cases.

- 1.11 Of the 205 files on personal injury cases that we examined, there were 100 where full information was available. Of these, there were 38 cases where the settlement was under £15,000. The average time taken to settle these cases was 2.8 years, compared to 5.6 years for the 62 cases for over £15,000⁴. Some of the 38 cases, however, were brought before the Civil Justice Reforms of April 1999 which introduced the Civil Procedure Rules to simplify and speed up civil court proceedings. The changes included a fast-track procedure for claims under £15,000 which should result in claims being resolved within one year of initiation. The Courts can impose sanctions if the timescales set down in the Rules are not followed. So far, the Department has not incurred any sanctions for missed deadlines.

4 Age of claims paid by the Department in 2001-02

The time taken from receipt of a claims letter to the claims payment varied depending on the type of claim involved.

Type of claim	Time taken	
	Average (Years)	Range (Years)
Clinical negligence	3.2	0.1 - 9.4
Personal injuries to members of the public	1.5	0.1 - 8.9
Employer's liability (Service employees)	2.4	0.1 - 11.0

Source: The National Audit Office

5 Age of claims outstanding at March 2002

The time taken to deal with claims varied depending on the type of claim.

	Number of claims outstanding	Age of claims		
		Two or more years (Per cent)	Four or more years (Per cent)	Six or more years (Per cent)
Employer's liability				
■ Service employees	3,695	64	47	22
■ Civilian employees	1,844	52	15	2
Clinical negligence	104	47	22	7

Source: The National Audit Office

² C&AG's report "NHS (England) Summarised Accounts 2001-02" (HC 493 2002-03, March 2003) Figure 17.

³ "Access to Justice" Final Report Annex III Table 5 (July 1996).

⁴ The average time taken to deal with these 100 cases was 4.5 years. This is higher than the times taken for claims involving injuries to Service personnel and members of the public in Figure 4 as our sample of 205 included all 55 cases involving injuries to Service personnel which were handled by the Department and settled in 2001-02. The Service personnel injury cases handled by the Department tend to be more complex than those handled by Royal & SunAlliance.

6 The Department's legal costs and compensation paid

The Department's legal costs have increased greatly, at a faster rate than for the compensation payments themselves.

	Legal costs £ million	Compensation £ million	Total £ million	Legal costs as a percentage of compensation Per cent
1998-1999	10.4	73.6	84.0	14.1
1999-2000	10.6	70.5	81.1	15.0
2000-2001	13.3	77.0	90.3	17.3
2001-2002	15.1	81.7	96.8	18.5

NOTE

All figures are at 2001-02 prices.

Source: The Department

The Department's legal costs have increased and, when combined with claimants' legal costs, can exceed the value of the compensation paid

1.12 The Department's legal costs on claims include not only the fees of its own legal advisers and disbursements on such things as obtaining medical opinions, but also the costs of the claimants' solicitors. Meeting claimants' costs reflects the normal legal practice that the successful party to any legal action is entitled to recover from the other party its own legal costs. The Department is, however, often constrained from recovering its own costs from claimants in the cases it successfully defends, as the claimants in many cases are assisted by legal aid⁵.

1.13 Although the Department's Claims Branch does monitor its total legal costs, it does not analyse these by category of claim. Overall, the Department's legal costs have increased by 45 per cent, from £10.4 million in 1998-99 to £15.1 million in 2001-02 (Figure 6). This was in the main due to higher charging rates, the introduction of conditional fee arrangements whereby the opposing lawyers can claim an additional fee (up to 100 per cent) in successful cases, and pre-trial costs in the Post Traumatic Stress Disorder Group Action High Court trial. It compares with an increase of 11 per cent in the amount of compensation paid during this period. This increase in compensation is attributable to changes in the level of general damages recommended to the courts by the Judicial Studies Board and a change in the multiplier used to calculate future losses as directed by the Lord Chancellor in June 2001 and set out in the Damages Act 1996.

1.14 Our analysis of the sample of claims that we examined revealed that legal costs were, on average, 19 per cent of the compensation paid, reflecting the fact that our sample covered more complex types of claims. For individual claims the level of legal costs varied greatly, ranging from one per cent to 396 per cent of the compensation paid. Legal costs exceeded the compensation paid in 39 (19 per cent) of these cases. The main reasons for these high costs were the length of time taken to deal with the claims, their complexity and novelty, and the need to commission medical experts.

Cases with high legal costs		
Legal costs	Compensation paid	Case details
£000	£000	
396	100	The case took seven years to settle and proceeded to trial. Many expert reports were commissioned.
146	50	The case took 11 years to settle during which time both sides commissioned many expert reports. The case went to trial, attracting associated costs, with an offer to settle by the claimant's side on day three of the trial.
59	33	Clinical negligence claim that took almost five years to settle. Many expert reports commissioned.
31	11	Case took over seven years to settle. Many expensive expert reports commissioned.

⁵ Legal aid no longer applies to Employer's Liability claims.

A number of improvements have been made to the Department's handling of claims

1.15 The Department has taken a number of steps to improve its time and cost performance, which are recognised by external stakeholders. It is also having to respond to a number of external initiatives to reduce the costs involved and the time taken to deal with legal claims under civil law.

The Department has taken steps to improve its time and cost performance

1.16 The Department's Claims Branch has taken several steps to improve its handling of claims. In 1996 it used competition to outsource the handling of some categories of claim to two commercial insurance companies, AXA and Royal & SunAlliance (Figure 1). Claims Branch has considered contracting out the handling of other claims but decided these needed to be dealt with in-house because of their sensitivity, Service involvement (for example, claims involving covert or Special Forces), or specialist nature.

1.17 In addition, Claims Branch has drafted a procedural manual, as there were no written instructions previously, and has introduced a structured programme of training courses, which it believes has helped to reduce the time taken to deal with claims. Staff are required to undertake a minimum of 18 hours Continued Professional Development training each year. The Claims Branch has also encouraged its staff to be more proactive in progressing claims, by not waiting for correspondence, for example, but instead pressing its solicitors for action.

1.18 Moreover, the Department does seek to avoid litigation. Its Claims Branch told us that it looks to settle the majority of cases without going to court, and, to this end, approaches negotiations with claimants' solicitors positively. As a result, only three per cent of claims go to court. Avoiding court action can save legal fees of £15,000 per day for, on average, five days per case.

The Department's positive attitude to negotiations

In a case settled in 2001 a leading Queen's Counsel said: "The point which is most noticeable to me is that both sides enter the negotiations in a spirit of compromise and goodwill. The defence claims manager is very impressive. He really does take the view that it is the duty of the Army to look after its own, even after injury. That sets the scene, because he is insistent on selecting lawyers who will adopt the same attitude. Not surprisingly, perhaps, that approach has a profound effect on me, and all those on my side. It is such a pleasure (and surprise, initially) to negotiate in that atmosphere; inevitably it brings out the reasonable side. As a result, we have never failed to settle following one of these round table consultations."

1.19 Claims Branch uses Counsel-to-Counsel settlement conferences as a way of resolving cases without going to court. An independent audit of Branch procedures in 1998 confirmed that this practice has reduced associated legal costs. Seven claimants' solicitors we surveyed also mentioned that they had used solicitor-to-solicitor meetings or negotiations as an alternative means of settling claims against the Department.

1.20 Claims Branch told us that it had received fewer letters of criticism since 1997, and solicitors we interviewed have confirmed that there have been considerable improvements in the Department's performance since 1997 and that their relationship with Claims Branch has improved. Almost three quarters of the claimants' solicitors we surveyed felt that the Department's handling of claims was the same as, or better than, that of other employers.

Counsel to Counsel Settlement Conferences

A solicitor remarked that, in August 2001, he had listed for trial three fatal accident cases involving widows which were likely to achieve sums between £350,000 and £600,000. Each would have been listed for between three and five days for a trial on the amount of damages. With the co-operation of the Royal & SunAlliance's solicitors, Counsel to Counsel Settlement Conferences were arranged for each case. All three cases were dealt with in under two days, thus achieving considerable cost savings for the Department and, more importantly, a just settlement at minimum stress to the widows.

7 External initiatives for handling claims under civil law

There are a number of external developments in the handling of claims under the civil law.

New civil procedure rules (Woolf reforms)

The Civil Procedure Rules, introduced in April 1999, significantly change the way in which claims are investigated both before and after litigation has commenced, in an attempt to speed up and simplify the process, and make it cheaper. They set out a pre-action protocol and new rules to govern the conduct of litigation limiting the defendant's ability to procrastinate and delay proceedings. They limit the scope for arguments over expert testimony by seeking the appointment of a single expert to provide an independent opinion. For cases likely to be settled for under £15,000 a fast-track procedure has been introduced with set time-scales for certain activities leading to an ideal time of about one year from raising the claim to settlement.

Clinical negligence

The Government expects to issue a Consultation Paper on proposals to reform the way that clinical negligence claims against the National Health Service are dealt with. In addition, there are existing plans to improve the system, such as encouraging the use of mediation to resolve clinical negligence disputes. The National Health Service Litigation Authority launched an initiative in May 2000 among all its panel solicitors requiring them to examine every case for suitability for mediation. The National Health Service is taking steps to ensure that it learns from complaints, adverse incidents and clinical negligence claims, as well as from the proposed reforms to its complaints procedure.

Road traffic accident claims

In December 2002 representatives from the Association of Personal Injury Lawyers, the Motor Accident Solicitors Society, the Law Society and liability insurers agreed on a framework deal for fixed fees in road traffic accident cases that are settled for under £10,000 without going to court proceedings. This agreement was finalised under the umbrella of the Civil Justice Council, the watchdog body on the civil courts. Under the agreement, claimants' solicitors would receive base costs of £800 plus 20 per cent of the damages up to a settlement of £5,000. The costs figure would rise to 15 per cent of the damages awarded from £5,000 to £10,000. Interim findings from research carried out for the forum were that the average case was settled for £3,000, with base costs of approximately £2,000. Under the scheme, the base costs would fall to £1,400. There will be measures to ensure that solicitors do not issue proceedings just to escape the scheme.

Source: The National Audit Office

The Department is having to respond to a number of external initiatives to improve the handling of claims under civil law.

1.21 There are a number of external developments in the handling of claims under the civil law that will have, or have already had, an effect on the time and costs of cases handled by the Department (Figure 7).

8 Reasons for delays to claim handling

There were a number of reasons for delays to the handling of claims.

Causes of delay	Cases where this was a factor	
	Number	Per cent
Delay in obtaining a medical opinion	19	29
Delayed provision by the Department of incident reports, witness statements, and other relevant material	13	20
Waiting for a long-term prognosis	11	17
Delayed provision by the Department of medical records	4	6

Source: The National Audit Office

The Department should do more to reduce the time and cost involved in handling claims

1.22 We identified a number of instances where, despite the steps the Department had taken to improve its performance, it had incurred extra costs or there had been delays as it had not universally applied good practice. While under two-thirds of both claimants and solicitors we surveyed felt that the Department handled claims in a timely manner, over one-third of these felt that the Department's handling of claims was too slow. The views of external stakeholders, such as claimants, on the Department's claims performance may, however, be coloured by the fact that they have allegedly suffered injury as a result of the Department's negligence. Nevertheless, we consider that there are a number of further steps the Department should take to improve the way it handles claims.

The Department should do more to improve the handling of claims

1.23 Our examination of a sample of cases paid in 2001-02 revealed 55 cases (20 per cent) which took over 3.5 years to complete. Analysis of the reasons for delay showed that the Department had not universally applied good practice in handling claims (Figure 8).

Medical matters should be resolved as quickly as possible

1.24 The time taken to handle a case can be cut dramatically if the parties to a claim can agree on a joint medical opinion or agree a timetable for obtaining one in appropriate cases. Joint instructions to medical experts are agreed by Claims Branch officials whenever feasible to do so, but in the main these will involve the lesser value straightforward claims. In complex clinical negligence cases, perhaps involving a brain damaged baby, it is sometimes necessary for the claimant and the defendant to receive independent advice in order to arrive at an agreed position, particularly of the life expectancy of the claimant. We found that medical matters, such as obtaining a medical opinion or long-term prognosis, were a significant cause of delays in 30 cases that we examined (Figure 8), a fact confirmed by half of the solicitors we surveyed. According to Claims Branch, experts were in greater demand than in the past and consequently the time taken to arrange medical examinations and medical opinions was a major cause of delay.

Timely provision of documentation will avoid delays

1.25 It is good practice for any documents relating to a claim to be provided in good time to the other party. For example, the Veterans Agency, in dealing with its claims, has put in place customer service agreements which contain agreed timescales for the provision by the Department of documents⁶. Claimants' solicitors, however, told us that the settlement of claims was often delayed because of the time taken by the Department to provide documentation, such as personal files, medical files, promotability forecasts, and evidence on the original incident such as investigation reports. Our examination of a sample of paid claims confirmed that problems in obtaining from the Department documents such as incident reports, witness statements, and medical records caused delays (Figure 8). The Department told us that, in certain cases where the claimant has also submitted a claim for a war pension, the relevant documentation might be with the Veterans Agency and therefore not immediately available for the compensation claim. Nonetheless we consider that, as a matter of good practice, Claims Branch should consider implementing agreements similar to those in the Veterans Agency for its own work.

Outstanding information from claimants' solicitors should be chased up

1.26 While it may be tempting not to chase up the claimant's solicitors for outstanding information, it is the Department's policy to do so. We found instances where the Department's handling of a claim was delayed by the late provision of information by the claimant's solicitor. The resulting extra time taken to handle the claim is likely to increase the legal costs. According to Claims Branch, despite its hastening action in some cases, late provision of the claimant's estimate of the losses allegedly incurred as a result of the Department's negligence was a particular problem. The Branch also told us that it would disallow claimant's legal costs and interest on damages for any period of delay caused by the claimant's solicitors. Despite this, the Department should still ensure that its solicitors press claimants' solicitors for the timely provision of necessary information.

Delays caused by claimants' solicitors

Time taken to resolve (Years)	
9.5	There was a three year and a one year period when, according to the Treasury Solicitor, nothing was heard from the claimant's solicitors.
8.0	According to the Treasury Solicitor there was no correspondence from the claimant's solicitor for over two years.
6.8	Long delays throughout the case on the part of the claimant's solicitor.
6.7	The District Judge thought that the claimant's solicitor's conduct had fallen very far short of the appropriate standards and was also very slow.

Realistic initial offers will speed settlement of a claim and help avoid expensive legal fees

1.27 When justified, it is good practice to make a claimant a reasonable initial offer as this often results in the early settlement of a case and the avoidance of expensive legal fees. In deciding the level at which to pitch such an offer, the Department faces a difficult judgement. On the one hand it wants to avoid making too high an offer; on the other, unrealistically low offers can delay matters, cause unnecessary distress and hardship to claimants, antagonise the claimant's solicitors, and result in expensive court application.

⁶ C&AG's report "Improving Service Delivery: The Veterans Agency" (HC522 2002-03, March 2003) paragraph 2.6.

1.28 Comparison of the Department's initial offers with the amounts finally paid in compensation revealed, however, that, prior to September 2000, the Department's initial offers had sometimes been too low. Of the 130 personal injury cases we examined where the Department's initial offer was rejected by the claimant, 20 (15 per cent) had initial offers which were 50 per cent or less than the value of the compensation finally agreed, unnecessarily delaying settlement and increasing costs. However, just under two-thirds of the solicitors and three-quarters of the claimants we surveyed said that, where the Department had accepted liability, it had made a reasonable offer.

Low initial offers by the Department

Royal & SunAlliance, as the Department's agents, made a counter-offer of £280,000 in response to an initial offer to settle by the claimant's solicitor of £390,000. The Department's counter-offer was rejected and the matter went to trial where, after a two-day hearing, the claimant was awarded £406,000.

Royal & SunAlliance, as the Department's agents, made an offer of £5,500 in full and final settlement. This was rejected and the matter was subsequently settled by negotiation, some six months later, for the sum of £27,500.

1.29 For its part, the Department considers that claimants often are unduly optimistic as to what constitutes a reasonable level of compensation, and that claimants' solicitors often make unrealistic initial claims which, even in multi-million pound cases, can be as much as four times the settlement eventually agreed. In one recent case the claimant estimated their losses at £189,000, whereas the final settlement was for £12,000.

High claims by claimant

In one recent case the claimant estimated their losses at £189,000, whereas the final settlement was for £12,000.

The Department made a counter offer of £1 million in settlement of a noise nuisance case in response to the claimant's valuation of about £9 million. The case settled at court for £1 million.

1.30 In September 2000, following a number of complaints from claimants' solicitors, Claims Branch raised the question of counter-offers with the Treasury Solicitor. Several of the Counsel acting for the Department had been putting forward very low counter-offers in response to claimants' solicitors' loss schedules. The counter-offers had been inappropriately calculated and had not taken legitimate losses into account. The effect had been unnecessarily to antagonise the claimants' solicitors. Since Claims Branch raised this with the Treasury Solicitor the level of counter-offers has been more realistic.

Late decisions to admit liability should be avoided, if possible

1.31 It is usually not good practice for defendants to change their stance and admit liability at a late stage as this leads to unnecessary worry to the claimant and extra legal costs. Claims Branch told us that, in some cases, it had been reasonable and unavoidable for it to admit liability late on as new evidence had emerged which compelled it to do so. The Branch noted that some claims brought against the Department contained only sketchy details and were therefore defended until it had received sufficient evidence to satisfy it on the question of its liability. We found examples, however, where the Department had made a late change in its stance on its liability because its internal medico-legal opinion, that it was not liable, was contradicted later by an outside medical expert it had retained. Such changes could have been avoided if the Department had got independent medical advice earlier.

Changes in the Department's stance on its liability

It was alleged that a Serviceman who was finally diagnosed as having peripheral vascular disease had been initially misdiagnosed. In May 1999 the opinion of the Department's internal medico-legal adviser was that there was no evidence whatsoever of negligence. An independent medical opinion, obtained in 2001, was that the consultant had misdiagnosed the condition. A Joint Experts meeting confirmed this view and the claim was settled at a Counsel to Counsel settlement conference in 2002.

It was alleged that an officer's melanoma was misdiagnosed. In March 2001 the opinion of the Department's internal medico-legal adviser was that nothing more would come of the claim once the claimant's experts saw the medical notes. An independent medical opinion, obtained in August 2002, was that there had been a failure in the duty of care and that there was a delay in the diagnosis and management of the primary lesion. This case was settled at a mediation conference in December 2002.

Claimants' costs should be challenged

- 1.32 It is good practice to challenge the legal costs sought by claimants. The Law Society has developed guidelines on the fee rates that solicitors should charge. According to these guidelines, such costs should be about 25-30 per cent of the compensation paid, depending on the complexity of the case. Another useful comparator is with clinical negligence claims in the National Health Service where claimants' costs amounted to 32 per cent of the compensation they received⁷.
- 1.33 In the absence of information readily available at the Department, we found in a sample of 77 cases that the Department's solicitors, the Treasury Solicitor, had achieved an average reduction in claimants' costs of 13 per cent (or £6,094 per claim). In contrast, greater savings had been achieved on the claims handled by the insurance companies. AXA Corporate Solutions reported that it had achieved a 20 per cent saving on the fees of claimants' solicitors in October 2002, and Royal & SunAlliance a saving of 25 per cent during 2002. The insurance companies had achieved these savings by employing specialist firms to negotiate with the claimants' solicitors over their fees. In our view, the Department should examine the scope for the wider use of such firms. In response, Claims Branch met with the Treasury Solicitor, AXA Corporate Solutions and Royal & SunAlliance in January 2003 to discuss claimants' legal costs. The meeting agreed to set up a panel of specialist firms to prepare detailed assessments of such costs in future.

There is scope for improvement in the legal service the Department receives

- 1.34 The arrangements for the provision of legal services on claims vary, depending on the body handling the claim (Figure 9). The Department's main legal service provider for the claims it handles itself is the Treasury Solicitor. It allocates the Treasury Solicitor this work without competition for many of the same reasons it does not outsource the claims handling itself (paragraph 1.16). As for claims handled by the insurance companies, the Department has effectively delegated the choice of solicitors to these companies. The exception is Royal & SunAlliance which is required to use the Treasury Solicitor for half of its claims. Again, this work is allocated to the Treasury Solicitor without competition.
- 1.35 Some aspects of the Treasury Solicitor's service compare well with that provided by private sector solicitors. For example, its fee rates are lower than those of other London-based solicitors. And, of the claimants' solicitors we surveyed, 54 per cent considered that the Treasury Solicitor's handling of claims was the same as or better than that of the legal firms employed by the insurance companies.
- 1.36 The Treasury Solicitor's service, however, could be improved. Willis Limited's audit of Claims Branch in 1998 concluded that the service provided by the Treasury Solicitor on certain occasions fell below an acceptable standard. The audit raised concerns about the quality of the Treasury Solicitor's preliminary reports on newly received claims, its generally poor response times for dealing with correspondence, and its over-reliance on Counsel to carry out some of the more

9 Legal advisers on claims

The arrangements for the provision of legal services vary.

Claim handler	Arrangements for legal service	Basis of legal appointment
The Department	Claims Branch uses the Treasury Solicitor for claims arising in England and Wales, Morton Fraser Solicitors in Scotland, and the Crown Solicitors in Northern Ireland.	Work is allocated to the Treasury Solicitor and the Crown Solicitors without competition. Morton Fraser was appointed after a competition, replacing the former service provider, the Scottish Office.
AXA Corporate Solutions	AXA Corporate Solutions uses its own panel of solicitors.	AXA Corporate Solutions appointed the solicitors to this panel after a competition.
Royal & SunAlliance	Since May 1999 Royal & SunAlliance has used a panel of solicitors for half of its claims (those arising in South, East and North West England). Royal & SunAlliance is required under the terms of its appointment to use the Treasury Solicitor for the other half (claims arising in London, the Midlands and North East England).	Royal & SunAlliance appointed the solicitors to this panel after a competition. The Treasury Solicitor is allocated this work without competition.

Source: The National Audit Office

7 C&AG's report "Handling clinical negligence claims in England" (HC403 2000-01, May 2001) Figure 14.

routine legal work. Although the Treasury Solicitor has subsequently improved its service, Claims Branch still consider that there is scope for improved communication with the Branch, compared to other claims legal service providers. For example, the Treasury Solicitor's bills contain little information, such as a breakdown of the time taken on a case, by which the Branch can assess the reasonableness of the service provided. In addition, there remains an over-reliance on Counsel.

- 1.37 The Treasury Solicitor is taking steps to address the Branch's concerns. It intends to introduce a new billing system which will enable it to provide detailed cost breakdowns for each case. It admitted to us, however, that it does involve Counsel regularly in its cases. It considers it to be in the Department's best interests on claims over £15,000 for the person who has to argue the case in court to draft the defence. It also considers that it has negotiated very favourable rates for its use of Counsel. It is planning, however, to use Counsel less on claims under £15,000.
- 1.38 Claimants' solicitors commented that a high turnover of staff within the Treasury Solicitor's office also leads to a lack of continuity on cases, and to higher costs because new staff must spend time acquainting themselves with cases. Our case file examination has provided examples of at least five individuals handling one Treasury Solicitor case. Claims Branch told us that this had been a problem in the past, but it had now been largely overcome. Turnover of Treasury Solicitor staff has reduced dramatically since 2001.

Changes of staff within the Treasury Solicitor

A claimant's solicitor reported that in a large brain injury case involving a Serviceman, which was settled at the end of 2001 for just over £1.2 million, there were six solicitors in the Treasury Solicitor Department who had conduct of the file over the course of the settlement.

- 1.39 The Department's aim is to secure value for money in its legal advice by obtaining a better quality of service at an optimal cost. For certain types of claim it has used competition to achieve this aim (paragraph 1.34 and Figure 9). It has chosen, however, to allocate work to the Treasury Solicitor without direct competition. This is despite the fact that there are many legal firms which deal with compensation claims. AXA and Royal & SunAlliance already have their own panels of solicitors (paragraph 1.34), and the National Health Service Litigation Authority established a similar panel in 1998 for clinical negligence claims⁸. Where the Treasury Solicitor has faced indirect competition, in the form of

panel solicitors for some of the Royal & SunAlliance cases, one of the three solicitors we interviewed said that it had detected an improvement in the Treasury Solicitor's performance. We consider, therefore, that the Department should seek to exert greater competitive pressure on the Treasury Solicitor by benchmarking it against other legal service providers and, if necessary, market-testing the service.

The Department intends to do more to monitor its claims-handling, but there is still scope for further improvement

- 1.40 Before January 2002 Claims Branch's database did not have enough capacity to carry the information necessary for effective monitoring. Consequently, the Branch could not routinely monitor the overall time taken and costs involved in dealing with the range of claims handled by them each year. In January 2002, however, Claims Branch introduced a new database, which has improved the information available to management. To date, Claims Branch has not used this database fully but intends to do so. In our view, it should make greater use of the monitoring information available and develop performance indicators in order to drive down the time taken to handle claims and the associated costs.

Claims Branch's monitoring of the time, costs and quality of claims-handling should be improved

- 1.41 Claims Branch's monitoring of the time and cost of the handling of claims should be improved. For example, it does not prepare regular (for example, monthly or quarterly) returns showing the age distribution of claims. It has been left to individual claims officers to monitor the time taken to progress individual claims, including the time taken by the solicitors, and bring to their managers' attention any cases of concern.
- 1.42 Nor does Claims Branch regularly prepare any returns showing the legal costs of individual claims. It cannot readily distinguish between legal costs incurred on claims handled by it or its agents, and those of the claimants themselves. For claims handled before the introduction of the new database, this data is only available through manual extraction from case files. Claims Branch does not keep any statistics on plaintiffs' costs, and has not formally checked the effectiveness of the solicitors it uses in negotiating plaintiffs' costs.

⁸ This panel currently contains 15 firms of solicitors. (C&AG's report "Handling clinical negligence claims in England" (HC403 2000-01, May 2001) paragraph 4.23).

- 1.43 Claims Branch has not evaluated the overall quality of its handling of claims. It has not carried out any survey of claimants who have settled, or of claimants' solicitors, to establish how the Department's handling of their claims is perceived by them. The Veterans Agency, by contrast, regularly surveys its customers to monitor their satisfaction with its service.⁹
- 1.44 Claims Branch told us that it does intend to make greater use of its new database to improve its monitoring of the time and costs of claims and to disseminate the results of this to Top Level Budget-holders. As for the quality of its service, it considers that surveying claimants who allegedly had been injured by the Department's negligence would be of limited value as their views on the handling of their claim might be biased. Surveying claimants' solicitors was also unnecessary as Claims Branch has regular dealings with all the major solicitors who regularly bring cases against the Department.

Claims Branch should do more to monitor the performance of its contractors

- 1.45 Claims Branch monitors its contractors' performance. There is constant liaison between senior staff in Claims Branch and the insurance companies. The Chief Claims Officer also gets involved in any claim involving more than £1 million, providing him with personal experience of the capabilities and performance of the companies.
- 1.46 Claims Branch also relies on audits that Willis Limited carries out every two years to ensure that the performance standards set in the contracts with AXA and Royal & SunAlliance have been achieved. The performance standards all relate to time taken - for example, to process data or to respond to correspondence and complaints. Where performance falls below specified levels, Claims Branch is able to reclaim a proportion of the annual fee - up to 15 per cent in the case of Royal & SunAlliance. Willis has found that both insurance companies have performed within the criteria set down in the contracts and that they have also complied with other recommendations made by it.
- 1.47 In our opinion, Claims Branch should do more to monitor the performance of the companies it uses to handle claims, and thus to drive down its costs and the time taken to handle claims. For example, the insurance companies have evolved their own comprehensive databases, which provide all the information they need to manage effectively the claims that they handle. They

provide quarterly downloads of information to Claims Branch for use by Claims Branch's Risk Management Group. They also provide the Branch with quarterly management reports, which include the time taken to deal with claims and the companies' and claimants' legal and other costs associated with the claims. Claims Branch, however, does not use these management reports for monitoring the companies' performance. We consider that regular analysis of these reports would help to identify developing trends, and problems or issues to be resolved.

The Department should provide more non-financial help to claimants

- 1.48 Our survey of claimants showed that they were not only seeking financial compensation when making claims, but also wanted, for example, an admission of liability, the prevention of future incidents, and an apology and explanation. The Department, however, rarely satisfied these non-financial expectations (Figure 10). The importance of such demands was also confirmed by our survey of claimants' solicitors. These survey findings are in line with other surveys that we have conducted elsewhere, for example on clinical negligence claims¹⁰.

10 The Department's success in meeting claimants' expectations

Claimants are not motivated only by the prospect of financial compensation but the Department is less successful at meeting non-financial expectations.

	Claimants seeking (Per cent)	Claimants satisfied (Per cent)
Admission of liability	63	33
Apology	57	14
Action taken to prevent occurrence of incident	42	17
Thorough investigation	31	15
Explanation of what happened	20	17

NOTE

The above figures are based on claimants' responses to the National Audit Office's survey.

Source: The National Audit Office

⁹ C&AG's report "Improving Service Delivery: The Veterans Agency" (HC522 2002-03, March 2003) paragraphs 2.36-38, 2.41, 2.49-50, and 2.55.
¹⁰ C&AG's report "Handling clinical negligence claims in England" (HC403 2000-01, May 2001) paragraph 3.22 and Figures 18 and 19.

1.49 Offering non-financial remedies in addition to financial compensation when settling a claim is good practice: it can help avoid expensive litigation and give greater satisfaction to the claimant. Other public sector bodies have recognised the importance of non-financial aspects of claims:

- The Veterans Agency regularly surveys its customers to identify their satisfaction with its service, including the non-financial aspects of this such as the Agency's performance in keeping its customers informed of the progress of their claim¹¹.
- The National Health Service Litigation Authority has issued guidance on giving appropriate apologies and information. Trusts, however, have not routinely offered non-financial remedies as part of the process of settling claims¹².

1.50 The Department told us that, in its experience, the primary concern of claimants or their solicitors was financial compensation. In its opinion, claimants only expressed, as a secondary concern, an interest in non-financial aspects in response to a survey after they had received the financial compensation. It considered that the relatively low proportion of claimants who felt that they had got an admission of liability from the Department (33 per cent - Figure 10) reflected claimants' experience on older claims. Since the introduction of the Civil Procedure Rules in April 1999 a defendant had to either admit liability or defend a claim. More claimants on newer claims would, therefore, be receiving an admission of liability, if appropriate.

Recommendations

- 1.51 a) The Department should adopt a more proactive approach in the management of claims and provide appropriate training in this approach for its claims staff. As part of this approach:
- The Department should seek the agreement of the claimant to the obtaining of a joint medical opinion in appropriate cases (paragraph 1.24).
 - The Department should agree timescales for its provision of documents required to ensure the speedy processing of a claim (paragraph 1.25).
 - The Department and its agents should continue to press claimants' solicitors for the timely provision of necessary information and disallow any claimants' costs arising from their solicitors' delay (paragraph 1.26).
 - The Department should weigh up the merits of cases carefully and, based on this, always seek to make a claimant an initial offer that is reasonable (paragraph 1.27).
 - Unless justified, the Department should avoid making last minute changes to its position on whether it admits liability or not (paragraph 1.31).
- b) The Department should seek to exert greater competitive pressure on the Treasury Solicitor by benchmarking its service against that of other legal service providers and, if necessary, market-testing the service (paragraph 1.39).
- c) The Department should make greater use of its claims database and the management reports from the insurance companies to monitor performance, to develop performance indicators on the time taken to handle claims and the associated costs (paragraphs 1.41 to 1.42 and 1.47). These indicators could include, for example, the time taken to provide claimants' solicitors with key documentation and, for each type of claim, claimants' legal costs as a percentage of compensation paid. The Department should also seek the views of claimants and their solicitors as to the quality of its handling of claims (paragraphs 1.43 to 1.44).
- d) The Department should do more to satisfy claimants' non-financial expectations. Offering an apology, for example, could help avoid litigation and increase claimants' satisfaction (paragraph 1.48). Such an apology would need to make clear that it did not include an admission of liability.

¹¹ C&AG's report "Improving Service Delivery: The Veterans Agency" (HC522 2002-03, March 2003) paragraphs 2.22-23.

¹² C&AG's report "Handling clinical negligence claims in England" (HC403 2000-01, May 2001) paragraphs 3.25 and 3.27.



Part 2

Preventing incidents

2.1 This Part of the Report examines the Department's efforts to prevent incidents which result in claims. These efforts include not only the promotion of health and safety policies, but also the recording and analysis of incidents as they occur, and the use of such information for risk management and reduction. Although there is formal guidance on these areas, we found that in practice the recording, investigation and analysis of incidents, and risk management procedures, were of variable quality, partly due to lack of line management awareness of, and training in, safety-related procedures.

The Department has recently taken steps to improve its prevention of incidents, including promoting clear policies and guidance

- 2.2 After the Strategic Defence Review and two major studies in 1998, the Department undertook a number of improvements to its safety management system. In doing this, it aimed to comply with the Government's Revitalising Health and Safety Strategy, launched in 1999. This strategy aimed to inject new impetus into achieving better health and safety in all workplaces.
- 2.3 In making these changes, the Department enlisted the help of the Health and Safety Executive in reviewing its health and safety arrangements in 2000: the Department's strengths and weaknesses were assessed against a model covering the standard management activities of policy-making, organising, planning and implementing, measuring, auditing and reviewing.

The Department has strengthened its management of health and safety

- 2.4 In July 2000 the Secretary of State issued a new policy statement in which he set out the Department's aims on health and safety (**Figure 11**). This statement also made it clear that health and safety were line management responsibilities, and that managers were to put adequate health and safety arrangements in place and monitor their effectiveness.

11 The Department's health and safety policy

The Department aims to comply with all relevant health and safety legislation and standards.

The Department will:

- Comply with all relevant health and safety legislation and regulations (Health and Safety at Work Act 1974)
- Maintain accident prevention plans and emergency procedures on all sites presenting a risk of major accident to individuals or the environment

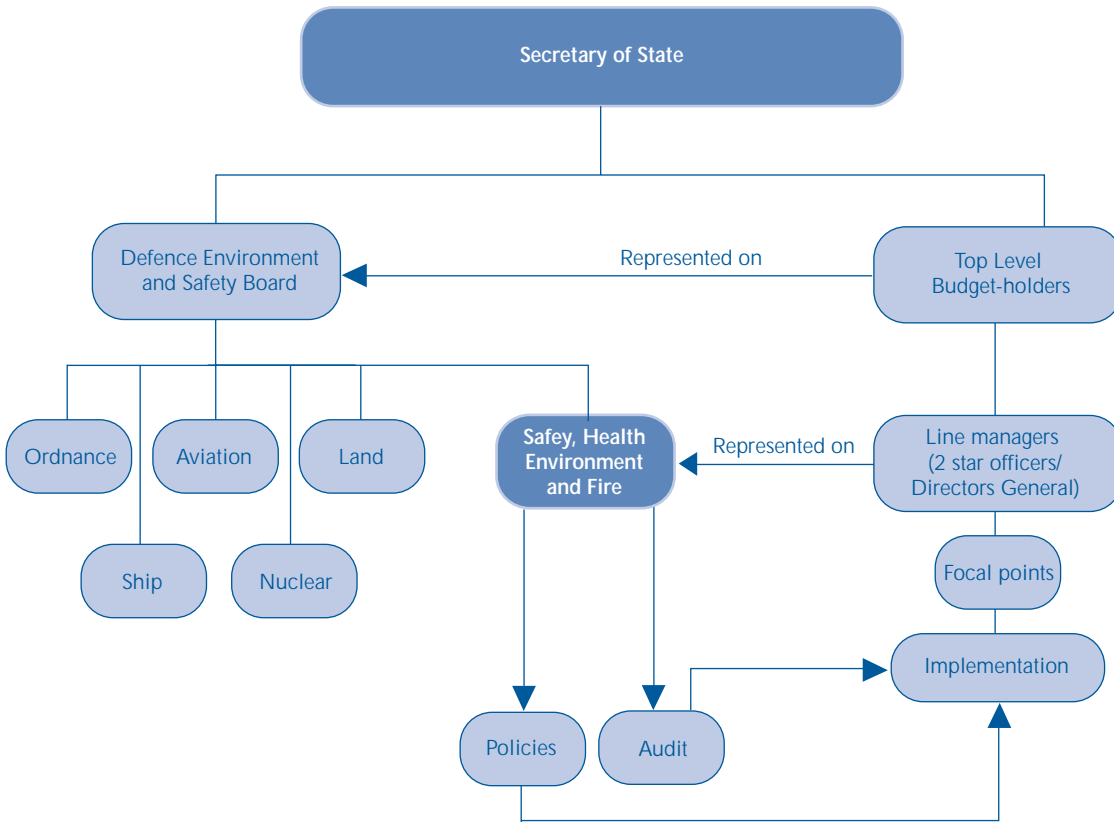
Overseas, the Department will apply UK standards where reasonably practicable and, in addition, will comply with relevant host nations' standards.

Where the Department has been granted specific exemptions from legislation, the Department's standards and arrangements will be, as far as is reasonably practicable, at least as good as those required by legislation.

Source: The Department

12 The Department's framework for managing health and safety

The Department has established a new framework for its management of health and safety.



Defence Environment and Safety Board

The Board is responsible for ensuring that an integrated approach to safety and environmental management is applied throughout the Ministry. Its role is to provide direction, set objectives and report on performance to ministers. It includes senior representatives of each Top Level Budget-holder.

Functional Boards

The Defence Environment and Safety Board is supported by six functional, subsidiary boards, whose role is to develop policy, set standards, measure performance and define the extent to which independent scrutiny and regulation is to be applied in their area of interest. Five boards deal with the safety of military equipment and systems, while the sixth has specific responsibility for Safety, Health, the Environment and Fire.

Safety, Health, Environment and Fire Board

This Board has three main tasks to: develop the overall safety, health and environment and fire policy for the Department, including the development of common standards; monitor implementation; and oversee the scrutiny of draft legislation. It is supported by the *Safety, Health, Environment and Fire Directorate* (Health and Safety Directorate), which is headed by the Department's Chief Environment and Safety Officer. The Directorate also supports the main *Defence Environment and Safety Board*.

Top Level Budget-holders

The Department's 11 Top Level Budget-holders implement policy on safety, health and environment and fire, assess risks and input resources within their areas of responsibility. Top Level Budget-holders, in turn, delegate responsibility down to Higher Level Budget-holders and Basic Level Budget-holders. Each Top Level Budget-holder has its own health and safety set-up, with its own Chief Environment and Safety Officer and Health and Safety Advisers.

Focal Points

The role of these designated staff is to provide assurance to the Top Level Budget-holder that line managers are discharging their responsibilities adequately.

Source: The National Audit Office

- 2.5 The Department has introduced a more coherent framework for its management of health and safety under the Safety, Health, Environment and Fire Board (**Figure 12**). Our risk management consultants, Willis, reviewed this new structure and concluded that it was sound. The Department also revised its Health and Safety Handbook in October 2001, completely revising existing health and safety procedures and introducing a new format designed to help management and employees understand more clearly what they are required to do to reduce risks.
- 2.6 In April 2000, the Department introduced a new integrated safety, health, environment and fire audit regime (**Figure 13**). The Health and Safety Directorate and Top Level Budget-holders¹³ audit health and safety arrangements to see that health and safety policy has been implemented and there are procedures in place that are being followed.
- 2.7 Top Level Budget-holders and agencies are required to measure the performance of the health and safety management systems using the Department's Health and Safety Performance Indicators (**Figure 14**) and to report on their performance each year. Top Level Budget-holders and designated agencies also set targets that require improvement in their performance against these indicators year on year. The indicators, however, relate solely to policy and planning and do not cover outcomes. Thus the indicators do not include specific targets for reducing risks that result in claims, or for reducing the number of working hours lost through accidents (as Cabinet Office targets envisage).
- 2.8 In addition to the Health and Safety Performance Indicators, the Department has set itself a target of reducing by 10 per cent over ten years from 1999-2000 the major and serious injury rate for civilian staff. This rate stood at 619 per 100,000 staff in 1999-2000.

The Department's statistics show that its performance has improved

- 2.9 The Department's health and safety performance has improved over recent years. The number of reported incidents¹⁴ fell over the period 1998-99 to 2001-02 by 24 per cent (**Figure 15**). The number of fatalities in any one year is small, ranging from 16 in 1998-99 to 8 in 2001-02. The number of accidents¹⁵ per 100,000 employees also fell over the period 1999-2000 to 2001-02, and compares well to the performance of other organisations, as reported by the Health and Safety Executive (**Figure 16**). The Department's accident rate per 100,000 civilian employees had fallen to 475 in 2001-02, 23 per cent less than in 1999-2000.

13 The Department's framework for auditing health and safety

The Department has established a new framework for auditing health and safety.

Responsibilities

- The Health and Safety Directorate acts as the Audit Authority for the Department as a whole. It conducts health and safety audits of all Top Level Budget-holders and Executive Agencies, examining the effectiveness and reliability of the total health and safety management system.
- Each Top Level Budget-holder also acts as an Audit Authority to conduct audits/inspections at line management level across the Top Level Budget-holder's area, examining the application and effectiveness of the arrangements in place to comply with health and safety policy at a working level.

Quality assurance

- The Department issued a new Health and Safety Audit Code of Practice in April 2000 which sets the policy, responsibilities and methodologies for audit. It aimed to ensure that all health and safety audits, whether by the Health and Safety Directorate or Top Level Budget-holder, are performed to a common standard with an agreed set of audit criteria.
- The Health and Safety Directorate's Audit Section monitors the audit process by acting as part of the audit team formed by the Audit Authority.
- The audit process is controlled by the Department's Safety, Health, Environment and Fire Audit Board, which includes representatives of the various health and safety Audit Authorities.

Frequency

- Audits of Top Level Budget-holders/Higher Level Budget-holders/Agencies usually take place once every three years. For Basic Level Budget-holders, although the aim is for the same rule to apply, the occasions for audit are decided by an Audit Needs Assessment.

Source: The National Audit Office

¹³ The Department is organised into 11 different units for budgetary purposes, each of which is headed by a Top Level Budget-holder (Appendix 1). Within each unit, budgetary responsibility is cascaded down to Higher Level Budget-holders and then to Basic Level Budget-holders.

¹⁴ An incident is any event which causes, or has the potential to cause, injury, loss or damage to people, plant or premises.

¹⁵ An accident is any event which causes injury to a person.

14 The Department's measurement of its health and safety performance

The Department measures its health and safety performance over five areas.

Section	Performance Requirement
1. Policy	The Top Level Budget-holder shall: <ul style="list-style-type: none"> ■ Ensure that there are effective policies set out in the Health and Safety Statements in place across the Top Level Budget-holder to provide clear directions on the achievement of the Secretary of State's Policy Statement
2. Planning	<ul style="list-style-type: none"> ■ Establish an effective organisation that recognises the effects of its activities and their associated legislative requirements ■ Set objectives and targets and maintain programmes for their achievement
3. Implementation & Operation	<ul style="list-style-type: none"> ■ Define the role, responsibilities and procedures for effective Health and Safety management to ensure that it is effectively implemented and operated
4. Checking & Correction	<ul style="list-style-type: none"> ■ Ensure that achievement of Health and Safety objectives, targets and corrective actions is monitored at the unit/establishment level ■ Establish procedures for periodic management system audit
5. Management review	<ul style="list-style-type: none"> ■ Ensure that the body's top management review the Health and Safety management system to assess its continued adequacy in the light of audit results and changing circumstances

Source: The National Audit Office

15 The number of incidents in the Department

The number of reported incidents fell between 1998-99 and 2001-02.

	1998-1999	1999-2000	2000-2001	2001-2002
Total	12,228	11,524	11,124	9,288
Analysed by body	Per cent	Per cent	Per cent	Per cent
Royal Air Force	34	34	28 ¹	29
Royal Navy	24	24	7 ¹	7
Army	24	23	22 ¹	29
Defence Logistics Organisation	-	N/A	23 ¹	19
Centre	4	4	4	5
Other bodies	14	15	16	11

NOTE

1. The fall in incidents in the Royal Air Force, Royal Navy and Army arose due to the formation of the Defence Logistics Organisation in April 2000 when the Organisation took over responsibility for logistic activities which the individual Services had previously carried out.

Source: The Department

16 Accident rates in the Department

The number of accidents per 100,000 employees fell between 1999-2000 and 2001-02.

	1999-2000	2000-2001	2001-2002
Major accidents¹			
Department	62.1	62.6	54.6
Health and Safety Executive ²	104.9	110.2	109.5
Serious accidents³			
Department	421.0	417.9	344.2
Health and Safety Executive	547.0	536.9	506.3

NOTES

1. As defined by the Health and Safety Executive, these are non-fatal accidents which result in major injuries, such as fracture, amputation, dislocation, loss of sight, etc.
2. The Health and Safety Executive figures show the average accident rate for all industries.
3. As defined by the Health and Safety Executive, these are non-fatal accidents which, although not major, result in the injured party being off work for over three days.

Source: The Department

Incidents are not adequately recorded and analysed, partly because of problems with the Department's health and safety database

Despite guidance, there are problems with the completeness and quality of recorded data

- 2.10 The Department's Health and Safety Handbook provides guidance on the definition of an incident, and states that responsibility for reporting an incident rests with the relevant line manager. All incidents (including near misses) are to be reported and recorded, using a standard form, and then input to the Department's health and safety database. This database is held on a computer mainframe which is managed by the Pay and Pensions Agency in Cheadle Hulme.
- 2.11 Despite this guidance, many of the Chief Environmental Safety Officers and Health and Safety Advisers interviewed as part of our study (Appendix 2) expressed concerns about the ways in which data was captured. They were concerned that areas of the Department were interpreting differently the guidance in the Handbook on what constituted an incident and the threshold for reporting incidents. Consequently, they doubted whether line managers were recording all incidents.

2.12 They also considered the Department's standard form for reporting incidents to be too long and complex for line managers to complete properly, because line managers had to complete it only infrequently, when an incident occurred. This point was also made by our risk management consultants, Willis, who told us that they had rarely encountered anything as complex as this form. The form contained many codes for describing and categorising incidents which were open to interpretation. In view of the form's complexity, the RAF had introduced its own, simpler variation.

2.13 The senior health and safety staff interviewed also noted that the forms are sent to the Pay and Pensions Agency for input to the Department's health and safety database. As a result, many of those tasked with recording or reporting incidents have no "ownership" of data integrity.

2.14 Perhaps as a direct consequence of the above, there were widespread doubts among health and safety staff about the completeness of entries on the database. The Health and Safety Directorate's audits suggest that only about 40 per cent of all incidents are recorded on the database. There are even examples of fatalities not being recorded. According to Health and Safety Executive statistics, the scale of this under-reporting of incidents within the Department is in line with national figures.

2.15 Some of the health and safety officials raised concerns that this failure to record incidents on the Department's health and safety database could put the Department in breach of its statutory obligations to report separately accidents to the Health and Safety Executive (under the Reporting of Injuries, Diseases, and Dangerous Occurrences Regulations 1995).

The Department's health and safety database is not user friendly

2.16 Our interviewees said that the Department's health and safety database does not fulfil the reporting needs of all those stakeholders who would like to get access to incident data. This is a particular problem for those at the lower levels of the Department, some of whom, as a result of their inability to access the Department's database, maintain their own, separate databases on incidents and use the data on these to monitor performance and analyse trends.

There are problems in the structure of the database

2.17 Some senior health and safety staff considered that the structure of the health and safety database did not allow for easy analysis of the data contained. Although details for individuals and their units are recorded at the very highest (Top Level Budget-holder) and very lowest levels of the Department's structure, the ability to allocate data to other levels is restricted. As a result, users at a local level cannot analyse data on the database in the way they require. The codes used to record information at the lowest level of detail are also reallocated on occasion, making it difficult to produce accurate summary information.

2.18 The database contains limited incident cost data in its records, which hinders detailed financial analysis. Entering financial data on the database is difficult, because, once entered, an entry cannot be amended. Therefore, when the incident is put into the database, any estimate of possible associated claims costs would be very approximate. Moreover, the database contains no data on the staff time lost as a result of an incident.

Access to the database is limited

2.19 Senior health and safety staff considered that, although interrogation of the database at Higher Level Budget holder level was satisfactory, the further down the management chain the user was, the more difficult the database was to interrogate. Some Basic Level Budget holders were unable to access the database other than through their Higher Level or Top Level Budget-holders, on an ad-hoc basis.

2.20 Database terminals are in short supply, which limits access. There are only 50 throughout the Department. For example, some Defence Logistics Organisation Basic Level Budget-holders and RAF outstations have no access to terminals, and there are none in Defence Estates' outstations. Even in Claims Branch, the terminals are not accessible. After an office move in June 2001 their terminals have not worked due to problems with their compatibility with the new accommodation's IT systems. Even when they can access a terminal, users can carry out their own analyses only if it contains the required software. If not, they have first to get this software from the Health and Safety Directorate and install it on their terminal.

Users lack the necessary analytical skills

2.21 The Health and Safety Directorate uses the statistics that it collects to help it develop the Department's health and safety policy and guidance. It is left to the health and safety staff within the Top Level Budget-holders to analyse the data for their area, to identify incident trends and the risk of further incidents. For example, from statistics supplied by the Directorate, the RAF identified that it was having a lot of handling related incidents. It therefore undertook a large scale training and publicity campaign to address this. The number of handling related incidents reported subsequently fell.

2.22 Health and safety officials, however, at five of the 15 locations we visited felt that they had not received adequate training in the analytical skills necessary to interpret accident statistics properly. For example, although one Chief Environmental Safety Officer performed basic analysis, he felt that he lacked the skills necessary for more complex statistical analysis.

The Department is addressing the database problems

2.23 The Health and Safety Directorate has set up a working group to examine, among other things, the health and safety database's input and output problems. The Directorate is proposing a model for reporting incidents in which details of incidents would be sent to specialist health and safety focal points (the current Health and Safety Advisers), who would then complete the Department's standard form for reporting incidents and enter the data into the database. In this way the focal points would receive notification of all incidents in their area, and would have the necessary expertise to analyse the data received, spot trends and seek action. The Directorate will be putting forward a business case for these proposals in March/April 2003 for consideration by the Department's senior management.

2.24 Line management's access to the database should improve in future. The Department is planning to make it available on its intranet, obviating the need for line managers' to have special health and safety database terminals.

Despite good guidance, investigations of incidents can be of variable quality

2.25 The Department's Health and Safety Handbook gives guidance on the procedures to be followed when an incident is investigated, on who should conduct incident investigations, and on the type of investigation to be carried out. These can range from simple investigations by line management, through to Special Investigation Teams and then Boards of Inquiry, depending on the nature and severity of the incident.

2.26 The Handbook sets out the objectives of such investigations in a way that compares well with good practice. Investigations are meant to have a wide focus, not only discovering the facts associated with the incident but also ensuring that the causes are properly established and aiming to prevent recurrence, or similar incidents.

2.27 According to good practice, incidents are best investigated within 24 hours of occurrence, while recollection of circumstances is fresh. The Handbook states that, once appointed, the Investigating Officer should immediately start the investigation. Although this is good guidance, our study has shown that it is not always followed, and that at present some line managers are not sufficiently trained to conduct investigations.

This guidance is not always followed

2.28 According to our interviews with senior health and safety staff, not all areas of the Department follow the procedures for carrying out incident investigations. They expressed concerns that investigations were not starting as quickly as they should.

2.29 We were told that, while serious incidents are being properly investigated, the investigation of less serious incidents, which depend on line management input, are not so rigorous. Health and safety staff at three of the locations we visited doubted whether line managers in some areas of the Department investigated all minor incidents, as the staff considered that there was some confusion among line management as to the circumstances in which an incident should be investigated and if so, by what means. It is often, however, the minor incidents, such as slipping in a pool of oil or on a wet floor, that can finish someone's career and lead to compensation claims worth hundreds of thousands of pounds. Injuries, particularly those involving the nervous system, may, at first, appear relatively innocuous, but can deteriorate over time,

leading to expensive claims. Initial investigators need to recognise this potential and, for example, obtain an expert medical opinion early.

Incident investigators are not trained or equipped to analyse trends

2.30 Training of all appropriate personnel to facilitate the conduct of incident investigations to consistent standards is vital, and the Department's Health and Safety Handbook states that line managers should be trained in basic incident investigation techniques. But health and safety officials were concerned that not all line managers went on health and safety training courses on matters such as incident investigation, and as a result were not capable in this area. For example, they did not all possess the skills and competence, or analytical tools and techniques, to conduct meaningful analyses into trends or to lead investigations.

The Department is addressing these problems

2.31 In future, the new specialist focal points in the Department's health and safety structure, on being told of an incident, will decide the type of investigation to be held and who will carry it out. In our opinion, however, where line managers are responsible for investigations, shortage of the necessary skills among some of these staff may slow any performance improvement in this area.

Despite good guidance, the quality of the Department's management of risks to health and safety is mixed

2.32 According to the Department, its management of risks to health and safety is fully integrated into all other tasks to deliver an approved defence capability in a cost effective and safe manner. Risk assessment forms the cornerstone of its current approach to the management of such risks. The Top Level Budget-holders' own line managers have the prime responsibility for carrying out assessments of risks to health and safety, and for managing the risks identified in these. This reflects good practice, as line managers are likely to have greatest "ownership" of the health and safety issues in their areas.

2.33 The Department's Health and Safety Handbook sets out comprehensive procedures for the assessment, management and control of health and safety risks. It contains standardised risk assessment forms and worked examples on how to carry out assessments. Safety, health, environment and fire audits are conducted at Top Level Budget-holder level every three years and provide a quality review of risk assessments, and safety, health, environment and fire auditors are available to provide advice and guidance in follow ups to their periodic audits.

2.34 Despite this good guidance, the quality of the Department's health and safety risk assessments and risk reduction measures is mixed.

Assessments of risks to health and safety are not always compliant with guidance, and are of variable quality

2.35 Safety, health, environment and fire audits and incident investigations have revealed that assessments of risks to health and safety are not always compliant with the Department's Health and Safety Handbook. In some cases, no assessment has been performed at all, and in others the assessment has been of a poor standard.

2.36 Although risk assessments are likely to be reviewed following a major or serious incident and actions to reduce risk in such cases are generally well managed, the senior health and safety staff we interviewed were concerned that these assessments are unlikely to be reviewed following minor injuries and near misses. Assessments of health and safety risks conducted around "routine" exercises or regular activities are particularly likely to be of poor quality. For example, audits revealed that there were particular problems with assessments covering operational training activities. Here there was confusion as to the necessity of assessments, their scope, and the method to be used. As a result, the Department revised its Health and Safety Handbook to cover operational training risk assessments.

2.37 Some line managers have availed themselves of risk assessment training guidelines and advice from safety, health, environment and fire audits. But health and safety staff accepted that, in an organisation the size of the Department, the capabilities of those conducting the risk assessments and their interpretation of guidance would vary widely.

Measures to reduce risks to health and safety tend to be reactive rather than proactive

2.38 Although measures to reduce risks to health and safety are generally identified and undertaken after a major or serious incident, health and safety staff at three of the locations we visited considered that proactive risk reduction measures were not undertaken consistently between and within services.

2.39 In our view, the assessment of risks to health and safety seems to be driven by the wrong motivational factors on the part of line management. Risk assessments should, ideally, be carried out with the express purpose of improving operational performance, as such performance is adversely affected when staff are injured. Instead, health and safety staff felt that, while many line managers carried out such assessments in order to ensure staff safety, others did so simply because they were required to do this by the Department's Health and Safety Handbook.

2.40 Although targets for the reduction of the number of incidents are set centrally by Top Level Budget-holders, these are rarely cascaded downwards. Higher Level Budget-holders' business plans rarely incorporated such targets and we could find no examples of site health and safety committees setting risk reduction targets.

2.41 Risk assessment output forms are retained locally, but the salient details are not always incorporated into centralised risk registers at Higher Level or Top Level Budget-holder levels. If such details were included, the data could be analysed at a higher level to identify trends.

Recommendations from incident investigations and risk assessments are not always followed up

2.42 There is no central branch responsible for co-ordinating the action taken to address incidents. While the Health and Safety Directorate set the policy, it is for individual Top Level Budget-holders to implement it, including any measures taken to prevent or reduce the level of incidents. Implementation is usually monitored by each unit's Health and Safety Committee. The extent to which line management follow up recommendations from incident investigations and risk assessments is inconsistent and dependent upon local funding; our interviewees told us that not all recommendations arising from safety, health, environment and fire audits and Boards of Inquiry investigations are implemented as a matter of routine.

2.43 In our view, these omissions were as much a failing of the monitoring and review system as of line management. Such monitoring and review should be enforced from above to ensure that recommendations for reducing risks to health and safety are properly implemented.

Line managers are not sufficiently aware of the importance of their role in health and safety matters

2.44 According to the Secretary of State’s policy statement on health and safety, managers should foster, by positive leadership, a culture which encourages employees to take responsibility for achieving the Department’s safety objectives.

2.45 The Department is having some success in meeting this objective. Despite the dangers inherent in combat and operational training, the number of reported incidents is falling and its accident rates are lower than average

(paragraph 2.9). Most incidents, however, occur outside of combat or battlefield training (**Figure 17**). For example, athletics, sports and other physical training activities are one of the highest causes of incidents. The senior health and safety staff we interviewed were concerned that line managers were insufficiently aware of, or committed to, their health and safety responsibilities; line managers tended to feel that health and safety was a matter for health and safety staff. According to the interviewees, few line managers’ personal objectives covered their health and safety responsibilities. Our findings on the shortcomings in incident investigation and risk assessment and management (paragraphs 2.25 to 2.43) support these concerns.

17 Analysis of incident numbers by cause

Most incidents occurred away from the battlefield and combat training.

	1998-1999	1999-2000	2000-2001	2001-2002
Total	12,228	11,524	11,124	9,288
Analysed by cause	Per cent	Per cent	Per cent	Per cent
Lifting and handling of loads	25	26	23	20
Workplace infrastructure ¹	19	19	17	13
Athletics / sports / physical training	12	12	13	16
Misuse of / defective plant, vehicles and equipment	6	5	5	5
Misuse of / defective handtools	5	4	5	5
Exposure to harmful substances	3	3	2	2
Defective protection measures	2	3	3	3
Misuse of / defective ammunition and explosives	- (2)	- (2)	1	1
Other	28	28	31	35

NOTES

1. This covers incidents such as electric shocks, slips on unclean floors, poor ventilation, etc.
2. This category was not identified separately prior to 2000-01.

Source: The Department

Recommendations

- 2.46 a) The Department should address the problems of its health and safety database. It should seek to ensure that more incidents are recorded on the database (paragraph 2.14). It should also revise the structure of the database and improve access to it so that the data it contains can be analysed as required by staff (paragraphs 2.17 and 2.19). It should also provide staff with the training they need to carry out such analysis (paragraph 2.22).
- b) The Department should seek to improve the quality of the risk assessments (paragraphs 2.35 to 2.37) and incident investigations (paragraphs 2.28 to 2.30) carried out by its line managers. To do this, it will need to implement a range of measures to improve awareness among line managers of their personal responsibilities for their own and others' safety:
- The Department should remind line management that the health and safety of the employees under their control is their primary responsibility and that Chief Environmental and Safety Officers and Health and Safety Advisers can advise and guide on technical issues.
 - Explicit health and safety objectives and performance indicators should be included in line managers' job descriptions and in their personal performance objectives.
 - Targets for reducing incidents should be cascaded throughout the Department, so that Business Plans at all levels contain specific aims and objectives for health and safety (paragraph 2.40).
 - The Department should encourage line managers to increase their take-up of health and safety training (paragraphs 2.30 and 2.37).
 - Safety, health, environment and fire audits should focus more on the implementation of recommendations resulting from incident investigations, risk assessments, audits, and Boards of Inquiry investigations (paragraphs 2.42 to 2.43).

Part 3

Understanding the risk-incident-claim cycle

3.1 Although this Report has dealt separately with claims handling and incident prevention, clearly they are closely related. Claims Branch's success in reducing the number and cost of claims, and the time taken to resolve them, depends partly on thorough risk assessment and incident prevention and investigation. An understanding of the cost of negligence claims and the role that information and documentation play in the settlement process should in turn inform the work of health and safety staff. Risk, incident and claim therefore form a cycle (Figure 18). The recorded costs of settling a claim are often only the tip of the iceberg. Incidents result in a number of other costs for the Department which are seldom quantified. The Department has roughly

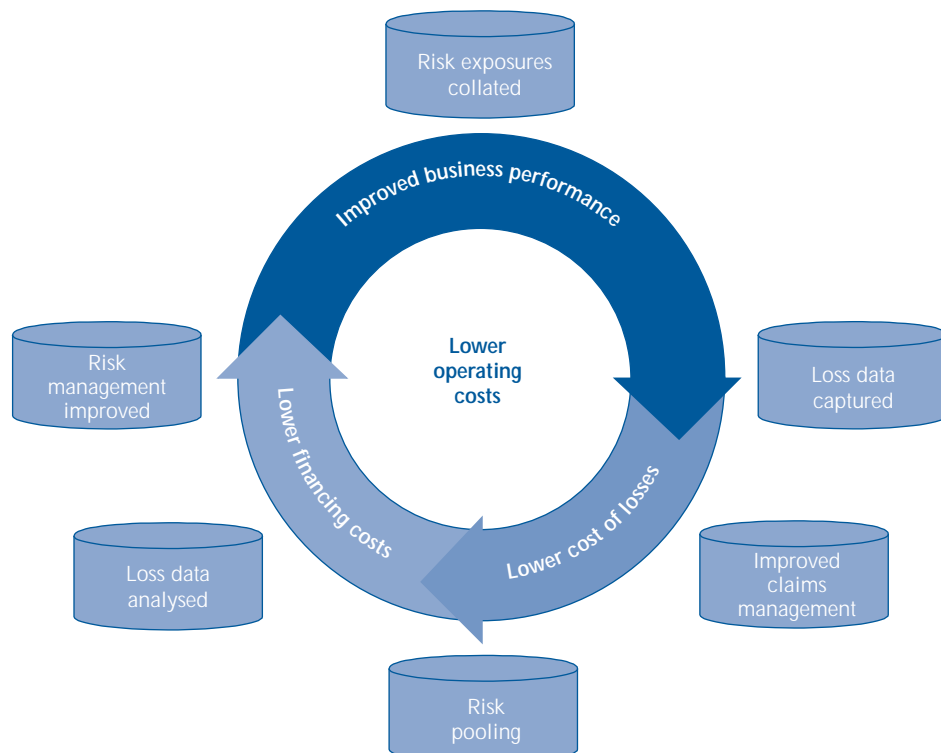
estimated that the hidden extra costs of a claim are about six times the size of the compensation eventually paid. Promoting greater awareness of the cycle could therefore help reduce the Department's costs significantly.

The Department has started to address the risk-incident-claim cycle

3.2 The Department has started to address this cycle. Claims Branch and the Health and Safety Directorate produce their own annual reports which they make available to each other and to Top Level Budget-holders. Claims Branch also established a dedicated Risk Management

18 The risk-incident-claim cycle

Risk, incident and claim form a cycle.



Source: Willis

section and Risk Management Working Group in August 2000. Its aim in doing this is to increase awareness of compensation claims against the Department and enhance risk management so as to reduce the number of claims made. The Group meets every three months and includes representatives from the Health and Safety Directorate. The Claims Risk Management section produces a regular newsletter, available on the Department's intranet, which is aimed at raising awareness of the types of losses the Department can incur, together with lessons learned. It has also presented an awareness roadshow at various seminars since August 2000, which has been attended by over 3,000 staff.

- 3.3 Both Claims Branch and the Health and Safety Directorate admitted that there were limited formal links between them. They plan to strengthen these links in 2003 through, for example, regular meetings between the heads of the two sections. This Part of the Report looks at ways in which the Department could improve co-operation and the transmission of relevant information between health and safety staff and Claims Branch.

Health and safety staff should do more to meet the needs of Claims Branch

Incident investigators do not always capture data that would help Claims Branch

- 3.4 Communication and liaison between incident investigators and Claims Branch could be improved. In March 2002 Claims Branch's Claims Risk Management section issued a paper to Departmental health and safety staff, detailing the information required from an incident investigation to facilitate the handling of a claim. Despite this, health and safety staff confirmed that, at the moment, investigation data is not collected with a view to handling a possible claim at a later date.
- 3.5 Line management should recognise their own lack of skills in this area, and be aware of the need to involve specialist advisers. A Claims Adviser could be on the investigation team for major incidents to ensure that the investigation is conducted with a view to the successful handling of any future claim. Their role would include ensuring the collection of information, such as witness statements, which is needed either to defend the claim or to settle it in cases where the Department is liable. The lack of a proper investigation was a factor in delays to some of the claims we examined (paragraph 1.25); for example, we found that it could take the Department up to six months to trace witnesses and obtain their statements.
- 3.6 According to the Health and Safety Directorate, action currently being undertaken could well improve the involvement of Claims Branch in investigations. The

new specialist focal points, on being informed of an incident and deciding the appropriate type of investigation, will also decide on which stakeholders should be informed. An obvious and important stakeholder would be Claims Branch.

Health and safety risk assessments do not always reflect the needs of Claims Branch

- 3.7 Our examination of incident prevention found that the quality of assessments of the risks to health and safety was mixed (paragraphs 2.35 to 2.37). The Department's defence of claims against it for negligence can be weakened if it fails to provide a risk assessment of sufficient quality for the activity in which the incident occurred.

Impact of the quality of risk assessments on claims settlement

During a rescue demonstration a Serviceman was injured when he lifted a live casualty. A risk assessment had been carried out but the casualty's weight was not considered. The terms of the Manual Handling Regulations are such that this failure, in the opinion of Senior Counsel, was sufficient breach to give rise to civil liability. In her opinion, if the risk assessment had noted that the weight of the casualty had been considered and accepted as an acceptable risk, then the prospects of avoiding liability would have been different.

A manual handling claim concerning the loading of a lorry had to be settled despite the existence of a risk assessment. At trial the judge found that specific risk assessments for each type of loading from each type of vehicle used by the unit should have been produced, rather than a generic one covering all unloading.

Not all incident documents are properly retained

- 3.8 Investigation reports and risk assessments will invariably be disclosable documents in any court action, and may be key to the successful defence of a claim. Therefore, in order to assist Claims Branch, incident investigation records must be accessible and retrievable. We were told that, despite guidance on the retention of documentation from both Claims Branch and the Health and Safety Directorate, not all incident investigation records are properly retained, because of limitations of storage space. For example, the Navy Chief Environmental Safety Officer said that it was difficult retaining all incident documentation on board a ship or submarine when it is at sea on a lengthy tour. The Department has also sometimes failed to retain risk assessments.
- 3.9 The Department has now established a Documents Retention Working Group to review which health and safety documents should be kept and for how long.

Claims Branch should give greater feedback to health and safety staff on the cost of claims

- 3.10 Claims Branch has details of the direct costs of claims arising from incidents (the compensation paid and the legal costs involved). It sets out a range of these details in its Annual Report, copies of which it sends to the Health and Safety Directorate and Top Level Budget-holders and their health and safety staff. It did not, however, routinely forward detailed cost information on individual claims in their area.
- 3.11 Claims Branch intends to disseminate more information on the costs of incidents to Top Level Budget-holders. From December 2002 it has supplied Top Level Budget-holders each quarter with a report on their respective claims history. In our view, this information should then be cascaded within the budget-holders' organisations to allow line managers to make more informed assessments of risks to health and safety.
- 3.12 The Department as a whole is not aware of the full costs of an incident. These include not only the costs of subsequent claims but also, for example, lost working hours, equipment replacement or repair costs, loss of materials, possible fines, and time spent investigating an incident. There is also a direct impact on operational effectiveness as a result of death and injury to personnel. The Department has roughly estimated that the "hidden" extra costs of a claim are about six times the size of any compensation paid. Possession of such data would improve the quality of risk assessments and line managers would then be better placed to decide how to manage individual risks. For example, they could consider the cost benefits associated with taking no action as compared with those of removing or reducing each risk.
- 3.13 The Department is aware of this problem and a paper was submitted to the Defence Management Board in February 2003, detailing a range of measures for increasing awareness in the Department of the hidden costs of an incident.

The Department should consider budgetary incentives to increase risk awareness

- 3.14 Top Level Budget-holders bear the costs of preventing incidents as well as the hidden costs of incidents when they occur. They do not, though, bear the costs of the compensation paid in respect of incidents occurring in their area; these costs are funded centrally from a budget controlled by Claims Branch. Top Level Budget-holders therefore have little financial incentive to invest in measures to reduce the risk of incidents, as they see none of the resulting savings in compensation payments and are unaware of the extent of any resulting savings in the hidden costs.
- 3.15 Other organisations, such as commercial firms and the National Health Service Litigation Authority and National Health Service Trusts¹⁶, have found ways of providing line managers with the necessary financial incentives. There is a range of ways in which such financial incentives could be provided within the Department:
- Claims Branch could meet the first part of any claim, with the relevant Top Level Budget-holder meeting the remainder.
 - The relevant Top Level Budget-holder could meet the first part of any claim, with Claims Branch meeting the remainder.
 - Claims Branch could levy an annual "insurance premium" on Top Level Budget-holders, based on their claims record. Reductions in the number of claims would result in a lower premium.
- 3.16 The Department is currently considering how to encourage line managers to be more risk aware. In addition to the above measures, other ways it has identified of doing this include the issue of a league table of the Top Level Budget-holders' claims record and the production of a balanced scorecard for each Top Level Budget-holder's claims activity.

Recommendations

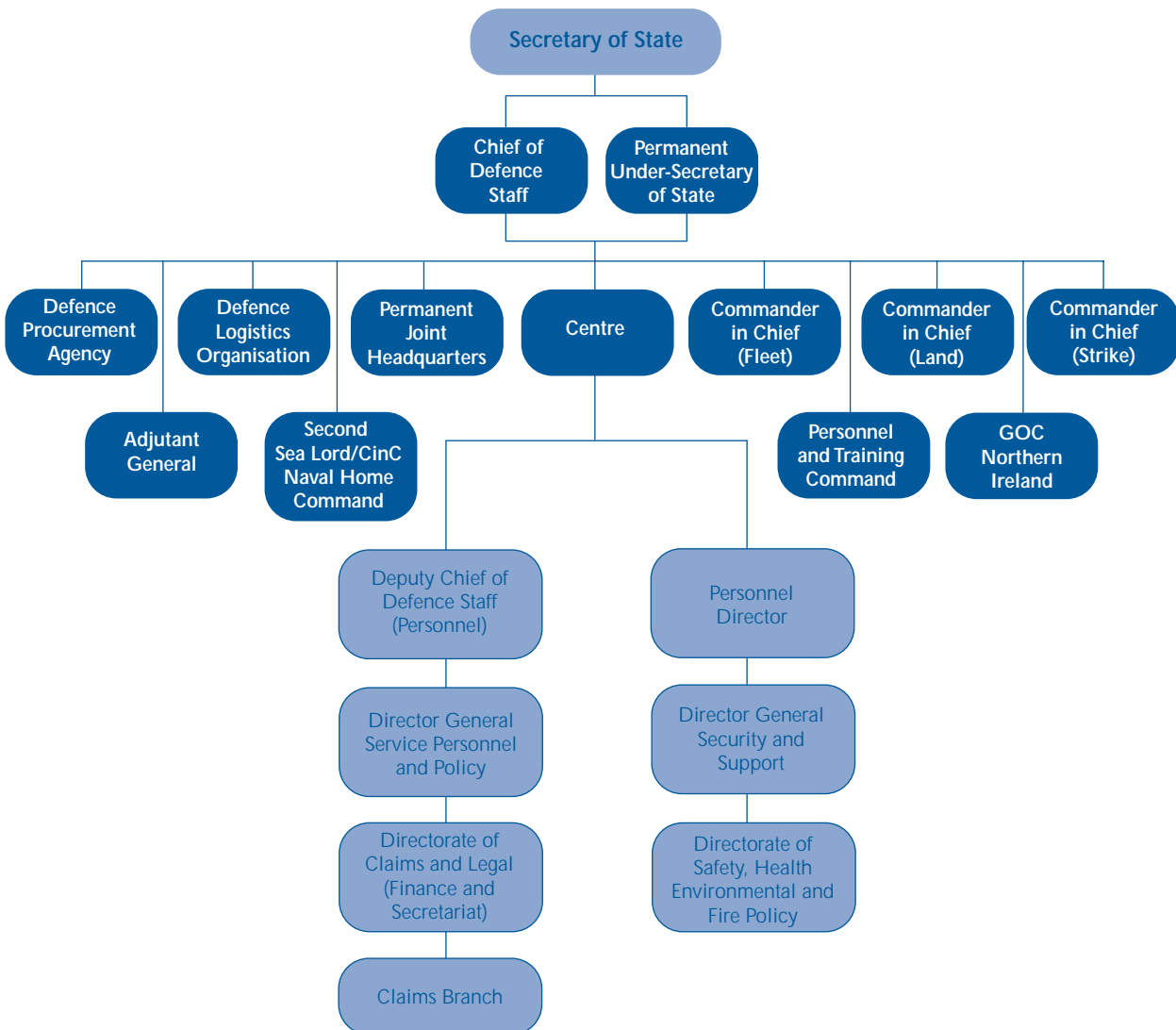
- 3.17 a) The Department should seek to reinforce the risk-incident-claim cycle in its operations by strengthening the links between its health and safety staff and Claims Branch and improving their co-operation (paragraph 3.3). Health and safety staff need to ensure that they compile incident investigation reports with a view to the handling of a possible claim in the future (paragraphs 3.5 to 3.6), and that records are accessible and retrievable (paragraph 3.8).
- b) The Department needs to do more to establish the total cost of incidents, including the hidden costs, and make these more widely known among line managers so that they can make more informed assessments of risks to health and safety (paragraphs 3.11 to 3.12). It should also encourage line managers to invest in measures to reduce the risk of incidents by ensuring that their budgets bear at least some of the cost of any compensation paid (paragraphs 3.14 to 3.15).

Appendix 1

Administrative context

- 1 The Department is organised into 11 different units for budgetary purposes, each of which is headed by a Top Level Budget-holder. Within each unit budgetary responsibility is cascaded to Higher Level Budget-holders and then to Basic Level Budget-holders.
- 2 Claims Branch is responsible for handling negligence claims against the Department and for meeting the associated costs.
- 3 The Directorate of Safety, Health, Environmental and Fire Policy (the Health and Safety Directorate) is responsible for helping develop the Department's health and safety policy and monitoring its implementation. The Top Level Budget-holders are responsible for the policy's implementation in their units.

19 Organisation chart



Key

Top Level Budget-holders

Appendix 2

Methodology

1. This Appendix sets out the methodologies we used in the course of this study.

Scope of study

2. We examined whether the Department managed effectively compensation claims and the risks that gave rise to them. We used an issue analysis approach to identify the scope and nature of the evidence required to complete the examination. As a result we identified three main issues:

- Whether it was clear what could be claimed for;
- Whether the Department managed claims effectively; and
- Whether the Department managed efficiently the risks that gave rise to the claims.

For each of these main issues we devised a set of sub-issues in order to direct our detailed work and analysis and to allow us to answer the main issues set.

Interviews with the Department

3. We interviewed the main stakeholders in the Department. We discussed with the Department's Claims Branch their policy and objectives with regard to claims handling, their management of claims and the associated costs, and the work they had contracted out. In visits to the Directorate of Safety, Health, Environmental and Fire Policy we discussed the Department's approach to risk management in the health and safety area and how policy was formulated and disseminated throughout the Department. We reviewed what action the Directorate took to ensure the policy was followed and what the Directorate did by way of recording and analysing incidents.

Consultants

4. We employed Willis Limited, specialist risk management consultants, to:

- Document the Department's procedures, both at the local and central level, for reporting health and safety incidents, investigating such incidents (both for claims handling and risk reduction purposes), analysing such incidents, identifying and assessing risks affecting health and safety, managing such risks, reducing such risks and for monitoring these procedures;
- Use its experience of organisations, both in the public and private sectors, to identify good practice with regard to those procedures; and
- Identify what, if anything, the Department needed to do to bring its processes in to line with good practice.

5. In addition to a review of documentation, the consultants visited a number of Department locations where they interviewed key health and safety staff, including Chief Environment and Safety Officers and Health and Safety Advisers. The 15 locations visited included:

- Eight local establishments;
- Five Top Level Budget-holders' Health and Safety central units;
- The Directorate of Safety, Health, Environment and Fire; and
- Claims Branch's Risk Management Group.

Examination of a sample of claims

6. In looking at the claims handled by the Department we decided to concentrate on claims for employer's liability for Service and civilian employees, clinical negligence and public liability claims which had been paid in 2001-02 (**Figure 20**). We did not look at the other large area of claims, those arising from the use of motor vehicles, as they were relatively routine and the individual claims were low value. For our sample of claims we reviewed the relevant case files, both at the Department and the insurance companies, to identify a range of information regarding the way the claims had been handled.

20 Sample of claims paid in 2001-02

For those categories of claim examined by us, we reviewed a sample of 259 claims, 15 per cent of the claims paid in 2001-02.

Claim Type	Handled by	Claims paid in 2001-02	Sample size	Sampling method
Public liability	The Department	407	50	Sampled using random numbers
Service employees employer's liability	Royal & SunAlliance	323	50	Sampled using random numbers
Service employees employer's liability	The Department	55	55	All reviewed
Civilian employees employer's liability	Axa Corporate Solutions Ltd	950	50	Sampled using random numbers
Clinical negligence claims (both Service and Public Liability)	The Department	54	54	All reviewed
TOTAL		1789	259	

Source: The National Audit Office

21 Survey of claimants and their solicitors

We surveyed a sample of claimants and their solicitors for their views on the Department's handling of claims.

	Total surveys sent	Responses received	Surveys returned "Not known"	Responses as a percentage of	
				Total surveys sent	Total sent less not known
Claimants					
Department-handled claims	122	35	23	29	35
Insurance company-handled claims	89	28	6	31	34
	211	63	29	30	35
Claimants' solicitors					
Department-handled claims	114	41	2	36	37
Insurance company-handled claims	69	9	8	13	15
TOTAL	183	50	10	27	29

Source: The National Audit Office

Survey of claimants and their solicitors

- For the sample of claims that we had selected we sent a short questionnaire to some claimants and a more detailed one to their solicitors. For a variety of reasons, such as not wishing to cause additional distress, we did not send questionnaires to all claimants in our sample. The purpose of these questionnaires was to obtain information about how the claimants and their solicitors felt about the way that the Department, or its agents, had handled the claims. From the claimants we also sought information on what else the Department could have done to meet their needs.
- The response rates to our survey are shown in **Figure 21**. Although the response rate from the solicitors was lower than ideal, many of those that did respond dealt with

significant numbers of claims against the Department and so were able to provide a wider view than the response rate indicates.

Interviews with key players

- We visited three solicitors' firms that deal with the more complex or higher valued claims to discuss the Department's approach, any particular problems they had had and how they thought the process might be improved. They provided useful comments and insights into the whole area of compensation claims.
- We also visited the British Legion, which handles a large number of queries on compensation from both serving and ex-Service military personnel, to gain their views on how claims are handled.

Appendix 3

Large value claims

1. Below are the top 20 cases (by value) paid by the Department's Claims Branch in the financial years 2000-01 and 2001-02.

Service or Civilian	Type of injury/loss	Compensation (£000)
Army	Received electric shock when touching overhead cable - left with multiple injuries and is now quadriplegic	3,675
Civilian (child)	Negligent treatment during birth resulting in the child suffering Cerebral Palsy	3,600
Royal Navy	Negligent treatment of cancer	1,950
Civilian	Claimant suffers from Cerebral Palsy	1,925
Army	Fractured spine while on duty leaving the claimant paraplegic	1,635
Army	Road traffic accident, claimant rendered paraplegic	1,500
Army	Abseiling incident left claimant paraplegic	1,216
Army	Claimant left brain damaged after negligent shooting	1,115
Army	Claimant received electric shock after banging head on cable	978
Navy	Wrong vertebrae fused together during operation	964
Army	Claimant seriously injured after slipping on spilt liquid	800
Royal Air Force	Injured as a result of ejecting from aircraft following a bird strike	750
Civilian	Driver of a vehicle hit by a United States military vehicle. Injuries led to loss of qualification and employment opportunities	667
Army	Negligently shot in leg, which led to an amputation	640
Army	Fatality, due to helicopter collision	575
Army	Suffered head injuries when jumping from a vehicle which experienced brake failure	502
Civilian	Suffered multiple injuries as a result of inadequate instructions	500
Civilian	Operation on right arm that caused claimant to lose the use of the arm	490
Army	Negligent treatment of bone tumour leading to Deep Vein Thrombosis	490
Civilian	Negligent treatment of Diabetes resulting in impaired vision	480

Appendix 4

Novel and contentious claims

Examples of novel and contentious claims paid or dismissed by the Department's Claims Branch in the financial years 2000-01 and 2001-02

Electrocution Injuries

While serving with the Army in Germany, the claimant was loading vehicles onto railway wagons in a marshalling yard, when he was ordered to climb on to the roof of one of the wagons to retrieve an oil can that inadvertently had been left there. While on the roof of the wagon he touched a live overhead power cable which he had been assured had been made safe. The resultant electric shock threw him to the ground. He sustained 60 per cent burns to the body, damage to the skull, and electrocution cataracts, and a leg had to be amputated. He is tetraplegic and will need 24 hour nursing care for the rest of his life. The Department admitted liability and the case was settled by way of a Counsel to Counsel settlement conference for £3,675,000, the then highest amount of compensation ever paid by the Department.

Horseplay

A former member of the Army claimed compensation for serious head injuries sustained when he fell from the tailgate of a moving Army lorry, while returning to camp from a night out in a local town. The claimant was on the tailgate attempting to "windsurf". Allegations of negligence against the Department included that of failure to enforce discipline in the rear of the vehicle, failure to give a specific command so as to prevent horseplay, and unnecessarily exposing the claimant to risk of injury.

Following a trial on liability, judgement was handed down in the Department's favour. The claimant, however, was granted leave to appeal. The Court of Appeal found in favour of the claimant but stated that contributory negligence played an important part in this case. Liability was therefore split: 75 per cent to the claimant and 25 per cent to the Department. Following subsequent negotiations between the two parties, the claim was settled for £75,000 (£225,000 less than the value of the claim had it been on the basis of 100 per cent liability).

Crush Injury

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

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

Motor Bike Accident

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

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

Gunshot Injury

The claimant received a serious gunshot injury to his leg when a fellow soldier negligently discharged his weapon while on exercise in Kenya, resulting in his medical discharge from the Army. A claim for future loss of earnings was submitted. The Department's claims handlers instituted a rehabilitation programme shortly after his discharge. He fully engaged in the programme and so impressed the rehabilitation company that they offered him a permanent job. This enabled a prompt return to the labour market, thereby capping the potential value of the claim.

Accident in Rough Seas

The claimant, a submariner, submitted a compensation claim against the Department alleging that he suffered personal injury when the submarine, of which he was a crew member, was struck by a large wave during a surface patrol. His solicitors argued that the Department had breached its duty of care, as the surface patrol was too dangerous given the rough sea conditions. Enquiries by the Department established that he was provided with adequate personal protective equipment including waterproofs and a harness. Moreover, while the boat surfaced during rough seas the force of the storm did not exceed the maximum possible permitted guidelines for surface patrol. Consequently, the claim was repudiated and subsequently withdrawn without recourse to legal proceedings.

Racial Discrimination

An Employment Tribunal application was made by an officer in the Armed Forces who claimed that he had been discriminated against, in that he was not considered for specialist training, and that his appeal against this decision was not allowed. The applicant also alleged that he had been racially harassed by a colleague who made racially derogatory comments. The outcome of the applicant's redress of complaint process was that the racial harassment element allegations were upheld, but the major complaint over the specialist training was not.

Employment Tribunals recognise that racial discrimination is rarely blatant and that, where it is apparent that individuals of an ethnic minority have been disadvantaged in comparison with their white colleagues, inferences of racial discrimination can be, and are often, made. It was decided that in the circumstances the Department should seek an amicable settlement of this claim, prior to the Employment Tribunal hearing, on a strict without admission of liability basis.

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

Clinical Negligence

The claimant suffered from a bone disease in his right shin. In November 1993 he was seen by a Service clinician who eventually carried out an operation on the leg in January 1994. Unfortunately the procedure used by the clinician did not resolve the problem and the leg became infected which resulted in a below knee amputation. The claimant was medically discharged from the Army.

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

Visiting Forces Claim

The claimant brought a claim against the United States of America following a road traffic accident, when the claimant's vehicle was struck head on by a vehicle owned by the US Government, which was attempting to overtake a parked vehicle. The Claims Public Liability Group adjudicated the claim under the terms of the NATO Status of Forces Agreement. The claimant, a scientist, suffered severe injuries which resulted in his temporary paralysis and short term memory loss. The claimant's predicament was exacerbated by the fact that he had just completed a dissertation which, during the crash, was scattered to the four winds. The claim was settled at £667,000, with a large proportion covering care costs and future loss of earnings.

Mountain Climbing Injury

In 1995 a Serviceman, serving as a member of an RAF Mountain Rescue Team, was injured whilst on a training exercise, following an avalanche that occurred on the North East face of Red Tam. He suffered severe head injuries from which he has not fully recovered.

Solicitors representing the claimant submitted a common law claim for compensation against the Department, alleging that their client's injuries were sustained as a result of the Department's negligence. The claimant's case was in essence that the RAF Mountain Rescue Team should not have been training in the area on the day of the accident because the climbing conditions were foreseeably dangerous. In addition, it was alleged that the claimant himself was insufficiently experienced to undertake the particular climb that day. The Department disputed the claimant's allegations of negligence and the case therefore proceeded to trial in December 2001. The Judge subsequently found in favour of the Department and stated in his conclusion that he was satisfied on the evidence that neither the decision to climb the Red Tam face, nor the choice of climb upon that face, was negligent. He was also satisfied that the claimant was competent to undergo the climb, that it was proper for it to be taken un-roped, and that the claimant was properly supervised throughout. The claimant was therefore unable to recover damages. Prior to the trial the value of the claim had been assessed by the claimant's solicitors as being around £1.5 million.

Slip Injury

The claimant seriously injured his right leg after slipping on some liquid beside a drinks machine at the top of a flight of stairs in Rheindahlen, Germany. Following the incident, the claimant suffered spasms in his right leg and he was diagnosed as suffering from the extremely rare condition "stiff limb syndrome". This involves irregular muscular spasms, extreme sensitivity and persistent pain. The injury led to the claimant being medically discharged from HM Forces.

It was alleged that the Department failed to clear up the spilled liquid or give adequate warning of the presence of the liquid on the stairs. The claim was investigated, and following legal advice was accepted on the basis that contributory negligence played an important part in the accident. As such the level of damages paid to the claimant was reduced by 20 per cent to reflect his contribution to the accident. The claim was settled for £800,000.

Clinical Negligence

Parents claimed on behalf of their son who suffered from quadriplegic cerebral palsy as a result of clinical negligence at the time of his birth at a military hospital in December 1992. His twin sister born a few minutes earlier had no such problems and, indeed, in later years was assessed as having a high IQ. Liability was accepted at an early stage and, since that time, matters progressed towards settlement. The boy is totally dependent on others for dressing, personal hygiene, eating and drinking. He is unable to speak and has little or no bodily control, which severely restricts his mobility, and he will remain profoundly physically and developmentally impaired for the duration of his life.

Numerous expert reports were obtained and it was clear that a number of heads of claim would not be in dispute and could be agreed without debate. The main question to be answered was that of life expectancy, which would greatly influence a very large proportion of damages by way of future care and loss of earnings. A schedule of loss was received claiming in the region of £4.5 million. The case was settled by way of a Counsel to Counsel settlement conference for £3.6 million, which is currently the second highest value claim settled by the Department.

Back Injury

While serving his last day at sea before leaving the Royal Navy, the claimant was designated "swimmer of the watch". During a "man overboard" exercise, the claimant was being winched back on board ship and was allegedly dropped on the deck, sustaining a serious back injury.

The claimant's solicitors alleged that the exercise was ordered as a prank on his last day at sea, in poor weather and with inadequate manning. Proceedings were brought against the Department alleging serious back injury and loss of future career in the Police Force. The value of the claim was assessed in the region of £85,000 on full liability. The claimant, however, was unable to fully prove his case on liability, and the case was settled for £4,500.

Clinical Negligence

An Army Sergeant injured his back while playing volleyball in 1987. He subsequently attended RN Hospital Haslar and underwent two operations in 1988. Unfortunately neither operation relieved his back pain. After further scans it was suggested that an operation to fuse two of the lumbar vertebrae together could help. He agreed to the operation, which took place at RN Hospital Haslar in July 1990. The operation was unsuccessful and a high level of residual pain remained. It was not until October 1990 at a post operative clinic that he was told that the wrong vertebrae had been fused.

The surgeon accepted that he had operated at the wrong level, although he did not understand how he came to do this. To make matters worse, the bone graft involved did not consolidate, so the level of back pain actually increased. A period of rehabilitation at the Department rehabilitation centre did not result in any noticeable improvement and the individual was later medically discharged in January 1993. He was offered the opportunity of a further operation, a triple fusion, but declined.

Although negligence was accepted, causation remained to be determined. The Department's medical expert was convinced that not all of the claimant's symptoms were related to the failed operation and that he was exaggerating his condition. As no agreement on quantum could be reached the issue of causation was the subject of a trial held in May 2000, where the Judge ruled in favour of the claimant. The claimant's solicitors valued the case in excess of £1.25 million. A Counsel to Counsel settlement conference was held in December 2001 and settlement was reached at £950,000.

Pristina Air Crash

On 12 November 1999, a French-registered, but Italian-operated, UN World Food Programme civil aircraft crashed in cloudy conditions on its approach to Pristina airport, Kosovo. All 24 people on board were killed, including three British aid workers.

This was a complex case: a number of parties individually or collectively were involved in the accident and would have to contribute towards the compensation claims by the relatives of the deceased. Therefore, in an attempt to avert the matter being heard by the courts (on which there were jurisdictional difficulties in view of the number of different nationalities killed), the World Food Programme invited the Department to attend a series of without prejudice meetings of "interested parties" in Rome to begin to establish the potential for an out of court settlement of the relatives' claims. The Chief Claims Officer, the Department's Legal Adviser, and an RAF Air Traffic Control expert represented the Department (with full support from the British Embassy and the UK Permanent Representative to the United Nations Food and Agriculture Agencies). At the conclusion of negotiations, which spanned several months, the Department contributed a sum which represented its involvement in the tragic accident.