



Nuclear test veterans - compensation

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A group of 1,011 services veterans and civilians from the UK, Fiji and New Zealand attempted to obtain a compensation hearing against the Ministry of Defence relating to alleged illnesses caused by exposure to radiation in nuclear weapons tests during the 1950s.

In November 2010 the Court of Appeal upheld an MoD request to overturn a previous judgment waiving limitation requirements for a group of lead cases. In July 2011 the Supreme Court agreed to consider an appeal of this decision, but in March 2012 it ruled against the Atomic Veterans' case proceeding.

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1 The legal action

A group of 1,011 veterans and civilians from the UK, Fiji and New Zealand have been attempting to obtain compensation from the Ministry of Defence (MoD) for illnesses alleged to have been caused by exposure to radiation during atmospheric nuclear weapons tests in the Pacific Ocean (Montebello Island, Christmas Island and Malden Island) and Australia (Maralinga) during the 1950s and 1960s.¹

The initial High Court case heard over 3 weeks from 21 January 2009 considered the MoD argument that the veterans cannot pursue a claim for compensation due to the provisions of Section 11 of the *Limitation Act 1980*. This Act requires initiation of compensation or related claims for injuries within three years of their occurring or becoming apparent, with provision for some discretion in its application (under section 33).

The MoD has also denied a proven causal link between nuclear test exposure and any subsequent illnesses. Based on studies by the National Radiological Protection Board (NRPB), MoD policy has been that War Disablements Pensions will only be granted for those suffering specific leukaemias within 25 years of exposure.^{2,3}

Nuclear test veterans challenged both the time limitations and the scientific basis for the refusal of pensions, citing work carried out in New Zealand that demonstrated genetic damage in nuclear test veterans but did not address the issue of a causal link with actual illness.

In June 2009, the Judge in the case decided to use his discretion and 'disapply' the time limit in this case, ruling that the veterans could sue the Government. In the judgment, Mr Justice Foskett said:

All things being equal, a veteran who believes that he has an illness, injury or disability attributable to his presence at the tests whose case is supported by apparently reputable scientific and medical evidence, should be entitled to his 'day in court'.⁴

Both Mr Justice Foskett in his judgment and the veterans' solicitor appealed for the parties to settle out of court. The solicitor said:

We still have a further period of perhaps three years before the case can finally be brought to court for trial and sadly, in that time, many of the veterans we are fighting for will have passed away. We hope that the Ministry of Defence will recognise this and agree to settle the claims of the veterans out of court, rewarding them with the compensation they rightly deserve.⁵

The MoD sought leave to appeal the time limit decision and this was granted on 19 June 2009 by Mr Justice Foskett, who also awarded the claimants £7.5 million as an interim payment of costs. The parties had previously agreed to a stay on proceedings until 14 September 2009, which was also given as the deadline for the MoD to lodge an appeal. In his judgement Mr Justice Foskett said:

¹ Rosenblatt Solicitors, [Opening day of veterans claim against MOD](#), 21 January 2009 [at 12 August 2009]

² Health Protection Agency, [Third Epidemiological Study of Nuclear Test Veterans](#), 24 February 2003 [at 12 August 2009]

³ HC Deb, 24 July 2005, c779-80W

⁴ BBC News online, [Nuclear test veterans can sue MoD](#), 5 June 2009 [at 12 August 2009]

⁵ BBC News online, [Nuclear test veterans can sue MoD](#), 5 June 2009 [at 12 August 2009]

47. I was told during the hearing on 16 June that the legal teams had agreed to a stay on any further proceedings (including any proposed appeal), with permission to apply to restore those proceedings, until September 14 to enable them to “take stock” and, as I understood them, to consider possible avenues of settlement. Doubtless that will be seen as welcome news by many interested in this case. All I can do is to express the hope that this moratorium will not be used simply for both legal teams to draw breath, re-group and recommence battle in the Autumn without any serious effort being made to address a sensible and constructive resolution to these long-standing issues. Going through the motions will not be good enough.⁶

No settlement was negotiated and the MoD subsequently appealed Justice Foskett's decision on limitation issues and his refusal to strike out or summarily dismiss the claims.

Hearings were held from 7-14 May 2010 and the judgment was handed down on 22 November 2010. The MoD's limitation appeal was allowed in nine of the 10 lead cases on the basis that the prospect of demonstrating a cause and effect link was insufficiently robust to justify waiving the requirements of the *Limitation Act 1980*. The tenth case was judged to fulfil the requirements of the Act.⁷

The judgment highlighted the difficulties of proving causation in the lead cases. Relating to the single lead case allowed to proceed, it noted:

We have already dealt generically with the appeals against the judge's refusal to grant summary judgment. We have dismissed the appeals on procedural grounds. We do not propose to give special consideration to summary judgment in this lead case simply because it is the only one to survive scrutiny of the limitation issues. Nor do we intend to give any indication of what our views would be on the questions which would be canvassed on an application for summary judgment. It is possible that the MOD will make a formal application and that the issue will be decided by a judge. We simply confirm that the judge's decision on limitation stands unchallenged and Mrs Sinfield may proceed as of right.⁸

The judgment was welcomed by the Minister for Defence Personnel, Welfare and Veterans, Andrew Robathan:

The MOD welcomes the Court of Appeal judgement that granted the MOD's limitation appeal in all these cases. While I have tremendous sympathy with anyone who is ill, the court accepted arguments that the general merits of the claims were extremely weak and said that the claimants had produced no evidence to link illnesses with attendance at the nuclear tests.

We recognise the invaluable contribution of all Service personnel who took part in the nuclear testing programme. We are grateful to them for the part they played in ensuring UK security.

Compensation in the form of a war pension is available to all former members of Her Majesty's Forces suffering from an illness or injury attributable to service. The scheme also makes provision for the widows and widowers of Service and ex-Service personnel in the form of a war widow's pension. Awards are made where a causal link to service can be recognised.⁹

⁶ AB and others v. Ministry of Defence [2009] EWHC 1421 (QB)

⁷ Ministry of Defence v. AB and others [2010] EWCA Civ. 1317

⁸ Ministry of Defence v. AB and others [2010] EWCA Civ. 1317, paragraph 301

⁹ Defencenews, [Defence in the Media: 23 November 2010](#), 23 November 2010

Solicitors for the veterans signalled their intent to take the case to the Supreme Court, noting that the cases of over 1,000 other nuclear test veterans remained able to go to trial.¹⁰

On 28 July 2011 the Supreme Court agreed to consider an appeal of the Court of Appeal decision and hearings were held from 14 - 17 November 2011.¹¹

The Supreme Court ruled in March 2012 against the Atomic Veterans' case proceeding.¹²

Later commenting on the case on the Supreme Court web-blog, Daniel West noted that this was not a unanimous judgment,

By a slim 4:3 majority (Lady Hale and Lords Phillips and Kerr dissenting), the Court upheld the decision of the Court of Appeal by finding that the claims of the servicemen should not be allowed to proceed on the basis that they were time-barred.¹³

The three dissenting judgments disagreed that the claimants had a sufficient standard of 'knowledge' sufficiently early so as to render most of the claims time-barred under the Act. They argued that a distinction should be drawn between 'knowledge' and 'subjective belief' in the absence of objectively verifiable facts. The majority view however included that "The standard of knowledge required to trigger the limitation period ... was ... a 'reasonable belief' in the 'real possibility of a causal link'".

None of the three dissenting judgments gave a firm view on the exercise of the section 33 discretionary power. Lord Phillips, in one of the dissenting judgments, also emphasised that the claimants were representative of a total of 1,011 potential claimants, many of whose claims were accepted not to be time-barred and were likely to be able to proceed.

1.1 Comparison to Mau Mau insurgency case¹⁴

Some people who were aggrieved with the decision of the courts in the Nuclear Test Veterans case have sought to contrast this with a decision of the High Court to disapply the limitation period in a different case. In a claim brought by a number of Kenyans in respect of allegations of torture which arose during the Mau Mau insurgency in the 1950s, the High Court exercised the section 33 discretionary power under the *Limitation Act 1980* to disapply the limitation period.¹⁵

The case was subject to significant press coverage, including a useful summary by the BBC.¹⁶ While the claim would normally have been deemed to be out of time, the High Court had regard to a number of considerations, including:

- There was "an amply sufficient" documentary base to test both liability and the excessive use of force in the camps;
- there was "good evidence" of attempts by both governments, throughout the emergency, to limit enquiries and investigations into abuses committed in the camps.¹⁷

¹⁰ See Rosenblatt Solicitors, [Atomic Veterans Case Update](#), 9 November 2010 and BBC News, [MoD wins appeal over damages for atomic test subjects](#), 22 November 2010

¹¹ http://www.supremecourt.gov.uk/current-cases/CCCaseDetails/case_2010_0247.html

¹² [Ministry of Defence v. AB and others](#) [2012] UKSC 9 Judgement given on 14 March 2012

¹³ [Case Comment: AB v MoD \[2012\] UKSC 9](#) 15 June 2012

¹⁴ For more detail contact Alexander Horne, Home Affairs Section

¹⁵ [Ndiki Mutua and others v Foreign Office](#) [2012] EWHC 2678 (QB) by the High Court in October 2012

¹⁶ [Mau Mau uprising: Kenyans win UK torture ruling](#) BBC website, 5 October 2012

Recent reports of declassified documents also note that the Government denies liability.¹⁸ It was reported that the FCO was likely to appeal against the decision and so the decision may not be final. It is also important to note that the case was only related to a preliminary issue (namely the limitation period) and the case has not yet gone to full trial.

1.2 Compensation and the health needs report

Following the Supreme Court's judgment on the nuclear test veterans, the Government said in October 2012 that there had been no recent steps by the MoD to reach agreement over claims for damages in view of this ruling.¹⁹

In July 2012 the Government said that any sums discussed earlier could not be disclosed:

Andrew Miller: To ask the Secretary of State for Defence if he will publish the terms of his Department's settlement proposal for British nuclear test programme veterans, including the total sums discussed by the parties. [115596]

Mr Robathan: In accordance with the wishes of Mr Justice Foskett of the High Court discussions were held between representatives of the Ministry of Defence and the Claimants involved in the Atomic Veterans group litigation. I am unable to publish the terms of the discussions because these were and remain subject to a confidentiality agreement between the parties.

Such discussions took place before the hearings conducted by the Court of Appeal and Supreme Court in which both courts ruled against the Atomic Veterans case proceeding.²⁰

MoD policy on compensation, which is for 'disablement causally linked to service' was outlined in July 2005. It is also war pensions policy that entitlement is given to any type of leukaemia, other than chronic lymphatic with onset, within 25 years of participation at a nuclear test.²¹

In April 2009 the then Veterans Minister, Kevan Jones, announced the establishment of a working group to look into the health needs of veterans and their offspring:

The wider published peer-reviewed epidemiological evidence to date has not demonstrated a general link between veterans' ill-health and participation in the tests. Similarly there is no peer-reviewed evidence suggesting that their children and grandchildren are at increased risk of genetic abnormalities.

The Government are, however, determined to address the ongoing concerns of nuclear test veterans. I had a constructive meeting with the British Nuclear Test Veterans Association (BNTVA) and interested MPs on Monday 20 April. I am pleased to report that the BNTVA have agreed to help identify a representative sample of veterans and their descendants with a view to conducting an assessment of their health needs. I therefore announce today an intention that the Ministry of Defence will work with veterans and experts to finalise the details of research to investigate the particular health needs of nuclear test veterans and their offspring with a view to identifying priorities and taking action to improve health. I also intend some follow-up to last year's New Zealand chromosome study. The aim will be for projects to be of

¹⁷ [Mau mau torture claims against Foreign Office not time barred rules High Court](#) UK Human Rights Blog

¹⁸ [Mau Mau massacre documents revealed](#) 30 November 2012 BBC website

¹⁹ HC Deb 25 October 2012 c988W

²⁰ HC Deb 17 July 2012 c769W

²¹ HC Deb, 24 July 2005, c779-80W

practical relevance to veterans with results delivered to a reasonable time scale. The work will be tendered in the normal manner and should be under way before the end of this year. A working group including representatives from the BNTVA will be established to take these projects forward.²²

The Government announced in January 2011 that it had placed a contract with an expert independent contractor for an audit of health needs among UK atmospheric nuclear test veterans, despite the Government's assertion that:

Radiobiological measures were in place for the UK atmospheric tests and independent studies by the National Radiological Protection Board and International Cancer Research since then have found no evidence of a general adverse effect on health compared to a matched control group.²³

The resulting '[Health Needs Audit](#)' report was published in October 2011 and the Government has said that the MOD, Department of Health and representatives of the British Nuclear Test Veterans Association continue to work to take forward suggestions in this.²⁴

This Audit report does not address the rightness of compensation specifically, but did include comments from respondents, such as:

Puzzlement at why the MoD is spending money defending legal action rather than using these funds to offer a degree of compensation to nuclear test veterans, as other countries have done.

During a debate on the nuclear deterrent in January 2013, John Baron MP suggested a benevolent fund:

Following the success of the health needs analysis, the BNTVA and I recently started a new campaign with three objectives. The first is to secure a lasting legacy for these men and their descendants. There is still much to learn about the effects of exposure to radiation and how we can continue to make nuclear energy safe. The second is to secure public recognition from the Prime Minister of our debt to these veterans. That could include recognition through the medal system by adding a clasp to the general service medal. The third is to establish a benevolent fund courtesy of Government, the suggested figure being £25 million. This would support atomic veterans and, more importantly, their descendants, who have also suffered medical setbacks that can be attributed to their fathers' exposure.²⁵

Speaking in the same debate, Kevan Jones, former Veterans Minister, said:

A generous settlement proposal was put to the lawyers—I got the Treasury to agree to it—but it was rejected. That was an opportunity missed for veterans to get some compensation.²⁶

Currently, the Government has no plans to pay compensation;

The Ministry of Defence has no plans to pay common law compensation. On 14 March 2012, the Supreme Court ruled in favour of Ministry of Defence on all lead cases that claims by nuclear test veterans were time-barred, and further declined to allow the

²² HC Deb 21 April 2009, c6-7WS

²³ [HC Deb 18 January 2011 c748W](#)

²⁴ HC Deb 8 October 2012 c668W

²⁵ [HC Deb 17 January 2013 c1111](#)

²⁶ Ibid.

claims to proceed under the statutory discretion. In handing down judgment, all seven justices recognised that the veterans would face great difficulty proving a causal link between illnesses suffered and attendance at the tests.²⁷

Regarding the current group of on-going nuclear test veterans war pensions appeals, the Government has said that “We remain keen to work with the tribunal and appellants with a view to ensuring that costs relating to all war pensions appeals are proportionate and kept to a minimum. The hearing is due to commence on 28 January 2013 and is likely to run until mid-February”.²⁸

2 Linking nuclear test radiation exposure to illness

Exposure to ionising radiation is known to increase the risk of most types of cancer, including both leukaemias and solid tumours such as thyroid, lung and bowel cancer. The precise mechanisms by which this occurs are still unclear but the following extract provides a reasonable overview:

The development of cancer is a complex cellular process that occurs in several stages, usually taking many years. Radiation appears to act principally at the initiation stage by causing mutations in the DNA of normal cells in tissues. It is usually considered that damage is caused by double-strand breaks (DSBs) in DNA, which are not readily repaired. The production of DSBs can result in a cell entering a pathway of abnormal growth that can sometimes lead to development of a malignancy. In recent years, much has been learned about the processes by which radiation exposure leads to DNA damage, and also about the cellular systems that act to repair, or misrepair, such damage and the way mutations can arise. This information provides supporting evidence for the long-standing belief that, although the risk of cancer after low doses of radiation may be very small, there is no dose, no matter how low, at which we can completely discount the risk.²⁹

Regarding the time course of development of radiation-induced cancers:

When cancer is induced by short but intensive exposure to ionizing radiation, as following the explosions of the atomic bombs in Hiroshima and Nagasaki or in patients treated by radiotherapy, the excess incidence of solid tumours rises for 15 to 20 years and then may continue to rise, level off, or decline. In the case of acute leukaemia, however, a peak incidence occurs much earlier (about 5 years after irradiation) and relatively few cases appear after more than 30 years.³⁰

There is also some evidence that exposure to radiation may increase the risk of non-cancer illnesses such as heart disease but this remains controversial.

Estimation of the dose of radiation received by the veterans is difficult: personal radiation exposure monitoring (such as wearable indicators as used by at-risk workers today) was not in use at the time and surrounding levels of radiation are difficult to calculate retrospectively. Attempts have been made to assess retrospectively levels of recent exposure to ionising radiation by analysis of chromosome damage but extension of this technique to exposure over 40 years previously is not proven.

²⁷ HL Deb 26 November 2012 cWA2

²⁸ HC Deb 5 November 2012 c442W

²⁹ Colin Blakemore and Sheila Jennett (Eds), *The Oxford Companion to the Body*, Oxford University Press, 2001 [at 11 August 2009]

³⁰ Epidemiology of Cancer, *Oxford Textbook of Medicine*, Oxford University Press, Fourth Edition, 2004

2.1 Ministry of Defence position

The MoD has denied any direct causal link between the level of radiation exposure experienced by the nuclear test veterans and subsequent health problems. It has also held the view that War Disablement Pensions, which are awarded for disability due to military service rather than for specific illnesses, would only be available to nuclear test veterans who can demonstrate a causal link. Although the MoD has been careful not to admit any such links, its policy is that pensions may be awarded to those who developed disability due to certain types of leukaemia within 25 years of exposure.³¹

The basis for the MoD position is the findings of three large studies of test veterans carried out by the National Radiological Protection Board (NRPB).³²

The NRPB studies compared the rates of death and certain radiation-linked cancers in 21,357 test participants and 22,333 matched service personnel who had not been exposed to ionising radiation. One using data up to 1998 was published in 2003 in the peer-reviewed journal, *Occupational and Environmental Medicine*, and as an NRPB report. This concluded that there was no significant overall increase in either death rates or cancers but that a small increase in the risk of leukaemias could not be ruled out:

It is concluded that that overall levels of mortality and cancer incidence in UK nuclear weapons test participants have continued to be similar to those in a matched control group, and for overall mortality to be lower than expected from national rates. There was no evidence of an increased risk of multiple myeloma among test participants in recent years. The suggestion in the first analysis of this study of a raised risk of myeloma has not been confirmed in longer periods of follow-up and is likely to have been a chance finding. Analyses of subgroups with greater potential for exposure provided little evidence of increased risks, although the numbers of men involved were smaller and the statistical power was therefore less.

In common with earlier analyses, there is some evidence of a raised risk of leukaemia among test participants relative to controls, particularly when focussing on leukaemia other than CLL [*chronic lymphocytic leukaemia – conventionally thought not to be radiation-related*]. This could be a chance finding, in view of low leukaemia rates among the controls and the generally small radiation doses recorded for test participants. However, the possibility that test participation caused a small absolute risk of leukaemia other than CLL among men cannot be ruled out; the evidence for any increased risk appears to have been greatest in the early years after the tests, but a small risk may have persisted in more recent years.³³

2.2 Nuclear test veterans position

The [British Nuclear Test Veterans Association](#) and lawyers representing the defendants in the compensation case have countered these findings with research from New Zealand by Professor RE Rowland and his team, partly funded by the New Zealand Nuclear Test Veterans Association, which documents damage to the chromosomes of a group of nuclear test veterans. Although chromosome damage is thought to be an important cause of radiation-induced cancers, the relationship between specific patterns of damage in humans and development of cancers is the subject of debate. Professor Rowland's team have

³¹ HC Deb, 24 July 2005, c779-80W

³² Health Protection Agency, [Third Epidemiological Study of Nuclear Test Veterans](#), 24 February 2003 [at 12 August 2009]

³³ NRPB, [Mortality and Cancer Incidence 1952-1998 in UK Participants in the UK Atmospheric Nuclear Weapons Tests and Experimental Programme](#), February 2003

published their results in the peer-reviewed journal, *Cytogenetic and Genome Research*, from which the following abstract is taken:

In 1957/58 the British Government conducted a series of nuclear tests in the mid-Pacific codenamed Operation Grapple, which involved several naval vessels from Britain and New Zealand. Two New Zealand frigates with 551 personnel onboard were stationed at various distances between 20 and 150 nautical miles from ground zero. In the present study we applied the cytomolecular technique mFISH (multicolour fluorescent in situ hybridisation) to investigate a potential link between chromosome abnormalities and possible past radiation exposure in New Zealand nuclear test veterans who participated in Operation Grapple. Compared to age matched controls, the veterans showed significantly higher ($P < 0.0001$) frequencies of chromosomal abnormalities (275 translocations and 12 dicentrics in 9,360 cells vs. 96 translocations and 1 dicentric in 9,548 cells in the controls), in addition to a significant excess of CCRs (complex chromosomal rearrangements) in the veterans. A Kolmogorov-Smirnoff test showed that the distributions of translocations for the two groups were significantly different.³⁴

An earlier version of this research (not peer-reviewed) was presented during 2007, and Professor Rowland continued to undertake research in this area at Massey University in New Zealand prior to his retirement in 2009.³⁵ During an October 2008 Adjournment Debate the Labour Government's assessment of this evidence was that:

...previous Governments as well as this Government have looked at the evidence and have come to the conclusion that no evidence has been demonstrated to link those conditions with presence at the tests.

The hon. Gentleman's report conceded that current scientific evidence does not generally support the view that there has been an increased risk of ill health or death among the test participants. Even though Dr. Rowland's recent study indicates that genetic damage was present among the small cohort of individuals that he examined, it did not go on to draw any link between the genetic abnormalities found in the chromosomes and any conditions such as cancers. That report has been held up as an important piece of research, but it does not help to move forward the argument for drawing that link between damage to chromosomes and conditions such as cancers that developed later.³⁶

3 Compensation arrangements in other countries

Service personnel and civilians from many other nations, including the United States, Canada, Australia, New Zealand and France, were exposed to nuclear weapons tests and subsequent radioactive fallout, chiefly during the early Cold War period. The US has the most developed compensation scheme, offering payments to those exposed without need to prove causation, and similarly based schemes have been announced in Canada and France. The position of some countries was summarised by John Baron MP during a decent debate:

The US gives each veteran £47,000 plus a further £47,000 for any secondary attributable illness. No causal link is required between the cancer suffered by the veteran and the fact that they were there. If they were at the tests and they have cancer, they automatically get the compensation. Canada pays more than £15,000 in

³⁴ Wahab MA et al, *Elevated chromosome translocation frequencies in New Zealand nuclear test veterans*, *Cytogenetic and Genome Research* 2008;121:79-87

³⁵ Rowland RE et al, *New Zealand Nuclear Test Veterans' Study – a Cytogenetic Analysis*, 2007

³⁶ HC Deb, 22 Oct 2008, c420

addition to monies from pensions and compensation legislation. The Isle of Man makes an ex gratia payment of £8,000 to any resident test veteran.

In all three cases, the service personnel in question have access to free health care provision.³⁷

Further details are provided below.

3.1 United States

The Radiation Exposure Compensation Act was passed by Congress in October 1990 to compensate miners and other workers involved in US testing at the Nevada test site. The Act was subsequently amended to cover those involved in other test sites, and offers fixed sums of \$50,000 to \$100,000 based on a combination of exposure to radiation and development of certain illnesses, without the need to prove any link between them in individual cases.

The section of the guidance on compensation under this Act relevant to the UK claimants is as follows:

Onsite Participants. A payment of \$75,000 is available to eligible individuals who participated onsite in a test involving the atmospheric detonation of a nuclear device, and later developed a specified compensable disease.

A. Exposure. The claimant must have been present "onsite" above or within the official boundaries of the Nevada, Pacific, Trinity, or South Atlantic Test Sites at any time during a period of atmospheric nuclear testing and must have "participated" during that time in the atmospheric detonation of a nuclear device.

B. Disease. After the onsite participation, the claimant contracted one of the following specified diseases: leukemia (other than chronic lymphocytic leukemia), lung cancer, multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the thyroid, male or female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder, salivary gland, urinary bladder, brain, colon, ovary, or liver (except if cirrhosis or hepatitis B is indicated), or lung.³⁸

At least two UK veterans, present near the blast site during US tests, have received compensation via this route.³⁹

3.2 Canada

The Atomic Veterans Recognition Program provides tax-free payments to those who participated in nuclear weapons testing, administered by the Directorate of Casualty Support Management within the Department of National Defence. Their website provides the following summary for potential claimants:

In September 2008, the Minister of National Defence announced a program to recognize the service of Atomic Veterans. The program has two general mandates:

- To ensure the exceptional service of Canadian Forces Veterans and Department of National Defence civilian science and technology workers who participated in allied forces nuclear weapons testing and/or nuclear

³⁷ [HC Deb 17 January 2013 c1111](#)

³⁸ Radiation Exposure Compensation Program, [About the Program](#) [at 11 August 2009]

³⁹ Guardian, [US compensation for British nuclear test veteran](#), 26 July 2006 and Observer, [Widow of British nuclear test veteran awarded \\$75,000 by US](#), 31 October 2010

decontamination work in the post-Second World War period is properly recognized.

- To administer the award of ex gratia payments to Canadian Forces Veterans and National Defence civilian science and technology workers who participated in allied forces nuclear weapons testing or the nuclear decontamination work in Chalk River, Ontario. These Canadians are now eligible to apply for a one-time tax-free payment of \$24,000 to recognize the exceptional service performed by them. This is in addition to benefits the Canadian Forces Veterans and National Defence civilian science and technology workers may be entitled to under the Pension Act or the Government Employees' Compensation Act.⁴⁰

3.3 France

France to Pay Nuclear Test Victims

Alan Cowell

Publication date: 24 March, 2009

Source: New York Times

PARIS — After decades of rejecting ties between its nuclear weapons tests and health problems among personnel carrying them out, France said Tuesday that it would “be true to its conscience” and pay compensation to those suffering illnesses linked to radiation.

Defense Minister Hervé Morin told the newspaper *Le Figaro* that France had believed for a long time that “opening the door to compensation would pose a threat to the very significant efforts made by France to have a credible nuclear deterrent.”

Between 1960 and 1996, France carried out more than 200 nuclear tests, first in Algeria, then in French Polynesia in the Pacific Ocean. Up to 150,000 civilians and members of the military who worked on the testing program had been “theoretically” affected, Mr. Morin said.

However, the scale of compensation may be limited. Mr. Morin said the government had set aside about \$13.5 million to pay claims adjudicated by a panel of physicians and a magistrate...⁴¹

3.4 Australia

The Australian Government has implemented a scheme to provide free non-liability treatment of any malignancies for all those (military and civilian) exposed to British nuclear weapons tests in Australia. It is also currently reviewing entitlements to enhanced military pensions for those veterans involved.⁴²

⁴⁰ Department of National Defence and the Canadian Forces, *Atomic Veteran's Recognition* [at 25 January 2011]

⁴¹ New York Times, *France to Pay Nuclear Test Victims*, 24 March 2009

⁴² Australian government Department of Veterans Affairs, *Benefits for Australian Participants in the British Nuclear Tests* [at 25 January 2011]

3.5 New Zealand

The New Zealand Government do not offer specific support for veterans of the British tests. A group of New Zealand naval veterans exposed to French nuclear weapons tests during a 1973 incident were requesting compensation for this.⁴³

4 General background and further reading

The judgement of Mr Justice Foskett on 5 June 2009 includes a clear and readable introduction to both the essential facts of the case and the key issues at stake.⁴⁴

4.1 Nuclear veterans 'merit pay-out' (BBC)

Britain is out of step with governments around the world who have compensated nuclear test veterans who fell ill, the High Court has heard.

Benjamin Browne QC, representing 1,000 ex-servicemen, said science has made a link between health and their role in the 1950s tests in the South Pacific. He said veterans were told to wait for compensation until a link was found and were now being told they were too late. The Ministry of Defence says it compensates when liability is proven.

Ex-servicemen want compensation for illnesses, including cancer, skin defects and fertility problems, they claim are the result of exposure to radiation during nuclear bomb testing. But MoD lawyers are trying to derail their claims before they reach a full hearing, by arguing the tests happened too long ago for compensation to be considered.

Scientific 'proof'

Mr Browne told the judge: "Time and again, representatives of the government have said that the veterans must wait for compensation since science does not establish a link. Yet, when that science does finally become available, the MoD now says that all these claims are far too late. This is to be contrasted not only with the UK government's previous attitude where lateness has never been raised, but also with the attitude of many governments around the world who have set up schemes to compensate and are still compensating their veterans as the veterans fall ill."

Mr Browne pointed to the Rowland study of a small group of New Zealand test veterans which "proved that most, if not all, of them suffered genetic effects due to radiation exposure". He went on to highlight examples [which] he said showed those responsible for the tests did not fully understand the risks.

One explosion resulted in the yield of the bomb being 70 times higher than the minimum yield anticipated, he said. And on one occasion, a group of men were so badly contaminated by the penetrating radiation that they produced radioactive urine, he added.

He said it was only now, with this new scientific knowledge, that the veterans could proceed with their claims. It was for the court to decide whether the government should be "entitled to hide behind the time bar raised for the first time in this case so as to snuff out these claims at a preliminary stage", he added.

The US has awarded compensation under the US Radiation Exposure Compensation Act to veterans, including at least one Briton, involved in nuclear testing in the 1960s.

⁴³ New Zealand Herald, [NZ Mururoa veterans want compensation too](#), 7 June 2009 [at 12 August 2009]

⁴⁴ [AB and others v. Ministry of Defence \[2009\] EWHC 1225 \(QB\)](#)

The three-week hearing is expected to hear evidence from 10 veterans who say they were not adequately protected from the blasts and the MoD - at the time the Atomic Energy Authority - should be held responsible.

Government obligations

At the height of the Cold War in the 1950s, Britain carried out a series of nuclear weapons tests in mainland Australia, the Montebello islands off the west Australian coast and on Christmas Island, in the South Pacific. Veterans who served in the Army, Royal Navy and Air Force, as well as personnel from New Zealand and Fiji, were involved in the tests.

An MoD spokesman said: "The UK government recognises the vital contribution service personnel played in the UK's nuclear tests during the 1950s and understands its obligation to veterans. When compensation claims are received they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid. There is a case ongoing and therefore it would be inappropriate to comment further." ⁴⁵

A related BBC article outlines the tests in more detail and an extensive background was published in the Telegraph, both in January 2009.^{46,47}

⁴⁵ BBC News Channel, [Nuclear veterans 'merit pay-out'](#), 21 January 2009 [at 12 August 2009]

⁴⁶ BBC News Channel, [Cold War in paradise](#), 21 January 2009 [at 12 August 2009]

⁴⁷ The Telegraph, [HMS Diana: the ship that went nuclear](#), 7 January 2009 [at 12 August 2009]