


Ministry of Defence  
Compensation Claims



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

# 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><b>Key facts</b></p> <p>Despite the risks involved in military activity the Department's health and safety record is in line with other organisations</p>		<p><b>Key facts</b></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 2001-02<sup>1</sup></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 study<sup>1</sup>. 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.



<sup>1</sup> 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.

