

08 Aug 2014

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LEGAL ARGUMENT FOR WRITE OFF OF RRP(F) GPD

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

Recommendations: ██████████ 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 audit¹ 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 position² of the recovery of the aggregated GPD.
4. CLS should be advised to support HQ AAC's estoppel argument in view of the body of evidence.

Timing: Routine. CLS must be in a position to advise CE SPVA/Ministers by **end Sep 13** in time for planned submission of the Case for Write Off of GPD by HQ AAC **in Oct 13**.

Background:

5. Aircrew received monies in good faith as a consequence of authoritative and ostensible direction. An understanding of the chronology of directives and assumptions is important to explain why aircrew received monies in good faith:
 - 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. This theme runs throughout the SRs. If exposure to these documents compromises the ALS's position in its advice to higher, it is strongly recommended that the appropriate section of the DIA report on the controls of flying pay³ is used for reference.
 - c. **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 DAAvn⁴. In 2002, the incumbent ██████████ produced a letter that attempted 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.

¹ 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.

² 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".

³ DIA audit code 3031/01/13 dated 22 Jul 13, Executive Summary, para 8, "It was found that these errors had been both checked and confirmed as correct when queried by many recipients who consequently had received the payments in good faith".

⁴ Now HQ AAC.

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This is further exacerbated by a number of HQ DAAvn letters to Aircrew Observers⁵ detailing misapplication of the rules; in many cases these also 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 Ac 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 that individual pay clerks incremented aircrew early automatically as part of their understanding of these regulations.

6. The sums in question will force a change of position⁶ for many in the event of a decision to recover the GPD.

7. 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.

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

Presentational:

9. 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.

⁵ A specialism that has since been subsumed into the pilot CEG.

⁶ 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".