

12 Aug 2013

## RRP(F) AUDIT LEGAL ISSUES

**Issue:** Aircrew with suspended GPD received monies in good faith.

**Recommendations:** CE SPVA is invited **to note that:**

1. Aircrew with suspended GPD were authoritatively and ostensibly directed that their flying pay was being paid correctly.
2. An independent audit<sup>1</sup> of Army Flying Pay has confirmed that the widespread and prolonged misapplication of flying pay rules resulted in overpayments that were received in good faith.

**And to agree that:**

3. The Authority should be estopped in its default position<sup>2</sup> of the recovery of the aggregated GPD.

**Timing:** Urgent.

**Background:**

4. Aircrew received monies in good faith as a consequence of authoritative and ostensible direction. An brief description of the chronology of directives and assumptions follows:

- a. **Authoritative direction.** In many cases, individuals approached the SPVA (using JPAC Service Requests (SR)) to confirm their flying pay position. There is a body of evidence that shows the Authority confirmed/corrected individuals' flying pay levels and, in some cases, reimbursed large sums of 'back pay'.
- b. **Ostensible direction.** It is acknowledged that ignorance of the rules is no defence for non-compliance. It is argued that the following departments and organisations will have led individuals to conclude that they were being paid correctly:
  - i. HQ DAAvn<sup>3</sup>. In 2002, the incumbent [REDACTED] produced a letter attempting to clarify the rules of flying pay, which gave incorrect (seemingly authoritative) direction. This is the first attributable point at which practice diverged from policy. This is further exacerbated by a number of HQ DAAvn letters to Aircrew Observers<sup>4</sup> detailing misapplication of the rules; in many cases these resulted in the award of large sums of money.
  - ii. The AAC Chain of Command (CoC). As a result of the HQ DAAvn direction the practice of early advancement through flying pay increments became SOP in many parts of the Corps. There is widely quoted anecdotal evidence that pilots were advised by their CoC on when to time their Aircraft Comd qualification point in order to maximise financial advancement. It must be stressed that this was understood to be the 'rules' as a direct consequence of HQ DAAvn direction.
  - iii. Regtl Administration Offices (RAO). There remains no recorded explanation why many aircrew incremented early. This can be explained, in some cases, by the fact

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<sup>1</sup> DIA report code 3031/01/13 dated 22 Jul 13. In Apr 13, DRes tasked the Defence Internal Audit (DIA) to conduct a root-and-branch study of the controls of Army Flying Pay.

<sup>2</sup> HMT guidance on overpayments, Annex 4.11, para A.4.11.2, "In principle public sector organisations should always pursue recovery of overpayments, irrespective of how they came to be made".

<sup>3</sup> Now HQ AAC.

<sup>4</sup> A specialism that has since been subsumed into the pilot CEG.

that individual pay clerks incremented aircrew early automatically as part of their understanding of these regulations.

5. The sums in question will force a change of position<sup>5</sup> for many in the event of a decision to recover the GPD.

6. The premise of HQ AAC's Legal argument is that the Authority **should be estopped in its default position of the recovery of the aggregated GPD**. The defence of the authoritative and ostensible direction would be difficult to defend, and presentationally embarrassing, in the event that a class action is fought post a decision for recovery.

7. As a result of the 100% audit of Army Flying Pay all aircrew will be on the correct levels of RRP(F).

**Presentational:**

8. Two aircrew (both in the process of PVR/NTT, therefore less amenable to HQ AAC's requests to hold counsel) have generated direct and indirect Ministerial (and Prime Ministerial) Correspondence questioning the validity and morality of pay corrections and GPD.

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<sup>5</sup> HMT guidance on overpayments, A.4.11.14, "The recipient of an overpayment may seek to rely on change of position if he or she has in good faith reacted to the overpayment by relying on it to change their lifestyle. It might then be inequitable to seek to recover the full amount of the overpayment".

