



MINISTRY OF DEFENCE

# The Review of the Armed Forces Compensation Scheme – One Year On



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# Foreword

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**The Parliamentary Under-Secretary of State for Defence**

Upon the formation of the Coalition Government in May last year, the Prime Minister was quick to acknowledge the highly valued and hugely important work undertaken by the men and women of our Armed Forces. In doing so, it was also important to highlight that the demands we place on our Armed Forces are unique and that, in return, this Government was committed to ensuring that all Service personnel, veterans and their families are provided with the support they need, and are treated fairly.

One example where we have acted upon this commitment is to take a fresh look at the covenant. Other changes already announced include doubling the operational allowance, changes to rest and recuperation arrangements, improvements in the area of mental health, and plans for scholarships for bereaved children. These changes will have a direct and positive impact on our Armed Forces personnel.

In addition, the Government has also provided its full support towards ensuring that when service leads to injury, ill health or death, there is a comprehensive compensation package in place. The Armed Forces Compensation Scheme (AFCS) provides financial compensation in recognition of the sacrifice made by our Service Personnel on the Nation's behalf.

In 2009, former Chief of the Defence Staff, Admiral the Lord Boyce was asked to look at the Armed Forces Compensation Scheme in its entirety to ensure it was fit for purpose.

Lord Boyce was assisted throughout this Review by a mixed military and civilian team drawn from the MOD, and he also received support from an Independent Scrutiny Group (ISG) made up of medical and legal experts in injury and compensation. The ISG also included representatives of the Confederation of British Service and ex-Service Organisations, the Royal British Legion, Service Family Federations, War Widows and an injured soldier who has claimed under the Scheme.

Overall the Review team spoke to, or received comments from, more than 200 individuals and groups through a public engagement exercise. These included serving members of the Armed Forces, including reservists, their families, veterans, and the general public. Lord Boyce and his team visited serving Royal Navy, Army and RAF personnel in their bases and at the rehabilitation centre at Headley Court. Lord Boyce also spoke to Ministers, the Chief of the Defence Staff, the heads of the three Services and the Judiciary.

Lord Boyce announced his recommendations in February 2010. On the whole, the Review concluded that the Scheme was fundamentally sound and basic principles right. The Scheme was recognised as an improvement on what it replaced - the War Pension Scheme - and it was acknowledged that the AFCS had already been enhanced since its inception in 2005. However, the Review did identify further areas for change to ensure the Scheme would be fit for purpose. The Review also found that while future reviews of particular aspects of the scheme might be appropriate, a more fundamental review should not be required.

The key recommended changes included:

- An increase to all Guaranteed Income Payments (a tax-free, index-linked income stream payable from discharge for life) to reflect the lasting effect of more serious injuries on future promotion prospects and on the ability to work to age 65;
- An increase, which averages in excess of 25%, to all lump sum payments, except the top level of award which was recently doubled to £570,000;
- Nearly tripling the maximum award for mental illness from £48,875 to £140,000 in order to reflect accurately the impact of the most serious mental health conditions;
- The creation of a new independent expert medical group, as a sub-group of the Central Advisory Committee on Pensions and Compensation (CAC), to advise on compensation for specific, relevant illnesses and injuries such as hearing loss, mental health and injury to genitalia; and
- Improving the understanding and awareness of the Scheme through enhanced communications to both the in-Service community and veterans.

This report explains the progress which has taken place over the past year to ensure all these recommendations have been turned into reality. Some of the recommendations were simpler to implement than others. Therefore some changes, including: increasing the time limits for claims, increasing the maximum level of Bereavement Grant and uplifting the majority of awards for hearing loss by one tariff level, were implemented in August 2010. The other changes were more complex and required detailed analysis and legislative work. I am pleased to report that all legislative changes to the Scheme, recommended by Lord Boyce, have now been made and solid progress towards implementing all the non-legislative aspects of Lord Boyce's recommendations has been made. The remaining legislative changes were put into new legislation which was laid before Parliament on 28 February 2011.

Implementing these changes within such a short period of time has been a significant challenge and has required input, advice and support from many people – too many to list individually. However I would like to thank, in particular, members of the ISG and the CAC for their constructive contribution and support to Lord Boyce and to the Department, both during the Review itself and also over the past year, covering the implementation period.

I would also like to thank Lord Boyce for his work in leading the Review. It is clear that his recommendations have substantively improved the AFCS which, crucially, has led to a better provision of compensation support for our Armed Forces personnel.

All those who have had an award under the AFCS will have their case re-visited and uplifted in line with the revised Scheme. Therefore nobody who has been injured, made ill, or bereaved as a result of service since 5 April 2005 will lose out, though delivery of approximately 10,000 uplifts will take time to complete as we want to get it right.

As a result of implementing these changes we will now offer the Armed Forces an improved compensation scheme that is more appropriate to the dangers they face and the consequences of the injuries they may sustain. The Review has achieved its two primary aims: to ensure appropriate compensation is received and to bring greater clarity to the Scheme and its processes, for both those responsible for its delivery and for claimants.

# Executive Summary

On 29 July 2009, the then Secretary of State for Defence brought forward a planned review of the Armed Forces Compensation Scheme and asked Admiral the Lord Boyce to lead the review as independent Chairman.

The terms of reference for the review were as follows:

- To examine whether the fundamental principles of the Scheme remained valid;
- To evaluate how successfully the Scheme in its current form gave effect to these principles; and
- Having regard to fairness, feasibility, sustainability and ease of administration, to make recommendations on any modifications that are required to ensure the Scheme is fit for purpose.

Lord Boyce looked at 11 distinct areas in relation to the Scheme and a number of other issues raised during the course of the Review were grouped together as issue 12. The majority of the recommendations made required legislative change so a revised Statutory Instrument incorporating these amendments was recently laid in Parliament. The body of this report provides detail on the implementation of all of Lord Boyce's recommendations, with a summary of the main changes made below.

## **Issue 1 - The fundamental principles underlying the compensation scheme**

The principles have been updated, in particular to draw out more clearly the underlying tenet that the most compensation should be paid to those with the most serious injuries.

## **Issue 2 - What the compensation is for and its relationship with other state benefits**

As Lord Boyce recommended, the relationship between AFCS and wider state provision remains the subject of on-going work.

## **Issue 3 - The overall level of compensation, including for dependants**

All lump sum awards have been increased by an average which is in excess of 25%, except the top level of award which was recently doubled to £570,000. The monthly income stream paid to the most seriously injured, known as the Guaranteed Income Payment (GIP), has been increased to reflect the lasting effect of more serious injuries on future promotion prospects and on the ability to work to age 65. Bereavement Grants have been increased for both Regular personnel and Reservists.

#### **Issue 4 - Comparisons with other compensation in the UK and internationally**

Comparisons with other schemes and compensation arrangements nationally and internationally did not identify, in themselves, a need to make changes to the Scheme. However, in light of comparisons drawn between the AFCS and civil awards, the opportunity has been taken to ensure the full value of AFCS awards is communicated wherever possible.

#### **Issue 5 - Issues raised by the 2009 Court of Appeal judgment**

Greater clarification and standardisation has been provided to the terminology used within the Scheme. In addition, until now, the Scheme excluded the payment of benefit for the effects of medical treatment of an injury, unless the treatment occurred overseas where medical facilities were limited. This exclusion has been removed. The fact that descriptors encompass the expected effects of the primary injury and its appropriate clinical management has been clarified. If a consequential condition develops as a result of injury or treatment, which in itself appears on the AFCS tariff, a separate award may therefore be payable.

#### **Issue 6 - The circumstances of injury, illness or death**

Lord Boyce recommended that no distinction should be made in relation to the context in which an injury was sustained, i.e. injuries that occur on operations should attract the same level of award as those sustained through training, exercise or sport. Therefore, no action was required on this issue in the implementation phase.

#### **Issue 7 - The claims and adjudication process**

A number of actions have been taken to improve the interface between the claimant and the Scheme, these include: the establishment of an AFCS Communications and Training Working Group to co-ordinate an improved awareness and understanding of the Scheme; enhanced guidance for those wishing to make a claim; a new provision to provide a fast payment (a "payment on account") in advance of a full claim being submitted for all those with serious injuries; improved use of interim award powers where prognosis is not certain at the time of claim; and work has also progressed on the provision of independent financial advice for claimants.

#### **Issue 8 - The burden and onus of proof**

A new provision has been added to the Scheme that where an official record has been lost or destroyed by the MOD, and that record is relevant to a material fact in relation to an AFCS claim, there is a presumption that that fact will be decided in favour of the claimant. In addition, an Independent Medical Expert Group (IMEG) has been created to advise Ministers on medical aspects of the Scheme, including the creation of a list of diseases that may be recognised as appropriate for compensation, provided certain published criteria are met.

#### **Issue 9 - Time limits on claims and treatment of deterioration**

The time limits in which personnel can make a claim, including for late-onset illness claims have been increased. An additional right to request a review of a decision 10 years after that decision was made has been introduced.

### **Issue 10 - Compensation for mental illness**

The range of mental health tariffs and lump sum payments have been adjusted to acknowledge the impact of serious mental disorder. In particular, the highest award has been increased to tariff 6 and therefore now attracts 75% of the maximum available GIP.

### **Issue 11 - The compensation paid to individuals with multiple injuries**

Changes to the way in which compensation is awarded to individuals suffering multiple injuries from a single incident have been introduced, to ensure that the most seriously injured individuals receive the most compensation. Every injury sustained in a single incident will now receive some compensation.

### **Issue 12 - Other issues raised**

Lord Boyce also looked at a number of other issues which were raised during the course of the Review. These included: whether the Scheme, and any improvements from the Review, should be applicable to injuries/illness/death occurring before 6 April 2005; hearing loss; anomalies across the Scheme; payments to Eligible Partners; treatment for Foreign and Commonwealth ex-Service personnel; "home to duty" definitions; the relationship between AFCS and Personal Accident Insurance (PAX); and the relationship with common law claims. As a result of consideration of these issues, the main recommendations made by Lord Boyce were:

- All hearing loss descriptors should be increased by one tariff level, with the exception of the top awards for hearing loss;
- An independent medical expert group should be established to look at anomalies across the Scheme and provide recommendations; and
- A provision to pay certain costs for on-going medical treatment in respect of a serious service-related injury/illness for a person who moves to a place outside the UK within a year of discharge.

All these changes have been made to the Scheme.





# The Review of the Armed Forces Compensation Scheme - One Year On

## Issue 1 - The fundamental principles underlying the compensation scheme

### Background and Review Recommendation

The Review concluded that the original principles that guided the design of the AFCS remained broadly sound. However, greater clarification of the meaning behind some of the principles was needed, and some adjustment was necessary to make explicit the relationship between the Scheme and other state provision and to ensure the basis of the Scheme and its operation were transparent. The Review therefore recommended that the Scheme should be designed to:

- Be Fair;
- Be Understandable, Accessible and Transparent;
- Be Contemporary and Joined-up;
- Provide Security;
- Encourage Employability;
- Be Compatible with Human Rights and Fairness at Work;
- Be Sustainable.

### Implementation of Recommendations

The changes described in this report ensure that, while the core principles of the Scheme are maintained, improvements and clarification have been provided in key areas of its operation. The adjusted principles have formed the basis for the revised legal and policy framework placed around the Scheme. The principles will be reflected in future AFCS documentation, including communication material aimed at both the in-Service and ex-Service communities.

## Issue 2 - What the compensation is for and its relationship with other state benefits

### Background and Review Recommendations

The Review acknowledged that as a no-fault scheme, the AFCS rightly needed to be considered alongside the full range of care and support available to personnel injured or made ill by their service, or to their survivor(s) if they die as a result of service. The Review also took note of the Service Personnel Command Paper, "The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans" (Cm 7424 published in July 2008) which highlighted two important themes: no disadvantage as a result of service, and appropriate recognition for sacrifice.

The latter principle is reflected in some long standing preferential treatment and access to public services, including NHS secondary care, for those injured as a result of service. The Review noted that further improvements were planned across Government and the Devolved Administrations to the transition of care and support for those being discharged from service. The Review recommended that the inter-relationship between AFCS awards and other state benefits and public services should be kept under review for the future and as and when wider provisions were being reviewed or refreshed.

More specifically, the Review recommended that future work in this area should focus on the following:

- Explore the scope for extending further preferential access to vocational rehabilitation programmes which support injured people towards paid work;
- Keep the inter-relationship between AFCS awards and other state benefits and public services under review for the future and when wider provisions are being reviewed or refreshed, both within Whitehall Departments and the Devolved Administrations;
- Work to clarify the provisions under the Department of Health's and Devolved Administrations' commitments on funding of personal care in cases of very serious injury or illness where the personal care need arises directly for health reasons, including whether the provision is covered by NHS priority;
- Ensure the proposals in the Consultation Paper, about making the Service Personnel Command Paper commitments endure (CM7674), are turned into concrete measures, including, in particular, providing an Ombudsman as a recourse mechanism in those cases where problems might arise.

## Implementation of Recommendations

On 4 January 2011 the MOD set up a Defence Employment and Opportunities Team to help enable a successful transition to an appropriate skilled and supported civilian life or a return to duty for all wounded, injured and sick personnel. Furthermore, this team optimises the employment related offers of support throughout the recovery pathway and will provide appropriate support for up to two years in the post-discharge transition phase.

Assessment of the inter-relationship between AFCS awards and other state benefits has continued. For example, as the Universal Credit<sup>1</sup> is developed in the next few years, we are working to ensure it is designed to take account of the needs of injured Service personnel and veterans.

The funding provisions under which the Department of Health and Devolved Administrations can provide further commitment to Service personnel remain under consideration. Veterans receive, and will continue to receive, priority healthcare in respect of conditions due to service, subject to clinical need.

Responses to the July 2009 Consultation Paper "The Nation's Commitment to the Armed Forces Community: Consistent and Enduring Support" made a valuable contribution to our understanding of these issues and helped in the development of initiatives such as the Armed Forces Community Covenant.

Furthermore, findings from the consultation identified that there was not a requirement for a new 'Service' Ombudsman as the public services which Service personnel access already had this provision covered, for example, the Local Government Ombudsman. Focus has therefore been on better communicating the existence

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<sup>1</sup> Universal credit is expected to be introduced in October 2013 and will radically simplify the system to make work pay and combat worklessness and poverty. Universal Credit is part of a wider package of reforms introduced to Parliament on 16 February 2011 by the Department for Work and Pensions.

of the Ombudsman to the Armed Forces Community and, in parallel, working with the Ombudsman to familiarise them with the issues faced by the Armed Forces and their families.

### **Issue 3 - The overall level of compensation, including for dependants**

#### **Background and Review Recommendations**

The Review concluded that lump sums paid under the AFCS compared well with those found in civil litigation for pain and suffering, especially following increases in tariff levels in 2008. Lord Boyce recommended that the top level of lump sum award of £570,000 should remain but that the tariff amounts for injuries below that level should be adjusted further in order to reduce the differentials that the 2008 changes introduced, especially between tariff levels 1-2, 2-3, and 3-4.

For serious injuries and illnesses, in addition to the lump sum, the AFCS also provides an income stream known as the Guaranteed Income Payment (GIP), payable from the point of discharge until death. It is an enhancement to an individual's pension and is paid in recognition of the fact that the person has a lasting injury or illness, caused by their military service, which has impacted on their future civilian earning potential.

The Review considered the way in which the GIP and Survivor's Guaranteed Income Payments (SGIP) were calculated. Lord Boyce decided that the calculation should be adjusted to take account of earnings lost as a result of injury, up to age 65<sup>2</sup>. Lord Boyce went on to further recommend that a factor should be introduced in the GIP calculation to take account of the average range of promotions foregone because of the injury, illness or death. The Review also recommended that certain other technical factors underpinning the GIP calculation should be updated.

<sup>2</sup> 65 is the current deferred pension age in the Armed Forces Pension Schemes

The Review examined the level of Bereavement Grants paid under the Scheme and noted that the purpose of the Grant was to offset the differential Death-In-Service lump sums available under the Armed Forces Pension Scheme (AFPS) 75 and the AFPS 05. Lord Boyce acknowledged that improvements were made in 2005 to increase the AFPS 75 Death-In-Service lump sum from approximately 1.5 times salary to 3 times salary; the AFPS 05 provides 4 times salary.

The Armed Forces Pensions' 'Offer to Transfer' exercise made clear that the differential Bereavement Grant was introduced to lessen the impact of the pension choice on dependants where death was due to service. The Review noted that the Bereavement Grant levels did not take account of the situation of a mobilised Reservist who may have elected to remain in their civilian occupational pension scheme, which might only provide a Death-In-Service lump sum of around 2 times salary. The Review also noted that the levels of the Bereavement Grant needed updating to reflect increases in salaries since the rate was set in 2005.

The Review recommended that an enhancement to the Bereavement Grant should be made to cater for the circumstances where a Reservist dies as a result of service, but remains in their civilian occupational pension scheme. The Review noted that this was implemented for Reservists from the start of the Scheme in 2005 and therefore recommended that the Bereavement Grant applicable in these circumstances should be increased to 1.5 times the standard Bereavement Grant.

The Review recommended that the principal level of Bereavement Grant for Regular personnel should be increased for all future claims from £20,000 to £25,000. It was considered that this would reflect rises in pay since the rate was first set in 2005.

The Review also recommended that the Bereavement Grant should be revised to reflect the salary that the AFPS 75 takes into consideration (in cases after the inception

of the AFCS in April 2005), in respect of the benefits paid to eligible partners and widows on remarriage where death was due to service. Under the AFCS a SGIP is paid to eligible surviving adult dependants. This includes spouses, civil partners and unmarried partners, where financial inter-dependency is demonstrated. It is payable for life with no account taken of remarriage or a subsequent relationship.

The Review recommended that the tariff levels of lump sum payments and Bereavement Grants for the future should be subject to periodic review.

The Review acknowledged that while the calculations relating to determining the level of the GIP and SGIP are complex, including the interplay with any occupational pensions, the broad approach remained appropriate. Nonetheless, the Review recognised that being able to explain in simple terms how the arrangements work, with appropriate guidance and support, was essential and needed to be developed.

Recognising that a number of Armed Forces personnel hold an acting rank at the time of injury, the Review recommended that when calculating GIP, the higher of (a) salary at time of injury or (b) salary at time of discharge be used to calculate the GIP.

## **Implementation of Recommendations**

### ***Increasing AFCS payments – Lump sum awards and Guaranteed Income Payments***

Lump sum tariff levels have been increased as per the recommendations of the Review. All tariff levels have been increased except for tariff level 1, as this was doubled to £570,000 in 2008. The revised tariff levels can be viewed at Annex A to this report. In line with the Review recommendations, the factors on which GIP, SGIP and Child Payments (CP) are based have also been increased. The new factors to be used are at Annex B to this report.

### ***Increase in Reservists' Bereavement Grant***

Survivors of Reservists who die as a result of their service and are not members of a reserve forces pension scheme will now receive an enhanced Bereavement Grant of 1.5 times the standard Bereavement Grant, to help bring their benefits to the same levels as their Regular counterparts who die in service. The new legislation came into force on 3 August 2010. For previous cases, since April 2005, an additional one-off payment of £10,000 will be paid.

### ***Increase in standard Bereavement Grant***

From 3 August 2010, eligible partners of personnel who die as a result of their service will receive an uplifted Bereavement Grant of £25,000 to reflect rises in pay and inflation since the rate was first set in 2005. This increase will only apply to bereavement after 3 August 2010, and not to previous cases.

### ***Pension benefits for unmarried partners***

On 3 January 2011 the rules in the AFPS 75 were amended, so as to provide that where an SGIP is payable under the AFCS to an unmarried partner he or she will receive benefits under the AFPS 75, equivalent to those payable to a widow, widower or surviving civil partner. In addition, and again only in cases where an SGIP is payable under the AFCS, new rules in the AFPS 75 have made pensions paid to all surviving adult dependants payable for life, regardless of remarriage or a subsequent relationship. No amendments were required to the AFCS, the Armed Forces Pension Scheme 2005 or the Reserve Forces Pension Scheme 2005 in order to implement this recommendation.

### ***Explaining how AFCS payments are calculated***

The methodology to calculate GIP/SGIP/CP awards is necessarily complex. Work has taken place to identify opportunities where claimants can be provided with a greater degree of clarity and explanation of how their awards have been calculated and how they relate to pension benefits. Clear explanation is now provided in the award letter issued to claimants and accompanying leaflets

have also been updated to provide clearer explanations of awards. In addition, a step-by-step explanation of how the GIP/SGIP and CP are calculated will be included in the policy documentation which accompanies the AFCS.

#### ***Recognising service in the acting rank***

The salary used to calculate GIP will now be the higher of either the salary at date of injury or salary at date of discharge. This is to recognise that a number of Service personnel hold acting rank when on operations. Where Service personnel die as a result of service while in acting rank and an SGIP is payable, it is calculated on the basis of salary at date of death, so in these cases the SGIP already reflects the higher acting rank salary.

### **Issue 4 - Comparisons with other compensation in the UK and internationally**

#### **Background and Review Recommendations**

The Review undertook comparisons with other schemes and compensation arrangements from both national and international perspectives. The Review concluded that their consideration of other schemes had not in itself required changes to the AFCS. However, the Review acknowledged that adverse comparisons had been made in the media on UK common law settlements and AFCS awards. These had concentrated on the AFCS lump sum awarded and often neglected the considerable additional value of the GIP. The Review therefore recommended that the MOD should continue to explain at every opportunity the full value of AFCS awards.

#### **Implementation of Recommendations**

We have increased our efforts to ensure that opportunities are identified - and taken - to explain the full value of AFCS awards. In doing

so, an increased emphasis has been placed on highlighting the benefits and advantages of the GIP. The GIP aspect of an AFCS award can be the most financially beneficial part of the compensation package. This payment over a lifetime may be worth many hundreds of thousands of pounds as, unlike other compensation schemes, awards made under the AFCS are not financially capped. The further work on improving communication is discussed under Issue 7 of this report.

### **Issue 5 - Issues raised by the 2009 Court of Appeal judgment**

#### **Background and Review Recommendations**

In July 2009, the Court of Appeal heard an appeal brought by the MOD following an Upper Tribunal decision on two individual cases concerning injuries to Cpl Duncan and Mne McWilliams. The MOD had brought the case in order to obtain clarity on important issues within the Scheme of general applicability; it was not about taking money away from the individuals concerned. The central issues concerned the Scheme's approach to diseases as opposed to incident-related injuries, and how the Scheme should take account of prognosis i.e. how a disorder develops over time, treatment and any consequences. The Court of Appeal handed down its judgment in October 2009.

This judgment provided guidance which has been used to amend and supplement operational instructions for decision makers at the Service Personnel and Veterans Agency (SPVA), which administers the Scheme. While at the time of the Boyce Review it was acknowledged it was too early to assess the full impact of the judgment and wider implications on cases with a very different factual basis to Duncan and McWilliams, it did anticipate that the claims and adjudication process could give rise to potentially difficult medical policy and legal issues in some cases. The Review therefore recommended that it would be necessary to assess how

the relevant tribunals, before which appeals against AFCS award decisions are heard, apply the principles in the judgment.

The principles set out in the judgment in relation to medical evidence raised particular issues. At the hearing, Counsel for the MOD submitted that the decision maker must take account of all available evidence when determining the nature and gravity of the injury. That principle was endorsed by the Court (paragraph 47 of its judgment), but difficult issues arise about new medical evidence presented by the claimant on appeal. Frequently, this first appears at a tribunal hearing and comprises of self-reported symptoms, particularly pain and discomfort.

The Review acknowledged that obtaining objective evidence to test consistency at that stage can be difficult and could be at variance with documented earlier evidence on the person's function, such as medical employability grading or the fact that he/she has deployed.

The Review therefore made two key recommendations:

- To continue to provide even greater clarity of the AFCS tariff and ensure clear, simple explanations and consistency of language; and
- To implement improved procedures to ensure SPVA medical advisors have an opportunity to comment on the evidence that is before a tribunal. This would assist in the evaluation of that evidence by the tribunal.

## Implementation of Recommendations

### *Improving clarity and understanding*

The revised legislation includes definitions of frequently used terms, for example, 'functional limitation or restriction' is now defined as "difficulty in executing an activity or a requirement to avoid an activity". In

addition, the tariff has been adjusted to ensure consistency of terminology.

The legislation now makes clear that this will be assessed by making a comparison between the injured person and a healthy person of the same age and sex who does not have an injury or health condition. It is hoped that this greater clarification and definition will be helpful to all who use the Scheme.

Until now, the Scheme excluded the payment of benefit for the effects of medical treatment of an injury, unless the treatment occurred overseas where medical facilities are limited. This exclusion has been removed and Article 5 of the new Statutory Instrument provides that a descriptor encompasses the expected effects of the primary injury and its appropriate clinical management, including: the effects of operative intervention, therapeutic drug treatment and the use of appropriate aids and appliances. If a consequential condition develops, as a result of injury or treatment which in itself appears on the AFCS tariff, a separate award may therefore be payable.

### *Improving SPVA procedures – obtaining medical advice*

Procedures at the SPVA, which administers all AFCS claims, have been strengthened to ensure that, where appropriate, medical advice is obtained on cases prior to being submitted to appeal.

## Issue 6 - The circumstances of injury, illness or death

### Background and Review Recommendations

The Review recommended that the Scheme should continue to treat injuries, illness or death due to service in the same way, irrespective of the precise circumstances in which that injury, illness or death occurred because it is the act of joining up and signalling willingness to make a sacrifice for the Nation that distinguishes those who serve. For example, the Scheme rightly

acknowledges the benefits and risks to the Armed Forces of Service-approved sport and adventurous training and should compensate them in the same way. Any alternative which sought to differentiate between types of duty or service may not only be divisive but also difficult to define, given the wide-ranging nature of military service and operational duties.

### **Implementation of Recommendations**

No action has been required on this issue in the implementation phase.

## **Issue 7 - The claims and adjudication process**

### **Background and Review Recommendations**

The Review concluded that there was considerable scope for improvement in the way in which the Scheme is communicated to all members of the Armed Forces, their families and interested stakeholders. This included improvements to: the level of guidance and support provided to potential claimants in navigating the claims process; being kept informed adequately throughout the claims process; and the provision of guidance, information and support once an award has been made on what might be done with the money.

The Review went on to recommend that this improvement in communications should be pursued across the board, including through the chain of command, as it recognised that it was not just the responsibility of the SPVA. Lord Boyce noted that the single Services had been too slow to recognise their responsibilities in relation to supporting injured personnel in making claims under the AFCS as the Scheme, unlike its predecessor the War Pension Scheme, is predominantly for personnel who may seek to claim while in service.

The Review acknowledged that the Scheme's trained lay decision-makers at the SPVA

already had ready access to advice from licensed doctors trained in the Scheme. It therefore recommended that guidance should be developed on circumstances where medical input is mandatory, such as in all claims in tariffs levels 1-6, on reconsideration, and at appeal. The Review also recommended the introduction of greater appropriate military oversight in determining cases.

The Review recommended that greater use should be made of the existing interim award power within the Scheme in appropriate cases and that it would be helpful to introduce, in addition, some form of "payment on account" for those with significant injuries likely to require active intervention over a period and where prognosis may be difficult to judge when the claim is made.

The Review suggested that this could be paid soon after the claim is lodged without the need to go through the entirety of the claims process, in those cases where service is without doubt the cause of injury (for example, those injured in combat situations). Lord Boyce recommended that claimants should be allowed to choose this option if they wish, but it should not be imposed upon them. The amount available should be initially set at a level which can be determined from early evidence of the minimum level of award the individual would receive for all their injuries, which would be taken into account when a full assessment of the claim was made.

The implementation of some form of "payment on account" should, it was suggested, be viewed entirely separately from the necessary support that should be provided to families to enable them to visit while the individual is receiving on-going treatment, including through rehabilitation, and not just at the Queen Elizabeth Hospital (formerly known as Selly Oak) and Headley Court.

Access to independent financial advice, the Review recommended, should be made readily available to AFCS recipients. It was suggested that this would help ensure that they are both better informed about



what their AFCS award covers, including expected consequences, and also how to better manage their financial affairs.

The Review also recommended that additional review powers should be available for those who have made a claim while active treatment was ongoing and before steady state was achieved or prognosis clear: this would allow proper account to be taken of the developing progress of the injury and its management. It was acknowledged that in the short-term such provisions might delay the claimant's access to an independent tribunal but where prognosis was not clear it seemed right that the final determination of the SPVA should be able to take full account of developments during treatment.

It was also recommended that the automatic consideration of "spanning cases", for personnel whose service spans the introduction of the Scheme on 6 April 2005, should cease. Instead it was proposed that claimants should be able to request for their claim to be considered under the AFCS for service spanning 6 April 2005, as well as for the SPVA to treat a claim as being made under the War Pension Scheme where appropriate.

To aid understanding of the claims and adjudication process, the Review recommended that a fully consolidated version of the AFCS legislation, incorporating the legislative changes that will result from this Review, was made available as soon as is practicably possible. It went on to recommend that copies of versions of consolidated AFCS legislation following previous legislative changes should also be made available. The Review concluded that this would ensure claimants, their advisors and other interested parties would have access to the correct version of legislation pertaining to any claim.

## **Implementation of Recommendations**

### ***Communication of the Scheme***

An AFCS Communications and Training Working Group (CTWG) with representation from the

three Services, the AFCS policy team, the SPVA, training experts, Defence communications experts and other stakeholders has been established to co-ordinate an improved awareness and understanding of the Scheme.

The Group has met on several occasions over the past year and co-ordinated a substantial communications push to support the legislative changes to the Scheme that became operative in August 2010. The Group is now concentrating on supporting and embedding improved understanding of the Scheme through:

- Providing consistent, accurate, targeted and clear information to key audiences, and, in doing so, exploiting all appropriate communication channels. Ensuring that the information provided will not be in excess of what our audience need but will be necessary and sufficient; and
- Improving the interface between the AFCS and claimants and individuals through making the Scheme more understandable.

### ***Enhanced guidance on all aspects of making an AFCS claim***

The SPVA are undertaking a review of all communication products that refer to making AFCS claims and the claims procedure. Claim acknowledgement letters now include more information on how the claim will be processed and assessed. Where cases may take longer than average to process, interim letters are issued to explain what progress has been made and what remains outstanding. In award letters, clear presentation of how the compensation has been calculated is provided, along with an explanation of appeal and reconsideration rights.

### ***AFCS training***

In addition to the work to develop communications, the changes to the AFCS have led to the development of a training and education package for all Armed Forces personnel. Once rolled out, this training package will provide an overview of the AFCS

and explain the changes to the Scheme as a result of the Review. It will be delivered via presentations by the chain of command and will be included within initial military training, as well as at other key stages in a military career. It will also be available through desktop interactive media. Specialist staff working within the Service chain of command including: Unit Welfare Officers, Medical Officers and Human Resources Officers – all of whom can come into contact with AFCS claimants - will also receive an appropriate level of training.

### ***Mandatory medical advice***

Formal guidance for SPVA personnel is being put in place for situations where obtaining medical advice on claims will now be mandatory. Once developed, this revised guidance will ensure that specific claims in tariff levels 1-6, and all reconsiderations and appeals will receive automatic medical opinion.

### ***Military oversight in the processing of claims***

While there is no routine military oversight within the SPVA of the AFCS claims process, claims assessors and Scheme managers have access to advice from military staff within the Agency, if needed. Additionally, engagement and interaction has been increased with the Service chain of command. As a result, the exchange of information and provision of two-way advice on injury context and military practice is increasingly common place.

An example includes military staff agreement for SPVA to access the Army Incident Lessons Management System (AILEMS). This will provide the SPVA with quick, accurate information of incidents that have occurred requiring medical assistance. This will help the SPVA collate the necessary evidence when processing claims. SPVA access to the Defence Patient Tracking System (DPTS), as used by the military medical services, is also being considered to ascertain whether similar mutual benefits to those realised through shared AILEMS access can be replicated.

### ***Payment on account/fast payment***

A new provision has been introduced to the Scheme that will provide Service Personnel with the option of receiving a 'fast payment' through the AFCS to meet the Review recommendation to award a modest, but not insubstantial, up-front payment for the more seriously injured. The following qualifying criteria will need to be met in order to take advantage of this option:

- The injury in question was caused by service; and
- One or more injuries sustained as a result of service will give rise to an entitlement at levels 1 to 8 of the tariff; and
- A claim has been made for a fast payment.

A payment of £60,000 will be made to eligible personnel, the revised lump sum amount for a level 8 tariff award. In cases where the fast payment criteria had not been met, the individual will be advised that they are still able to put in a claim for AFCS in the usual way.

This option will not be imposed on Service personnel but if chosen, will provide financial reassurance and support to both them and their families as quickly as possible after a serious injury has been sustained.

### ***Interim awards where prognosis is uncertain***

Revised guidance has been introduced to increase the use of the power to make an interim award where the prognosis of an individual's injury is uncertain. Until now, an interim award could be made for a maximum of two years, after which it is made final. We have now introduced a power that, where prognosis remains uncertain at the end of two years, the award can be extended for a maximum of a further two years. The making of an interim award does not carry a statutory right of appeal, and the MOD recognises that, for this reason, the new power would be used only in exceptional circumstances.

### **Review at service termination**

A new right to request a review of injury benefit at service termination has been introduced. Where a final determination has been made within 7 years of service termination, individuals will have the right to request a review of an award within 12 months of service ending.

This new review power replaces the current medical discharge review power. If no claim under AFCS has been made and the person is medically discharged and is eligible for an ill-health or invaliding pension, the SPVA will continue to automatically consider the principal invaliding condition, without the need for a claim form. However, if an award has been made for the principal invaliding condition, the individual would need to seek a review.

The aim is that final awards made by the SPVA are correct. By the date of service termination, the majority of injured personnel will have reached the point of maximum medical improvement or at least their prognosis will be clear. As a result, award decisions made around this time should be informed by full in-Service evidence. For revision of the in-Service award under the new review power there needs simply to be worsening or development of a further injury (which attracts a new and/or higher tariff level descriptor), this is a lesser threshold than the previous medical discharge review.

### **Access to independent financial advice**

Current arrangements include the provision of guidance by a representative from the Consumer Financial Education Body (CFEB) at the Defence Medical Rehabilitation Centre at Headley Court. This arrangement will soon be replaced by Action4Education (A4e) which will continue money guidance work.

Further, the MOD is working with a prospective charity partner to identify how the provision of financial advice could be further developed with a view to establishing a Tri-Service package that covers three core areas:

- Financial Capability education and training (throughout the service career);

- Financial Guidance (directed towards AFCS recipients);
- Financial Advice (provided by Independent Financial Advisors).

This work is at an early stage and will be developed over the next 12 months.

### **Removal of the automatic consideration of “spanning cases”**

The automatic consideration of “spanning cases” was removed from legislation as part of the changes that were made to the Scheme in August 2010.

### **Consolidated copies of AFCS legislation**

The legislation laid before Parliament in February 2011 revokes the previous Scheme rules and re-enacts the Scheme, incorporating the recommendations of the Review. This legislation will be available on the MOD and SPVA websites through a link to the Stationery Office website. Consolidated copies of previous versions of the Scheme will also be made available on the MOD and SPVA websites.

## **Issue 8 - The burden and onus of proof**

### **Background and Review Recommendations**

The Review recommended that the standard of proof should remain the balance of probabilities in all cases and the onus on the individual claimant in the majority of cases. The Review did, however, recommend significant modifications in cases where the MOD had genuinely lost relevant records, by giving the individual the benefit of presumption in relation to the material fact that would have been determined by that record. The Review recognised that a loss must be distinguished from the non-existence of a record.

As well as continued opportunity for claims to be made for any physical or mental disorder

and for such claims to be determined on their merits, the Review recommended that mechanisms should be established to ensure that a recognised list of diseases, that could be presumed to be due to service, provided that certain published criteria were met, was developed. The Review considered that such work could be done by the Independent Medical Expert Group (IMEG).

## **Implementation of Recommendations**

### ***Burden of proof***

A new provision has been added relating to the burden of proof. This provides that where an official record has been lost or destroyed, and that record is relevant to deciding a material fact in relation to causation, there is a presumption that the fact will be decided in favour of the claimant.

### ***Creation of the Independent Medical Expert Group (IMEG)***

The Review also recommended the creation of an Independent Medical Expert Group (IMEG) to advise Ministers on medical aspects of the Scheme. The group was established in early 2010 and comprised of senior consultants from relevant specialities, including trauma, orthopaedics, neurology, audio vestibular medicine, occupational medicine and mental health. The group also comprised of three lay members to represent the Services and ex-Service organisations.

The IMEG was initially asked to consider specific topics arising from the Lord Boyce Review, notably: the compensation for mental disorders and hearing loss. The Review also identified a number of potential anomalies where the Scheme was not delivering the horizontal and vertical equity on which it was founded. These included: injury to genitalia, brain injury, spinal cord injury, non-freezing cold injury, paired injuries and loss of use of a limb. Between April and September 2010 the Group met four times and reported to Minister on all topics which needed to be included in revised legislation. The Group's recommendations have been

incorporated into the AFCS legislation that was recently laid in Parliament.

Both hearing loss due to chronic noise injury and mental health disorders are important and complex topics and the subject of a spectrum of opinion. To allow in-depth consideration of these two issues, it was recognised that more time was required. In September 2010, the Minister for Defence Personnel, Welfare and Veterans therefore extended the Group in its present form to March 2012, with a review of its future in September 2011, to allow further work in these areas.

### ***The identification and implementation of a list of diseases***

In addition to the work on hearing loss and mental health, in 2011/12 the IMEG will also consider the creation of a list of recognised diseases that could be presumed to be due to service.

## **Issue 9 - Time limits on claims and treatment of deterioration**

### **Background and Review Recommendations**

Under the AFCS, the time specified for making a first claim was originally 5 years from the day on which the injury occurred or, in the case of an injury not due to service, was made worse by service; for illnesses it was from the day the individual first sought medical advice in relation to that illness. There were some qualifications for example, where a person was physically and mentally incapable of making a claim or instructing someone else to do so for them, and so the time to claim could be extended. There was also an express provision to cover late-onset illnesses.

The AFCS makes full and final awards at the outset and aims to take due account of the medically expected progress and prognosis of the injury including, where appropriate, expected deterioration. The intention is that the resultant award provides a degree of financial certainty and allows the person to

move forward from the incident and focus on their future, rather than focussing on how the award may be changed in the future.

From evidence received there remained, however, an underlying concern that, in a few cases, after a very considerable period a condition might suddenly deteriorate very substantially. To cover this circumstance, Lord Boyce recommended the introduction of a further review provision beyond the current 10-year time limit. The Review accepted that this would apply in very limited circumstances: where there was new and compelling evidence which meant the maintenance of the existing award would be manifestly unjust.

The Review concluded that having appropriate time limits reflected important principles in the Scheme around encouraging Service and ex-Service Personnel to focus on recovery and continuing life following injury.

Nonetheless, it recommended a number of significant changes to the principal time limits in the Scheme:

- The initial period to submit a claim should be extended to 7 years;
- The time available to request reconsiderations should be extended from 3 to 12 months, given the mobile nature of Service Personnel;
- The time available to request appeals should be extended to a further 12 months beyond reconsideration; and
- The time available to claim for late-onset and death-in-retirement claims should be increased from 12 months to 3 years from first seeking medical opinion, or death, respectively.

The Review also recommended that the rules in relation to worsening of conditions by service were adjusted and that this could be considered by the new Independent Medical Expert Group.

## Implementation of Recommendations

In response to the recommendations on extending the time limits in which personnel can make a claim, the following changes were implemented in August 2010:

- Extending the time limits for injury claims from 5 to 7 years;
- Under the previous legislation there was only 3 months in which to request a reconsideration; this time limit has been extended to 12 months; and
- Extending the time limits for bereavement, late-onset and death-in-retirement claims from 1 to 3 years.

### *Review of a claim beyond the 10 year point*

An additional right to request a review beyond ten years, after a decision was made, has been included in the revised Scheme. As Lord Boyce recommended, the threshold for revising an award under this provision is that the development of a new injury or worsening has been substantial, unexpected and exceptional. As a result, the MOD considers that this provision will be relevant in only very limited circumstances where maintenance of the existing award would be manifestly unjust.

### *Worsening of injuries as a result of service*

This is one of the issues the IMEG will consider during its programme this year.

## Issue 10 - Compensation for mental illness

### Background and Review Recommendations

The Review sought external expert oversight of the Scheme's mental health arrangements from Professor Alexander on the Independent Scrutiny Group (ISG) and other UK leading experts who had experience of military mental health. The consensus was that the types of mental health conditions that would

be caused by military service, while having the potential to have a significant impact on an individual and their ability to work after leaving the Armed Forces, would not mean that an individual was permanently incapable of any form of employment.

Expert advice also acknowledged the positive impact of work on individuals with mental health conditions, and the potential for both relapse and remission from the condition throughout a lifetime.

The Review recommended that the existing range of mental health tariffs and lump sums be adjusted in acknowledgement that the impact of the most serious mental health conditions due to service might be greater than those that were reflected in the Scheme. In particular, the highest award should be increased from the equivalent of tariff level 8 (and 50% GIP Band) to the equivalent of tariff level 6 (and 75% GIP Band). The Review acknowledged that such an award was likely to be appropriate in only a very small number of cases.

It was also suggested that viewing mental health conditions in exactly the same way as physical injuries, in some instances, might downplay some important distinctions, particularly in relation to the willingness or ability of a patient to seek or engage in treatment. Nonetheless, from a compensation perspective, it was important that appropriate parity was achieved between comparable injuries and that some way of combining awards was also required for the individual who suffered both physical and psychological trauma as a result of an incident due to service.

The Review recommended that, bearing in mind these issues, the IMEG should consider the development of a separate “chapter” or “part” to the Scheme in acknowledgement of the distinctions between mental and physical conditions.

The Review also recommended that consideration should be given to introducing, as appropriate, a tailored interim award power for mental health conditions. This

would recognise the difficulty in determining prognosis, in some cases, immediately following diagnosis.

## Implementation of Recommendations

The range of mental health tariffs and lump sum payments has been adjusted to acknowledge the impact of serious mental disorder. In particular, the highest award has been increased to tariff level 6 and therefore now attracts 75% GIP.

This topic will be explored further by the IMEG in 2011 in conjunction with key experts and stakeholders.

## Issue 11 - The compensation paid to individuals with multiple injuries

### Background and Review Recommendations

When the AFCS was developed neither the context nor technology associated with the Iraq and Afghanistan conflicts had been anticipated. In some cases, claims have been made for over 30 injuries sustained in a single Improvised Explosive Device incident.

When originally conceived, the AFCS paid out 100% of the lump sum value for the most serious injury; 30% for the second most serious injury; 15% for the third most serious injury, and nothing for any other lesser injuries, although the lesser injuries would be accepted as due to service.

In 2008 the Scheme was modified for those whose injuries placed them in tariff levels 1-4 (100% GIP Band). In those circumstances, the Scheme awards the lump sum elements in full for every injury up to a maximum of the equivalent of a tariff Level 1 award for a single injury (£570,000).

Before developing options for change, the Review attempted to identify some key principles to guide the design of

any revision to the multiple injury rules. Three guiding principles emerged:

- That the more seriously injured (whether in a single injury or multiple injuries) should receive more than someone with lesser injuries (whether in a single injury or multiple injuries);
- That someone with multiple lesser injuries should receive less than someone with a single more serious injury; and
- That each injury sustained in a single incident should be acknowledged through an amount of compensation.

These guiding principles for a multiple injury rule suggested that it would not be appropriate simply to add all the lump sum values for the injuries together in all circumstances as, in those circumstances, an individual with a collection of more minor injuries would receive significantly more than an individual with a single more serious injury.

Lord Boyce concluded that the changes made to the multiple injury rules in early 2008, for those with very significant injuries, remained appropriate for that group. Under this change, those in the top 100% Band for GIPs receive the full tariff value for all their injuries up to the maximum level for a single tariff level 1 injury of £570,000.

The Review did, however, find that the existing rule for those with significant, but lesser, injuries below 100% GIP level did not adequately compensate for the impact that multiple injuries have on an individual. It therefore recommended that the existing rules should be changed to include an element of compensation for each injury sustained. Lord Boyce went on to recommend that all injuries should not necessarily be paid at their full tariff value to ensure those with lesser multiple injuries do not receive more than someone with

a single more serious injury, and thereby maintaining the principle of fairness.

The Review recommended that a revised approach should be based on an assessment of the injuries received to each principal body zone. In doing so, it identified the following principal body zones:

- Head and neck;
- Torso;
- Upper and lower limbs;
- The senses; and
- Mental health.

It was suggested that the tariff amounts should then be combined, with the most seriously injured zone compensated at 100% of the total tariff value, and then 80%, 60%, 40% and 20% for each lesser zone respectively.

## Implementation of Recommendations

The provision for multiple injuries has been amended in line with the guiding principles as identified in the Review.

The changes mean that for those who suffer multiple injuries from a single incident, but who do not have a 100% GIP, the following rules will apply to the calculation of their lump sum payment:

- Where at least two of the body zones are affected and there is at least a tariff level 11 injury in at least two zones, 100% of the lump sum payments for all injuries in the most heavily affected zone will be paid, 80% of the second most affected zone, 60% of the third, 40% of the fourth, and 20% of the least affected zone.

- Where an individual suffers multiple injuries from a single incident but two or more body zones are not affected, or the individual does not sustain a tariff level 11 injury in at least two zones, the lump sum amount will be calculated on the following basis: 100% of the lump sum for the most serious injury is paid, 80% of the lump sum for the second most serious injury, 60% of the lump sum for the third most serious injury, 40% of the lump sum for the fourth most serious injury, 20% of the lump sum amount will be paid for the fifth and each subsequent injury.

The rules have been constructed in this way to ensure the Scheme's principle of being fair is not breached. The Review considered that an individual with multiple injured body zones was more disadvantaged than someone with only one injured body zone. If the zoning approach was applied to all multiple injury cases an individual who sustained all injuries in a single zone and was therefore awarded 100% of the lump sums for all their injuries, would be in a better position than an individual who had identical injuries spread across a number of zones (who would receive 100% of some; 80%, 60%, 40% and 20% for others).

If the criteria for the zoning approach was restricted to individuals who had injuries spread across two or more body zones (with no tariff level criteria applied), similar equity issues would arise. For example, an individual who sustained all injuries in a single body zone would receive 100% for the first injury, 80% for the second, and so on; while an individual with identical injuries all in a single body zone except the least serious would receive 100% of all but the lowest lump sum (which would be paid at 80%).

In addition, the previous Article 19 which provided for discounting of awards for repetitive injury to the same body part has been removed. Those claiming for injuries to the same part of the body from separate incidents will be compensated in the same way as any person claiming for injuries in separate incidents.

## Issue 12 - Other issues raised

During the course of the Review some other important issues were raised, which were not covered within issues 1 to 11 above. The other issues raised were:

- The Scheme, and any improvements from the Review, should be applicable to injuries/illness/death occurring before 6 April 2005;
- Hearing loss is not properly catered for in the Scheme;
- Anomalies across the Scheme;
- Payments to eligible partners;
- Treatment for Foreign and Commonwealth ex-Service personnel;
- Home to duty travel definitions;
- Relationship with Personal Accident Insurance (PAX); and
- Relationship with common law claims.

### **The Scheme and any improvements from the Review should be applicable to injuries/ illness/death occurring before 6 April 2005**

#### **Background and Review Recommendations**

The Review considered whether any improvements should be made available to those who were injured before the start of the Scheme on 6 April 2005. The Review recognised the difficulties of providing AFCS benefits before the start of the Scheme, and noted that other compensation arrangements existed for injuries before that date.

#### **Implementation of Recommendations**

The Review therefore did not recommend extending the provisions to before the start of the AFCS.



## Hearing loss is not properly catered for in the scheme

### Background and Review Recommendations

The Review acknowledged that the Scheme catered for hearing loss using a range of descriptors from blast injury to the ears at tariff level 14 to total deafness in both ears at level 6. In view of this, some stakeholders suggested that these provisions were insufficient and required review. Lord Boyce recommended that, at the top end, the awards provided for hearing loss were maintained at their existing level (i.e. a level 1 award for total deafness and loss of both eyes, or total deafness and total blindness in both eyes, or total deafness and loss of one eye and total blindness in the other, and a level 6 award for total deafness in both ears); and that the level of compensation awarded for lesser degrees of hearing loss were all increased by one tariff level.

The AFCS covers injuries and diseases caused by service on or after 6 April 2005 and the Review considered that it did not expect that hearing loss due to chronic workplace noise damage would be a particular issue for this Scheme. However, it recognised that recent operations had been associated with impulse noise related to weapon-firing and associated hearing loss and tinnitus. The Review noted that this matter was being investigated by the MOD. It recommended that these other issues, notably compensation for acoustic trauma due to weapon-related impulse noise, should be explored by the IMEG.

### Implementation of Recommendations

In line with the Review recommendations, the 'top end' awards for hearing loss were maintained at existing levels and the level of compensation awarded for lesser degrees of hearing loss were all increased by one tariff level. This change was included in the August 2010 amendments to the Scheme and will be applied to all previous claims relating to this level of hearing loss.

The IMEG investigated and made recommendations on hearing loss due to weapons-related impulse noise and will continue its work on hearing loss in 2011/12.

## Anomalies across the Scheme

### Background and Review Recommendations

During the course of the Review a number of areas of the tariff were identified where it was suggested that the Scheme was not operating as intended in terms of horizontal and vertical equity. These areas were:

- The compensation paid for injury to the genitalia;
- The compensation paid for brain injury;
- The compensation paid for spinal cord injury;
- The compensation paid for non-freezing cold injury;
- The compensation paid for paired injuries; and
- The loss of use of a limb.

Lord Boyce recommended that these areas were examined in detail by the IMEG.

### Implementation of Recommendations

The IMEG recently presented a report of its findings on these issues. The Group's recommendations have been reflected in the revised Scheme.

## Payments to eligible partners

### Background and Review Recommendations

The Review examined the rules for determining eligible partners in the Scheme. It recognised the sometimes

complex nature of modern relationships, and how those might be affected by the circumstances of service life.

### **Implementation of Recommendations**

The Review concluded that the current rules appropriately take these circumstances into account. The Review also noted that the current rules are in fact more generous to the claimant and their circumstances than the rules found in a number of other comparator schemes and therefore did not recommend any changes to the Schedule.

## **Treatment for Foreign and Commonwealth ex-Service personnel**

### **Background and Review Recommendations**

The Review acknowledged the legal obligations on the MOD to promote equality and not to discriminate on the grounds of race or nationality. The Review also accepted that decisions on where to live are ultimately for individuals to make for themselves, taking into account all the relevant factors. The Review understood, however, the concerns that have been expressed in relation to the choices about where to live open to personnel from or with connections to Foreign and Commonwealth countries, injured as a result of service on their discharge from the Armed Forces, which might be more constrained than would otherwise have been the case had the injury not occurred.

In those very special circumstances, the Review recommended that the Scheme should be able, on a discretionary basis, to defray certain costs associated with ongoing medical treatment arising from the injury caused by service. The Review recommended that such a power should be necessarily constrained as described above to ensure that the legitimate policy aims are met. The Review recognised the practical challenges to be overcome in making this provision work in practice and for detailed guidance to be

drawn up in consultation with stakeholders and then made available to those to whom it might apply, and other interested parties.

The Review also recommended that the MOD continued to work with injured personnel, their families, charity and voluntary organisations and other government departments to ensure that individuals are provided with sufficient information, so that they can make a properly informed choice about their future living and care arrangements, if they choose to live outside the UK after they leave the UK Armed Forces.

### **Implementation of Review Recommendations**

A discretionary provision to meet certain costs of ongoing medical treatment required by seriously injured personnel (defined as those with an award in tariff levels 1-8) has been added to the Scheme. This is payable only to those who move from the UK within 12 months of leaving the Armed Forces.

The MOD will maintain the commitment to ensure continued work with injured personnel, their families, the voluntary and charity sectors and other government departments. This will help ensure that individuals are provided with sufficient information, so that they can make a properly informed choice about their future living and care arrangements, if they are eligible to benefit from this provision and choose to do so.

## **Home to duty definitions**

### **Background and Review Recommendations**

The Review acknowledged that the Scheme contained certain exclusions on where normal home to duty travel of personnel was not covered. A number of contributors to the Review suggested that greater clarity, in either the rules or associated guidance notes, should be provided in certain circumstances. The Review recommended that such clarity was provided either in the Scheme rules or

in appropriate guidance material, and this should be made widely available to personnel.

### **Implementation of Review Recommendations**

AFCS legislation has been adjusted to provide greater clarity on what is included, and what is excluded, from the scheme.

### **Relationship with Personal Accident Insurance (PAX)**

#### **Background and Review Recommendations**

The Review noted that the AFCS was entirely separate from the Personal Accident Insurance (PAX) that Service personnel may have made through their own private arrangements. The Review acknowledged that payouts under PAX were not taken into account when the Scheme determines the level of award. In those circumstances, an individual would receive both their AFCS award and any benefits from their own Personal Accident cover.

The Review noted these separate arrangements and the overlap between them, and that it is an individual's choice whether they take out their own personal accident cover to meet their own personal priorities, taking into account the potential premiums required to provide for cover, given the current scale and nature of operations.

#### **Implementation of Recommendations**

No action has been required on this issue in the implementation phase.

### **Relationship with common law claims**

#### **Background and Review Recommendations**

The Review considered the general policy of abatement in relation to AFCS claims and civil litigation in relation to injury, illness and death and concluded that the policy remained

sound. A different practical approach was, however, required for dependency claims in England & Wales to ensure that a fair amount of compensation was awarded in total from the AFCS and a common law claim, by taking in to account the awards made from either. In most cases, the settled claim would take account of AFCS awards. In dependency claims in England & Wales, it might be necessary for a widow's AFCS award to be revisited once a common law claim had been settled. For the sake of clarity, the Review recommended that this approach be set out explicitly within the Scheme rules, and made clear in communications with claimants.

The Review concluded that in effect, someone leaving the Service as a result of an injury, or a dependant because of death, would receive the occupational pension to which they are entitled as of right. In addition to this, they would receive additional money from the AFCS if the injury, illness or death was due to service. Further money on top of an AFCS award would be available in the case where MOD accepted liability in a negligence claim. Any additional payments received as a result of Personal Accident Insurance, for which an individual paid their own premiums, such as PAX, would not be taken into account in AFCS awards, nor in common law claims.

#### **Implementation of Recommendations**

Amendments have been made to AFCS legislation to clarify the powers to review and adjust awards received, where a pension is in payment and damages are received for the same injury, illness or death for which benefit is payable under the Scheme. This reflects the long-standing public policy and common law position that no person is compensated twice for the same injury.

It is recognised that the relationship between AFCS awards and common law claims could be viewed as being particularly complex. Therefore, clear guidance is being worked up for sharing with interested stakeholders.

# Annex A

## Armed Forces Compensation Scheme – lump sum award values

This table shows the existing value of AFCS awards and their future value as a result of implementing the recommendations from the Lord Boyce Review.

Tariff Level	Current Award Value	Future Award Value
1	£570,000	£570,000
2	£402,500	£470,000
3	£230,000	£380,000
4	£172,500	£290,000
5	£115,000	£175,000
6	£92,000	£140,000
7	£63,825	£90,000
8	£48,875	£60,000
9	£34,100	£40,000
10	£23,100	£27,000
11	£13,750	£15,500
12	£9,075	£10,000
13	£5,775	£6,000
14	£2,888	£3,000
15	£1,155	£1,200

# Annex B

## Armed Forces Compensation Scheme - table of factors for calculation of the Guaranteed Income Payment, Survivors Guaranteed Income Payment and Child Payment

The revised conversion factor takes into consideration the recommendations from the Lord Boyce Review of the AFCS:

- The lasting effect of more serious injuries on future, likely promotions;
- The ability to work to age 65 (post the service career);
- The increase in the assumed average age of death from 79 to 86 years; and
- The reduction in the discount rate from 3% to 2.5%.

Age	Factor	Age	Factor	Age	Factor
16	1.205	30	1.094	44	0.897
17	1.202	31	1.081	45	0.882
18	1.199	32	1.068	46	0.866
19	1.196	33	1.055	47	0.849
20	1.192	34	1.041	48	0.833
21	1.189	35	1.028	49	0.816
22	1.185	36	1.014	50	0.799
23	1.182	37	1.000	51	0.781
24	1.170	38	0.968	52	0.763
25	1.157	39	0.972	53	0.744
26	1.145	40	0.957	54	0.724
27	1.132	41	0.943	55	0.705
28	1.120	42	0.928	over 55	0.705
29	1.107	43	0.913		

