

18 Jun 14

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## THE OVERPAYMENT OF RECRUITING AND RETENTION PAY (FLYING) TO ARMY PILOTS

### Issue

1. The erroneous overpayment of circa £829K Recruiting and Retention Pay (Flying) (RRP(F)) to 152 serving helicopter pilots and circa 49 retired pilots since 2007.

### Background

2. **Context.** Prior to the joint harmonisation of RRP(F) in April 2008, Army pilots had their flying pay differentiated between P2 Pilot and P1 Aircraft Commander according to experience and suitability. The rules for transition between the associated rates of flying pay (detailed in The Army Pay Warrant 1964 and elsewhere through supplemental guidance) were complicated and contradictory, resulting in inconsistent interpretation of RRP(F) policy by Regimental Administrative Offices (RAOs), HQ DAAvn and DBS (then SPVA) over many years. The application of these rules was automated with the advent of JPA in April 2007, but some of the inconsistencies were not rectified, resulting in several Army Pilots who believed that they were being underpaid relative to their contemporaries raising Service Complaints (SC).

3. **Investigative Action.** In March 2012, D Pers Admin (then DSPS(A)) was tasked to investigate the issue. The investigation was initially bounded to scrutinising the (original) cohort of 167 identified in 2007. However, in January 2013, sample checks outwith this cohort provided sufficient evidence of further inconsistencies in the application of RRP(F). HQ AAC then directed a 100% audit of RRP(F) for all 606 serving pilots and the 315 pilots who had retired since Apr 07<sup>1</sup>. The outcome of these investigations was to establish that since 2007, 152 serving helicopter pilots and circa 49 retired pilots had received overpayments of some £829K RRP(F)<sup>2</sup>. There is now assurance that all serving Army and former Army Pilots are receiving the correct rate<sup>3</sup> of RRP(F) and that effective management processes - and assurance oversight - are in place that will prevent any future recurrence of overpayment in RRP(F).

4. **Information Provided to Aircrew.** HQ DAAvn issued direction<sup>4</sup> to aircrew in 2002 which attempted to clarify the rules concerning flying pay but in fact articulated a faulty interpretation of extant RRP(F) policy, notably endorsing P2 aircrew time as qualifying for specialist pay banding purposes. The situation was exacerbated by a number of HQ DAAvn letters to Aircrew Observers<sup>5</sup> detailing further misapplication of the rules; in many cases these resulted in the award of large sums of money to individuals. Between 2006-12, 69 pilots contacted DBS, either personally or via unit Pers Admin staff, to query underpayments of RRP(F), of whom 40 subsequently received back payments<sup>6</sup>.

5. **Corroborating Reviews.** A DIA<sup>7</sup> Review of RRP(F) concluded that aircrew had received overpayments in good faith<sup>8</sup>; that the potential for recovery action has resulted in retention issues<sup>9</sup>;

<sup>1</sup> For expediency a representative sample of 84 of the 315 retired pilots taken from across all ranks and pay bands effected have been scrutinised to date.

<sup>2</sup> Overpayments to personnel who are presently serving are held in suspense pending a decision on recovery or write off.

<sup>3</sup> 49 pilots were placed on the correct RRP(F) level and the balance, who had received an overpayment, were found to be on the correct level but had moved too early from a lower rate.

<sup>4</sup> D/AAvr/31/2 dated 21 Jan 02.

<sup>5</sup> A specialism that has since been subsumed into the pilot Career Employment Group (CEG).

<sup>6</sup> If required, HQ AAC can provide examples of RRP(F) queries raised by Service personnel with the JPAC.

<sup>7</sup> DIA Report – Army – Controls over the Payment of Flying Pay (RRP(F)) dated July 2013 Audit Code: 3031/01/13

and that that the cost of replacing one pilot far exceeds the total debt, with clear VFM implications for any recovery of individual debts. It also highlighted the risks associated with the overpayments not being written off, including with regard to operational capability, the increased training costs to meet a potential shortfall in Pilots and potential for air safety risks. It should also be noted that Hd REM CDP has determined that former AAC Pilots who transferred to the RAF should be removed from further consideration for repayment<sup>10</sup>.

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<sup>8</sup> Ibid - Annex A para 4.2 states: "We found that individuals had received flying related pay in good faith. Many enquiries about the validity of flying pay payments had been raised over the period and had been checked and confirmed by, unit pay staffs, HQ DAAvn and SPVA."

<sup>9</sup> Ibid - Annex A para 4.2 states: "The investigation and the potential recovery action, had resulted in retention issues with increased numbers terminating their service citing this issue as the reason. In addition to the impact on manning liabilities this exodus also had significant cost implications"

<sup>10</sup> Ref email from PS10(A) to HQ AAC and SPVA dated 28 Oct 13 1005hrs: Hd Rem CDP ruled that when Army pilots transfer to the RAF their P2, as well as their P1, service should be taken into account when deciding their level of RHP (F). This means that, in effect, there is no debt to be written off

## TLB Justification for Bulk Write Off Of Overpayments

1. **General.** The Army is firmly of the view that - on this occasion - suspended RRP(F) debts should be written off in bulk on the basis that there are compelling Operational Capability, VFM, Fairness and - related to these - potential for Service Complaints considerations which far outweigh the case for recovery.
2. **Operational Capability.**
  - a. **AAC Pilot Manning.** A decision to recover must be considered against the risk that it will precipitate increased outflow and placed in the context of sustained net outflow<sup>11</sup> of qualified aircrew<sup>12</sup> which has eroded the AAC's sustainability for both RW and FW fleets. For example, the AH Force sits at 35 deployable crews (70 pilots) from 55 funded crews. The Op HERRICK commitment endures. Wildcat fielding requires increased QHI availability and support to wider Army contingent Force Preparation and mandated attributions<sup>13</sup> increases the requirement for Avn capability at readiness. The loss of one more Apache QHI from the operational training pipeline will reduce the trained pilot output to below the level required to maintain front-line crewing ratios. Subsequent action to stem the flow and retain capability through the use of Financial Incentives would prove extremely expensive and may not work.
  - b. **Combat Capability.** The manning situation has the potential to force JHC to declare the suspension of some aspects of mandated combat capability<sup>14</sup>, if VO continues at the current abnormal rate. The majority of the 152 serving personnel who have been notified of overpayments are senior, experienced aircrew and include 53% of the Army's QHIs, a manning pinch-point trade. Furthermore QHI manning is at a current strength of 90 set against an AAC QHI liability of c109, representing a 17% shortfall. Three quarters of the cohort are beyond their Immediate Pension Point and therefore have fewer impediments to leave. There has already been an increase in VO<sup>15</sup> since the debts have been placed on individual's pay accounts, with 15 pilots<sup>16</sup> directly citing the incorrect payment as the deciding factor in their decision to leave the Army.
  - c. **Air Safety.** A decision to recover must be considered against the significant risks that experienced aircrew and QHI outflow<sup>17</sup> would cause to Air Safety and the longer term costs of training replacements<sup>18</sup> as a result of the potential loss of the key supervisors and aviation experience. QHIs are leaving faster than they can be generated and a buoyant civilian market is targeting exactly this experienced cohort.
3. **VFM.** The costs to Defence of generating aviation combat capability, already significant, are very likely to escalate as a direct result of Pilot outflow. An AH QHI costs Defence £8.5M to generate - a cost to Defence of approximately 10 times the total value of the overpayments - and an ab initio AH pilot costs c£3.5M to generate over 4 years.
4. **Fairness.** RRP(F) is highly complex to calculate from first principles due to the many changes to RRP(F) policy over the years. There is no detail of RRP(F) rates or levels included on an individual's monthly pay statement - just a total figure. It is therefore difficult for an individual to

<sup>11</sup> For a variety of factors, VO is greater than a reduced SOTR (and trained inflow). Current efforts to increase the SOTR from 35 to 51/yr remains the aspiration. This will not be felt at Front Line for a minimum of 2-3 years due to the length of the training pipeline, and is frustrated by an average failure rate of 20%.

<sup>12</sup> 161 between 2007-13

<sup>13</sup> AATF, LATF and L3 Cdo Gp

<sup>14</sup> Capabilities at greatest risk include: the Apache Operational Conversion Flight, the Army contribution to JSFAW and 665 Sqn AAC

<sup>15</sup> Annex A, Table 1 provides details of voluntary outflow from 1 Nov 12 to 9 Sep 13

<sup>16</sup> A further 10 QHIs have submitted their NTT in the last month, one of whom cited the overpayment debt as his primary reason for leaving

<sup>17</sup> In addition to costs associated with replacing aircrew who resign over this issue, it is fully expected there will be costs associated with legal challenges from aircrew who believe they received RRP(F) in good faith if recovery action is pursued

<sup>18</sup> A 'replacement' will not happen quickly due to the length of the recruitment and training pipelines across multiple environments and operational and Trg conditions

check his/her own pay<sup>19</sup>. Some Army aircrew queried their RRP(F) rates with DBS and were assured that they were being paid correctly by the Authority - and in a number of cases received back payments. Unfortunately in many cases the Authority had misinterpreted complex RRP(F) policy resulting in many, who had previously received authoritative reassurance, being informed that they have been overpaid RRP(F) and incurred a public debt.

5. **Potential for Service Complaints.** If RRP(F) cases were considered on an individual basis, personnel instructed to repay their overpayment will have a right of appeal to DBS; and, if the appeal was not decided in their favour, they will have the right to submit a SC to the CoC. This will place considerable demands upon the already valuable time of Commanding Officers who will be required to process these complaints and create further delay<sup>20</sup>. Given the protracted nature of this issue, the fact that many aircrew sought reassurance - and received it - that they were on the correct rate of RRP(F) and the removal of personnel, as determined by Hd REM CDP, who transferred to the RAF from repayment - which Army pilots may perceive as inequitable - there are clear indications that appeals and SCs would be forthcoming. Service Complaints Boards often look favourably upon individuals who make their case on grounds of fairness, so it is likely that not all overpayments will be recovered, which further strengthens the Value for Money argument of the costs of training a pilot against the money that might be recovered.

<sup>19</sup> Ibid - Annex A para 4.1 states: "Onus was also on individuals to check their own pay statements, however, those in receipt of RRP(F) stated that their Statement of Earnings had not provided sufficient detail in terms of relevant rate or qualifying period to enable them to identify issues and errors"

<sup>20</sup> At present PS2(A) is dealing with c800 SCs and has a backlog of 130 Level 3 cases (which is the level that RRP(F) cases would be considered). It estimates that should an Army pilot submit a SC regarding RRP(F) there would be a c12 month delay before the case will be considered.

## **DBS Justification For Consideration for Write Off on a Case By Case Basis.**

1. **General.** DBS has considered very carefully the case for bulk write-off in this case and appropriate legal advice has been taken. HMT's Managing Public Money (MPM) states that 'in principle, public sector organisations should always pursue recovery of overpayments irrespective of how they came to be made'<sup>21</sup> although there are levels of mitigation and defences against recovery. In this case, in which the pay of 34% of the possible cohort was incorrect and 66% was correct, DBS is clear that each individual case has its own particular circumstances and context, some of which may justify write-off action but some may not. DBS believes that a bulk write-off is not the appropriate way forward but rather that Army and DBS staffs should work together to ensure that individuals who believe they have a case in accordance with the MPM Defences against Recovery will have their cases properly and fairly considered.
2. The authority to make determinations in accordance with the Defences against Recovery has been vested to date in CE SPVA. DIA is not, therefore, authorised to make judgements concerning good faith and their comments regarding retention or operational capability are not considered anything more than a view based on information provided to them by interested parties.
3. **SPVA/DBS Role.** Whilst JPAC staff are aware of basic policy, responsibility for correct data input and interpretation of policy lies with the individual and Unit HR. This is a long-standing procedure, since JPA was established as an outsourced function, and is well understood by sS. Detailed analysis of the Service Requests raised has been undertaken and shows that, for those SPs in the overpaid cohort, of the 109 queries, 40 were requests to amend pay records which resulted in incorrect overpayment. In 29 cases, the JPAC referred the individual back to unit HR to provide more evidence but no further action occurred. 40 queries were unrelated to RRP(F). Detailed analysis of the SRs is at Annex C; DBS holds transcripts of every SR. Evidence of representations may strengthen "good faith" defence that individual pilots may have, although to act entirely in good faith, individuals have a personal responsibility to ensure that they are entitled to a payment or an allowance and would have to demonstrate that their expectation to receive RRP(F) at the rate it was paid to them, was well founded. We understand that the qualification criteria for the payment of RRP(F) are widely known by serving pilots and has been applied to the majority of personnel correctly within the Army without a problem. No rates of pay or allowances are shown on pay statements but are held in the relevant policy document and published rates.
4. **Equitable handling.** Annually, DBS deals with 17000 debt recovery cases associated with Tri-Service Pay and Allowances, recovering between £2.5M and £4M a year. The consistent and fair application of the principles outlined in MPM have underpinned the achievement of Unqualified Accounts year on year. Inconsistent decision making will make it difficult to pursue recovery in many instances because personnel could contest recovery, past, present and future on the basis that there is no consistent policy on recovery. This of itself could generate many Service Complaints of inequitable dealing.
5. The Army's preference to write off overpayments to personnel in Operational Pinch Points (OPP) is also likely to set a precedent that would be extremely difficult and costly to manage. The parameters surrounding what constitutes operational capability will vary both by Service and at the point of decision. The operational impact will be different for those in OPP at the time of overpayment or recovery, or both; and different again for those in uniform who have left an OPP at the time of recovery, when compared with those who have left the Service. This will lead to enduring disparity in treatment between the Services and could most certainly give rise to many grievances and complaints in turn as well as the requirement to revisit previous decisions. The cases outlined at Annex B highlight how straying away from consistent and fair principles has the potential to unravel all debt recovery across the Services.

<sup>21</sup> HM Treasury Managing Public Money, Annex 4.11.

6. Hd REM CDP's determination that former AAC Pilots who transferred to the RAF should be removed from further consideration for repayment is recognised. This is a policy view which also appears to introduce further inconsistency. DBS believes that the authority to make determinations on recovery and write-off was vested in CE SPVA, not Hd REM CDP and believes that further investigation into this cohort is required to ensure consistent treatment.

7. **Retention.** DBS understands that the purpose of RRP(F) is to retain a specialist cohort but does not believe that this defends the overpayment of money to which the SP was not entitled. The action of individual pilots to VO is a personal decision based on a number of criteria and one that some have made prior to any decision to Recover or Write-off overpayments having been made. It is difficult to substantiate the incorrect payment as the deciding factor in anyone's decision to leave the Service. In terms of the provision of Combat Capability, outflow should not be addressed by perpetuating an error which has benefitted some and not others: this would simply not be fair.

List of Annexes:

- A: Army Pilot Voluntary Outflow (VO) 1 Nov 12 to 9 Sep 13.
- B: Current cases under consideration.
- C: Detailed analysis of Service Requests received between Apr 06 and Oct 12 (when pay records were corrected).

**ARMY PILOT VOLUNTARY OUTFLOW 1 NOV 12<sup>22</sup> TO 9 SEP 13**

The VO of 39 Army pilots in 10 months represents a statistically significant increase above the mean VO analysed over the previous 6 years (21 per year with a range of 17 to 33).

Serial	Aircrew Role	Number	Number Citing RRP(F) as Deciding Factor for Leaving the Army <sup>23</sup>
1	Pilot (less Apache)	23	6
2	Pilot (Apache)	4	1
3	QHI (less Apache)	5	2
4	QHI (Apache)	7	6
5	<b>Total</b>	<b>39</b>	<b>15</b>
6	Of Whom A2 QHI <sup>24</sup>	9	6

**Table 1: Army Pilot Voluntary Outflow (VO) 1 Nov 12 to 9 Sep 13**

<sup>22</sup> The initial announcement of RRP(F) overpayments occurred on this date.

<sup>23</sup> Information collated by APC from departure interviews and individual input to JPA on resignation from the Army.

<sup>24</sup> A2 QHIs are the most experienced and highly qualified instructors in the AAC.

**CURRENT CASES UNDER CONSIDERATION BY SPVA/DBS**

1. The cases outlined at Annex B highlight how straying away from consistent and fair principles has the potential to unravel all debt recovery across the Services.

- a. LOA Israel. This case concerns the erroneous overpayment of some £104k of the wrong rate of LOA to a cohort of 73 Army personnel comprising 60 RA H450 pilots and 13 REME technicians. The Army argues that there are compelling VFM, operational and capability development considerations which dictate that the debts of all serving pilots, who are in an OPP trade, should also be written off. The question of whether the REME technicians' overpayments should also be written off raises the question as to whether to treat the entire cohort equitably or whether to treat the REME soldiers equitably to other non-OPP personnel who have received money to which they are not entitled.
- b. CEA Clifton College. This case has recently come to light and no recovery action has yet been taken. This case concerns an error made by the Children's Education Advisory service (CEAS) in the publication of CEA rates for Clifton College, Bristol. Over a three year period, CEAS published Senior school rates instead of Junior rates for Years 6/7/8 and these rates were then inputted into JPA. 24 Service Personnel (of whom have now left the Services) comprising RN, RM, 17 Army and RAF have been overpaid CEA. Following investigation, DBS is now ready to notify the Service Focal Points as the first step in the process to recover the overpayments. Of note is that one of the Army personnel in his cohort is also an AAC pilot in the RRP(F) cohort. If the RRP(F) debt is written off due to his OPP status, the question then arises as to whether this debt should also be written off. The question as to whether to treat this cohort equitably and to write off the CEA overpayment for all is then a logical next step.
- c. RAF AIP. This case is similar to the Army RRP(F) case and has been running alongside it in the staffing process. Action is currently stalled pending a decision on the Army RRP(F) case. The case concerns the erroneous overpayment of some £1.28M of Accelerated Incremental Progression (AIP) awards to 1566 serving RAF personnel, and around 200 retired RAF personnel, since 2004. An audit of relevant AIP awards identified that 85.32% had followed the policy correctly.



**DETAILED ANALYSIS OF SERVICE REQUESTS RECEIVED BETWEEN APR 06 AND OCT 12  
(WHEN PAY RECORDS WERE CORRECTED)**

Category of Question	Total SPs	Responses provided	Remarks
Individual SP or unit queried <u>underpayment</u> :	40	On evidence provided SPVA took action to amend pay records. This action subsequently resulted in overpayments as the evidence provided was incorrect	SPVA/DBS is not empowered to interpret or assure policy but is a delivery organisation acting on the instructions it receives from HR Admin within the Services who are charged with assurance.
Individual SP or unit queried <u>underpayment</u>	29	DBS has referred SP back to unit HR to produce evidence required or has informed unit HR that more evidence is required – no further evidence received from unit HR so no action taken.	DBS cannot act without the required evidence and authority from unit HR.
SP or unit contact DBS on issues unrelated to the rate of FP in issue eg competencies, Reserve Banding, no of days on record, leave, GYH(T)	40	Responses vary from simple responses to questions posed, action on pay record due to evidence provided to FP to referring SP back to unit HR.	