



Ministry  
of Defence

**JSP 765**  
**Armed Forces Compensation Scheme**  
**Statement of Policy**

# Foreword

People lie at the heart of operational capability; attracting and retaining the right numbers of capable, motivated individuals to deliver Defence outputs is critical. This is dependent upon maintaining a credible and realistic offer that earns and retains the trust of people in Defence. In order to achieve this, all personnel must be confident that, not only will they be treated fairly, but also that their families will be treated properly, and that Service Veterans and their dependants will be respected and appropriately supported.

JSP 765 is the authoritative policy on the three<sup>1</sup> schemes which make up the provision to pay compensation to members of the Armed Forces (Regulars and Reserves) and their dependants, where injuries or illnesses are caused or made worse by service; or where death is caused by service. Such processes are a vital element of retaining the trust of the Armed Forces Community – serving personnel, veterans and families. The policies and processes are to be followed precisely; this is an area that must be correctly implemented.

**Lieutenant General James Swift**  
**Chief of Defence People**  
**Defence Authority for People**

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<sup>1</sup> Armed Forces Compensation Scheme (AFCS) – Section 1 Page 5. War Pension Scheme (WPS) – Section 2 Page 1. Armed Forces Attributable Benefits Scheme (AFAB) – Section 2 Page 25, and Reserve Forces Attributable Benefits Scheme (RFAB) –Section 1 Page 1.

# Preface

## How to use this JSP

1. JSP 765 is intended as a statement of policy for the MOD compensation schemes where illness, injury or death is caused by service: The Armed Forces Compensation Scheme and its predecessor the War Pensions Scheme. It is designed to be used by individual Service personnel, the single-Service Chain of Command, administrators of each scheme, ex-Service organisations and many others who have an interest in these schemes. The rules of each scheme will prevail if there is any inconsistency with this JSP. This JSP will be reviewed at least annually.

2. The JSP provides the direction that must be followed in accordance with statute or policy mandated by Defence or on Defence by Central Government, and is structured in two sections:

- Section 1 – Armed Forces Compensation Scheme.
- Section 2 – War Pensions Scheme.

## Coherence with other Defence Authority Policy and Guidance

3. Where applicable, this document contains links to other relevant JSPs, some of which may be published by different Defence Authorities. Where particular dependencies exist, these other Defence Authorities have been consulted in the formulation of the policy and guidance detailed in this publication.

## Further Advice and Feedback – Contacts

4. The owner of this JSP is the Armed Forces Compensation & Insurance policy team in the Chief of Defence People area. For further information on any aspect of this guide, or questions not answered within the subsequent sections, or to provide feedback on the content, contact:

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# SECTION 1 - ARMED FORCES COMPENSATION SCHEME

## Chapter 1 - Introduction

### Overview

1.1. The Armed Forces Compensation Scheme (AFCS) provides compensation for injury or illness caused or made worse by service; or where death is caused by Service in the UK Armed Forces on or after 6 April 2005. The Scheme applies equally to Regular and Reserve forces. Compensation is paid for injuries<sup>2</sup> which arise as a result of service, regardless of how they are sustained. No distinction is made between injuries sustained on operations, and those incurred during training, service-approved sport (see [JSP 660](#)), or while undertaking specified activities to maintain fitness. Recognising that members of the Armed Forces do not generally choose where they deploy and what activities they undertake as part of their service, the compensation scheme covers this wide spectrum of activities the Armed Forces undertake.

1.2. The AFCS is a no-fault scheme and is therefore different from awards for damages paid through the courts. If an individual believes they have been injured as a result of negligence, having an AFCS award does not prevent them from bringing a claim through the common law damages route, although an AFCS award would be taken into account in the damages payment (or vice versa). This is in keeping with the longstanding principle that an individual should not be compensated twice for the same injury.

1.3. The Scheme rules are set out in legislation in The Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>3</sup> and the Scheme is administered by Defence Business Services (DBS) Veterans UK. This document lays out the policy behind the Scheme.

### Scheme Principles

1.4. The Scheme has been designed to be consistent with a number of fundamental underlying principles. These were examined and clarified by former Chief of the Defence Staff, Admiral the Lord Boyce, during his wide-ranging review of the Scheme which was published in February 2010. These principles, as reinvigorated by Lord Boyce, are to:

- **Be fair.** The arrangements guarantee a fair deal for all those who are entitled to compensation. The unique nature of military service is reflected by the nation's continuing commitment to those who have been injured, with an appropriate recognition for their sacrifice. The arrangements deliver consistent and equitable outcomes, with due recognition to the needs of those most seriously injured who receive higher awards than those less seriously injured.

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<sup>2</sup> Where the term 'injury' appears in this context, it should be construed to include cases of illness or death, where appropriate to do so, unless specified otherwise.

<sup>3</sup> SI 2011/517.

- **Be understandable, accessible, and transparent.** Every effort is made to ensure that claimants are able to understand the basic elements of the Scheme and the claims process. Transparency is a key consideration, with widely available clear information and guidance enabling claimants to successfully access the Scheme. Information concerning claimants' overall compensation package is to be straightforward and comprehensible to all.
- **Be contemporary and joined-up.** The arrangements reflect contemporary best practice in relation to disability, by supporting people to look forward in their lives, empowering them and enhancing their capability. Reflecting this ethos, the Scheme is one element in a coordinated range of services, benefits and programmes provided by the responsible government departments, devolved administrations and delivery agencies working together to maximise the individual's well-being.
- **Provide security.** Compensation is fixed at realistic and sustainable levels. For those most seriously injured who may be unable to work again after service there is lifetime financial support and security.
- **Encourage employability.** As work is generally good for health and well-being, awards should not act as a disincentive to those who are able to work, or to engage in treatment.
- **Be compatible with human rights and fairness at work.** The arrangements are consistent with the Government's commitment to human rights and to being a modern and fair employer.
- **Be sustainable.** The arrangements are sustainable, realistic and fair also to the taxpayer. This includes ensuring the arrangements are affordable.

# Chapter 2 - Eligibility

## Causation

2.1. The Scheme provides compensation for illness, injury or death where caused (wholly or partly) by an individual's service in the Armed Forces. A payment is made from the Scheme where the individual shows that the balance of probabilities is such that their injury is more likely than not to have been caused by service. Where the injury is partly caused or made worse by service, compensation is payable if, on the balance of probabilities service is the predominant cause of the injury or of the worsening of the injury.

2.2. While the responsibility to show that the injury is caused by service rests with the individual, the process itself is designed not to be onerous. The process of determining a claim is inquisitorial and not adversarial, with DBS Veterans UK undertaking the majority of evidence gathering on the individual's behalf.

2.3. If an individual does not agree with the decision made on their claim, they can request that DBS Veterans UK reconsider their case; there is also access to an independent tribunal (paragraphs 8.23 to 8.37).

2.4. Injuries sustained in a limited number of specified contexts are specifically excluded from the Scheme as such injuries are not considered to have been caused (wholly or predominantly) by service. These include injuries caused by or occurring during: social events, travel to and from work, sport which is not formally recognised or not had prior approval, and the majority of slips, trips, and falls. For more details on these categories see paragraphs 2.21 to 2.34 below.

2.5. There are no automatic entitlements to obtaining a payment under the Scheme. Where injury is caused in circumstances that are not expressly excluded by the Scheme, an assessment will be made as to whether, on the facts of the case, the injury or injuries have been caused or worsened by service. It is possible that some injuries sustained in the contexts covered by the Scheme will not attract compensation.

## Evidence and Complex Cases

2.6. The duty status of an individual when the injury is sustained is not the determining factor when claims are considered. Each case is considered on its merits. Decisions are made by DBS Veterans UK who are supported through training and guidance. They will consider the case taking account of all available relevant evidence relating to the incident and injury.

2.7. Most cases are relatively straightforward in terms of establishing whether the injury claimed was caused as a result of service. Given the potentially complex nature of service life, there can be instances where it is difficult to establish whether an injury is caused by service or not. In these cases, the decision-maker will be required to make a judgement, having taken account of all the facts of the case, as to whether the injury was caused wholly or partly by service or not. Where the case is difficult or borderline the decision-maker may need to engage with the MOD policy team. This can mean it takes a little longer than usual to arrive at a final decision. In 2013, the Upper Tribunal considered whether the war pension case law on when an injury was attributable to service was relevant to the AFCS and decided that it was. However, the AFCS considers not only whether the cause of the injury was

service, but also whether service was the predominant (more than 50%) cause of injury. In its judgment (CAF/3624/2013), the Upper Tribunal (UT) set out a detailed process for determining whether an injury is caused by service.

2.8. Factors that may mean an injury was more likely to be caused by service include, but are not confined to: acting on orders, responding to a service-related emergency, being on operations or exercise, participation in service-approved and recognised sport, or performing an activity specified in the individual's job description.

2.9. Factors that may mean an injury was less likely to be caused by service include, but are not confined to: disobeying orders, being at a social event, using alcohol or drugs, or participation in a sporting activity that has not received prior approval from the Defence Council<sup>4</sup>. Injuries as a result of the participation in sport at charity events, in civilian teams, at national level, at international level and as a professional are not covered by the Scheme. JSP 660 Part 2, Chapter 1, paragraphs 10 to 22, entitled 'Sport in the UK Armed Forces' refers.

## **Claim Assessment**

2.10. Decision-makers are trained in making reasoned decisions in the Scheme and are supported by policy advice and guidance. A decision-maker can also seek advice as required from in-house DBS Veterans UK medical advisers. DBS Veterans UK medical advisers are independent from the clinicians who treat individuals when they are injured. Factual evidence from treating clinicians is invaluable but by their nature they are advocates for their patients and are rarely familiar with scheme legislation. DBS medical advisers have typically had a career in clinical medicine, e.g. general practice or psychiatry, and are trained in medico-legal determinations and the AFCS legislation. They give advice, with reasons, based on the case-specific service and medical facts and in line with contemporary medical understanding of the causes and progress of injuries and disorders.

2.11. This process of analysis by trained officers means that awards are evidence-based. They aim to be consistent and equitable and properly reflect the extent of the injury or injuries which have been predominantly caused or made worse by service.

2.12. In some circumstances, DBS Veterans UK will routinely seek medical advice when assessing the claim or appeal at the outset. These include:

- those who are most seriously injured<sup>5</sup>
- all cases involving mental health problems<sup>6</sup>
- cases where a Supplementary Award is likely to apply (see paragraphs 3.9 to 3.10)
- temporary awards (see paragraphs 3.32 to 3.35)
- reconsideration or appeal cases
- cases that are undergoing an exceptional review (see paragraphs 8.15 to 8.17) or final review (see paragraphs 8.20 to 8.22)
- all cases of multiple injury where zoning applies (see paragraphs 3.40 to 3.41)

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<sup>4</sup> The Defence Council provides the formal legal basis for the conduct of Defence through a mix of prerogative and statutory powers. It is under its authority that the three Services approve sports that Service personnel can undertake to maintain the required good standard of fitness.

<sup>5</sup> Where an award or awards within tariff levels 1-8 is likely to be made.

<sup>6</sup> Mental disorders must be diagnosed by a clinical psychologist or psychiatrist at consultant grade.



- all other cases where the decision-maker judges' medical input would aid their decision-making
- service termination reviews
- Interim Awards (see paragraphs 3.36 to 3.38)
- spanning cases, i.e. where the person has served both before and after 6 April 2005
- worsening cases (see paragraphs 2.15 to 2.20)

2.13. Once DBS Veterans UK has made a decision on an AFCS claim a letter detailing the outcome will be sent to the individual. The letter will include the reasons for the decision and also advise the individual what to do if they are not happy with the decision.

### **Independent Medical Expert Group (IMEG)**

2.14. In 2010 the 'Independent Medical Expert Group' (IMEG) was established. This group ensures that medical and scientific aspects of the Scheme policy are sound. IMEG is a non-departmental public body; with members appointed under Cabinet Office rules, comprising independent senior consultants in disciplines relevant to the Scheme and who also have an interest in disability assessment, rehabilitation and compensation. In addition, there are three lay members – one from an ex-Service organisation, one from the in-Service community plus an injured serving person who has claimed under the Scheme. IMEG is tasked by Minister for Defence Personnel and Veterans to investigate topics in relation to the AFCS which have a medical and scientific dimension and provide impartial evidence-based advice and recommendations on these issues. IMEG publishes reports and its chair is a member of the Central Advisory Committee on Compensation (CAC) (which is chaired by the Minister) and briefs findings and recommendations to them. More information on IMEG's work is available at [www.gov.uk](http://www.gov.uk) along with the following reports:

- IMEG [first report](#) and recommendations on medical aspects of the Lord Boyce review of the AFCS.
- IMEG [second report](#) on medical and scientific aspects of the Armed Forces Compensation Scheme – including Mental Health, Hearing Loss, Recognised Diseases and Facial Disfigurement.
- IMEG [third report](#) on medical and scientific aspects of the Armed Forces Compensation Scheme – including Infectious Diseases, Mesothelioma, Non-freezing Cold Injury, Traumatic Extremity Amputation, Combat-Related Complex Lower Limb Injuries and Recognised Diseases.
- IMEG [fourth report](#) on medical and scientific aspects of the Armed Forces Compensation Scheme – including Quinquennial Review recommendations, Musculoskeletal Disorders, Traumatic Brain Injury, Infectious Diseases, Mental Health, Worsening and Spanning.
- IMEG [fifth report](#) on medical and scientific aspects of the Armed Forces Compensation Scheme - including on the hazards, risks and adverse health effects of remotely piloted aircraft systems, cabin air quality, connection between mental health and cardiovascular disorders, musculoskeletal disorders part 2, review of IMEG second report on mental health, cutaneous malignant melanoma in air crew, tinnitus and recognised diseases.

## **Injury or Illness Which is Made Worse by Service**

2.15 As well as paying compensation for injuries which are caused (wholly or predominantly) by service, compensation may be payable where an individual sustains an injury through some other means, i.e. not due to service but then that injury is made worse by their service. Service on or after 6 April 2005 must be the predominant cause of the worsening of the injury. The specific circumstances when this applies are when an injury:

- was sustained before entry into the Services and was recorded in the individual's medical reports on entry to service.
- was sustained before entry into the Services but about which the individual was not aware, and the injury was not found at medical examination on entry; or arose during service but was not caused by service.

2.16. Compensation is not paid for worsening of an injury which the individual knew about but did not disclose on entry to the Armed Forces and which was not discovered in the medical examination on entry.

2.17. Compensation is not paid where a pre-existing injury is worsened within the first six months of service. This is so that an individual who has an existing injury on joining service is given a reasonable period to assess whether service is compatible with that injury.

2.18. Where an individual has an existing injury when they enter service, it is considered medically reasonable that if there is no further injury and clinically the injury does not worsen within five years of starting service, then any subsequent worsening cannot be predominantly considered to be caused by service. As a result, compensation is only paid if the worsening of the injury results in the individual being medically downgraded for at least a period of six months within five years of entry into service. The individual must remain downgraded until service ends, and the worsening of the injury must be the predominant cause of the downgrading. The six-month rule is waived where the individual is discharged on medical grounds within that period.

2.19. For conditions which arise during service but are not caused by service, the worsening of the condition has to be the predominant reason for medical downgrading within five years of the condition arising. To be entitled to an award, downgrading again has to remain until service ends.

2.20. A claim for compensation for the worsening of an injury cannot be considered until a person leaves service. This is because service termination is the time at which the injury worsening as a result of service will cease, so the extent of the service-caused worsening can only be accurately assessed at or beyond this time. When a claim is received after a person has left service and it is determined that their injury is not caused by service, whether that injury is worsened by service will automatically be considered as part of the claim assessment process.

## **Travel to and From Work**

2.21. Travel to and from work is an activity that is not unique to service, therefore an injury occurring during, or as a result of travel to and from one's home to a regular place of work is generally excluded from the AFCS. In certain specific circumstances, it is recognised that a journey to or from work may put Service personnel at particular risk. In these circumstances, the journey may be covered by the Scheme. This does not mean that any

injury sustained as part of that journey would attract AFCS compensation; the general test of whether the injury or death was predominantly caused by service would still apply.

2.22. The limited circumstances where the Scheme may provide compensation for incidents which occur during travel to and from work are:

- if the travel is undertaken to attend a Defence Council approved sporting activity.
- travelling to or from an emergency, for example a firefighter called out to attend a fire.
- where the individual is travelling to change from a place of work in the UK to a place of work outside the UK or during travel back again; or, during travel, an act of terrorism is directed at the individual as a result of their being a member of the Armed Forces.

2.23. In this context, 'home' is defined as: accommodation including service accommodation in which the individual has lived, or expects to live, for three months or more. The individual may have more than one home at any one time. For example: a family home and accommodation closer to work.

2.24. In this context, the definition of 'place of work' is the place of work to which an individual is assigned or temporarily attached<sup>7</sup>.

2.25. Injuries due to road traffic accidents that happen on roads internal to a site of work or a Defence site (e.g. on an RAF base) are subject to the usual test of whether they were caused by service. An incident is not automatically accepted as being a result of service because it occurs on a road internal to a Defence site but must be determined on the case facts.

- **Overseas assignments.** The regular place of work relates to the country that the individual is stationed in. For example, a Service person stationed in Germany and travelling from their home in Germany to their normal place of work in Germany would be travelling on their normal home-to-work journey therefore would not ordinarily be covered by AFCS for any injury sustained on that journey.
- **Incidents away from regular place of work.** If an individual is on a course or other activity related to their service and is injured while travelling in their free time in the evenings or at weekends whilst there, even if they are only in that geographical area because of attending that activity, the injury is unlikely to be accepted as due to service. A judgement on the specific case facts must be made.
- **Operational theatres.** Travel to and from work considerations do not apply in operational theatres because an operational theatre is not an individual's regular place of work. Similarly, when travelling between the UK and an operational theatre, the individual is not deemed to be travelling to or from their regular place of work. This means injuries sustained during journeys to, from and within theatre are subject to the usual test for compensation.

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<sup>7</sup> Including an adventure course or an expedition approved by the Defence Council.

- **MOD-provided transport.** There may be occasions when MOD provides a car, minibus or other transport for a journey, including a journey from home to work or back again. The matter of who provides the vehicle in which normal travel to and from work occurs is irrelevant for compensation purposes. The same rules apply in compensation terms, regardless of whether the vehicle is provided by MOD.
- **Reservists travelling to training.** For compensation purposes, an individual's place of work refers to their normal military place of work, i.e. the individual's parent Reserve unit, not their normal civilian place of work. Injury which occurs in the course of normal travel to and from an individual's home to their parent Reserve unit would not therefore be covered by the AFCS. Reservists can be attached to a unit different from their parent unit. Incidents which occurred in the course of travel to that different unit would be included under the Scheme because the Reservist is travelling to a military place of work which is not their normal military place of work. Injuries arising on these journeys would then be subject to the usual test of whether they were caused by service.

## Slips, Trips and Falls

2.26. Awards are not automatically paid under the AFCS for a slip, trip or fall which occurs while undertaking an activity linked to service, or which takes place on Defence property. Each case is considered on its individual facts.

2.27. An AFCS award is only payable if the slip, trip or fall occurs when the individual, in course of their service role, is undertaking at least one of the following:

- activity of a hazardous nature;
- activity in a hazardous environment, i.e. immediate environment not a geographical area; or
- training to improve or maintain their effectiveness in the forces.

2.28. If the injury is sustained in one of the above contexts the balance of probabilities test will be applied i.e. an assessment will be made as to whether the individual's service, on the balance of probabilities, caused the slip, trip or fall. If the slip, trip or fall did not occur in one of these contexts, then an award will not be made.

## Hazardous Environments

2.29. A hazardous environment is not about duties in an operational or deployed zone; a hazardous environment could for example be extreme weather conditions, such as a severe storm or flood or ungritted roads /pavements in icy conditions or a loose step tread. All claims will be considered on the facts of the case.

## Social Events

2.30. Injuries at social events that an individual has not been expressly ordered to attend are excluded from the Scheme, even if organised by a service colleague. If it is the Service person's choice to attend the social event, any injury arising as a result of attendance is not considered to be due to service.

2.31. However, if a Service person is expressly mandated by a senior officer to attend a social event then it is deemed to be the same as any other service duty and would be included in the Scheme. The balance of probabilities test will still apply to injuries sustained in such circumstances. It may be pertinent to note that injuries caused (or contributed to) by personal negligence may see a reduction in the amount of compensation payable (see paragraph 5.18) and injuries which are predominantly caused by the consumption of alcohol or the use of drugs will not attract compensation (see paragraph 2.35).

## **Sporting Activities**

2.32. Maintaining a good standard of fitness is an integral part of service life. The Scheme recognises this and provides compensation for injuries sustained whilst taking part in a sporting event, adventurous activity or expeditions and whilst exercising to maintain physical fitness, including in the individual's own time on leave or away from the regular workplace. Injuries caused by sporting activities are covered where the sporting event was approved by the relevant Service in advance, or where the type of sporting activity is approved by the Defence Council and was undertaken for the purpose of meeting and maintaining fitness. [JSP 660](#), entitled 'Sport in the UK Armed Forces', sets out the types of sporting activities that are approved on behalf of the Defence Council by the UK Armed Forces Sports Board, Single Service Sports Boards or unit commanders. JSP 419 covers Adventurous Training for the UK Armed Forces.

2.33. Activities include sporting activities as a player, a referee (or equivalents, e.g. an umpire), an organiser or a representative of a particular sport or sporting organisation.

2.34. Fitness activities (separate category to sporting events) which may be considered for compensation, when undertaken by Service personnel to maintain fitness levels include (but not limited to):

- running.
- cycling.
- circuit training.
- weight training.

## **Other Exclusions**

2.35. There are a number of circumstances included in the legislation where it is considered compensation is not reasonably payable under the Scheme, decisions will depend on the case facts. These are essentially situations involving:

- personal habits or behaviours which are matters of personal choice. These include:
  - o the use or effect of tobacco.
  - o the consumption of alcohol.
  - o the use of drugs for non-medical reasons.
  - o consensual sexual activity.
- events, experiences, exposures and activities occurring before joining service. However, compensation may be paid if service is the predominant cause of worsening of a pre-existing injury (see paragraphs 2.15 to 2.20).

- illnesses or conditions which are genetic, hereditary or determined in early life. This includes an illness which is caused by a single gene defect or is predominantly hereditary in origin; examples include cystic fibrosis, sickle cell anaemia, and haemophilia or personality disorder.
- illnesses due to infections where the risk in military service is no different from that in civilian life. These include:
  - o infections or diseases that arise from within the person themselves, such as appendicitis and prostatitis. These are known as endogenous infections.
  - o infectious or contagious diseases that are spread by person to person contact. These are known as exogenous infections. Examples of such diseases are influenza or mumps. These are common in the community and transmitted by bodily contact with an infected person or object, i.e. person-to-person spread. Where service has increased the risk of an individual becoming infected then compensation may be paid. Exogenous infections are accepted when acquired<sup>8</sup> on deployment to a tropical or sub-tropical region, or where, in a temperate region<sup>9</sup>, there has been an outbreak<sup>10</sup> of the infection in service accommodation or workplace. For the purposes of the AFCS, infections acquired by animal spread (zoonoses), e.g. Lyme disease, may be accepted for compensation as may, subject to case facts, wound infections, where the wound is accepted, especially if there is associated disabling arthritis, fatigue or sepsis.
- self-inflicted injury, except where the self-inflicting of the injury is a result of a mental disorder caused by service.
- where an individual is in receipt of an award under the WPS, the same injury or death will not be accepted under the AFCS.

## Burden and Standard of Proof

2.36. In the AFCS the individual must show, on the balance of probabilities, that the injury or illness was caused wholly or partly by service and if partly, predominantly by service. This means they must show that they are suffering from a particular injury, and that it is more likely than not that that injury arose as a result of their service in the UK Armed Forces.

2.37. While the responsibility to show that the injury is caused by service rests with the individual, the process for doing so is designed to be as easy to navigate as possible. The process is not adversarial, but inquisitorial, with DBS Veterans UK undertaking the majority of evidence-gathering on the individual's behalf. The MOD, including the single Services and Defence Medical Services (DMS) have a duty to provide relevant service evidence where available. This can include the individual's service history, medical records and details of

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<sup>8</sup> In the course of duties.

<sup>9</sup> Where there is variation of temperatures but no extremes of heat or cold.

<sup>10</sup> Article 12 (1) (f) of the AFCS Order includes a definition of 'outbreak'. For its meaning MOD adopts the World Health Organisation (WHO) definition – a disease or infection outbreak is the occurrence of cases in excess of what would normally be expected in a defined community geographical area or season.



any incident(s), as well as evidence from the Chain of Command, medical officers and others. Claimants are of course entitled to provide any additional evidence they wish. Some examples of the types of evidence that are useful are administrative instructions, unit weekly orders or joining instructions for courses.

2.38. Decision-makers consider all the facts of the case, including factual evidence provided by clinicians treating the individual claimant. They use this evidence to decide whether or not the claimed causal link to service meets the balance of probabilities test and, if so, select a descriptor from the tariff, which reflects the nature and severity of the injury and its ongoing functional effects.

### **The Exception to this Approach is for Missing or Lost Records**

2.39. Where an official record relating to a fact which may be helpful in the determination of an AFCS claim is missing or lost by the MOD, the claim will not automatically fail for lack of evidence. If there is other reliable supportive evidence then that material fact will be decided in the individual's favour, unless the MOD can produce reliable evidence to the contrary. In these circumstances, it is the individual who will need to produce the other evidence to support the claim. This could be contemporary documents to show they were in a particular place at a particular time carrying out a particular task; it could be their own consistent and credible testimony or consistent and credible corroborative testimony from family members or colleagues. The more evidence that can be provided, the better. As discussed in the Lord Boyce review, IMEG reports include a section considering causation of a variety of disorders commonly claimed in the Scheme and assesses whether there are circumstances where they can be presumed to be due to service without individual case consideration. These are called Recognised Diseases (See IMEG second report (May 2013), third report (May 2015) and fourth report (December 2017)).

2.40. There is a difference between a record being lost and it being reasonable to conclude that the record never existed. If a record is lost, there is likely to be a visible gap in the Service person's unit or unit records. By contrast, if there are lots of medical or other reports for that period, and if other medical, service and incident records for that person are otherwise complete, DBS Veterans UK may be justified in concluding that the record did not exist in the first place.

2.41. As the Scheme was introduced in 2005 and, normally, has a seven-year time limit to make a claim (see paragraphs 5.4 to 5.6), there is a discrete time period for which records are required. Even if there was a good reason for a record not being created there should be no reason for there to be a total absence of all contemporary records and accounts which support the individual. An absence of this scale would suggest that no record had ever been created rather than having been lost or destroyed. If DBS Veterans UK are satisfied on the balance of probabilities that the record never existed, as opposed to having been lost or destroyed, the exception does not apply, and the claim may fail for lack of evidence.

2.42. The types of record which this provision relates to include any documentation completed during normal reporting procedures which confirms that the incident took place or medical treatment was administered, including records held electronically. These can include details from Incident Notification Cells, road traffic accident reports, hospital case notes, data obtained from the Defence Medical Information Capability Programme and GP notes.

2.43. For dates covered by the AFCS, Service personnel have an obligation to report incidents. All three Services have accident notification cells and reporting chains. If a report of the incident was not created at the time, the Service person could reasonably be asked if he or she has a credible reason for not filing a report. If no such reason is forthcoming, then it may be assumed the incident did not necessarily take place as claimed.

2.44. Where there is reliable evidence an incident occurred in the circumstances described by the individual, this does not necessarily mean that any injury arising from that incident is deemed to be caused by service. The material fact to which the missing record relates will be decided in the individual's favour, not necessarily the whole claim. For example, if the individual states that they broke their leg at an approved sports event and there is other evidence that the injury occurred but the Army file relating to the incident has been lost, DBS Veterans UK will presume that the individual did in fact break their leg at the event. If, for example, further evidence demonstrates that the individual was at the event as a spectator only and in a capacity unrelated to their own service, and was not participating in a sport activity, the individual will not receive compensation.

### **Illness Caused by Service**

2.45. Claims for illnesses including physical and mental health disorders are treated in exactly the same way as claims for injuries. The Services and all Defence organisations, including DMS and Defence Community Mental Health teams (DCMH), provide the supporting information to enable DBS Veterans UK to make evidence-based decisions. For post- service claims evidence will be obtained from the primary care team, community or hospital clinic. Decision-makers take account of contemporary medical understanding on the causes and progress of disorders and each case is decided on its merits.



# Chapter 3 - Compensation for Injury

## Awards

3.1. Every AFCS award includes the payment of a lump sum for the injury.

3.2. For more serious injuries, where the individual's capacity to earn in civilian life beyond their service career is detrimentally affected by their injury, an income stream is paid in addition to the lump sum. This is known as the *Guaranteed Income Payment (GIP)*. It is paid for life as an enhancement to the individual's pension, is index-linked and tax free.

3.3. The Scheme is designed so awards take into account the expected effects of the injury and treatment over the person's lifetime. This means that once a final award is made, in the majority of cases, it cannot be amended or removed except in limited circumstances (for example, interim awards). This is to enable individuals to move forward with their lives following injury with financial security and to encourage individuals to take up future employment and activities of life according to their ability, without fear that doing so could reduce or remove their income or assets.

3.4. In the majority of cases, an award under the Scheme is payable when the injury sustained is described in the Scheme by what is known as descriptors. These are descriptions of different types of injury, listed in a series of tables known as the tariff. A descriptor encompasses the expected effects of the injury on the individual. Each descriptor has a corresponding tariff level from 1 to 15; this is known as the tariff level for the injury.

3.5. The AFCS uses a tariff system with 15 levels which reflect the severity of the injury, tariff level 1 being associated with the most serious injuries and 15 with the least serious. This comprehensive graduated tariff is designed to deliver consistent awards for injuries of different category but similar severity. The tariff is designed to deliver equity both within and across injury types, in line with the Scheme's key principle of fairness. For example, a minor injury to a finger or hand should receive a lesser amount of compensation than a more serious injury to the forearm or whole arm. Similarly, a minor injury to the foot should attract lesser compensation than a serious burn to the face. This is known as vertical and horizontal equity.

3.6. In some cases, the injuries sustained as a result of service could be described by one or more descriptors and in others, more than one descriptor is needed to fully describe an injury. Where this occurs, DBS Veterans UK will identify the most appropriate descriptor or combination of descriptors for the injury or injuries. There are also provisions to pay compensation where an individual sustains an injury which is caused by service and an award is considered appropriate but there is no appropriate descriptor or combination of descriptors on the existing tariff (see paragraphs 3.32 to 3.35). This is called a Temporary Award (Article 26 AFCS Order 2011).

## Those Most Seriously Injured

3.7. The Scheme's underlying principle is to pay the highest awards to those most seriously injured. There comes a point, in cases where the most profound injuries are sustained, where distinctions cannot be drawn between one individual's injuries and another's. It would also breach the Scheme's principle of delivering equity if a number of lesser injuries provided

a greater award than a smaller number of more serious injuries which had, overall, a greater impact on the individual. For these reasons, the maximum lump sum payable to those individuals with the most profound injuries, sustained in a single incident, will be equivalent to the single tariff level 1 award, which is currently £650,000. Individuals with this level of award will also receive the maximum level of income stream, the value of which can be £1m or more over a lifetime, leading to an overall compensation package with a value of over £1.5m. The method of calculation of the income stream is set out in para 3.11 below. Because it includes case-specific personal factors there is no limit to the amount of compensation that can be paid from the Scheme to any individual in terms of lump sum plus income stream.

## Lump Sums

3.8. As explained above, all AFCS awards include a lump sum paid for the injury. The lump sum is paid as soon as possible after the claim is made and can be paid while the individual is in service. (paragraphs 5.4 to 5.6 contain more information on the time limit for making a claim).

## Supplementary Awards

3.9. There may be cases where the injury or effect of the injury, while not necessarily having an impact on future employability, can have a substantial effect on some aspect of the person's function or their self-image, confidence and self-worth. To recognise these circumstances, an additional payment, known as a *Supplementary Award*, is made if the injury is accompanied by certain specified conditions<sup>11</sup>. supplementary awards are paid in addition to the lump sum and are paid at the same time as the lump sum. For example, an injury to genitalia that results in infertility<sup>12</sup> does not impact on the individual's future ability to earn; however, given the effect this injury can have on a person's life, this injury would attract a supplementary award.

3.10. For the reasons explained above, the maximum amount payable as a lump sum including any supplementary award(s) payable will be equivalent to the single tariff level 1 award, which is currently £650,000. This recognises that, as money cannot directly equate to injury or disability, in cases where individuals sustain the most profound injuries, one cannot robustly differentiate between the effects of a single very serious injury and those due to multiple less serious injuries and the same amount should be paid to both.

## Guaranteed Income Payment (GIP)

3.11 Where an individual has a lasting injury received as a result of service which has an ongoing impact on the amount they are able to earn over their lifetime in terms of both salary and pension, financial security is provided through a lifelong, tax-free, inflation-proof income known as a Guaranteed income Payment (GIP). This is an income replacement stream which is calculated and put into payment when the individual leaves service. The GIP is therefore based on the individual's age at last birthday and their basic salary (minus allowances) at the time they leave service and the severity of the injury/illness. The calculation of GIP uses this data, along with a series of assumptions, to determine the lifelong loss of earnings the individual is likely to face in terms of both salary and pension as

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<sup>11</sup> For the conditions in the 2011 Order for making a supplementary award: see articles 15(1) (b) and 16(5) and Part 2 of Schedule 3 to the Order.

<sup>12</sup> See Chapter 9 for additional information regarding IVF treatment provided by the National Health Service.

a result of their service-caused injury or injuries. The GIP only comes into payment after service ends as its purpose is to compensate for the reduced earning potential of the individual in post-service civilian employment. The amount of GIP actually paid is reduced to take account of any Armed Forces pension, Early Departure Payment (EDP) or Tier 1 lump sum which is also paid or payable to the individual (more detail at paragraphs 3.19 to 3.21). Although the GIP is payable from the day after discharge, payment will not be made immediately as it is necessary to establish the Armed Forces Pension Scheme entitlements in order to calculate the amount of the GIP payable in each case.

3.12. Key points about the GIP are:

- the GIP is a minimum income guarantee recognising the long-term impact of injury on the individual's civilian employability.
- the GIP is tax-free and index-linked and paid for life.
- the GIP can be the most financially beneficial part of the compensation package; a tariff level 1 lump sum award of £650,000 along with a GIP paid for life could bring the total value of an AFCS award to £1.5m or more.

### Amount of GIP

3.13 The level of GIP awarded reflects the overall impact of the injury on the individual's future ability to earn. Where the injury or injuries are so serious that it is unlikely the individual will be able to earn again in any form, all of their future income is replaced. For less serious injuries, a proportion of the individual's future earnings are replaced in recognition of the fact the individual is still able to earn income, though not to the same level had they not been injured. Where one injury is sustained in one incident the relevant percentage amount of the calculated GIP payable is as follows:

- **Band A – tariff levels 1-4.** 100% of the individual's future earnings (pensions and salary) are replaced. It is considered individuals with these tariff level awards are so seriously injured that they will be unable to work again, therefore all future salary and pension income is replaced.
- **Band B – tariff levels 5-6.** 75% of the individual's future earnings (pensions and salary) are replaced. It is considered individuals with these tariff level awards will be able to work but at a significantly reduced earnings capacity, therefore 75% of future salary and pension income is provided.
- **Band C – tariff levels 7-8.** 50% of the individual's future earnings (pensions and salary) are replaced. It is considered individuals with these tariff level awards will be able to work but that their earning capacity will be reduced by around half, so 50% of their future salary and pension income is provided.
- **Band D – tariff levels 9-11.** 30% of the individual's future earnings (pensions and salary) are replaced. It is considered individuals with these tariff level awards will be able to work but will experience a lower level of earnings due to their injury, so 30% of their future salary and pension income is provided.
- **Tariff levels 12-15.** No GIP is payable as it is considered that the individual's future civilian earnings capacity will be unaffected by their injury as the injury does not have any significant permanent effects.

3.14. Only one GIP is paid regardless of the number of injuries sustained. If an individual sustains more than one injury in separate incidents, the GIP which corresponds to the highest tariff level(s) awarded is payable.

3.15. The GIP band is determined by the most serious individual injury. Where more than one injury is sustained in one incident and the two most serious injuries fall into the same GIP band, the individual's GIP moves up to the band immediately above the band in which the injuries fall. For example, if an individual sustains two injuries, both at tariff level 7, this will result in a 75% GIP being payable whereas a single tariff level 7 award attracts a 50% GIP.

### **Annual Up-rating**

3.16. The level of payment for GIP is increased annually in April in line with the Government Consumer Prices Index (CPI)<sup>13</sup> figure for the previous September. This up-rating will automatically happen each year and individuals will be informed in writing of the new level of their payment.

### **Salary Increases and GIP – Including Acting Rank**

3.17. Where because of acting rank an individual has a different salary on the date on which they are injured from the date on which they leave service, the higher of the two is used to calculate any GIP that is payable in relation to that injury.

3.18. Where the claim is made after service ends, the salary used to calculate any GIP payable is the salary on the day service ended, uprated by the CPI to the date of claim (or date of death in bereavement cases). This is to take account of the effects of inflation in the intervening period between leaving service and making a claim.

### **Adjustment of GIP When Armed Forces Pension Payments Paid**

3.19. The GIP reflects the lost earnings for the individual in terms of both salary and pension; therefore, it is adjusted to take account of payments received from:

- the Armed Forces Pensions Schemes (AFPS) 1975, 2005 and 2015;
- the Gurkha Pension Scheme; or
- the Armed Forces Early Departure Payment (EDP) Schemes EDP 05 and EDP 15.

3.20. For information on the adjustment of GIP for reservists, see Chapter 7.

It should be noted that where a pension has been commuted, DBS Veterans UK must use the gross pension before the commutation is put in place as the basis for calculation – this is a statutory requirement.

3.21. Where an individual receives an ill-health pension and/or EDP for the same injury for which their GIP is paid, that entire pension/EDP is taken into account in the payment of GIP. If an individual receives a pension and/or EDP which is not related to the injury for which the

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<sup>13</sup> A CPI measures changes in the price level of a market basket of consumer goods and services purchased by households. The CPI is a statistical estimate constructed using the prices of a sample of representative items whose prices are collected periodically. The CPI can increase or decrease.

GIP is paid, 75% of the amount of pension/EDP paid is taken into account in the GIP. The rationale for the different levels of deductions when calculating the GIP recognises the different tax statuses of these awards. AFPS ill-health pensions/EDP are only tax-free when paid for an injury which has been accepted as caused or worsened by service, other AFPS payments are taxable. The 75% deduction for taxable awards means the GIP is enhanced by 25% of the taxable income. See Annex A for examples.

### **Introduction of Flexible Service (FS) and the GIP**

3.22. From 1 April 2019, MOD introduced FS for members of the Regular forces, who are able to request to serve part-time or on a restricted separation basis from this date. FS is designed to provide temporary relief from some of the exigencies of service life, without undermining Defence need which generally requires Regular service to be a full-time unlimited commitment.

3.23. The purpose of the AFCS is to provide benefits (lump sum and/or income payments) in respect of an individual by reason of their illness, injury or death caused, wholly or partly, and, if partly, predominantly by service. This will not change because the individual is on a period of FS. Where an individual is on a period of FS when they are injured or become ill and are entitled to a GIP the salary will always be calculated as though the individual had served full-time and not on flexible terms. The GIP is not reduced because an individual has had a period of FS.

### **Injury to Paired Body Structures**

3.24. The AFCS recognises through the tariff framework that loss of two parts of a paired body structure has greater impact on the injured individual than double the loss of a single part of that paired structure. For example, loss of both hands has more than double the impact on a person's function than loss of a single hand. Therefore, where one foot is lost a lump sum of £61,800 is paid along with a 50% GIP; while where both feet are lost a lump sum of £180,250 is paid along with a 75% GIP. The paired structures to which these rules apply are:

- arms or parts of an arm.
- feet.
- hands.
- kidneys.
- legs or parts of a leg.
- total loss of sight in both eyes.
- total loss of hearing in both ears.

3.25. If a case arises where somebody sustains two separate injuries from two separate incidents which result in the loss of (or loss of use of) two elements of a paired body structure, the following rules apply. These have been designed to ensure the greater impact on the individual's functionality as a result of the double loss is appropriately recognised by the Scheme.

**Where the first of the paired structures has been affected by a service-caused injury and an AFCS award has been paid for that injury:**

- any subsequent service-caused injury to the second of the paired structures will attract the lump sum that would have been paid for loss of both of the structures, adjusted for any lump sum already paid for loss of the first structure.
- any GIP awarded for the first injury will cease and be replaced by the recalculated GIP which takes account of the tariff level for loss of both structures.

3.26. For example, a Service person loses the sight in one eye in an incident caused by service. The individual remains in service and receives a tariff level 8 AFCS award. A lump sum of £61,800 is paid immediately, with a Band C (50%) GIP coming into payment on leaving service. The individual remains in service and two years later is involved in a further service-related incident causing loss of sight in the other eye. The individual is medically discharged from service. Loss of sight in both eyes is a tariff level 2 injury, so the overall lump sum payable for both injuries is £484,100. Taking account of the previous payment of £61,800, the balance of £422,300 is paid.

3.27. The tariff level 2 injury means the individual will receive a Band A GIP, i.e. 100% of the maximum available GIP (as opposed to 50%). This means all future lost income is replaced, rather than 50%.

**Where the Injury to the Second of the Paired Body Structures is not Caused by Service**

3.28. There may be an instance where an injury sustained as a result of service results in the loss of (or loss of use of), one of a paired body structure. Then, at a later date another incident occurs which results in an injury which is not caused by service that results in the loss of (or loss of use of) the second of the paired structures.

3.29. In cases of two separate injuries which result in loss of (or loss of use of) both parts of a paired structure, where the first is due to service and the other, sustained later, is not caused by service and is an acute loss (or loss of use) due to trauma or infection involving:

- arms.
- hands.
- total loss of sight in both eyes.
- total loss of hearing in both ears.

The amount payable, in terms of both lump sum and GIP, is the amount payable for the loss of both structures (i.e. the same rules apply as if both losses were due to service).

3.30. The Scheme recognises that loss of or loss of function of, upper limbs is more disabling than the loss of or loss of function of lower limbs. This is in line with the IMEG report published in February 2011 (see paragraph 2.14) and also takes account of the less advanced prosthesis for upper limbs compared with lower limbs. This is the reason for the list in relation to non-service caused second injury being different to the list where both losses occur as a result of service.

3.31. In cases where the same body structures are involved (i.e. arms, hands, total loss of sight in both eyes and total loss of hearing in both ears), but loss of (or loss of use of) the second structure develops more gradually, for example due to ageing or degenerative disease, and for all other combinations (e.g. feet, kidneys or leg) the individual has more opportunity to adapt to the loss (or loss of use) of the second structure. As a result, the additional payment will be half the lump sum due for the difference between the single and double injuries. The GIP would also increase by one band except where the individual is already in receipt of a 100% GIP.

## **Temporary Awards**

3.32. If an injury is sustained due to service for which there is no appropriate descriptor on the tariff, but the injury is sufficiently serious to warrant compensation, a Temporary Award may be made in relation to the injury. A temporary award can be made where the injury is listed in the International Statistical Classification of Diseases and Related Health Problems or in the Diagnostic and Statistical Manual of Mental Disorders.

3.33. Where this situation arises, the decision-maker will consult with medical and policy colleagues and if it is decided payment of a temporary award is appropriate, a lump sum relating to the relevant tariff will be paid, along with any associated GIP if applicable.

3.34. Within a year of the date the temporary award being made, the tariff will be amended to incorporate a new descriptor that is appropriate for the injury.

3.35. The individual will be notified in writing when the temporary award is made and also once it is incorporated into the tariff. Once the award is finalised, if the individual is not satisfied with the amount of compensation they have received for their injury, they are able to seek an internal DBS Veterans UK reconsideration, or can appeal to an independent tribunal (see Chapter 8).

## **Interim Awards**

3.36. An aim of AFCS is to make awards which are full and final as early as possible after the claim is made. This gives financial certainty and allows the person to focus on moving on with life. It also reflects modern medical treatment where for most injuries and disorders, a steady medical state where the injury is in treated optimal state having undertaken an adequate course of best practice treatment, should be reached within two to three years. AFCS final awards reflect the nature and course of the injury and its disabling effects over the person's lifetime. However, where an injury is caused by service but has not reached steady state because treatment is incomplete, or the ongoing disabling effects are uncertain, an interim award may be made. At the date of decision, the most appropriate descriptor is selected and the period for which the interim award applies is specified.

3.37. A final award will usually be made within two years, starting with the date on which the interim award was made, but, exceptionally, can be extended for a maximum of four years. This situation may arise if claims are made very early after injury, where treatment has not begun or is in very early stages, in cases of multiple injuries, where some injuries are settled but others not and sometimes in mental health disorders where an adequate course of appropriate best practice treatment has not been received.

3.38. While an award is interim there is no right of appeal. Once finalised, if the individual is not happy with the amount of compensation they have received, they can seek an internal

reconsideration or appeal to the independent First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber) in England and Wales or the Pensions Appeal Tribunal in Scotland and Northern Ireland (see Chapter 8).

## Where One Incident Leads to Multiple Injuries

3.39. Where a single incident leads to an individual sustaining more than one injury due to service, the calculation of the lump sum is carried out in accordance with a specific set of rules which are described below. These rules are designed to ensure equity in line with the Scheme's overriding principles. Specifically, the rules are designed to ensure that:

- those most seriously injured receive the highest awards.
- those with a large number of minor injuries receive less than those with a lesser number of more serious injuries.
- where appropriate, each injury sustained receives some compensation.

## Body Zoning Approach

3.40 In some cases, the AFCS takes account of the overall impact of all the injuries sustained by considering the impact of injury in relation to the five '*body zones*.' These are:

- A: the head and neck.
- B: the torso.
- C: the upper and lower limbs.
- D: the senses.
- E: mental health.

3.41. The more body zones affected by injury the greater the overall impact on the individual. This may result in two individuals with similar injuries receiving different levels of compensation depending on the number of body zones affected.

## Case Types

3.42 There are three types of multiple injury case. Before it can be determined which category, a case falls into, each injury is assigned an appropriate descriptor or range of descriptors; where appropriate, these can then be assigned to each of the five body zones. This enables the cases to be split into the three categories:

- I. Those where the individual receives a Band A GIP (i.e. 100% of the maximum available GIP).
- II. Those where at least two body zones have one or more injuries at tariff levels 1-11.
- III. All other cases (i.e. those which do not fall into categories I or II).

## Multiple Injury Rules

3.43. Depending on which of these three categories a case falls into different rules apply. These are described below.

- I. **Cases where 100% GIP is payable**, because at least one injury is at tariff level 1-4 or two injuries are at tariff level 5-6.



3.44. In these cases, the full lump sum will be paid for each injury, along with any supplementary award(s) which may be payable. The lump sum value of each descriptor allocated plus any relevant supplementary award is added up to give a total. The maximum lump sum payable will be equivalent to the single tariff level 1 lump sum value (currently £650,000).<sup>14</sup> This recognises that the most severely injured, who are considered unlikely to be able to work as a result of their injury, are to receive the highest levels of compensation.

3.45. The Scheme's underlying principle is to pay the highest awards to those most seriously injured. There comes a point, in cases where the most profound injuries are sustained, where distinctions cannot be drawn between one individual's injuries and another's. It would breach the Scheme's principle of delivering equity if a number of lesser injuries provided a greater award than a smaller number of more serious injuries which had, overall, a greater impact on the individual. For these reasons, the lump sum payable to individuals with the most profound injuries, sustained in a single incident, is equivalent to a tariff level 1 award (currently £650,000). Individuals with this level of award will also receive the maximum level of income stream, the value of which can be £1m or more over a lifetime, leading to an overall compensation package with a value of over £1.5m. There is no limit to the amount of compensation that can be paid from the Scheme to any individual in terms of lump sum plus income stream.

## **II. Cases where at least two body zones contain at least one injury at tariff levels 1-11 and a Band A 100% GIP is not payable**

3.46. In these cases, body zoning applies.

3.47. The process for determining the relevant lump sum payable for these cases is as follows:

- A descriptor (or, where appropriate, combination of descriptors) is allocated to each injury.
- Each descriptor is allocated to a body zone. For each body zone, the total value of the lump sums (including any supplementary awards that may be payable) associated with all injuries are added together.
- The body zones are then ranked in order of monetary value. If two body zones attract the same amount of compensation, one is treated as the higher and the other the lower.
- 100% of the total value of the lump sums for the body zone attracting the greatest level of compensation is paid. 80% of the total value of the lump sums for the body zone attracting the second most amount of compensation is paid, 60% for the third, 40% for the fourth, and 20% for the fifth.
- The lump sum payable (including any supplementary awards) cannot exceed the amount payable for a tariff level 1 lump sum (currently £650,000).<sup>15</sup>

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<sup>14</sup> See Examples 1 and 2 of Annex D

<sup>15</sup> See Example 3 of Annex D

3.48. This approach ensures an individual who has a single body zone affected by injury does not receive more compensation than an individual who has similar levels of injury in more than one affected body zone.

### **III. All other cases**

3.49. For all other cases, each injury is ranked in order of lump sum payable (including any supplementary award). Where two injuries attract the same amount of lump sum, one is treated as the higher and the other the lower. 100% of the lump sum is paid for the injury attracting the greatest level of compensation, 80% of the lump sum is paid for the injury attracting the second highest amount of compensation, 60% for the third, 40% for the fourth, 20% for the fifth and all subsequent injuries. Again, the total lump sum payable should not exceed a tariff level 1 lump sum.<sup>16</sup> See Annex D for examples of Multiple Injury calculations.

### **GIP**

3.50. The amount of GIP in all cases is as per the GIP rules; see paragraphs 3.11 to 3.23. The multiple injury rules are only used to determine the amount of lump sum payable.

### **Armed Forces Independence Payment**

3.51. The Armed Forces Independence Payment (AFIP) was introduced on 8 April 2013 in conjunction with the Department for Work and Pensions (DWP). This payment is designed to provide financial support to Service and ex-Service personnel who have been seriously injured as a result of service. It is to cover the extra costs that may be incurred as a result of their injury.

### **Eligibility**

3.52. Individuals awarded a GIP of 50% or more<sup>17</sup> under the AFCS will be eligible for AFIP.

3.53. Individuals eligible for AFIP will not be required to undergo an initial assessment, nor any future reassessment. Once a claim has been made and is successful the payment will be paid for life, unless the GIP is reduced to below the 50% level.

### **Claims Process**

3.54. Claims for AFIP will be made through the completion of a claim form which should be sent to DBS Veterans UK. There are no time limits for applying however if there is a delay returning the claim form it may affect the date on which AFIP becomes payable. Claims will be administered by DBS Veterans UK as part of the AFCS process with DWP making the payments. Enquiries can be made to DBS Veterans UK via the Helpline: 0808 1914 218.

### **Level of Award**

3.55. The amount paid for AFIP is the same amount as the enhanced rates of both the daily living and mobility components of DWP, Personal Independence Payment (PIP) or the

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<sup>16</sup> See Example 4 of Annex D

<sup>17</sup> Individuals whose injury results in their future earnings capacity reducing by around half or more.

highest rates of both components of Disability Living Allowance (DLA). Individuals cannot receive AFIP and PIP or DLA at the same time.

## **Fast Payment**

3.56. Fast payment provides the most seriously injured Service personnel with the option to claim an upfront AFCS payment without the need to go through the complete AFCS claim process. This payment is intended to provide these injured personnel, the opportunity to receive some financial reassurance and support as quickly as possible after injury.

### **Eligibility**

3.57. Two criteria must be met for an individual to be eligible to receive a fast payment. These are:

- the injury occurred in service on or after 9 May 2011 and it is clear (beyond doubt) that it was caused by service; and
- the injury sustained clearly warrants a descriptor within tariff levels 1-8.

### **Claims Process**

3.58. This award is designed to be 'fast', therefore a separate claim for a fast payment must be submitted to DBS Veterans UK within six months from the date of incident or event that caused the injury. The form can be accessed online from [GOV.UK](https://www.gov.uk). This form has been kept deliberately short and requires only the key facts of the incident to enable prompt consideration by DBS Veterans UK. DBS Veterans UK will conduct appropriate checks to confirm whether the eligibility criteria are met. If it is not clear that both the eligibility criteria are met, then a fast payment will not be made. However, the individual can still put in a full AFCS claim in the normal way.

### **Level of Award**

3.59. The amount of the fast payment is equivalent to a tariff level 8 lump sum (currently £61,800). As the eligibility criterion for a fast payment is that at least one injury is at tariff levels 1-8, this is the minimum final lump sum an individual will receive. It is considered an appropriate amount to pay in these circumstances and is a substantial payment providing reassurance whilst ensuring no overpayments occur. At the point of determination of the full AFCS claim, where all injuries arising from the incident are considered, the final award will be adjusted to take account of any fast payment made.

3.60. The decision to make a fast payment is discretionary; therefore, an individual cannot request DBS Veterans UK to reconsider its decision and the decision cannot be appealed to a tribunal. However, once a full claim is made and a decision on it issued, the individual can ask for a reconsideration or apply to an independent tribunal if they do not agree with the decision on the full claim (See Chapter 8).

## **Overseas Medical Expenses**

3.61. Any UK-based member or former member of the Armed Forces (regardless of nationality) who has been injured or made ill as a result of their service is eligible for priority treatment from the NHS for their service-caused injury. In addition, all non-UK national

personnel who have been seriously injured due to service are eligible to stay in the UK, at the discretion of the UK Border Agency.

3.62. In line with the Scheme's underlying principle of fairness, AFCS may, in certain circumstances, pay the necessary medical expenses of seriously injured personnel who live overseas after their discharge from the Armed Forces. This is to ensure that an individual is able to move to a place of family or other connection without being constrained by their service-caused injuries. In general, in deciding these cases account will be taken of UK best clinical practice at the relevant date.

### **Eligibility**

3.63. The Scheme will only pay for overseas medical expenses if an individual:

- receives at least one AFCS award for an injury in tariff levels 1-8.
- becomes ordinarily resident outside the UK within one year of service termination and is ordinarily resident outside the UK when the expenses are incurred.

3.64. The individual must have moved overseas within a year of discharge. This allows individuals an appropriate amount of time to make necessary arrangements to move abroad after leaving service. It also means those individuals who may simply wish to emigrate later in life are not brought within the scope of the Scheme.

### **Definition of Residency**

3.65. An individual will be considered to be 'ordinarily resident' in a country where they live permanently, spending at least ten months of the year there.

3.66. In some cases, an individual may have to leave their normal residence for extended periods of time which would, normally, disqualify them from payment under the Scheme. In such instances, the individual's circumstances will be considered on a case-by-case basis to assess whether their reasons for leaving their normal country of residence are reasonable and that consideration of payment for necessary medical expenses remains appropriate; therefore, this may not prevent their medical expenses being provided under the Scheme.

### **Intended Country of Residence**

3.67. DBS Veterans UK will need to consider whether an individual's intended country of residence will be able to meet their specific care needs. Applications will be judged on a case-by-case basis. In so doing, DBS Veterans UK and the MOD policy team will jointly consider the application, with medical advice as appropriate. DBS Veterans UK may refuse an application if it is considered that a person's needs are unlikely to be met in the intended country of residence.

3.68. In some cases, an individual's day-to-day care needs will be able to be met in their intended country of residence but some interventions, such as a change of prosthesis or a one-time surgery, may not. In such instances, costs associated with day-to-day care in their intended country of residence may be met and it may, in addition, be possible for the Scheme to provide payment for the individual to travel to another location to meet treatment needs.

## **Expenses that may be Covered**

3.69. The Scheme may pay, wholly or partly, for necessary medical expenses where they are associated with the injury for which an AFCS award has been made, and the treatment for which expenses are incurred is comparable with what an individual would receive under best-practice UK treatment.

3.70. The clinician in charge of the case should be an appropriately qualified medical practitioner whose credentials are disclosed to DBS Veterans UK. Only treatment commissioned by this clinician will be considered by the Scheme.

3.71. In order to assess the claim, DBS Veterans UK will gather evidence, including, where applicable: an individual's AFCS claim form, medical discharge papers and in some cases of very serious injury, a joint Defence /NHS multidisciplinary transition assessment of an individual's health care and other support needs, undertaken three months before service medical discharge.

3.72. While the Scheme may meet health care costs (for example, costs associated with medical, surgical or rehabilitative treatment, professional nursing care and appropriate medical aids and appliances), social care costs, e.g. residential care and community-based services, e.g. home help, cannot be met by the Scheme.

3.73. Where a claim has been approved, DBS Veterans UK will define the expenses that will be covered by the Scheme. The list will be reviewed at a defined date which is considered medically appropriate (see paragraphs 3.74 to 3.75), until which point the list will not be changed unless the individual's condition changes unexpectedly and dramatically. Items included on the list will define courses and periods of treatment, for example 'six sessions of physiotherapy' within a three-month period. Individuals will receive a copy of the list when their application is accepted, and, at that time, DBS Veterans UK will also inform individuals when it will be reviewed.

## **Payment**

3.74. The scheme will pay for treatment where:

- it is not already provided free of charge in the individual's country of residence; and
- approval is sought from DBS Veterans UK before an expense is incurred, unless there is an exceptional circumstance which means it was not possible to inform DBS Veterans UK; e.g. emergency admission to hospital for the service-related injury. In such cases DBS Veterans UK should be informed as soon as possible. In such a case, receipts will be required to support reimbursement.

3.75. DBS Veterans UK or agents acting on their behalf will only pay expenses directly to the medical provider in exceptional circumstances. Individuals will normally pay the expenses to the provider.

## **Reviewing the Application**

3.76. It is important that an individual's circumstances, in the context of their treatment, are reviewed as they develop. DBS Veterans UK will set the review date when an individual's care list is created and at the end of each review. The review date will be dependent on the

individual's injury and circumstance and will be re-set each time a list is created/updated. At a minimum, an individual's healthcare needs will be reviewed every 24 months.

3.77. During a case review it is important that appropriate evidence is collected. DBS Veterans UK will also review the expense requests made by an individual since their care requirement was last agreed when the review is conducted and will liaise with the MOD policy team before issuing the outcome of a review.

### **Discretionary Principle**

3.78. Decisions to pay overseas medical expenses are discretionary. It is up to DBS Veterans UK decision-makers to decide, having considered all the facts, whether the case falls for payment under the Scheme, what items /interventions are covered and to what level.

3.79. If an individual is not happy with the decision, they may ask DBS Veterans UK to reconsider their application. As the decision is discretionary, they are not able to appeal any decision to pay or not pay overseas medical expenses to an independent tribunal.

# Chapter 4 - Compensation for Bereavement

## Overview

4.1. Where the death of an individual was caused by service in the UK Armed Forces, the AFCS pays benefits to the individual's dependants.

4.2. AFCS payments can be made to an eligible partner in recognition of the financial loss suffered as a result of the bereavement.

4.3. An eligible partner is a person who was married to the deceased or was their civil partner, and the marriage or civil partnership was in place for at least six months before the bereavement. If there is no spouse or civil partner, a person who fulfils the following criteria may be entitled to benefits under the Scheme:

- they lived with the deceased as partners in a substantial and exclusive relationship.
- they were not prevented from marrying or forming a civil partnership.
- they were financially dependent on the deceased or they were financially interdependent.

4.4. In the event of a death caused by service where there is no spouse or civil partner, it will be important to establish whether a relationship meets the above criteria to determine whether compensation is due to be paid. In order to determine whether a person may be entitled to compensation, a range of evidence will be considered to establish whether the relationship was substantial and exclusive, and whether there was financial dependence or inter-dependence. This may include (but is not limited to):

- joint rental accommodation, lease or property ownership.
- joint bank account, savings plan or investment.
- joint borrowing arrangements, including loans or credit cards.
- shared responsibilities for children.
- evidence showing the length of relationship.
- evidence of a will or insurance policy in which the deceased nominates the partner as principal beneficiary or co-beneficiary.

4.5. A relationship is not an exclusive relationship if:

- one or both of the parties to the relationship is married to, or is the civil partner of, someone other than the other party in the relationship; or
- one or both of the parties is a party to another relationship which could be considered to be a substantial and exclusive relationship in light of the above criteria.

4.6. Payments may also be made to eligible children. An eligible child is a birth child, an adopted child or other child who was financially dependent on the deceased. A child is defined for these purposes as someone who is under 18 years of age or, if in full-time education or vocational training, someone aged under 23. This includes a child born to the individual's partner within 12 months of the bereavement. The age criteria do not apply if the

child is unable to support themselves because they are suffering physical or mental disability.

4.7. Compensation is paid to an eligible partner and /or child when death is caused by service and:

I. the death occurred in service;

or

II. the death occurred within seven years from when service ends and was caused by:

- o an injury which was caused by service; or
- o the worsening by service of an injury which existed before or arose during service and which was not caused by service;

or

III. the death occurred more than seven years after service ends and:

- o the death is caused by a late-onset illness which was caused by service.
- o the predominant cause of the death is an injury for which an AFCS award has been made where the lump sum fell within levels 1 to 9<sup>18</sup> of the tariff.

4.8. Where death is not wholly caused by service, compensation is only payable if service is the predominant cause of the death, on the balance of probabilities.

## **Types of Bereavement Compensation**

- An ongoing taxable income stream paid for life to an eligible partner known as a Survivors' Guaranteed Income Payment (SGIP).
- A taxable income stream for eligible child(ren) known as a Child Payment (CP).
- A one-off tax-free grant of up to £37,500 (see paragraphs 4.29 to 4.37) paid to an eligible partner or eligible child(ren) known as a Bereavement Grant (BG).

### **Survivor's Guaranteed Income Payment (SGIP)**

4.9. The SGIP is an income stream paid monthly to an eligible partner to provide financial support to recognise the loss of the deceased partner's earnings. The amount paid is increased in line with inflation each year and is paid for life. The SGIP is an enhancement to any service pension payable to the partner in relation to the deceased.

### **Child Payment (CP)**

4.10. CP is an income stream paid monthly to eligible child(ren) in order to provide financial support following the loss of their parent, guardian or person on whom they were financially dependent. Payments stop at the point at which it would be reasonable to consider the child

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<sup>18</sup> Tariff level 9 refers to the lowest tariff level of injury descriptor which has a 'permanent' effect.



would cease to be financially dependent on their parents (see paragraphs 4.22 to 4.28 for information on when CP ends).

## Claims and Dates for Payment

4.11. Where the death occurs when an individual is in service, DBS Veterans UK will automatically consider whether the death was due to service and therefore whether bereavement benefits are payable. In these cases, any SGIP and CP is paid from the date that the individual's salary stops being paid, i.e. it is paid from the day after death.

4.12. A claim is required, however, where there is an eligible child when there is either:

- no surviving spouse, civil partner or surviving adult dependant; or
- the child is not living with the surviving spouse, civil partner or surviving adult dependant.

4.13. A claim form must be completed for DBS Veterans UK to consider whether compensation is payable for the child. The reason for the difference is that MOD may not be aware of the child and so must be informed that consideration of the child's entitlement is required. Support through this process can be obtained from the DBS Veterans Welfare Service, the Chain of Command, and a number of voluntary organisations.

4.14. Where the death occurs after the individual has left service, dependants will need to make a claim for bereavement compensation. In these cases, the AFCS payment will begin from the date of claim, except where the claim is made within three months of the date of death, in which case payment will be backdated to the day after date of death. There are time limits for making a claim where death occurs after service.

## SGIP Calculation

4.15 The SGIP is calculated by multiplying the deceased's salary by a factor based on their age. This stage of the SGIP calculation is similar to that for a GIP. This amount is then multiplied by a factor of 0.6 to give the annual amount to be paid to the eligible partner. The salary used to calculate the SGIP is the salary of the deceased on the day service ends. If death occurs after service, this figure is uprated by CPI to the date of claim in order to take account of the effects of inflation in the period between leaving service and making a claim.

4.16 The SGIP calculation works out the total lost earnings for the individual in terms of both salary and pension (in the same way that the GIP calculation does) and then allocates proportion of this to the eligible partner. SGIP is therefore also adjusted for the amount of any Armed Forces pension being paid. 75% of any amount paid to the partner in relation to the deceased's Armed or Reserve Forces Pension Scheme will be taken into account when the SGIP is calculated; this contrasts with 100% of any ill-health payment being taken into account in the calculation of a GIP for an injured individual. Ill health and attributable pensions are treated differently for tax purposes and this approach ensures dependants receive broadly the same financial effect in all circumstances. The examples below help illustrate this point:

- Example 1. An individual's GIP is £10,000 per year and they have an ill-health pension of £4,000 per year. The individual is paid £10,000 per year in total tax free – £4,000 of which is from their pension and £6,000 from the AFCS (£10,000

less 100% of £4,000), totalling the full guaranteed income of £10,000 per year tax-free.

- Example 2. An individual's SGIP is £10,000 per year and they receive a pension in relation to their bereavement of £4,000. The individual receives £4,000 per year from the pension scheme and £7,000 from the AFCS (£10,000 less 75% of £4,000) to give an overall income per year of £11,000. The total amount paid is greater than in example 1 as the income is taxable, so the extra £1,000 per year is paid to help offset the tax charge the individual will incur.

4.17. From 1 April 2019, MOD introduced FS for members of the Regular forces, who are able to request to serve part-time or on a restricted separation basis from this date. FS is designed to provide temporary relief from some of the exigencies of service life, without undermining Defence need which generally requires Regular service to be a full-time unlimited commitment. The amount of SGIP will always be calculated as though an individual had not served on flexible terms. The GIP is not reduced because an individual has had a period of FS. The SGIP is not reduced because an individual has had a period of FS.

### **CP Calculation**

4.18. The underlying CP calculation is also the same as that of the GIP calculation, with the deceased's salary being multiplied by a factor based on their age. A further factor is then applied depending on the number of eligible children and whether there is an eligible partner, the salary used to calculate the CP is the salary of the deceased on the day of death. Where death occurs after service ends, this is uprated by the Consumer Price Index (CPI) to the date of claim in order to take account of the effects of inflation in the period between leaving service and making a claim.

4.19. Where there is an eligible partner:

- and there are up to three eligible children, 15% of the maximum calculated GIP is payable as a CP for each of the first two children, and 10% of the GIP for the third child.
- and there are four or more eligible children, 40% of the maximum calculated GIP is divided equally between the children.

4.20. Where there is no eligible partner:

- and there are up to four eligible children, 25% of the maximum calculated GIP is paid to each child.
- and there are more than four eligible children, the maximum calculated GIP is divided equally between each of the children.

4.21. Similarly, to the SGIP, the CP calculation works out the total earnings lost as a result of the bereavement, in terms of both salary and pension, before allocating a proportion of these earnings to each child. The amount of CP paid is therefore adjusted for the amount of pension also being paid to the child as a result of the bereavement. 75% of any amount paid to the child in relation to the deceased's service pension will be taken into account in the payment of CP, in the same way as for SGIP payments. This provides an enhancement to the income stream to reflect the fact that CPs are taxable (see above examples).

## **Cessation of CP**

4.22 A child who receives CP and is under the age of 19 when they stop full-time education will continue to be paid CP until whichever of the following occurs first:

- the second Monday in January.
- the second Monday after Easter Monday.
- the second Monday in September.
- the child's 19th birthday.
- the day the child commences full-time paid employment.

4.23. Where a child who is in receipt of CP and is under the age of 23 takes a break from full-time education or vocational education of up to one year, they are treated as an eligible child for that year. Although the child will not be eligible for a CP during this break, they will be eligible once they return to full-time education or vocational training within the year. If the child does not return to full-time education or vocational training within the year, they will not be eligible for a CP.

4.24. Where a child has left school but takes a break of up to 15 months before starting full-time education or vocational training, they will be treated as an eligible child for that period. No CP is paid during the break; however, the CP will continue once they enter full-time further education or vocational training if within 15 months from leaving school.

4.25. A child over the age of 17 but under the age of 23 who stops full-time education or vocational training because of ill health is treated as continuing education or training until whichever is the earlier of:

- they resume education or training.
- they are no longer ill but decide not to resume the education or training.
- their ill-health is such that they are unable to resume the education or training.

4.26. In these cases, the CP will be paid until the child reaches the age of 23 or ceases full-time education, whichever is the earlier.

4.27. A child can receive two CPs in respect of two individuals.

4.28. Where it appears that a child fulfils the criteria for eligibility in respect of the death of three or more members of the Armed Forces, they will be awarded the two highest payments for which they are eligible.

## **Bereavement Grant (BG)**

4.29. The BG is payable to the eligible partner. Where there is no eligible partner, then the BG is divided between all eligible children.

4.30. The BG is a tax-free lump sum paid to dependants of the deceased in certain cases. The purpose of the BG is to offset the difference in death in service lump sum payments available from different Armed Forces Pension Schemes (AFPS).

4.31. Under the AFPS 1975<sup>19</sup>, the death in service lump sum paid is equal to three times the individual's final salary, whereas under the AFPS 2005<sup>20</sup> and AFPS 2015<sup>21</sup> the lump sum is equal to four times the individual's final salary.

4.32. The amount paid as BG also depends on whether the death occurs during or after service. This is due to the differing pension benefits paid through the AFPS depending on whether the death occurs during or after service.

4.33. The BG was developed as a part of the AFCS to recognise that where an individual dies as a result of service, their partner and/or child(ren) should not receive a lower lump sum than they may have done if the deceased had been a member of AFPS 2005 or AFPS 2015. As a result, depending on the pension scheme that the person was a member of, and whether the death occurs during or after service, their pension lump sum is enhanced where appropriate by payment of a BG.

4.34. Where an individual dies in service one of the following amounts are payable:

- If the deceased was a member of AFPS 75 only, their dependant(s) will receive a BG of £25,000.
- If the deceased was a member of AFPS 05 only or AFPS 15 (including those who have accrued rights to AFPS 75 or 05) and their salary at the date of death was less than £25,000, their dependant(s) will receive the difference between their salary and the BG amount, for example if their salary was £16,000 per annum, their dependants will receive a payment of £9,000. If their salary at date of death was above £25,000 then no BG is payable.

4.35. If the death occurs after the individual has left service, the BG is paid regardless of the pension scheme of the deceased. The amount payable is one and a half times the base level of BG in order to compensate for the smaller lump sum that is payable from the member's pension scheme where death occurs after service – so the BG payable in these circumstances is £37,500.

4.36. Separate provisions apply for Reservists (see Chapter 7).

### **Bereavement Grant Payments**

4.37. The following table summarises the level of BG payable in various circumstances:

<b>Date of death</b>	<b>AFPS</b>		<b>AFPS 05 and AFPS 15</b>	
	<b>In service</b>	<b>Post service</b>	<b>In service</b>	<b>Post service</b>
From 03.08.10	£25,000	£37,500	Amount dependent on salary at date of death	£37,500

<sup>19</sup> Armed Forces Pension Scheme 1975.

<sup>20</sup> Armed Forces Pension Scheme 2005.

<sup>21</sup> Armed Forces Pension Scheme 2015.

# Chapter 5 - Making a Claim and Payment

## Overview

5.1. In most circumstances, a claim form must be completed before a decision can be made on whether compensation is payable. The claim must be made in writing to DBS Veterans UK within the time limit – see paragraphs 5.4 to 5.11 for more information on what this means.

5.2. AFCS claim forms can be accessed at the following GOV.UK link: <https://www.gov.uk/government/collections/armed-forces-compensation>. The form must be printed and signed, then sent to DBS Veterans UK.

5.3. There are two circumstances where an AFCS award will be considered automatically without the need for a claim form. These are:

- When an individual is medically discharged, and has been considered eligible for an ill-health pension, DBS Veterans UK will automatically consider the principal medical condition leading to medical discharge to determine whether it is caused by service and therefore warrants an AFCS award. This will not happen if the individual already has an AFCS award for that condition or made an unsuccessful claim for an AFCS award for that condition. If a claim made during service for the principal condition was rejected as not service caused, DBS Veterans UK will automatically consider whether service has worsened that condition if the individual is eligible for an ill health pension.
- If DBS Veterans UK decide not to make an AFCS award for the injury listed as the principal medical condition leading to medical discharge because the injury is not considered to be caused by service, DBS Veterans UK will go on to consider whether the condition is a pre-existing or non-service related injury that has been worsened by service, for which an AFCS award may be made.
- When an individual dies whilst in service and leaves an eligible partner and/or eligible child(ren), subject to paragraphs 4.12 to 4.13, bereavement compensation will automatically be considered by DBS Veterans UK.

## Timing

5.4. The time limit for making a claim is, in most cases, seven years. When making a claim for an injury the seven-year time limit starts on whichever is the earliest of the following:

- the day the injury is sustained.
- the day any injury which is not caused by service is made worse by service.
- the day the individual's service ends.
- the date the individual first sought medical advice in relation to an illness (if the claim is in respect of an illness<sup>22</sup>).

5.5. This means there should be sufficient time for an individual to make a claim. If a relatively minor injury is sustained as a result of service, it might be that the individual wants

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<sup>22</sup> Reflects Art 47(1) (d) and (2) of the 2011 Order.

to make the claim immediately and move on. However, if the injuries are of a more serious nature and continued medical treatment is required, they may wish to delay their claim until their injuries are more settled and they have established their rehabilitative process. It is important to recognise that while an individual remains in service, they will continue to receive their salary and appropriate support from the Services. Award levels depend on assessing the claimed injury when it is in a treated steady medical state and/or prognosis is reasonably certain. Deferring claims until the ongoing disablement caused by an injury is clearer can, in many cases, be helpful by allowing awards to be made final with appeal rights; however, interim awards may be made (see paragraphs 3.36 to 3.38).

5.6. In some illness cases, the seven-year time limit can be extended for a further three years where the illness first started within the seven-year period, but was not diagnosed until less than a year before the end of those seven years, so the individual may not have had sufficient time to make their claim.

### **Illnesses with a Late Onset**

5.7. The above time limits do not apply in cases where the illness (including mental health disorder) is medically considered a late-onset illness. In these cases, the time limit is three years from the date of diagnosis, whenever that diagnosis takes place. This provision applies to post-service claims only (i.e. it could be some decades after service has ended).

### **Other Time Limits that Apply**

5.8. If an individual leaves service and dies of an injury or illness caused by service within seven years of having left service, a claim for compensation must be made within three years of the bereavement.

5.9. A claim for a *fast payment* (see paragraphs 3.56 to 3.60) can be made within six months from the date of the injury.

5.10. If an individual is physically or mentally incapable of either making a claim themselves or instructing another person to do so on their behalf within the time limits, the time limit can be extended. Each case of this kind will be considered in the light of its specific circumstances.

5.11. There may be instances where an individual wants to either amend their claim or later decides not to pursue it at all. Where this happens, the individual should write to DBS Veterans UK to let them know as soon as possible. If the claim is withdrawn it cannot later be re-instated, though if this happens within the time limit, a new claim can be made.

### **Relationship between AFCS and Common-Law Damages**

5.12. The AFCS is a 'no fault' scheme, which means receiving an AFCS award does not indicate there has been negligence on the part of MOD in the injury, illness or death being sustained; in making a payment the MOD is not admitting any form of liability. A claim under the Scheme does not, however, prevent Service personnel or their dependants from pursuing claims for common-law damages if they consider that injury, illness or death

occurred as a result of MOD or third-party negligence<sup>23</sup>. Decisions under the AFCS and through a common-law damages claim are made entirely independently from one another.

5.13. It is longstanding MOD and wider public policy, as well as a principle of common law, that an individual should not be compensated twice for any single injury, illness or death. Therefore, where Service personnel or their dependants receive compensation under the AFCS and also receive common-law damages<sup>24</sup> for the same injury, illness or death, action is required to ensure 'double compensation' does not occur. Adjusting awards to take account of other payments made in respect of the same injury, illness or death is termed abatement.

5.14. In signing the AFCS claim form an individual confirms they will notify DBS Veterans UK if they have claimed for, or in future claim, compensation as a result of MOD or third-party negligence.

5.15. Where MOD 'no-fault' compensation has been paid and common-law damages awarded, either the AFCS award or the common-law damages will be adjusted where payments are made twice to compensate for the same aspects of injury.

## **Personal Insurance**

5.16. Purchasing personal accident and/or life insurance cover is voluntary and entirely independent from the compensation provided for under the AFCS. It is for individual Service personnel to decide whether or not they wish to purchase separate insurance cover and, if so, which insurance policy to adopt.

5.17. Any payment paid from AFCS is paid in addition to any personal accident or life insurance cover. AFCS payments are not reduced in line with insurance payments. It may be that insurers reduce their payments in light of AFCS payments; this would depend on the particular policy the individual purchased.

## **Negligence or Misconduct**

5.18. If an individual contributed to their injury through their own negligence or misconduct, up to 40% of any AFCS award payable may be withheld. Similarly, self-inflicted injuries are excluded from the Scheme except where the self-inflicting of the injury is a result of a mental disorder caused by service.

## **Payment**

5.19. Lump sums and any associated supplementary awards paid under the AFCS are paid as soon as possible after the decision to make an AFCS award has been made.

5.20. Where a GIP is payable, it is paid as soon as possible from when eligibility begins. GIPs are not paid while individuals are still in service. GIPs are payable from the day after the last day of Service.

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<sup>23</sup> Compensation arising from a source unconnected to the Ministry of Defence, e.g. in the event of a car accident, a Service person may seek compensation from the other driver.

<sup>24</sup> An award of compensation made following a claim in the civil courts for injury, illness or death

5.21. For claims made after an individual has left service and where a GIP is payable, the payment begins from the date of the AFCS claim. All those medically discharged who qualify for an ill-health pension are automatically considered for an AFCS award for their most serious medical condition (unless they have already made a claim under AFCS for the condition).

### **Frequency of Payment**

5.22. GIPs, SGIPs and CPs are paid monthly in arrears. They are therefore paid on the same date each month, e.g. if the first payment is made on the 10th of the month then subsequent payments will be made on the 10th of the month.

### **Admission to the Royal Hospital, Chelsea**

5.23. The Royal Hospital, Chelsea, is part-funded by the MOD with pensioners being provided with board, lodging and medical care. Therefore, if an individual is entitled to an AFCS GIP or SGIP and they enter the Royal Hospital, Chelsea as an in-pensioner, the AFCS award will cease until such time as they leave. This ensures there is no duplication of funding.

### **Sharing and/or Accessing Information**

5.24. There may be occasions when a person other than the individual who is claiming AFCS may want to find out about the claim in the course of their staffing responsibilities or on behalf of the individual concerned, for example Company Commanders, Visiting Officers, or other individuals supporting the injured Service person, or their family.

5.25. Whilst it is understood that in dealing with the impact of their injury and working their way through the recovery process some individuals may seek the help and support of others in relation to their AFCS claim, DBS Veterans UK must in all cases adhere to the rules in data protection and confidentiality legislation and policy. As a result, before any AFCS claim information can be shared with a third party the individual must give written consent to DBS Veterans UK.



# Chapter 6 - Claims Made on Behalf of Another Person

## Persons who are Mentally Infirm

6.1. Where a person may be eligible for AFCS compensation but in the opinion of DBS Veterans UK is incapable of managing his or her own affairs because of mental infirmity, they can have their claim progressed by a person who has legal authority to do so, for example a parent or a third party such as a representative from an ex-service organisation. If, however, there is no one who has appropriate authority to act on the individual's behalf, DBS Veterans UK can appoint another person to do so. Before appointing the person, DBS Veterans UK may seek assurance from that person as to the use of the AFCS compensation in respect of the individual.

6.2. The appointed person must:

- exercise the individual's rights in respect of their AFCS claim.
- receive and deal with awards payable under the Scheme.
- manage the award for the benefit of the individual.

6.3. Where DBS Veterans UK has appointed a person to undertake this role, they may withdraw the appointment at any time for reasons that include, but are not limited to:

- Non-compliance with reasonable requests for evidence to process the claim in accordance with due diligence and the established process;
- Irregularities and misleading information which suggests impropriety and a fraudulent claim, that may potentially result to misappropriation of public funds; and
- The person themselves may resign having given one month's notice to enable alternative arrangements to be made.

# Chapter 7 - Reserve Forces

## Overview

7.1. The AFCS applies to all members of the Reserve Forces, including Sponsored Reserves<sup>25, 26</sup> and their dependants. In general, the Scheme rules for the Reserve Forces are the same as for Regular Forces, with some necessary adjustments in place reflecting the different basis of engagement. These are detailed below.

## GIP

7.2. Essentially the base GIP calculation is the same for Reserves as for Regulars. The GIP is based on the individual's age at last birthday and salary at the end of their Reserve service. For Reservists the salary figure used to calculate GIP is the basic military salary of a Regular Service person in the same service and of equivalent rank and seniority. There are, however, some circumstances where the GIP calculation may also include an amount in respect of the Reservists' award<sup>27</sup> that the Reservist was receiving, in other words an additional amount of basic pay that the Reservist was receiving to take account of the Reservist's higher civilian pay.

7.3. Set out below are the types of circumstance which may arise in relation to Reservists. This list includes reference to the individual's level of civilian salary compared with their military salary:

- (1) injured on permanent service (i.e. mobilised) – individual's civilian salary is more than their service salary.
- (2) injured on permanent service (i.e. mobilised) – individual's civilian salary is less than their service salary.
- (3) injured on training, drill nights, exercise or while fulfilling Additional Duties Commitments (ADC) – individual's civilian salary is more than their service salary.
- (4) injured on training, drill nights, exercise or while fulfilling ADC – individual's civilian salary is less than their service salary.

## GIP Calculations

7.4. In all cases where circumstances (1) or (3) apply, the GIP calculation is based on the military salary plus the Reservists' award.

7.5. In situations (2) and (4) the GIP calculation is based on the individual's military salary only.

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<sup>25</sup> The Sponsored Reserve consists of personnel who have joined the Reserve Forces because of their employers' obligations to MOD for the maintenance of agreed services in an operational theatre as laid down in Part V of the Reserve Forces Act 1996.

<sup>26</sup> Members of the Royal Fleet Auxiliary (RFA) may be eligible for compensation where their Sponsored Reserve status is activated. In most other circumstances, as, MOD Civil Servants they are entitled to claim compensation through the Civil Service Injury Benefit Scheme.

<sup>27</sup> A financial award paid to Reservists under regulations made under section 83 of the Reserve Forces Act 1996.

7.6. If the individual is in Full Time Reserve Service (FTRS)<sup>28</sup> the GIP calculation will be based on the basic military salary.

### **Impact on GIP when other payments have been, or will be, paid**

7.7. The Reservist GIP reflects the lost earnings for the individual in terms of both salary and pension; therefore, it is adjusted to take account of pensions or payments received from any of the following schemes:

- the AFPS 1975, AFPS 2005, AFPS 2015, Gurkha Pension Scheme, a Reserve Forces Pension.
- the Armed Forces Early Departure Payment (EDP) Scheme.
- personal and occupational pensions.

7.8. Where a Reservist is entitled to a GIP for any period during which the Reservist is also entitled to an armed forces ill-health pension or EDP for the same injury for which GIP is paid, the GIP will be reduced by the full amount of the ill-health pension.

7.9. Where a Reservist is entitled to a GIP for any period during which the Reservist is also entitled to:

- an AFPS or Reserve Forces pension or EDP which is not paid for the same injury for which GIP is paid; or
- a civilian pension that is not an ill-health pension for the same injury for which the GIP is paid, the GIP will be reduced by 75%.

7.10. See Annex B for examples of GIP calculations.

### **Awards for Dependants**

7.11. Calculations of awards for dependants of Regulars and Reservists are made in the same way. This is outlined in Chapter 4. The addition of reservist awards and adjustments take place where appropriate.

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<sup>28</sup> FTRS is when a Reservist voluntarily serves under a full-time contract of employment with the Armed Forces.

## Bereavement Grant (BG)

7.12. The following levels of BG apply to Reserve personnel:

	Reserves				
	In Service				Post Service
Date of death	Members of the FTRS, NRPS and non-active members of the RFPS 05	Reserve members of the AFPS 15 and those who are not members of the RFPS 05, FTRS or NRPS	Active member of the RFPS 05	Former member of Reserves	
From 03.08.10	£25,000	£37,500	£25,000 less salary	£37,500	£37,500

7.13. The BG award paid for Reservists where death is caused by service and where the individual is not a member of the RFPS 05, the FTRS PS or the NRPS PS is 1½ times the standard BG. This provides an enhancement to any BG paid, to recognise the fact that civilian occupational pensions schemes usually have less generous provisions in relation to the lump sum that may be payable to dependants on death than that of the RFPS.

# Chapter 8 - Review, Reconsideration and Appeal

## Overview

8.1. The AFCS is designed to make awards as soon as possible after the claim. These awards are full and final and not subject to continuing review, in order to provide individuals with a degree of certainty about their financial position. This allows them to move forward with their lives, focusing on the future rather than wondering whether they will receive compensation, how much it might be, and whether it may be changed at some point in the future. There are very limited circumstances under which an award may be reduced or removed. Gaining employment or recovering more quickly or more fully than originally expected do not result in removal or reduction of compensation.

8.2. In every case, all relevant evidence and information will be gathered, and all relevant facts carefully considered in the assessment of the claim in order to make a reasonable, well-documented decision. This ensures that the award is comprehensive, accurate and equitable from the outset. It should properly reflect the injury or injuries which have been caused by service. It is not helpful if evidence should come to light at a later stage that could have been considered at the outset and may have had an impact on the original award, so the Scheme is designed to minimise the likelihood of this happening.

8.3. In cases where an injury is caused by service but its ongoing effects on the individual are uncertain an *interim award* may be made. This is where compensation is paid at what appears to be the likely level of the final award, but the individual's treatment is not complete nor prognosis sufficiently clear to come to a final decision on the most appropriate level of compensation (see paragraphs 3.36 to 3.38 for more details).

8.4. In making a decision on a claim, the decision-maker will ensure that any subsequent scrutiny of the decision will clearly show that all available and relevant evidence was obtained and considered at the time of the initial claim. While updated evidence may be available and considered at later stages, the re-examination is not designed as an opportunity to look for more evidence. When an award is looked at again, DBS Veterans UK will therefore focus on what the individual says about the effects of the injury and why they do not feel the Scheme has been appropriately applied, along with the evidence provided to support the reasons why the individual disagrees with the decision, rather than reopening the original claim.

8.5. In summary, the initial claim consideration is when the 'horizon scan' of all issues relevant to the claim will be made.

## Types of Review

8.6. It is recognised that in some circumstances unexpected events that were not foreseen at the time the claim was made and awarded and which change the prognosis or trajectory of recovery, may mean the individual wishes their award to be reviewed. The purpose of reviewing cases under these circumstances is to ensure that the award properly reflects the injury and its effects.

8.7. The following are the various forms of review within the Scheme:

- reconsideration.
- review of an AFCS award when service ends.
- review of an AFCS award in exceptional circumstances.
- review of an AFCS award due to ignorance of fact or mistake<sup>29</sup>.
- final review of an AFCS award.
- review of an AFCS award to take account of award of damages.

8.8. More information can be found on each of these reviews in the paragraphs below. Importantly, the majority of reviews cannot lead to a reduction of a compensation payment. This reflects the full and final nature of the Scheme and encourages individuals to move forward with life after injury with financial security.

### **Reconsideration**

8.9. The reconsideration process enables an individual to explain why they do not agree with the decision taken on their claim. An application for reconsideration must be made in writing, signed by the individual, or on behalf of the person making the application, and should explain the reasons why the individual is not happy with the decision. An application for a reconsideration must be made within 12 months from the date of the original decision which is the subject of the reconsideration. If the application is made on behalf of the individual, DBS Veterans UK will seek confirmation that authority has been given by them to make the request. DBS Veterans UK will then take a look at the case again in light of the comments received. The decision-maker who undertakes the reconsideration is different from the original decision-maker, enabling a 'fresh look' at the case. During reconsideration, DBS Veterans UK can either maintain the decision already made or increase the award. The award cannot be reduced or removed.

8.10. If an individual applies for a reconsideration and does not detail why they do not agree with the decision, DBS Veterans UK will ask for an explanation. While reconsideration is not limited to examining the reasons why the individual disagrees with the decision, this is the main focus of the process.

8.11. There may be cases where the outcome of a reconsideration leads to an increase in award level. This could lead to an increase in the level of an existing GIP or mean that a GIP becomes payable for the first time. In either of these circumstances, the date for paying the revised GIP will be the original date of the claim which has been reconsidered, or the day following service termination, whichever of the two is later.

### **Review of an AFCS award when service ends**

8.12. Where an individual has made a claim under the AFCS and an award has been made within the seven years prior to their leaving service, they can request a review of their award up to a year after they have left service. This applies regardless of how service ends, and regardless of how the decision was reached (the original decision, a decision at reconsideration, a decision at review, or Tribunal decision – for more on Tribunals see paragraphs 8.23 to 8.37).

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<sup>29</sup> Review may be on the grounds of ignorance or mistake as to a fact, or mistake as to the law.

8.13. By the date of service termination, the majority of injured personnel will have reached the point at which their condition has been treated and stabilised or at least prognosis and future recovery path will be clear. As a result, decisions made at this time can be informed by all relevant in-service medical and other evidence. For this reason, individuals can write to DBS Veterans UK within this year if they feel their AFCS award is no longer appropriate, explaining why.

8.14. If the injury for which the award was made has worsened, or a further injury developed, the award can be changed. The individual should, in their application, explain why they think the injury has got worse or which further injury has developed. These reasons will be the focus of the review. The review can result in the award being maintained or increased; it cannot result in the reduction or removal of an award.

### **Review of an AFCS award in exceptional circumstances**

8.15. The Scheme is designed to provide a full and final award taking into account the expected effects of the injury and its treatment through life. There may, however, be circumstances where an injury unexpectedly deteriorates, or consequential problems develop beyond those anticipated. In these cases, the award given may not be appropriate in the longer term. If this occurs within ten years from the latest decision on the claim, the individual can request a review of their award, explaining how and when the injury worsened and why this worsening is both unexpected and exceptional. This timeframe allows a reasonable period of time for any departure from the expected course of recovery to become evident.

8.16. Individuals must apply for this review within a year of the worsening or unexpected and exceptional development beginning – this is enough time to contact DBS Veterans UK to let them know that the award should be looked at again. Similar to reconsideration and other types of review, this type of review can only maintain or increase the award; it cannot be reduced. Recognising that such unexpected and exceptional worsening is likely to be uncommon, as final awards under AFCS are only made once prognosis is clear (with interim awards used until the injury is settled) only one review of this type can be conducted for any injury.

8.17. There may be cases where the outcome of an exceptional review leads to an increase in the level of an existing GIP or mean that a GIP becomes payable for the first time. In either of these circumstances, the GIP becomes payable from the date of the request for the exceptional review or, if the GIP has not yet been paid as the individual has not left service, then the new level of GIP will be payable from service termination.

### **Review of an AFCS award because of ignorance of fact, or mistake as to a material fact or the law**

8.18. A decision under AFCS can be reviewed at any time if it was made in ignorance of a fact or based on a mistake as to a material fact or of a mistake as to the law. This type of review can be instigated either by the individual or the MOD and can lead to:

- an award being made where one previously was not; or
- the original decision being revised so that compensation is either cancelled, reduced, maintained or increased.
- a change in the date from which compensation is payable.

8.19. Great care will always be taken when considering whether an award of compensation is cancelled or reduced, and this will only be done where there is compelling evidence of a mistake or ignorance of a fact.

### Final review of an AFCS award

8.20. Where more than ten years have passed since the latest AFCS decision, a ‘final review’ of an AFCS award can be requested. Given the number of review points that are available for an award before the ten-year point, and the basis of AFCS as a Scheme which makes final decisions only once prognosis is clear, it is anticipated that there will be exceptionally rare occasions where the AFCS award is found to be inappropriate beyond the ten-year point. Where this does happen, and the individual can provide new and compelling evidence that maintaining the award as it stands would be manifestly unjust, then this type of review can be requested. Again, this final review cannot reduce an award – awards can only be either maintained or increased. This reflects the full and final nature of the Scheme which encourages individuals to move forward with their lives following injury; only one review of this type can be conducted for any injury.

8.21. There may be cases where the outcome of a final review leads to an increase in the award level along with an increase in the level of an existing GIP or bringing a GIP into payment for the first time. In either of these circumstances, the GIP is payable from the date the final review was requested, or if the person is still in service, the new GIP is payable from the day after service ends.

### Where a decision is changed, the effective date of the change is:

	Date of claim	Day after service termination	Date of application for review
Reconsideration	✓		
Review of an AFCS award when service ends		✓	
Review of an AFCS award in exceptional circumstances			✓
Final review of an AFCS award			✓
Review of an AFCS award due to ignorance or mistake – at individual’s request	✓*		
Review – ignorance or mistake – at DBS Veterans UK’s request	✓*		
Review following award of damages			✓ <sup>30</sup>

\* Where the individual has applied for the review, any increased award is backdated to the date as set out in the table above subject to a maximum backdated period of six years; this is the usual time period for which backdated payments in public schemes are payable in the UK.

<sup>30</sup> This can be instigated by the Secretary of State where we find out damages have been recovered and not taken account in the AFCS award or vice versa. Article 64(7) provides that the reduced amount becomes payable on the date notification is given or sent to the claimant.



8.22. The award cannot be paid further back than the date of the original claim.

## **Appeals**

8.23. If an individual is not happy with the decision made in relation to their AFCS claim, in most cases, they may appeal that decision to an independent tribunal. The circumstances of each case will be different, and the individual will need to give the reasons why they disagree with the decision. If they have evidence to support the appeal this should be sent to DBS Veterans UK.

8.24. Once an appeal is made DBS Veterans UK will first look to see if a reconsideration has been conducted on the claim (see paragraphs 8.9 to 8.11). If one has not been undertaken, they will automatically undertake a reconsideration. This reconsideration enables DBS Veterans UK to take a fresh look at the case in light of the comments and any evidence received. The outcome of the reconsideration may lead to the appeal being resolved and not proceeding to an independent tribunal.

8.25. However, if a reconsideration has previously been conducted or the reconsideration does not change the decision, the case will proceed to an independent tribunal; each consists of a legally qualified Chair, a medical member and an ex- Service member. In England and Wales, appeals are heard by the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal. In Scotland and Northern Ireland, appeals are heard by a Pensions Appeal Tribunal. For claimants living overseas, their appeals will be dealt with by the Tribunal covering England and Wales.

### **Time Limits for Appeals**

8.26. Appeals must be made within 12 months from the date of the original decision (or, where the individual has applied for a reconsideration before appealing, the reconsideration decision).

8.27. There are some circumstances where the individual will be allowed to appeal beyond the 12-month period. When the individual appeals after 12 months have elapsed, they must state why they (or someone on their behalf) did not put in place an appeal within the 12-month period. Individuals cannot appeal after 24 months.

### **Appeals Process**

8.28. The steps that must be taken in order to appeal depend on where the individual lives and are set out below:

8.29. If living in England, Wales or Overseas the individual must either complete an appeal form or write to DBS Veterans UK stating:

- their name, address and member/service number.
- the name and address of any representative – if they have one.
- an address where documents can be sent or delivered (this will normally be the home address).
- the date and details of the decision being appealed.
- why the individual disagrees with the decision.

8.30. If living in Northern Ireland, the individual must complete an appeal form and send it to DBS Veterans UK.

If living in Scotland, the individual must complete a form and send it to the Scottish Tribunal directly at the following address: Pensions Appeal Tribunal, George House, 126 George Street, Edinburgh, EH2 4HH. The form can be obtained from [www.gov.uk](http://www.gov.uk) at <https://www.gov.uk/government/collections/armed-forces-compensation> or by calling the DBS Veterans UK Helpline on 0808 1914218.

8.31. Once the appeal application is lodged, DBS Veterans UK prepare a bundle of documents relevant to the appeal and these are passed to the tribunal service. DBS Veterans UK will also provide the individual and their representative (if they have one) with a copy of the bundle of documents. The tribunal will provide the individual with information on the appeal procedure. The individual bringing the appeal is advised to attend the tribunal hearing. Oral evidence provided by the individual may be relevant to the tribunal and can provide confidence that their case has been fully heard. The Royal British Legion and other service charities provide a free service to support people through the process and can attend the hearing with or on behalf of the appellant. Appellants may choose to be represented by a company however DBS will not be able to provide any assistance with the cost of this decision. In addition, this may result in the individual only receiving some of the award if the appeal is successful. These companies are not endorsed by the MOD, using them will be at the expense of the individual. DBS Veterans UK<sup>31</sup> will usually be represented at the hearing. The tribunal hearings are open to the public.

8.32. When the appeal is heard the tribunal will consider all the information on the case. The tribunal panel members may ask questions of the individual bringing the appeal, their representative (if they have one) or the DBS Veterans UK representative about the case. The tribunal's decision could result in the award being maintained, increased or reduced.

8.33. The decision by the tribunal may be announced by the Chair at the hearing, or be communicated later, in writing, to the appellant and DBS Veterans UK. The tribunal may also adjourn an appeal hearing and issue directions to either party (the individual or DBS Veterans UK) to obtain/produce further evidence if they deem it necessary to enable their decision to be made. In these cases, the appeal will be heard again once both parties have had the opportunity to consider the further information.

8.34. On receipt of the tribunal decision, if either party (the individual or the Department on behalf of Secretary of State), does not agree with the decision on a point of law they may have a further right of appeal.<sup>32</sup> In order to appeal, they first need to make an application directly to the tribunal service for the written statement of reasons for the decision. The further appeal to the higher-level tribunal must be made within 42 days (6 weeks) from when the tribunal issued their written reasons for the decision. The higher-level tribunal is in England and Wales, the Upper Tribunal (Administrative Appeals); in Scotland, the Upper Tribunal; and in Northern Ireland, the Pensions Appeal Commissioners.

8.35. In cases where the Secretary of State appeals the lower level tribunal's decision to the higher-level tribunal, DBS Veterans UK may decide not to put into payment any money that may be due to an individual as a result of the tribunal's decision. It does not affect any awards that have already been paid by DBS Veterans UK to the individual as a result of the

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<sup>31</sup> The DBS Veterans UK representative will be a MOD civil servant, not a solicitor or barrister.

<sup>32</sup> Appeals can only be brought on a point of law, not because a party disagrees with the decision.

claim. In these cases, DBS Veterans UK must notify the individual in writing that the payment is being suspended.

8.36. If the Secretary of State later decides not to appeal the lower level tribunal's decision, the lower level tribunal's decision will be implemented and any payments (including back payments) due to the individual will be paid in full.

8.37. More information on the tribunal procedures can be found at the following link: <https://www.gov.uk/government/publications/war-pensions-and-armed-forces-compensation-chamber-tribunal-rules>

## **Overpayment Recovery**

8.38. Where it is discovered that an underpayment has been made on a claim, the balance will always be paid. Overpayment recovery will take place in line with departmental and broader government guidelines where it is discovered that an incorrect payment has been made or is in payment.

# Chapter 9 - Additional Information

## Overview

9.1. AFCS awards are one element in a coordinated range of services, benefits and programmes provided by the Government, devolved administrations and delivery agencies. These organisations work together to support an individual who has been injured in the service of their country to maximise their well-being.

9.2. There may also be other benefits to which individuals are entitled. For more information on such benefits, individuals can seek advice from the Royal British Legion, the Citizens' Advice Bureau or from the DWP at [www.gov.uk](http://www.gov.uk).

## Personal Insurance

9.3. Service personnel may wish to purchase separate personal accident and/or life insurance. To do so is voluntary and entirely independent from the compensation provided under the AFCS. It is for individual Service personnel to decide what cover if any is required and if so which insurance policy to adopt.

9.4. Any payment paid from personal accident or life insurance cover is paid in addition to any AFCS award.

## Free Prescriptions

9.5. Individuals may receive free NHS prescriptions which relate to the injury or illness for which they have received an AFCS award. To receive a certificate that enables them to claim free prescriptions, individuals need to contact DBS Veterans UK.

## Universal Credit

9.6. All AFCS awards are exempt from the financial assessment for Universal Credit. Universal Credit introduced by DWP in April 2013 on a phased approach is a new system of working age benefits for those who are looking for work or on a low income to simplify the current system.

## Social Care

9.7. AFCS lump sums are exempt from the Local Authority social care financial assessment when put into a personal injury trust<sup>33</sup> within a year of receipt. From October 2012, ongoing AFCS Guaranteed Income Payments are also exempt from the social care financial assessment.

## IVF Treatment

9.8. Under the AFCS Service and ex-Service personnel with serious traumatic physical injury to genitalia or groin due to service which results in infertility will receive a

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<sup>33</sup> A personal injury trust is a form of trust, a legally binding arrangement, where funds are held by persons called trustees for the benefit of another or others upon the terms of a document called a trust deed.

supplementary award where clinically appropriate, individuals with these injuries, where infertility has been accepted as due to service, are entitled to receive the number of full cycles of IVF treatment that the NHS trust responsible for the individual's treatment determines corresponds to best practice, up to a maximum of three full cycles of treatment. For further information please contact [ArmedForces.IVF@nhs.net](mailto:ArmedForces.IVF@nhs.net) (see paragraph 9.5 regarding prescription exemptions).

## **Travel Concessions**

9.9. Individuals who have received at least one AFCS award at tariff levels 1-8 who have a permanent mobility-related injury may be automatically eligible, without further assessment, to free bus travel. They may also receive a 'blue badge' which entitles them to free parking. More information can be obtained from the individual's local authority or via [www.gov.uk](http://www.gov.uk).

## **Assistance from Private Companies with the Completion of AFCS Claims**

9.10. Service personnel who make a claim for an AFCS award may choose to approach or be approached by a company that offers assistance with the completion of a claim. These companies are **not** endorsed by the Ministry of Defence. The use of these companies to help with a AFCS claim can lead to significant charges detracting from the value of any financial award. Service personnel should contact DBS Veterans UK if they require help with an AFCS claim.

# Annex A - Worked Examples of Guaranteed Income Payment Calculations

## Example 1

A Service person aged 23 loses a foot in an incident caused by service. The injury is assessed and awarded an AFCS descriptor at tariff level 8.

On leaving service their salary was £20,000.

The individual receives a tax-free lump sum payment of £61,800, and a GIP upon discharge.

The amount of GIP is calculated as follows:

GIP factor for a person aged 23 is 1.182.

Salary x GIP factor, i.e.  $£20,000 \times 1.182 = £23,640$

As the injury is in tariff level 8 the person will receive 50% of the maximum GIP, so the annual GIP is calculated as £11,820 a year.

The individual is also entitled to an AFPS ill-health pension of £3,619 a year and the GIP takes account of 100% of this figure.

Therefore, the individual is paid a GIP of £11,820 per year, of which £8,201 is paid via the AFCS and £3,619 via their AFPS ill-health pension. The GIP and pension are increased in line with inflation each year.

## Example 2

A Service person aged 36 loses a leg as a result of service and is medically discharged from the Armed Forces. They received a salary of £35,000 and the injury is assessed as a tariff level 5 injury.

In addition to a tax-free lump sum payment of £180,250, the individual receives a GIP upon discharge.

The amount of GIP is calculated as follows:

The relevant factor is applied for a person aged 36 which is 1.014. Salary x GIP factor, i.e.  $£35,000 \times 1.014 = £35,490$ .

As the injury is in tariff level 5, the individual receives 75% of the maximum GIP, so the annual GIP paid is £26,618 a year.

The individual's AFPS ill-health pension entitlement was £13,750 a year, and the GIP is adjusted appropriately.

£12,868 is paid via AFCS, with £13,750 from the AFPS. The GIP and pension are increased in line with inflation each year.

### Example 3 - Reservist on Permanent Service

A Reservist aged 25 loses sight in one eye due to service. They receive a salary of £24,000 and had a financial award totalling £3,000 paid in relation to their Army Reserve service. Their salary for GIP purposes is therefore £27,000.

The relevant factor is applied for a person aged 25 which is 1.157. The amount of GIP is calculated as:

Salary x GIP factor i.e. £27,000 x 1.157 = £31,239.

As the injury is a tariff level 8, the individual will receive 50% of the maximum GIP, so the annual GIP paid is £15,620 a year.

The individual has an occupational pension of £4,500 a year and the GIP takes account of 75% of this figure. Therefore, the award is adjusted accordingly:

£15,620 less 75% x £4,500 = (£3,375) = £12,245.

They therefore receive an occupational pension of £4,500 enhanced by a GIP of £12,245. The GIP and pension are increased in line with inflation each year.

### Example 4 - Reservist not on Permanent Service

A Reservist aged 37 is medically discharged from service after losing a leg below the knee during exercise. Their basic military pay is £35,000; however, they also qualify for an additional £7,000 financial award. Therefore, the salary used for GIP purposes is £42,000.

The relevant factor is applied for a person aged 37 which is 1.000. The amount of GIP is calculated as:

Salary x GIP factor = £42,000 x 1.000 = £42,000.

As the injury is a tariff level 6, he will receive 75% of the maximum GIP, so the annual GIP paid is £31,500 a year.

They have a civilian occupational pension of £25,500 a year and the GIP takes account of 75% of this figure. Therefore, the award is adjusted accordingly:

£31,500 less 75% of £25,500 (£19,125) = £12,375.

They therefore receive an occupational pension of £25,500 enhanced by a GIP of £12,375. The GIP and pension are increased in line with inflation each year.

# Annex B - Worked Examples of Survivors' Guaranteed Income Payment and Child Payment Calculations

## Example 1

A married Service person with no children aged 24 dies as a result of service. Their salary is £21,441 a year.

The SGIP is calculated as follows:

Salary x the relevant GIP factor x 0.6 = £21,441 x 1.170 x 0.6 = £15,052

The partner is entitled to an AFPS pension award of £4,178 a year and the SGIP takes account of 75% of this figure. Therefore, the total amount the partner receives is £4,178 as AFPS income, enhanced by £11,918 from the AFCS. This is paid for life and increased in line with inflation each year.

## Example 2

A married Service person with 3 children aged 31 dies as a result of service. Their salary is £32,000.

The SGIP is calculated as follows:

Salary x the relevant GIP factor x 0.6 = £32,000 x 1.081 x 0.6 = £20,755

The partner is entitled to an AFPS pension of £12,500 and the SGIP takes account of 75% of this figure. Therefore, the total amount the partner receives is £12,500 as AFPS income, enhanced by £11,380 from the AFCS. This is paid for life and increased in line with inflation each year.

## Child Payments

From the example above the Service person was 31 when they died and had a salary of £32,000.

The amount of compensation payable for each child is calculated as follows and is dependent on the number of children. Where there are three children, the first two children receive 15% of the maximum GIP and the third child receives 10% of the maximum GIP.

Children 1 and 2 – the CP payable is calculated as follows:

Salary x the relevant GIP factor x 0.15 = £32,000 x 1.081 x 0.15 = £5,189

Child 3 – the CP is calculated as follows:

Salary x the relevant GIP factor x 0.1 = £32,000 x 1.081 x 0.1 = £3,459



Each child is entitled to an AFPS pension of £571 a year. The AFCS income is adjusted to account for 75% of this figure.

Children 1 and 2 receive £571 from the AFPS, plus £4,761 from the AFCS (£5,189 less 75% of £571).

Child 3 receives £571 from the AFPS, plus £3,031 from the AFCS (£3,459 less 75% of £571).

# Annex C - Guaranteed Income Payment and Survivors' Guaranteed Income Payment Age Factors

<b>Age at last birthday</b>	<b>GIP Factor</b>	<b>Age at last birthday</b>	<b>GIP Factor</b>
16	1.205	37	1.000
17	1.202	38	0.986
18	1.199	39	0.972
19	1.196	40	0.957
20	1.192	41	0.943
21	1.189	42	0.928
22	1.185	43	0.913
23	1.182	44	0.897
24	1.170	45	0.882
25	1.157	46	0.866
26	1.145	47	0.849
27	1.132	48	0.833
28	1.120	49	0.816
29	1.107	50	0.799
30	1.094	51	0.781
31	1.081	52	0.763
32	1.068	53	0.744
33	1.055	54	0.724
34	1.041	55	0.705
35	1.028	Over 55	0.705
36	1.014		

# Annex D - Worked Examples of Multiple Injuries arising in or from the same incident

All injuries, arising from the same incident, will be compensated for. Injuries will be grouped according to the five different zones of the body:

- A – head and neck
- B – torso
- C – upper and lower limbs
- D – senses
- E – mental health

There are 3 methods of calculating the lump sum payable depending on the severity of the injuries and the body zones affected.

In all cases, the total lump sum payable will not exceed the amount of a tariff level 1 lump sum of £650,000.

## Example 1 <sup>34</sup>

A Service person has multiple injuries which are caused by service, arising from the same incident. This method of calculating applies where a descriptor is at tariff levels 1 – 4 or 2 descriptors at tariff levels 5 and 6 have been awarded.

Injury	Tariff Level	Tariff Amount	Percentage Payable	Amount payable
Complex injury to abdomen	8	£61,800	100%	£61,800
Severe scarring to torso	12	£10,300	100%	£10,300
Loss of an arm below elbow	5	£180,250	100%	£180,250
Permanent severe mental disorder	6	£144,200	100%	£144,200

**Total award payable: £396,550**

## Example 23<sup>35</sup>

If the total award payable is more than the tariff level 1 amount, the amount is limited to the maximum amount payable (currently £650,000).

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<sup>34</sup> See paragraphs 3.44 – 3.45 of JSP 765

<sup>35</sup> See paragraphs 3.46 – 3.48 of JSP 765

Injury	Tariff Level	Tariff Amount	Percentage Payable	Amount payable
Full thickness burns to torso	4	£298,700	100%	£298,700
Complex injury to chest	7	£92,700	100%	£92,700
Complex injury to abdomen	8	£61,800	100%	£61,800
Complex injury to hand	9	£41,200	100%	£41,200
Severe scarring to arm	12	£10,300	100%	£10,300
Blast injury to ears	7	£92,700	100%	£92,700
Permanent severe mental disorder	6	£144,200	100%	£144,200

**Total calculated award: £741,600**

**Award limited to maximum amount – total payable: £650,000**

### Example 3<sup>36</sup>

A Service person has multiple injuries which are caused by service, arising from the same incident. There are at least 2 descriptors at tariff levels 1 to 11 which are in at least 2 different body zones. The lump sum is calculated by applying percentages to the tariff amounts in each of the body zones affected.

100% of the lump sum is paid for injuries in the body zone attracting the greatest level of compensation, 80% of the lump sum is paid for the injuries in the body zone attracting the second highest amount of compensation, 60% for the third, 40% for the fourth, 20% for the fifth. The lump sum payable is calculated as follows:

Injury	Body Zone	Tariff Level	Tariff Amount	Percentage Payable	Amount Payable
Fracture of ankle	C	9	£41,200	100%	£41,200
Left below knee amputation	C	6	£144,200	100%	£144,200
Blast injury to ears	D	10	£27,810	80%	£22,248
Fracture of facial bones	A	11	£15,965	60%	£9,579
Shrapnel wound to face	A	12	£10,300	60%	£6,180
Mental Disorder	E	13	£6,180	40%	£2,472
Burns to lower chest wall	B	15	£1,236	20%	£247.20

**Total award payable: £226,126.20**

<sup>36</sup> See paragraph 3.49 of JSP 765

### Example 4<sup>37</sup>

A Service person has multiple injuries which are caused by service, arising from the same incident. There are no descriptors at tariff levels 1 to 11 or if there are, they are in the same body zone. The lump sum is calculated by applying percentages to the tariff amount for each individual injury.

Where two or more injuries attract the same amount of lump sum, one is treated as the higher and the others the lower. 100% of the lump sum is paid for the injury attracting the greatest level of compensation, 80% of the lump sum is paid for the injury attracting the second highest amount of compensation, 60% for the third, 40% for the fourth, 20% for the fifth and all subsequent injuries.

Total award payable to Service person:

Injury	Body Zone	Tariff Level	Tariff Amount	Percentage Payable	Amount Payable
Tarsal Fracture	C	12	£10,300	100%	£10,300
Broken right arm	C	12	£10,300	80%	£8,240
Metatarsal fractures	C	13	£6,180	60%	£3,708
Loss of 2 front teeth	A	13	£6,180	40%	£2,472
Facial Lacerations	A	14	£3,090	20%	£618
Fractured ribs	B	15	£1,236	20%	£247.20

**Total award payable: £25,585.20**

These examples are illustrative scenarios to demonstrate the rules and are for guidance only. Claimants should seek advice from DBS Veterans UK on their specific circumstances.

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37 See paragraph 3.49 of JSP 765

## Contact Details

### **DBS Veterans UK**

Freephone (UK only): Helpline 0808 1914 2 18

Telephone Number (Overseas): +44 1253 866043

Email: [veterans-uk@mod.gov.uk](mailto:veterans-uk@mod.gov.uk) Website: <https://www.gov.uk/pensions-and-compensation-for-veterans>

The helpline provides advice on all aspects of the Scheme, including obtaining forms.

Lines are open: Monday to Friday from 0800 to 1700

When the helpline is closed, callers will be given the option to be routed to Combat Stress or the Samaritans 24-hour helpline.

Address:

Defence Business Services Veterans UK  
Norcross  
Thornton Cleveleys  
Lancashire  
FY5 3WP

# SECTION 2 - WAR PENSIONS SCHEME

## Chapter 1 - Introduction

### Overview

1.1. The War Pensions Scheme (WPS) provides compensation and supplementary allowances for disablement<sup>38</sup> or death due to injury, (which is defined as including wounds or disease) caused or made worse by service in the UK Armed Forces before 6 April 2005. For injuries, wounds or diseases after this date, the Armed Forces Compensation Scheme (AFCS) applies, which is included within this Joint Service Publication (JSP 765). The WPS applies to Regular and Reserve forces and claims and awards can only be made once an individual leaves service. Anyone who has served can claim for any disablement at any time following service termination, as long as the disablement is attributable to service.

1.2. Compensation is paid for injuries<sup>39</sup> which arise as a result of service or are made worse by service, regardless of how they are sustained. No distinction is made between injuries sustained on operations, and those incurred during training, service-approved sport, or while exercising to maintain fitness.

1.3. The WPS is a no-fault scheme and is therefore different from awards for damages paid through the courts. From 1987, following a change in the Crown Proceedings Act 1947, if an individual believes they have been injured as a result of negligence, having a WPS award does not prevent them from bringing a claim through the civil damages route, although a WPS award would be taken into account in the damages award (or vice versa). This is in keeping with the longstanding principle that an individual should not be compensated twice for the same injury.

1.4. The Scheme rules are set out in legislation in the Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006<sup>40</sup> (SPO) and the Scheme is administered by DBS Veterans UK. This document lays out the policy behind the Scheme.

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<sup>38</sup> Physical or mental injury or damage or loss of physical or mental capacity.

<sup>39</sup> Where the term 'injury' appears in this context, it should be construed to include cases of wound, injury, disease or death, where appropriate to do so, unless specified otherwise.

<sup>40</sup> SI 2006/606 as amended by SI2006/1455, SI2007/909, SI2008/679, SI2009/706, SI2010/240, SI2011/235, SI2012/359 and SI2013/241.

# Chapter 2 - Eligibility

## Entitlement

2.1. Awards under the WPS are based on causation. Individuals may be entitled to a payment if they suffer injury wholly or partly as a result of their service in the Armed Forces. Payment under the WPS is not restricted to those injured during operations; injuries incurred during regular peacetime training or on exercise are also covered.

2.2. Awards under the Scheme are made for any disablement, either mental or physical, provided there is a causal link to service. There are no time limits for claiming; however, the test for causal link to service changes after seven years.

2.3. Payments under the WPS can only be made once an individual leaves service; there is no entitlement to payment whilst still in service.

2.4. An individual may be entitled to benefits because of a relationship to an Armed Forces member (i.e. eligible dependant). Also, in certain circumstances some individuals who were not members of the Armed Forces may be eligible to be considered under one of a number of minor schemes which operate on similar lines to the WPS. Details on these schemes can be found at Chapter 8.

## Burden of Proof

2.5. If a claim is made not later than seven years after the termination of an individual's service in the Armed Forces and there is a reasonable doubt that disablement is due to or aggravated by service, the benefit of doubt is given to the claimant.

2.6. If a claim is made more than seven years after the termination of an individual's service in the Armed Forces, the benefit of reasonable doubt is given to the claimant where upon reliable evidence, a reasonable doubt exists that the disablement is attributable to or aggravated by service.

2.7. The same Burden of Proof applies in the case of the death of the former member of the Armed Forces and a dependant's claim (see Chapter 4).

2.8. This approach differs from other jurisdictions both nationally and internationally, including the insurance industry, personal injury civil litigation, and other MOD and public sector schemes.

## Evidence and Complex Cases

2.9. Each case is considered on its own merits. War Pensions are medically certified with relevant material facts including on claimed incidents, events and exposures decided by DBS Veterans UK lay decision-makers who are supported by training and guidance on scheme policy, legislation and case law.

2.10. Most cases are relatively straightforward in terms of establishing whether the disablement claimed was caused by service. Given the varied nature of service life and that there are no time limits to claim, there can be instances where it is difficult to establish whether an injury is caused by service or not. In these cases, the decision-maker will be



required to make a judgement, having taken account of all the facts of the case, as to whether any incident, event or exposure took place and was service-related or not. Where the case is difficult, discussion with the MOD policy team may be required. This can mean it may take longer than usual to arrive at a final decision.

2.11. Factors that may mean an injury was more likely to be accepted as service-related include, but are not confined to: acting on orders, responding to a service-related emergency, being on operations or exercise, participation in sport that has received prior approval by the Defence Council, being in a hazardous environment as a result of service, or performing an activity in the individual's job description.

2.12. Factors that may mean an injury was less likely to be accepted as service-related include, but are not confined to: disobeying orders, being at a social event, using alcohol or drugs, or participation in a sporting activity that has not received prior approval from the Defence Council<sup>41</sup>.

## **Claim Assessment**

2.13. All claims are medically certified by DBS Veterans UK in-house medical advisers. The certificate summarises the disablements which are accepted as due to service and provides a percentage assessment of their combined level of severity. The method of assessment, as set out by legislation, is by comparison of the disabled person with a normal healthy person without disability, of the same age and sex. Legislation includes a list of Statutory Scheduled Assessments which apply to the listed injuries and act as reference points for all other disablements in the Scheme. Account is not taken of earning capacity of the disabled member nor the effect of any individual factors or extraneous circumstances.

2.14. DBS Veterans UK medical advisers are independent from the clinicians who treat individuals when they are injured. They certify entitlement and assessment, based on case-specific service and medical facts and in line with contemporary medical understanding of the causes and progress of injuries and disorders.

2.15. Once DBS Veterans UK has fully considered a WPS claim, a decision will be made and a letter detailing the outcome sent to the individual. The letter advises the individual what to do if they are not happy with the decision.

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<sup>41</sup> The Defence Council provides the formal legal basis for the conduct of Defence through a mix of prerogative and statutory powers. It is under its authority that the three Services approve sports that Service personnel can undertake to maintain the required good standard of fitness.

# Chapter 3 - Compensation for Injury

## Awards

3.1. Awards paid depend on the medically assessed level of disablement. Special rules apply to noise-induced hearing loss. Compensation for injury under the WPS is paid in one of two ways. For those injuries that are minor in nature, with a percentage disablement of less than 20 per cent, a **lump sum gratuity** may be payable. For disablement percentages of 20 per cent or more, an **ongoing War Disablement Pension (WDP)** is awarded. Special rules apply to noise-induced sensorineural hearing loss.

3.2. Decisions on war pensions are evidence-based and reflect case-specific service and medical facts and contemporary medical understanding of the causes and progress of disorders. To assess the level of disablement, evidence will be collected. For example, by using a GP report or hospital case notes or requiring an individual to undergo a medical examination. This examination will help establish the degree of disablement due to service. The subsequent certified assessment compares the condition of the disabled person with a person without disability of the same age and sex, without taking into account earning capacity or other individual factors or circumstances. If an individual has a pre-existing condition which is made worse by service, special rules apply and, in some circumstances, only part of the disablement arising from that condition may be considered in the overall assessment.

3.3. The level of payment for both gratuities and ongoing pensions is increased annually in April in line with the Government Consumer Prices Index (CPI) figure for the previous September.

## Gratuities

3.4. Gratuities are payable at one of the three assessment bands:

- 1 to 5 per cent.
- 6 to 14 per cent.
- 15 to 19 per cent.

3.5. In addition, there are specific set levels of assessments for certain minor injuries to fingers or toes, which range from 1 to 14 per cent.

3.6 Assessments in the Scheme are certified for a period, by the medical adviser. Assessments may be made final when no improvement or worsening is anticipated. Gratuities are awarded for conditions assessed at less than 20% and having indeterminate duration. When an assessment is increased on review or an appeal to 20% or more an ongoing pension is awarded (see Chapter 6).

3.7 In practice, gratuities are one-off payments deemed to be awarded for a period of six years. If an individual's revised assessment provides an ongoing pension more than six years after the gratuity award, the pension will be paid with immediate effect. The gratuity will not be taken into account.

3.8. It is also possible for an individual to be awarded an increased gratuity, for instance, from the 1 to 5 per cent range, to 6 to 14 per cent. In these cases, where this is as a result

of a review and on the grounds of deterioration, the gratuity relevant to the new assessment applies from the date of application for review, but is adjusted to take account of the duration of the initial gratuity assessment and award. Where the increase is following a successful assessment appeal, the difference between the original gratuity and the revised gratuity is paid.

3.9. This is because successful appeals acknowledge that an original decision was wrong. The additional amount payable as a result is to compensate for the amount lost by not having the higher award to invest at the time the original decision was made.

## **Ongoing Pensions**

3.10. Ongoing WDPs are payable from 20 per cent upwards in 10 per cent steps, up to 100 per cent, and the amount payable increases for each step.

3.11. There are specific set levels of assessments for certain prescribed injuries, which range from 20 to 100 per cent. These are mainly for the loss of body parts or total sensory loss and help act as a benchmark for assessing conditions which are not listed. For example, since April 2009, Mesothelioma has been a prescribed injury with a set level of 100 per cent. This is in recognition of the short life expectancy from diagnosis and to speed up determination and payment of claims for this condition.

3.12. Ongoing pensions can be for a single or a number of conditions but the overall assessed disablement level, called a combined assessment, is certified, and cannot exceed 100 per cent.

3.13. As with gratuities it is possible for ongoing pensions to be increased as a result of a request for a review from the individual or an appeal against the percentage level awarded. In the case of a review, any increase will be payable from the date of claim or review, whichever is the later. In the case of an appeal, any increase in ongoing pension may be backdated to the date of the original claim.

3.14. When a request for a review is made, it is also possible for the disablement to be found to have improved. If this is the case, the assessment for that condition may reduce which may affect the overall assessment and the percentage level that is payable.

3.15. In addition to the basic rate of pension further amounts may be payable in the form of supplementary allowances (see paragraph 3.20). Eligibility for these may be linked to minimum percentage levels of disablement and depending on an individual's needs due to the accepted disablement.

3.16. Individuals awarded an ongoing pension whose injury is as a result of service on or after 31 March 1973, and who are medically discharged from service as a result of that injury, may be entitled to receive a payment under the Armed Forces Attributable Benefits (AFAB) Scheme; some policy guidelines are detailed within Chapter 9.

## **Non-Final Assessments**

3.17. If DBS Veterans UK medical advisers decide that an accepted condition may get worse or better in the near future, they may make an award for a specific period of time, and at the end of that period of time, request to review the case with updated medical evidence.

3.18. If DBS Veterans UK medical advisers decide that a condition may get worse or better but not in the near future, they will make an award called an interim assessment. This interim assessment will stay the same until there is a reason for DBS Veterans UK to review it again, for example at the request of the pensioner on the grounds that the condition has worsened. After the review, the assessment and award may be increased, reduced, or stay the same. If at this stage DBS Veterans UK medical advisers believe that the condition is unlikely to change, the assessment will be made final but can still be reviewed in future at the request of the individual.

### **Nil and Limited Assessments**

3.19. Where entitlement is given but the injury is not causing any current disablement, then an assessment of NIL per cent may be made. If a condition is not caused by, but is made worse by service, only part of the disablement arising from that condition may be used in the overall assessment of disablement. These assessments are called limited assessments because the evidence has shown that service did not cause the condition and is only partly responsible for the effect of the condition on the individual.

### **WDP Supplementary Allowances**

3.20. There are a number of supplementary allowances within the WPS which are payable in addition to a basic WDP and pre-date the welfare state. Some of these allowances must be claimed, others are paid automatically. The allowances cover a range of care needs according to individual circumstances. Many now have DWP equivalents and a war pensioner cannot receive both for the same injury. Some allowances are unique to the WPS. As with the WDP, supplementary allowances are paid tax-free, and the amounts paid are increased annually in April in line with the Government CPI figure for the previous September.

### **Constant Attendance Allowance**

3.21. Constant Attendance Allowance (CAA) can be claimed by an individual who has a percentage level of at least 80 per cent and who has a medical need that requires regular help and attendance of a personal nature because of their pensioned disablement. This may include dressing, bathing or going to the toilet. It may also include supervision but not help which is solely domestic in nature (such as housekeeping, shopping or cooking). Attendance does not necessarily mean outside help and can be provided by a member of the family. There must be a medical need for attendance, and it must be in relation to the pensioned disablement and not because of another disablement or old age. The allowance is paid at four rates depending on the amount, regularity and time of day of attendance needs. These are part-day, full-day, intermediate and exceptional rate.

3.22. Whilst a claim must be made for CAA, there is a fast-track procedure where an individual is terminally ill. Completion of the full claim form<sup>42</sup> and the normal consideration process is not required. A claim can be received from the individual or a member of their family. In these cases, where it is confirmed that an illness is terminal, provided the disablement is assessed at 80% or higher, CAA is paid at the intermediate rate. If the illness deteriorates the individual can go on to claim the exceptional rate.

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<sup>42</sup> DBS Veterans UK must receive a signed form (WPS003CAAD) from the claimant/POA before the award can be made.

3.23. If an individual enters hospital and receives free in-patient treatment for more than four weeks, payment of CAA is withheld until such time as this treatment ends. This is to prevent double provision because the help and attendance that CAA covers will be provided free of charge for the duration.

3.24. Those permanently in receipt of CAA at the two highest rates (or those who would be in receipt but for the fact they are in hospital) will, in addition, receive **Exceptionally Severe Disablement Allowance (ESDA)**. This allowance recognises those whose disablement is severe and permanent.

3.25. Those in receipt of CAA at the two highest rates and who are still able to work can receive **Severe Disablement Occupational Allowance (SDOA)** provided that they are not in receipt of **Unemployability Supplement (UnSupp)** or **Treatment Allowance**. All CAA claimants also receive **Comforts Allowance** automatically.

### **Clothing Allowance**

3.26. Clothing Allowance can be claimed by an individual who is in receipt of an ongoing WDP and wears an artificial limb, or whose pensioned disablement leads to excess wear and tear on their clothing.

### **Unemployability Supplement**

3.27. UnSupp can be claimed by an individual who has a disability percentage level of at least 60 per cent, is aged under 65, and whose disability is so severe as to make them unemployable or virtually unemployable.

3.28. UnSupp is not an automatic payment and must be applied for. An additional amount may be payable where the war pensioner has a dependant whose income is lower than a set weekly income figure. An additional amount may also be payable where the war pensioner has a dependent child.

3.29. UnSupp claimants are allowed to retain their UnSupp allowance if they do therapeutic work which is not detrimental to their health, provided that this is not for longer than 16 hours a week or does not exceed a set earnings limit.

3.30. Although UnSupp cannot be claimed by those aged over 65, existing claims in payment can continue beyond this age but an individual cannot receive their state retirement pension at the same time. With effect from 10 April 2006 the balance of the Overlapping Category State Retirement Pension owed can be paid to the individual by the Department for Work and Pensions (DWP). The claimant must apply through DWP to receive any payment under the State Pension.

3.31. Those in receipt of UnSupp who are aged under 60 can receive **Invalidity Allowance**. All UnSupp claimants also receive **Comforts Allowance** automatically. UnSupp cannot be paid with Allowance for Lowered Standard of Occupation (ALSO) (see paragraph 3.35).

### **Comforts Allowance**

3.32. Comforts Allowance acts as an additional supplement for an individual who has a very severe disablement.

3.33. It is paid automatically to an individual who is permanently in receipt of CAA or UnSupp. It is paid at a higher rate to those in receipt of both allowances and to those only in receipt of CAA but at the two top rates.

### **Allowance for Lowered Standard of Occupation**

3.34 Allowance for Lowered Standard of Occupation (ALSO) can be claimed by an individual who has a percentage level of at least 40 per cent but less than 100 per cent, is aged under 65, and whose disablement prevents them from following their regular occupation (including their trade or profession whilst serving) or other work of an equivalent standard. The purpose of ALSO is to reflect loss of earnings capacity due to disablement caused by service.

3.35. ALSO, cannot be paid in addition to **UnSupp** or **Treatment Allowance**, nor can the allowance together with the war pension exceed the basic 100 per cent war pension rate.

3.36. Individuals who are in receipt of ALSO but who subsequently become eligible for UnSupp will only continue to receive UnSupp. Further payments of ALSO will cease.

3.37. If individuals are in receipt of or begin to receive attributable benefits at any point this may reduce the amount of money that can be paid in respect of ALSO. The individual must inform DBS Veterans UK as soon as possible that they are in receipt of any attributable benefit that have been awarded to prevent an overpayment from arising.

3.38. Any changes to the rate of the attributable benefits which occur because of a change to an assessment of War Pension, must be reported to DBS Veterans UK so that an overpayment of ALSO is prevented.

### **Age Allowance**

3.39. Age Allowance is paid automatically to an individual who has a percentage level of at least 40 per cent, when they reach the age of 65. The purpose of Age Allowance is to help a war pensioner cope with the increased costs associated with the burden of aging and having a disablement rather than any acceptance that the disablement worsens with age.

3.40. The amount of Age Allowance payable depends on the percentage disablement with those more severely disabled receiving higher rates.

### **Treatment Allowance**

3.41 Treatment Allowance can be claimed by an individual who is in employment if:

- they receive in-patient or out-patient treatment for their pensioned disablement; as a result of such treatment they are unable to work for 8 days or more and incur loss of earnings.
- it is paid at the same rate as a 100 per cent WDP until they return to work.

3.42. In addition, if upon completion of a course of treatment an individual incurs a loss of earnings because they are required to take time off work for medically required recuperation, Treatment Allowance can be claimed.

3.43. If an individual undergoes short-term occasional periods of treatment but still experiences loss of earnings, they can claim part-time treatment allowance which is paid

pro rata at a daily rate up to a maximum amount and up to but for no more than 3 days in a week.

## **Mobility Supplement**

3.44. Mobility Supplement can be claimed by an individual who has disablement as a result of the loss of one or both legs, or has a disablement assessed at 40 per cent or more that renders them unable or virtually unable to walk and which is likely to remain for at least six months. It can also be paid to individuals who have total sensory loss. The purpose of Mobility Supplement is to assist an individual with the extra costs associated with their mobility needs.

3.45. Walking ability is determined wearing a suitable prosthesis or artificial aid which they use or might reasonably be expected to use and is assessed using self-assessment and a GP report or through a medical examination arranged by DBS Veterans UK. The examination assesses distance, quality of walking, distress and effort required.

3.46. In the case of hearing and visual impairment, an award is payable where the assessed disablement is more than 80 per cent for loss of vision, and at least 80 per cent for loss of hearing.

3.47. An individual in receipt of Mobility Supplement can use their payment to cover the cost of leasing a vehicle through the Motability Scheme.

## **Medical Expenses**

3.48. From 1948 successive governments have maintained that the NHS is the main source of health care for war pension accepted disablements. However, current war pensions legislation retains a discretionary provision such that individuals in receipt of a war pension or gratuity may be entitled to help with the medical, surgical and rehabilitative costs related to treatment for their pensioned disablement, where it is not provided free of charge by the NHS. This includes NHS dental and optical charges subject to voucher values. As this is discretionary, there are no appeal rights to an Independent Tribunal.

3.49. All war pensioners who do not qualify through other means, notably age, can apply for a certificate to exempt them from prescription charges for any condition related to their disablement where they have received an assessment above nil percent for it. Where any necessary aids, appliances or home nursing equipment is not covered by the prescription exemption or available within the provision of the NHS, individuals may be entitled to help with the cost. Prior approval must be obtained before costs can be paid.

3.50. To support disabled living, House Adaptation Grants of up to £750.00 are available under the WPS, to help contribute to the cost of adapting the house of a severely disabled war pensioner. The adaptation must be required because of the pensioned disablement and must be essential to life at home and not merely to enable the individual to live more conveniently. It must entail disturbance to the fabric of the house and be for the direct benefit of the individual. The grant cannot be paid more than once.

3.51. As everyone in the UK is entitled to treatment free of charge at the point of delivery under the NHS, funding of private treatment is only considered in exceptional circumstances and prior approval must be obtained before any costs are incurred.

3.52. Funding of rehabilitative treatment includes meeting the individual costs of war pensioners with accepted mental health disorders, to undertake recognised residential treatment programmes, not provided under the NHS, for their pensioned disablement. This supportive social support in a quasi-military environment was previously called Remedial treatment and pre-dated the emergence of effective treatments and expanded locally based NHS mental health services which provide evidence based best practice interventions usually delivered in the community. Since 1947 the NHS has been responsible for post service medical treatment of all veterans and war pensioners and the legislation precludes funding of treatments which are the responsibility of other UK public bodies. Combat Stress has recently focused on community-based treatments including as a delivery agency for the NHS, but an option for war pensions funding of residential /respite interventions not otherwise provided at public cost remains.

3.53. As there is no NHS overseas, war pensioners who do not live in the UK may still be entitled to help with the costs of any health care required for their accepted conditions if the required treatment is not available free of charge under the public health care system of the country where they live, and the treatment is available to UK Veterans within the NHS. Prior approval must be obtained before any costs are incurred.

3.54. Under long-standing arrangements, war pensioners in England, Scotland and Wales have been given priority NHS treatment for the conditions for which they receive a war pension, subject to clinical need. Decisions on priority are made by the clinician in charge and permit accelerated access to secondary care. This provision was extended in 2009 to include all veterans who have a health problem considered by treating clinicians to be the result of their military service. They no longer need first to have applied for and become entitled to a war pension.

3.55. The issue of refunding travel costs to attend medical appointments/treatment is covered under the WPS, for secondary care at the nearest facility, i.e. hospital/clinic<sup>43</sup> to the war pensioners home address. The WPS also covers travel costs to a centre of excellence<sup>44</sup> where a referral is not a matter of personal choice but of clinical need determined by the referring doctor. The centres are not usually in the primary care catchment area of the patient.

## **Mesothelioma**

3.56. Following announcements in December 2015 and February 2016 a lump sum option was put in place under the WPS for claimants diagnosed with mesothelioma where it is accepted that the disease is attributable to military service. In recognition of the short life expectancy, this provides claimants with mesothelioma more flexibility to have either a lump sum or to receive regular weekly/four-weekly/monthly/quarterly/13-weekly WDP payments, Supplementary Allowances and entitlement for their dependant to receive a war widow's pension.

3.57. Claimants diagnosed with mesothelioma should make a claim to DBS Veterans UK in the usual way. On receipt DBS Veterans UK will contact the claimant to arrange for a Veterans Welfare Officer to visit and explain the options available.

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<sup>43</sup> A district general hospital or clinic within a defined catchment area.

<sup>44</sup> A centre of excellence is generally used to describe a tertiary centre where more complicated or rare disorders are seen by a team with a special interest. Usually a highly specialist unit.



# Chapter 4 - Compensation for Bereavement

## Overview

4.1. Compensation for bereavement under the WPS for surviving dependants may be payable where the cause of death of an individual is due to service or was substantially hastened by service before 6 April 2005. This includes death post 6 April 2005 provided that the death is as a result of service before this date.

4.2. The purpose of compensation for bereavement is to make up for the deprivation, due to service, of the support that a dependant could have expected, given the pre-existing responsibility. It is not based upon the type of injury from which the deceased was suffering.

4.3. For surviving spouses and civil partners, compensation is paid in the form of a **War Widowers Pension (WWP)**. In order to determine eligibility for a WWP, DBS Veterans UK will consider if service had any bearing upon the death of the deceased individual. As with claims for a WDP, there only has to be reliable evidence to raise a reasonable doubt that there is a connection to service for causation to be found. The deceased individual does not need to have been in receipt of a WDP for a WWP to be claimed. As with a WDP the WWP is paid tax-free and there are no time limits for claiming.

4.4. In certain narrow circumstances survivors who lived as a spouse or lived as a civil partner of the deceased individual may be entitled to a WWP. A WWP is only payable to survivors who were not married or in a civil partnership provided that the survivor had been wholly or substantially maintained by the deceased individual six months prior to that individual joining the Armed Forces and continuing up to the date of death. The survivor would also have to be caring for the member's child.

4.5. For surviving eligible children, compensation may be paid as a supplementary allowance to the WWP, or where the surviving parent is not entitled to WWP a child allowance may only be paid and in the case of a child who has no parents living, an orphan's pension.

4.6. In most cases WWPs must be claimed but there are two instances where when the deceased was in receipt of a WDP, death is treated as caused by service, and automatic entitlement to a WWP is given. These are:

- when the deceased individual was in receipt of CAA or would have been had they not been in a hospital.
- when the deceased individual had a percentage disablement of 80 per cent or more and was in receipt of UnSupp.

4.7. The purpose of these rules is that in such cases it is highly likely that there was some connection between service and death – because of the high level of disablement and because the disablement gave rise to a need for care or made the deceased incapable of work. Having an automatic rule for such cases avoids the need to investigate the actual cause of death.

4.8. There are two rates of WWP payable, a higher rate and lower rate. The higher rate is payable if the deceased individual was an officer above the rank of Major or equivalent; if the survivor is aged 40 or over; under 40 but in receipt of a child allowance; or under 40 and

cannot support themselves financially. In all other cases the lower rate is payable until the individual reaches the age of 40.

4.9. Individuals awarded a WWP where death is as a result of service on or after 31 March 1973, and the deceased was medically discharged from service as a result of that injury may be entitled to receive a payment under the Armed Forces Attributable Benefits Scheme. Further information on the Armed Forces Attributable Benefits (AFAB) Scheme can be found within Chapter 9 of this JSP.

4.10. The level of payment for a WWP, child allowance and an Orphan's pension is increased annually in April in line with the Government Consumer Price Index (CPI)<sup>45</sup> figure for the previous September.

4.11. Since 6 April 2005 only survivors of deceased individuals who left service before 31 March 1973 and who are in receipt of a WWP keep their pension for life, regardless of remarriage or cohabitation. This change was only for those who were in receipt of a WWP at that time. Those who had already forfeited their WWP because of remarriage or cohabitation or civil partnership did not have it restored.

4.12. From 1 April 2015, all War Widows/ers in receipt of a WWP at that date will keep their pension for life, regardless of remarriage, formation of a civil partnership or cohabitation on or after 1 April 2015. War Widows/ers whose WWP has ceased suspended due to remarriage, formation of a civil partnership or cohabitation prior to 1 April 2015 can apply to have their WWP restored (for life) if their marriage/cohabitation should end.

## **WWP Supplementary Allowances**

4.13. There are a number of supplementary allowances within the WPS which are payable in addition to a basic WWP. Some of these allowances must be claimed, others are paid automatically.

### **Rent Allowance**

4.14. Rent Allowance can be claimed where a survivor<sup>46</sup> has living with them a child under the age of 16, or a child over the age of 16 who is still in full-time education or is incapable of self-support by reason of an infirmity which began before they were 16. The purpose is to provide a non-means tested payment to help individuals who have children with the costs of housing.

### **Age Allowance**

4.15. Age Allowance is paid automatically at ages 65, 70 and 80. The purpose is to help a survivor cope with the increased costs associated with the burden of ageing.

### **Child Allowance**

4.16. Child Allowance can be claimed where a survivor has living with them the deceased's child (biological or adopted) under the age of 16, or a child over the age of 16 who is still in

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<sup>45</sup> A CPI measures changes in the price level of a market basket of consumer goods and services purchased by households. The CPI is a statistical estimate constructed using the prices of a sample of representative items whose prices are collected periodically. The CPI can increase or decrease.

<sup>46</sup> Survivor can include child or over age child. Rent allowance can only be paid with WWP or dependants who lived as spouses or Civil Partners.

full-time education or apprenticeship or is incapable of self-support by reason of an infirmity which began before they were 16. The deceased must have been, at the time of their death, regularly contributing to the maintenance of the child or could reasonably be expected to contribute to their maintenance. The purpose is to continue that maintenance. Payment can be made for more than one child.

### **Supplementary Pension**

4.17. If the deceased individual was discharged from service on or before 31 March 1973, the survivor may be entitled to a supplementary pension which is paid at a set rate. The purpose of this supplementary pension is to compensate survivors of individuals who served before this time as they do not benefit from the improvements made from that date to occupational survivors' pensions under the AFPS.

### **Temporary Allowances**

4.18. If the deceased individual was in receipt of CAA, UnSupp or had underlying entitlement to UnSupp with ALSO, a temporary allowance is payable in place of a WWP for the first 26 weeks after the individual died. This is paid based upon the War Disablement Pension in payment at the time of death.

### **Funeral Expenses**

4.19. Funeral expenses which are paid at a set amount may be claimed but the claim or enquiry to claim must be received within three months of the date of the funeral of the individual.

# Chapter 5 - Making a Claim and Payment

## Overview

5.1. In most circumstances, a claim form must be completed before a decision can be made as to whether there is entitlement under the WPS. The claim must be made in writing to DBS Veterans UK.

5.2. A WDP will be considered automatically without the need for a claim form when an individual is medically discharged, and DBS Veterans UK has received the medical discharge papers.

5.3. In these cases, the individual's service medical documents will be sent to DBS Veterans UK automatically once a medical board has taken place and a copy of the report is available. Upon receipt of these documents, DBS Veterans UK may request more evidence or seek advice from medical advisors, before they can make a decision. DBS Veterans UK cannot notify their decision or make any payments prior to the date of discharge.

5.4. DBS Veterans UK will consider whether the injury for which the individual is medically discharged falls under the WPS and if the date of origin is unclear (i.e. the onset of a long-term condition) DBS Veterans UK may need to gather further evidence before they can be sure the injury falls under the WPS rather than the AFCS. However, payment cannot be made twice, i.e. under both schemes, for the same injury.

## Timing

5.5. Although there are no time limits for making a claim under the WPS, there is a difference in considering causation depending on whether the injury leads to a medical discharge or is claimed within seven years of service termination and whether it is made more than seven years after leaving service. The same rules apply to dependant's claims in respect of burden of proof (see paragraphs 2.5 and 2.6).

## Payment

5.6. Payments are made as soon as possible after the decision to make a payment under the WPS has been made or following acceptance of a claim for a supplementary allowance. If an individual is an officer, payment is made every month or every quarter in arrears. For other ranks payment is usually made every week, every four weeks or every 13 weeks.

5.7. Payment will normally commence from the latest of:

- the date of the claim; or
- the date of the application for review; or
- where the date of the application for a review was made within three months of the date of notification of a decision on a claim, from the date of claim; or
- where the date of application for review was made within three months of the date of notification of the decision on a previous review, the date of the application for the previous review; or
- the day after the date of termination of Service, in the case of medical discharge or where the date of claim is within 3 months of the date of discharge.

# Chapter 6 - Reviews and Appeals

## Overview

6.1. There are several instances in the WPS where **reviews** of decisions by DBS Veterans UK can be made, at any time and on any grounds:

- any decision to accept or reject a claim for a WDP or WWP.
- any decision as to the assessment of the degree of disablement of a WDP.
- any decision that there is no disablement or that it has come to an end.

6.2. There are several instances in the WPS where **appeals** of decisions to a Tribunal can be made:

- **Entitlement** – whether the disablement (or death) was caused or made worse by service and the label given to the claimed condition where the medical identification/classification of the condition is challenged.
- **Assessment** – whether the assessment of the degree of disablement of a WDP is accurate.
- **Supplementary Allowance** – whether the conditions needed for a supplementary allowance have been met.
- **Miscellaneous** – there are several other rights of appeal against various other decisions made such as the commencing date of an award, changes in the level of supplementary allowances, withholding of pension due to serious negligence, misconduct or imprisonment, the amount of abatement due to an award of damages.

## Reviews

6.3. Reviews can be carried out at the request of an individual who states that an existing decision should be reviewed. This will usually occur where an individual's claim for a WDP or a WWP is refused or, in the case of those already in receipt of a WDP, where the individual feels that their condition has worsened. If an end date has been imposed for payment of a condition, a review can also be carried out either by DBS Veterans UK or imposed by a tribunal. The Secretary of State can conduct a review at any time on any grounds.

6.4. Although it is not a mandatory requirement to provide any evidence, DBS Veterans UK will examine any evidence provided by an individual to support their request for review and this may include a letter from a general practitioner, hospital case notes or any other official record which confirms that an individual has sought medical treatment for the accepted disablement since they were last assessed. Individuals are responsible for any costs associated with producing such evidence. DBS Veterans UK may in addition gather further evidence such as a general practitioner or consultant report; DBS Veterans UK will meet the costs associated with this.

6.5. Any decision by DBS Veterans UK to increase or decrease an award following a review will usually take effect from the date of the review, but there is scope for revised awards to be deemed to take effect up to three months earlier:

- if the application for review is made within three months of the individual leaving service.
- in the case of a WWP review, if the individual has died within three months of an earlier application for review; or
- if the intent to review was received up to 3 months earlier and a signed and completed form is received within 3 months.

6.6. If a review concludes that an original decision was made in error, the reviewed decision will take effect from the date of the original decision.

6.7 Any review decision, regardless of its outcome, has a right of appeal.

## Appeals

6.8. If an individual is not happy with a decision made in relation to the claim under the WPS, in most cases they may appeal that decision to an independent tribunal. These tribunals deal solely with Armed Forces compensation cases and each consists of a legally qualified Chair, a medical member and an ex-Service member. In England and Wales, appeals are heard by the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal. Appeals from claimants living abroad are dealt with by the Tribunal covering England & Wales. In Scotland and Northern Ireland, appeals are heard by a Pensions Appeal Tribunal. The circumstances of each case will be different, and the individual will need to give the reasons why they disagree with the decision. If they have evidence to support the appeal, this should be sent to DBS Veterans UK.

### Time Limits for Appeals

6.9. Appeals must be made within 12 months from the date of the original decision or review.

6.10. There are some circumstances where the individual will be allowed to appeal beyond the 12-month period. When the individual appeals after 12 months have elapsed, they must state why they (or someone on their behalf) did not put in place an appeal within the 12-month period. Individuals cannot appeal after 24 months from the date of the decision.

### Appeals Process

6.11. The steps that must be taken in order to appeal a decision depend on where the individual lives and are set out below.

6.12. If living in England, Wales or overseas, the individual must either complete and sign an appeal form or send a signed letter<sup>47</sup> to DBS Veterans UK stating:

- their name, address and service number.
- the name and address of any representative – if they have one.
- an address where documents can be sent or delivered (this will normally be the home address).
- the date and details of the decision being appealed.
- why the individual disagrees with the decision.

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<sup>47</sup> Any letter must be signed (not electronically).

6.13. If living in Northern Ireland, the individual must complete an appeal form and send it to DBS Veterans UK.

If living in Scotland, the individual must complete a form and send it to the Scottish Tribunal directly at the following address: Pensions Appeal Tribunal, George House, 126 George Street, Edinburgh, EH2 4HH. The form can be obtained from [www.gov.uk](http://www.gov.uk) at <https://www.gov.uk/government/collections/armed-forces-compensation> or by calling DBS Veterans UK Helpline on 0808 1914218.

6.14. Once the appeal application is received, DBS Veterans UK prepare a bundle of documents (this is called a Response or Statement of Case) relevant to the appeal and pass them to the tribunal service. DBS Veterans UK will also provide the individual and their representative (if they have one) with a copy of the bundle of documents. The tribunal will provide the individual with information on the appeal procedure. The individual bringing the appeal is advised to attend the tribunal hearing. Oral evidence provided by the individual may be relevant to the tribunal and can provide confidence that their case has been fully heard. The Royal British Legion and other service charities provide a free service to support people through the process and can attend the hearing with or on behalf of the appellant. Appellants may choose to be represented by a company however DBS will not be able to provide any assistance with the cost of this decision. In addition, this may result in the individual only receiving some of the award if the appeal is successful. These companies are not endorsed by the MOD, using them will be at the expense of the individual. DBS Veterans UK will usually be represented at the hearing by a member of DBS Veterans UK staff<sup>48</sup>. The tribunal hearings are open to the public.

6.15. When the appeal is heard the tribunal will consider all the information on the case. The tribunal panel members may ask questions of the individual bringing the appeal, their representative (if they have one) or DBS Veterans UK representative about the case. The tribunal's decision could result in a decision being allowed or disallowed or an award being maintained, increased, reduced or cancelled. The decision by the tribunal may be announced by the Chair at the hearing, or be communicated later, in writing, to the appellant and DBS Veterans UK.

6.16. The tribunal may also adjourn an appeal hearing and issue directions to either party (the individual or DBS Veterans UK) to obtain/produce further evidence if they deem it necessary to enable their decision to be made. In these cases, the appeal will be heard again once both parties have had the opportunity to consider the further information.

6.17. On receipt of the tribunal decision, if either party (the individual or the DBS Veterans UK), does not agree with the decision they have a further right of appeal. They first need to make an application directly to the tribunal service for their written statement of reasons for the decision. The further appeal to the higher-level tribunal must be made within 42 days (six weeks) from when the tribunal issue their written reasons for decision. A judge will only give leave to appeal if there has been an error on a point of law, not just because one party or the other disagrees with the decision. The higher-level tribunal is in England and Wales, the Upper Tribunal (Administrative Appeals); in Scotland, the Upper Tribunal; and in Northern Ireland, the Pensions Appeal Commissioners.

6.18. In cases where the Secretary of State does challenge the tribunal decision, DBS Veterans UK may decide not to put into payment any additional money that may be due to

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<sup>48</sup> The DBS Veterans UK representative will be a MOD civil servant, a lay person, not legally trained/qualified.



an individual as a result of the tribunal's decision. It does not affect any awards that have already been paid by DBS Veterans UK or are in payment to an individual as a result of this or any other WDP claim. In these cases, the Secretary of State must notify the individual in writing that the additional payment is being withheld until the outcome of the appeal to the next level of tribunal is known. This is called suspending the payment.

6.19. If the Secretary of State later decides not to continue with an appeal to the next level of tribunal, the original tribunal's decision will be implemented and any suspended payments (including back payments) due to the individual will be paid in full.

6.20. More information on the tribunal procedures can be found at:

### **England and Wales**

<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/war-pensions-and-armed-forces-compensation/appeals.htm>

### **Scotland**

<http://www.patscotland.org.uk>

### **Northern Ireland**

<http://www.courtsni.gov.uk>



# Chapter 7 - Reduction, Suspension and Cancellation

## Overview

7.1. There are a number of instances where it may be necessary for awards under the WPS to be reduced, suspended or cancelled.

## Relationship between WPS and Common-Law Damages

7.2. It is longstanding MOD and wider public policy, as well as a principle of common law, that an individual should not be compensated twice for any single injury. Therefore, where Service personnel or their dependants receive compensation under the WPS and also receive common-law damages<sup>49</sup> for the same injury, action is required to ensure 'double compensation' does not occur. Adjusting awards to take account of other payments made in respect of the same injury is termed abatement.

7.3. The WPS is a 'no-fault' scheme, which means receiving a WPS award does not indicate there has been negligence on the part of the MOD in the injury being sustained; in making payment the MOD is not admitting any form of liability. The Scheme does not, however, prevent former Service personnel or their dependants from pursuing claims for common-law damages if they consider that injury occurred as a result of MOD or third-party negligence<sup>50</sup>. Decisions under the WPS and through a common-law claim are made entirely independently from one another.

7.4. In signing the WPS claim form an individual confirms they will notify DBS Veterans UK if they have claimed for, or in future claim, compensation as a result of MOD or third-party negligence.

7.5. Where MOD 'no-fault' compensation has been paid and common-law damages awarded, either the WPS award or the common-law damages will be adjusted where payments are made twice to compensate for the same aspects of injury.

7.6. In the case of bereavement, where a WWP is payable, this is not abated in respect of other compensation. This is because the WWP stands in lieu of the normal state retirement pension and so is distinguishable from the usual circumstances in which abatement is required.

## Supplementary Allowances

7.7. CAA may be withdrawn if an individual enters hospital (see paragraph 3.23 for more details).

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<sup>49</sup> An award of compensation made following a claim in the civil courts.

<sup>50</sup> Compensation arising from a source unconnected to the Ministry of Defence, e.g. in the event of a car accident, a Service person may seek compensation from the other driver.

## **Admission to the Royal Hospital, Chelsea**

7.8. The Royal Hospital, Chelsea is part-funded by the MOD with pensioners being provided with board, lodging and medical care. Therefore, if an individual is entitled to a WDP and they enter the Royal Hospital, Chelsea as an in-pensioner, this together with any supplementary allowances payable will cease until such time as they leave. This ensures there is no duplication of funding.

## **Imprisonment**

7.9. If an individual serves a term of imprisonment, an award of a WDP or gratuity may be withheld. This is because it may be inappropriate to make payment from public funds to an individual who has committed a criminal offence and is being maintained at public expense. If an individual is already in receipt of a WDP, payment may be withdrawn from the date of conviction. The WDP may be restored upon release and arrears of up to 52 weeks may be paid.

7.10. If a dependant shows that they would suffer hardship as a result of the withdrawal of the WDP, up to half of the value of the WDP may be paid to the dependant. Where this occurs, this payment will be taken into account if the WDP is restored upon release.

## **Refusal of Treatment**

7.11. If an individual refuses to receive treatment for their pensioned disablement, their WDP can be reduced by any amount up to half of its value.

## **Negligence or Misconduct**

7.12. If an individual contributed to their injury through their own serious negligence or misconduct, any amount of their WDP can be withheld, reduced or cancelled.

## **Reduction, Suspension and Cancellation**

7.13. If a review is instigated by the Secretary of State, the award of War Disablement Pension can be suspended and subsequently cancelled if the individual fails to comply with a request for information, without good reason. A request for information includes attending a medical examination or supplying information that is reasonably required to determine whether the award should be revised. The individual has 3 months from the date of the request to supply the information before their award is suspended.

7.14. If the individual fails to comply with a request for a medical examination or to supply further information, within 12 months of the date of suspension, their WDP award will be cancelled. This does not apply to reviews instigated by the individual.

# Chapter 8 - Minor Schemes

## Overview

8.1 In addition to the WPS there are a number of minor schemes for individuals who were not members of the Armed Forces, which have similar provisions to the WPS.

## The Personal Injuries (Civilians) Scheme (PI(C)S)

8.2. The PI(C)S pays pensions and allowances in respect of civilians and civil defence volunteers injured or killed during World War II. It is exceptional amongst war pensions instruments in that, not only is it restricted to physical injuries sustained during a specific period in history, but it also lays down a time limit within which claims should normally be made.

8.3. The PI(C)S covers injuries between 3 September 1939 and 19 March 1946 (there is an extended end date for members of the National Fire Service). Whilst the time limit for making claims is within three months of injury, or in the case of death within three months of the death occurring, there is power within the Scheme rules for the waiving of these time limits.

8.4. The time limit may be waived provided there is independent supporting evidence (GP's records, a newspaper article, or personal records such as diaries) of an injury sustained by an individual and there is link between that injury and the claimed disablement. The time limit may also be waived where such evidence is not available but there are exceptional circumstances which would justify not imposing the time limit, for instance in the absence of independent supporting evidence if it appears from other evidence that there is a strong possibility that the injury is linked.

## The Mercantile Marine Scheme

8.5. The Mercantile Marine Scheme was introduced originally to provide compensation to members of the Merchant Navy who served in World War II, in recognition of the fact that it was not possible for ship owners to arrange commercial insurance in respect of war risks.

8.6. The Scheme is not however restricted to World War II; it has been 're-enacted' on several occasions since that time. The Scheme's intention is to reflect the additional dangers of war over and above those normally found on board a ship.

8.7. 'War' is not defined within the Scheme rules, but it relates to the seriousness of the military activity and its objective, as well as the nature, character and circumstances of the injury rather than the formal existence of a state of war. The Scheme also applies to injuries caused by detention, i.e. as a prisoner of war, but peacetime activities such as support at the time of nuclear tests are not covered.

## The Pensions (Polish Forces) Scheme

8.8. The Pensions (Polish Forces) Scheme is made under the Polish Resettlement Act of 1947. It pays pensions to members of the Polish forces and their dependants injured due to service as members of the Polish Forces under British command in World War II.

Pensions under the Pensions (Polish Forces) Scheme cannot be paid if the beneficiary returned to live in Poland prior to 1 May 2004. After this date, there is no such residency rule.

# Chapter 9 - Additional Information

## Armed Forces Attributable Benefits Scheme

9.1. Along with a WPS award, a payment under the Armed Forces Attributable Benefits Scheme (AFAB), the Reserve Forces Attributable Benefits Scheme (RFAB) or the Non-Permanent Regular Staff Pension Scheme (NRPS AB) may form part of the total compensation package for injury or death caused by service between 31 March 1973 and 5 April 2005. It is a pre-requisite for consideration under AFAB (or RFAB/NRPS AB) that the injury or illness must have been found attributable under the WPS first before eligibility for an award can be considered, and the individual must have been medically discharged from service.

## Other Information

9.2. WPS awards are one element in a coordinated range of services, benefits and programmes provided by the Government, devolved administrations and delivery agencies. These organisations work together to support an individual who has been injured in the service of their country to maximise their well-being.

9.3. There may be other benefits to which individuals are entitled. For more information on such benefits, individuals can seek advice from the Royal British Legion, the Citizens' Advice Bureau or from the Department for Work and Pensions at [www.gov.uk/dwp](http://www.gov.uk/dwp).

## Assistance from Private Companies with the Completion of WPS Claims

9.10. Veterans who make a claim for a WPS may choose to approach or be approached by a company that offers assistance with the completion of a claim. These companies are **not** endorsed by the Ministry of Defence. The use of these companies to help with a WPS claim can lead to significant charges detracting from the value of any financial award. Veterans should contact DBS Veterans UK if they require help with a WPS claim.

## Contact Details

### DBS Veterans UK

Freephone (UK only): Helpline 0808 1914 2 18

Telephone Number (Overseas): +44 1253 866043

Email: [veterans-uk@mod.gov.uk](mailto:veterans-uk@mod.gov.uk)

Website: <https://www.gov.uk/pensions-and-compensation-for-veterans>

The helpline provides advice on all aspects of the Scheme, including obtaining forms.

Lines are open: Monday to Friday from 0800 to 1700

When the helpline is closed, callers will be given the option to be routed to Combat Stress or the Samaritans 24-hour helpline.

Address:

Defence Business Services Veterans UK  
Norcross  
Thornton Cleveleys  
Lancashire  
FY5 3WP