

PENSION AND COMPENSATION POLICY INSTRUCTION 05/14

SURVIVING ADULT DEPENDANTS (AKA ELIGIBLE PARTNERS)

What is this about?	Outlining the policy intent and eligibility criteria for the Surviving Adult Dependant (the “eligible partner”) benefit payable under the Armed Forces Compensation Scheme, Armed Forces Pension Scheme and Reserve Forces Pension Scheme.
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PREFACE

This policy statement focuses on providing guidance to determine whether an individual fulfils the legislative criteria of a surviving adult dependant for unmarried couples or those not in a civil partnership aka an “eligible partner”. The guidance also aims to ensure there is consistency in decision making between the different schemes (AFCS, AFPS 75 / AFPS 05 and RFPS 05) and in determining eligibility.

POLICY INTENT

The MOD’s statutory Pension and Compensation Schemes automatically provide benefits to spouses and civil partners of members of the Armed Forces. It is not so straightforward for those in a relationship that is not legally documented in this way.

The MOD recognises that, in modern day life, Service personnel can often constitute formal partnerships / relationships that are substantial and exclusive in their nature but not recognised by law. Furthermore, the Department acknowledges that circumstances such as financial and living arrangements can differ greatly from person to person. The MOD seeks to ensure that entitlement to AFCS compensation and AFPS 75 / AFPS 05 or RFPS 05 pension benefits is consistently applied to married or registered civil partners and un-married or unregistered partners.

The Department’s intention is to recognise and award benefit to surviving adult dependants from relationships akin to marriage. The way evidence of such a relationship is collated is through proof of cohabitation and an exclusive and substantial relationship with financial dependence or inter-dependence, with no technical or legal reason which prevents them from marriage or civil partnership. The existence of the relationship should be proven by being able to show joint financial commitments and other evidence that the couple were cohabiting in a substantial and exclusive relationship, in a similar way to married couples or civil partnerships. The majority of cases should be relatively straightforward, but a small proportion are likely to be more complex and, if not correctly considered, may be exposed to challenge on the grounds of failure to consider all relevant material factors in coming to a decision.

SURVIVING ADULT DEPENDANTS’ PENSION AND COMPENSATION BENEFITS UNDER AFPS, RFPS AND AFCS

DEATH IN SERVICE

When a death occurs in the UK Armed and Reserve Forces, the Armed Forces Compensation Scheme (AFCS) and Armed Forces Pension Scheme (AFPS) provide financial support to unmarried / unregistered surviving adult dependants. This financial support is dependent upon length of service, the scheme the individual was a member of, the date of the incident that caused his death and whether or not it was caused by service. AFCS compensation is only payable when death occurs as a result of service. These benefits are paid in recognition of the loss of a deceased partner’s earnings.

Under AFCS, surviving adult dependants who successfully claim are entitled to receive a Survivor’s Guaranteed Income Payment (SGIP). SGIP is an income stream paid monthly to a surviving adult dependant to provide financial support to recognise

the loss of the deceased partner's earnings. The purpose of the SGIP is to provide continued financial support to the partner after the death of the Service person.

Similarly, the AFPS 75, AFPS 05 and RFPS 05 pension schemes also provide benefits for life in the event of death. However, the terms under which a pension will become payable to a surviving adult dependant differs between the schemes:

- AFPS 75 – payable where the individual has two years reckonable service¹; death is considered by the Discretionary Awards Review (DAR), on the balance of probabilities, to be caused by service; and where the death has been made attributable under the War Pensions Scheme or AFCS.
- AFPS 05 scheme – payable if the deceased has two years or more calculation service. This is payable regardless of whether the death has been made attributable.
- RFPS 05 scheme – payable if the deceased has two years or more calculation service. This is payable regardless of whether the death has been made attributable.

A death in service (DIS) lump sum is paid to the nominee (AFPS 05 / RFPS 05), or if there has been no nomination then to a spouse, civil partner or surviving adult dependant. Under AFPS 75 it would then go to any children. If there are none of these relatives then the benefit would go to the deceased's personal representative regardless of the amount of service given. Under the AFPS 75 (when death was caused by service) / AFPS 05 and RFPS 05 a one off DIS lump sum may be paid to a surviving adult dependant irrespective of the time served providing the deceased member has not made a nomination.

DEATH IN RETIREMENT

A surviving adult dependant may still be eligible for pension / compensation benefit where the death of their partner occurs after discharge from the Service. A death in service/retirement claim form must be submitted in all cases. A pension will become payable to a surviving adult dependant under the following schemes as follows:

- AFPS 75 – where death occurred after 5 December 2005 and was a) made attributable under the War Pensions Scheme and accepted as attributable under the balance of probabilities by the DAR; or b) where death was accepted as attributable by AFCS.
- AFPS 05 / RFPS 05 – provided the deceased had an entitlement to a pension regardless of whether it is deferred or in payment.

¹ Reckonable service is defined as service from age 18 for Ordinary Ranks or age 21 for Officers for pension purposes but excludes some absences e.g. absence without leave (AWOL) and leave without pay.

- AFCS – if death occurred within 7 years of service ending, as a result of a late onset illness, or as a consequence of injuries previously awarded at levels 1 – 9 on the tariff.

LEGAL AUTHORITY

When considering a claim it will be necessary to decide whether the claimant provides sufficient evidence to be considered as a surviving adult dependant. The legislation regarding the eligibility to surviving adult dependant benefits for the AFPS 75 / AFPS 05, RFPS 05 and AFCS can be found in the following Statutory and Prerogative Instruments:

- Armed Forces and Reserve forces (Compensation Scheme) Order 2011 (SI 517/2011) - (see Annex A)
 - Article 30 – Meaning of “surviving adult dependant”
 - Article 43 – Entitlement to benefit dependent on claim
 - Article 45 – Cases where claims are not required
 - Article 47 – Time for making a claim - general
 - Schedule 1, Part 1 – Substantial Relationship
 - Schedule 1, Part 2 – Exclusive Relationship
- The Armed Forces Pension Scheme 1975 - Tri-Service Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme Prerogative Instruments 2010 (AFPS 75) – (see Annex B)
 - Part E – Death Benefits
 - E.1 – Surviving spouse or civil partner’s pension
- The Armed Forces Pensions Scheme Order 2005 (SI 438/2005) (AFPS 05) – (see Annex C)
 - D.2 – Retirement before reaching pension age
 - E1 – Surviving spouses’ and civil partners’ pensions
 - E.2 – Other adult dependants’ pension
 - E.21 – Nominations for lump sum death benefits
- The Armed Forces Redundancy Scheme 2006, the Armed Forces Redundancy Etc. Schemes 2010 and the Armed Forces Pension Scheme 2005 (Amendment) Order 2011 (SI 2013/2011) – with effect from 10 January 2012 – (see Annex D)
 - E.15 – Death of a member: lump sum benefit
- Reserve Forces Pension Scheme Regulations 2005 – Regulation E2 - Defence Council Regulations – (see Annex E)
 - E.2 – Other adult dependants’ pension

INTERPRETATION OF THE LAW

For a person to receive benefit as a surviving adult dependant the claimant should meet all four key AFCS elements or all three key AFPS 75 / AFPS 05 / RFPS 05 elements of the criteria as set out in the legislation. **All these criteria need to be fulfilled and should not be taken in isolation.** The balance of probabilities (i.e. more likely than not) standard of proof should be used to assess all claims.

AFCS, article 30	Eligibility Criteria	AFPS, E2(3)
(a)	Cohabiting as partners in a substantial and exclusive relationship	(a)
(b)	Deceased leaves no surviving spouse/partner	
(c)	The person and the deceased were not prevented (legally) from marrying or entering a civil partnership	(b)
(d)	Either the person was financially dependent on the deceased or they were financially interdependent	(c)

The definitions of surviving adult dependant are essentially the same for the AFCS, AFPS 75, RFPS 05 and AFPS 05. However, each scheme is independent, with its own rules, and a decision must be made on each case separately under each scheme. Although separate decisions are made under the AFCS, AFPS and RFPS schemes, because the rules and regulations mirror each other, determining eligibility should result in the same decision with regard to the surviving adult dependant. Teams should co-operate and seek policy advice if required.

SUMMARY OF SIMILARITIES AND DIFFERENCES BETWEEN AFCS AND AFPS / RFPS

AFCS	AFPS 75 / AFPS 05 / RFPS 05
Payment of benefit is dependent on entitlement i.e. that death was caused by service.	A Death in Service (DIS) lump sum is payable to the nominated recipient for AFPS 05 / RFPS 05. Where there is no nominee, or the deceased was a member of AFPS 75, then it is payable to the spouse, civil partner then to a surviving adult dependant (providing they meet the criteria). Where there is none of the above, then the DIS lump sum will be paid (to any children under AFPS 75 and then) to the deceased person's personal representative (i.e. parents or estate).
Bereavement Grant (BG) and Survivors' Guaranteed Income Payment (SGIP), payable for life, can only be paid to an eligible spouse / partner providing they meet the criteria.	A Dependants' pension is payable for life providing the deceased has completed two years reckonable service (for pension purposes). This is payable to the spouse or civil partner. Where there is no spouse or civil partner, then the surviving adult dependant (providing they meet the criteria) is entitled to the pension.

Decisions carry a right of appeal to an independent tribunal; if a decision is overturned it is not binding on AFPS 05 / RFPS 05 leading to potential for inconsistent outcomes	Recourse is via the Internal Dispute Resolution Procedure (IDRP) or Pensions Ombudsman.
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ESTRANGED PARTNERS

Of particular note is the fact that in both AFCS and AFPS 05 / RFPS 05 'spouse' would encompass an estranged spouse or civil partner even if that surviving estranged spouse / civil partner or the deceased were living with someone else at the time of death. Although this is true with regards to AFPS 05 / RFPS 05 pension entitlement, it is possible for the member to nominate another individual to receive the death in service lump sum only and the nominee would take precedence over an estranged spouse or civil partner. However, in AFPS 75 there is no nomination form and the estranged spouse would receive the pension benefits providing they are not cohabiting with another partner (Royal Warrant 2010 (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2010 Rule E.9).

CLAIM FOR A SURVIVING ADULT DEPENDANT

A claim for a surviving adult dependant can be made directly by the claimant or may be brought to the attention of decision makers in Norcross and Glasgow by the

- Joint Casualty & Compassionate Centre (JCCC) on the notification of death
- Chain of Command
- Casualty Visiting or Welfare Officer
- Family and friends
- Press or defence intranet
- Claim form
- Direct application to DBS Vets UK in the Norcross or Glasgow office

The Welfare or Visiting Officer will always visit to assist a potential claimant in the completion of a claim form if there appears to be a substantial surviving adult dependant. The decision on eligibility is made by a DBS Veterans UK Assessing Officer.

There may be instances where the Casualty Visiting Officer (CVO) or Veterans Welfare Service Welfare Manager (VWS WM) advises that a potential recipient has decided they do not wish to pursue a claim for surviving adult dependant benefits under AFPS 75 / AFPS 05 / RFPS 05 or AFCS e.g. if they were girlfriend or boyfriend but not living together as a couple. In this scenario, the event will be closed down and

no further action taken. Although it may not always be possible and it will depend on the circumstances, a letter of acknowledgment to confirm that no further action will be taken should be obtained. This is to allow AFPS (where there are other eligible dependants and / or JCCC to make payment of the Death in Service / Death in Retirement lump sum to the estate of the deceased. Where a letter of acknowledgement cannot be obtained and it is clear that the girl / boyfriend was not a surviving eligible partner, confirmation from the Welfare / Visiting Officer should be obtained. However, when a claim is not pursued or considered no formal decision letter is required or issued.

COHABITING AS PARTNERS IN A SUBSTANTIAL AND EXCLUSIVE RELATIONSHIP

When assessing a claim it will be the responsibility of the decision maker to decide if the claimant has met the criteria of “cohabiting as partners in a substantial and exclusive relationship”. The test for the meaning of a substantial and exclusive relationship in the AFCS and AFPS 75 / AFPS 05 / RFPS 05 is similar (but not identical) to the test used in social security law as to whether persons are living together in one house as husband and wife.

All the key elements of cohabiting as partners in a substantial and exclusive relationship should be considered, with each element being determined in the context of all of the elements and with none being decisive. There is more to the overall determination than the cold observable facts.

I. COHABITING

The need for a couple to be cohabiting in order to meet the criteria is a legal requirement set out in legislation. To ensure there is no discrimination, the rules on cohabitation are applied equally and consistently to everyone, regardless of any financial or personal reasons, moral, religious or cultural beliefs, for not cohabiting. It may be possible to determine that a couple are cohabiting from some of the evidence used to demonstrate that a relationship is substantial and exclusive (see below). Although this evidence may also support cohabitation it is not limited to any specific evidence.

There is nothing in the legislation stating where a couple should reside in order to qualify. So this could be in rented or purchased accommodation or, where a couple are economically challenged, living with relatives e.g. one or other of their parents.

Consideration should be given to the impact that service conditions, which have been imposed on individuals, may have on a couple's ability to cohabit. Service rules prevent unwed couples living together in married accommodation. The rules do not prevent Service personnel from finding alternative non-service accommodation, but when both members of a partnership are Service personnel they may be prevented from living together due to postings on different ships or to different units at home and abroad. Due to the nature of service life a broad view of what constitutes 'cohabitation' should be taken and it is essential that the unusual working and living patterns of Service personnel are given due weight when deciding the status of a surviving adult

dependant. If it appears that it is the profession of a serving couple that is preventing them from cohabiting the case should be referred to Head Office for policy advice.

It may be necessary for a partner to reside in barracks or lodgings Monday to Friday because of the travel distance to and from the posting and home. Childcare commitments, location of schools or the claimant's civilian employment, if not co-located to a service posting, may mean a couple reside separately for certain periods. In addition, Service personnel can be called upon to serve for long periods away from their shared place of residence, with only short periods of leave in between and it could appear that they might not, in normal circumstances, be classed as 'resident'. However, where there is evidence to show they return home at weekends, for holidays or when postings allow they could still meet the criteria for cohabitation. For example, where a couple are prevented from cohabiting during episodes of deployment, they may still be able to meet the cohabitation criteria if the pair can demonstrate they are cohabiting when service conditions allow e.g. on return from deployment etc. The key is that there is clear evidence that they have set up home together in that place on a full time basis apart from absences necessary for employment. Flexibility could be afforded in these circumstances where evidence is provided that fulfils the remaining criteria and when looking at the whole picture. It is the intention of the next AFCS review to examine the requirement for cohabitation in the instance of two Service personnel in more detail.

An instance where the question of cohabitation may not be so clear cut is where information comes to light that the claimant seems to be living a single existence. For example where it appears they are in receipt of single occupancy council tax reduction; lone parent benefit sought from social security. Further evidence will be required to determine if this is a true reflection of the living arrangements or a means of obtaining additional financial gain, albeit falsely. In the absence of verification to the contrary, information indicating a single lifestyle could be deemed to be strong evidence that a couple were not cohabiting or financially dependent or interdependent.

When considering the evidence to support cohabitation a good starting point is to look at documentation required legally to be linked to a current address e.g. driving licence, motor insurance, electoral roll.² If a couple are cohabiting on a permanent basis it would be expected that they had both updated these documents. However, the fact a family home address is used for bank accounts for example doesn't necessarily displace the evidence a house was shared with a surviving adult dependant.

II. SUBSTANTIAL

In order to support a claim for a surviving adult dependant there should be evidence of a substantial relationship. The evidence that would support a substantial relationship is set out in the legislation for AFCS (see Annex A) and in a policy statement for AFPS 75 / AFPS 05 and RFPS 05 (JSP 764, Part 1 and Part 3, Chapter 4, Para 0418 - see Annex F). There is no maximum or minimum amount of evidence required to meet the criteria or hierarchies of evidence in either of the schemes.

² This will be dependent on the date they registered for the electoral role especially if they registered as a Service voter which lasts for 5 years even if they move around.

In the majority of cases evidence provided in support of a claim will consist of one or more of the examples set out in the AFCS legislation or AFPS 75 / AFPS 05, RFPS 05 policy statement. However, it is important to note that the AFCS legislation allows for “*any evidence which the claimant considers demonstrates that the relationship is substantial*” to be taken into account. Equally, the list of evidence in the AFPS75 / AFPS 05 and RFPS 05 policy statement is “*not exhaustive*”. Consideration must therefore be given to any evidence submitted that may, or may not, support a claim for a surviving adult dependant. Examples of additional evidence, over and above that contained in the legislation or policy statement that could be provided for consideration in support of a claim, are listed at Annex G.

Additional Evidence

Additional evidence that may support the fact a relationship is substantial could include information that:

- Demonstrates that there is a commitment e.g. confirmation of an engagement
- Demonstrates the existence of a stable relationship akin to a marriage e.g. shared responsibility for a home (like bills) or joint financial arrangements
- Indicates an emotional long term link e.g. a ‘save the date’ card, showing engagement or intended marriage
- Demonstrates public acknowledgement that they are / have been identified (by others) as a couple e.g. joint invitations to social events
- Demonstrates that the relationship is established e.g. statements by family or friends
- Shows the length of the relationship e.g. shared holidays over a period of time
- Joint responsibility for Children

Length of Relationship - AFCS

Unmarried or unregistered partners and those in marriages or civil partnerships are treated differently in the AFCS Order. In the case of unmarried or unregistered partners, the Secretary of State will take into account the length of the relationship and apply discretion on a case by case basis in doing so, dependent on the circumstances.

Where married couples or civil partnerships are concerned the Secretary of State will take into account the period of six months (AFCS article 29(2) & (3) and Royal Warrant 2010 (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2010 Rule E.1 (12)) but still has discretion whether or not to withhold payment. Thus both approaches require the application of discretion by the Secretary of State on a case by case basis dependent on the circumstances.

Therefore, the application of discretion applies equally to married or unmarried couples and civil partners who are registered or not registered. For example, where a

spouse had only been married for two months but had actually been in a substantial relationship with the service person for a number of years, the Secretary of State may exercise discretion to award benefit.

Evidence

The claimant is required to provide evidence to establish entitlement. Initial consideration should be given to the information on, or enclosed with, the claim form. If this does not fulfil the criterion, it may be necessary to request further information either directly from the claimant or via the welfare officer. Some evidence may seem to contradict what one would expect to see in support of a substantial relationship e.g.

- The claimant is not nominated for DIS (AFPS 05 / RFPS 05) lump sum
- The claimant is not the principle beneficiary in the Will
- The claimant is not the main life insurance beneficiary

Nominating someone for AFPS 05 / RFPS 05 benefits, or naming them as the principle beneficiary in a Will or life insurance policy, would add substantially to the evidence which would be considered when establishing a surviving adult dependant's entitlement to AFCS or AFPS 75 / AFPS 05 / RFPS 05 benefits. However, eligibility does not rest on these documents alone. It is important to consider why a surviving adult dependant has not been nominated (AFPS 05 / RFPS 05) or bequeathed. Decision makers should consider:

- Has the deceased failed to update these documents in recent years or since this relationship began?
- Was it the intention to provide for others in the Will, for example on the understanding the surviving adult dependant would be provided for under AFPS 75 / AFPS 05 / RFPS 05 pension or AFCS SGIP arrangements?
- Is there other evidence on which to rely that is sufficient to meet this element of the criteria?
- Has the claimant provided some other reasonable explanation for the omission? Is there a plausible explanation?

Disclosure

In a few cases, information may come to light or be submitted by a third party that contradicts the evidence provided by a claimant. As a general principle, we should not decide a case on information which the potential beneficiary is not able to dispute. Therefore, where a third party shares information with us, we should write back to that third party making it clear that we can only consider that information if they are prepared for us to disclose it to the potential beneficiary. We need to get the third party's permission to disclose it, in writing, before doing so. The claimant should then be given an opportunity to address the information or answer any discrepancies. If the

third party is not content for us to disclose the information, then we must not take that information into account in our decision making.

Where the information could be critical, for example if informed the claimant was married to someone else therefore prevented from marrying, and a third party does not agree to the disclosure of the information to the claimant, it may be necessary to consider making separate enquiries.

Summary

Deciding whether a relationship is substantial is not a question of going through a checklist of the factors but having regard to and looking at the relationship in the round. When establishing whether a couple were in a substantial relationship, consider a claimant's circumstances prior to, and leading up to, the death of their partner. There is no way of knowing what would have happened to a relationship in the future if service had not caused the death of a partner. Nor is it appropriate to request details of the state of the relationship from recently bereaved relatives.

III. EXCLUSIVITY

By default, considering whether there is a surviving spouse / partner (AFCS art 30, (b)) or that the claimant is not prevented from marrying (AFCS art 30 (c) and AFPS E2, (b)) assists with the determination of exclusivity. So, unless informed to the contrary, evidence that may be taken into account to demonstrate exclusivity includes:

- Dependant's signed declaration on a combined AFCS / AFPS 75 / AFPS 05 / RFPS 05 claim form
- Other statements by the claimant
- JPA entries
- Information in service records
- Reports from the Welfare Service, casualty or visiting officer, chain of command
- Press coverage
- Statements from family and friends

IV. NOT PREVENTED FROM MARRYING AND NO SPOUSE OR PARTNER

In the main, the decision maker should be able to rely solely on the Dependant's signed declaration on the claim form as confirmation they were not prevented from marrying unless other contrary evidence is brought to their attention (see 'Disclosure' above).

When an individual is identified for AFPS 75 / AFPS 05 / RFPS 05 purposes, they are asked to complete an application form that includes detailed guidance. This guidance explains that by signing the application form they are declaring that they are entitled

and that they are not prevented from marrying or entering into a civil partnership and do not have a spouse or civil partner.

Evidence to be considered could include:

- Declaration on a combined AFCS / AFPS 75 / AFPS 05 and RFPS 05 claim form
- Decree absolute
- Service documents indicating either party has a current spouse / civil partner
- JPA entry
- Annulment

V. FINANCIAL DEPENDENCY OR INTER-DEPENDENCY

Due to the potentially high value of the AFCS award, AFPS 75, AFPS 05 and RFPS 05 benefits, in the event of death it is important that the decision maker seeks evidential confirmation of financial dependency or interdependency.

Financial Dependency

Financial dependency is where a partner is financially reliant on the deceased. Evidence should be readily available to show that the surviving partner cannot support themselves financially. Clearly, in those circumstances, regular financial commitments are not going to be met due to the death of a partner. Because a couple were in a long term committed relationship, which was intended to continue, the death of one partner would adversely affect the future life that had been planned on the basis of that relationship.

Financial Inter-Dependency

Financial inter-dependency is where there is a financial responsibility to each other and the couple share essential living expenses for mandatory things that one has no choice over paying such as a mortgage, rent, council tax, utilities, TV licence, food etc necessary in order to run a home.

Evidence of Financial Dependence or Inter-Dependence

The requirement for the claimant to provide this evidence enables the decision maker to scrutinise a potentially broad range of documentation to support a claim. Factors to take into account when considering the evidence should include whether there were regular financial commitments that indicate financial dependency or inter-dependency.

When ascertaining if certain circumstances amount to evidence of financial dependency or inter-dependency, it is important for the decision maker to exercise discretion. Evidence has previously come in numerous forms including:

- Regular bank account transfers / payments from the deceased, and vice versa
- The production of joint borrowing commitments such as credit card debt and loans
- Other significant, on-going financial commitments e.g. insurance policies that were in the joint names of the deceased and claimant.

A further example of core evidence could include the employment status of the claimant whereby he / she may be unemployed or in part-time employment (e.g. to raise a young family) and was therefore totally dependent on the salary of the deceased. A surviving adult dependant may also be undertaking training for which they relied on the deceased partner for the financing of that training.

Evidence presented should sufficiently demonstrate clear dependency or inter-dependency and thus meet the policy intent and the criteria set out in the legislation. The requirement for evidence should not, in theory, create a problem for a couple who have been in a committed relationship but this may not always be the case. For example, some couples that were financially dependent or inter-dependent may have conducted regular transfer of money on an informal, cash basis. Informal arrangements, where money is exchanged without the formality of using banking services, is an example of how modern day living arrangements prove difficult when evidence is required in support of a claim. Others may have maintained separate bank accounts. Personal financial commitments vary dramatically from one relationship to another so flexibility will be required when considering financial aspects to reflect current-day informal approaches to managing financial commitments.

ASSESSMENT OF COMPLETE CRITERIA

Although the AFCS and AFPS 75 / AFPS 05 / RFPS 05 have a list of factors to consider and criteria to be met, the emphasis should be on the importance of looking at the general nature of the relationship, and standing back and considering all the evidence as a whole, not simply going through a tick box exercise. Each case has to be looked at on its facts, and ultimately is a matter of judgment, based on the available evidence on how well the claimant meets the individual criteria and how fully the claim satisfies the requirements of the law.

Secretary of State's Discretion

Decision makers must be particularly careful that they make proper use of discretion when considering a claim for a surviving adult dependant. Discretion cannot be exercised where there is a surviving spouse / civil partner or the unmarried couple were prevented from marrying as these are hard rules that have to be satisfied. But there may be room for discretion when considering circumstances, other than those prescribed in legislation, when determining whether a couple fulfil the criteria for cohabiting as partners in a substantial and exclusive relationship with financial dependence or inter-dependence.

It is defensible to exercise discretion in accordance with policy guidelines on the fact of a particular case where there are factors which indicate a decision should depart

from the usual policy. In exercising discretion the merits of each case should be taken into account when considering whether to make a payment.

Article 59 – Ignorance or mistake

It is important to get the decision right. AFCS article 59 provides only a very narrow power to review a decision on grounds of ignorance or mistake. And only then when evidence that was 'knowable' and disclosed to the Secretary of State at the time of the original decision but was not taken into account e.g. due notice not given to a Will. If changed to the claimant's detriment clearly record what difference the article 59 review makes to the original decision and on what basis the person does not fulfil the criteria as a surviving adult dependant.

Assess all the evidence to picture how the applicant lived their life prior to the claim. In the majority of cases a decision on eligibility should be clearly apparent. If at first the evidence does not support an application, consider whether additional evidence is required and make a further enquiry of the claimant with a view to obtaining more information. This will make sure the Department does not make decisions on incomplete information and ensures that every possible opportunity has been afforded the claimant to meet the existing criteria.

Complex Cases

If a decision still cannot be reached, because the case falls outside these guidelines but which still merits consideration, discuss the issues with senior colleagues. Only after that avenue has been exhausted should policy teams need to be involved.

Reasons for Decision

Most important is to document the evidence considered and the reasons for accepting or not accepting it in support of the claim. This will guarantee there is a clear full written record of the decision and how it was reached.

- Decisions should be more than tenuous e.g. not based on an odd shopping receipt
- Decisions should be equitable and demonstrably fair
- Decisions should be defensible and explainable.

Consideration of an award under AFCS and payment of AFPS 75 / AFPS 05 / RFPS 05 benefits under the compensation and pension's schemes should be on a very clear and defensible footing. The reasons for making a decision should be well documented, supported by the evidence and defensible.

It is important to make the right decision as quickly as possible, ensuring it is to the correct recipient to minimise distress at a difficult time.

If satisfied on evaluation of all the evidence that all the criteria are satisfied then you can accept the claim. Notifications of decisions are usually delivered via the Welfare Services.

WISHES OF THE DECEASED

Death in service (DIS) lump sum

The only time a decision maker can comply with the wishes of the deceased is for an AFPS 05 / RFPS 05 death in service (DIS) lump sum where there is a valid nomination form. The nomination form takes precedence over a Service Will or JPA record.

Where the deceased is not married or in a civil partnership but has a partner, and a nomination form (AFPS 05 / RFPS 05) hasn't been completed, eligibility for the AFPS 75 / AFPS 05 / RFPS 05 DIS lump sum is considered in accordance with the eligibility criteria used to determine a surviving adult dependant under AFPS 75 / AFPS 05 / RFPS 05 pension benefits.

AFCS award / AFPS 75 / AFPS 05 / RFPS 05 pension benefit

Eligibility for a surviving adult dependant should be determined in accordance with the criteria to qualify for an AFCS award or AFPS 75 / AFPS 05 / RFPS 05 pension benefits. Where a partner has been nominated (AFPS 05 / RFPS 05) for a DIS lump sum, named in JPA records or a Service Will, although not binding on an AFCS award or AFPS 05 / RFPS 05 pension benefits, this may provide strong evidence when considering whether the partner meets the criteria for these benefits.

Wills

A Will is specifically listed as a viable piece of evidence when determining a surviving adult dependant both for an AFCS award and AFPS 75 / AFPS 05 / RFPS 05 pension benefits (and also for AFPS DIS lump sum when there is no nomination) so where a surviving adult dependant is named as principle beneficiary this may greatly assist their claim. But it should be borne in mind a Service Will may not be routinely updated i.e. before deployment. It is the responsibility of Service personnel to review their Will and keep it up to date.

FINAL DECISION

In making the final decision, there is a requirement to make an informed judgement, supported by cogent up-to date evidence in the context of the complexities that sometimes come with modern-day relationships. When considering claims for adult surviving dependant benefits decisions should be fair, robust, transparent, the reasons well documented explaining the rationale for each stage and the decision defensible.

ARMED FORCES AND RESERVE FORCES (COMPENSATION SCHEME) ORDER 2011 (AFCS 2011)

ARTICLE 30 - Meaning of “surviving adult dependant”

30. A person is a surviving adult dependant in relation to a deceased member or former member

if, at the time of the deceased's death—

(a) the person and the deceased were cohabiting as partners in a substantial and exclusive relationship;

(b) the deceased leaves no surviving spouse or civil partner;

(c) the person and the deceased were not prevented from marrying or forming a civil partnership; and

(d) either the person was financially dependent on the deceased or they were financially interdependent.

ARTICLE 43 - Entitlement to benefit dependant on claim

43.—(1) Except where article 45 applies, a person is not entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied, a claim is made for it in the manner, and within the time, specified in the following provisions of this Part.

(2) Where a member who is in service on or after 6th April 2005 or a surviving spouse, surviving civil partner or surviving adult dependant of such a member makes a claim for a pension for disablement or death under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, the Secretary of State may treat that claim as also being a claim for benefit under this Order.

ARTICLE 45 - Cases where claims are not required

45.—(1) Subject to paragraph (3), it is not a condition of entitlement to benefit that a claim be made for it where a member—

(a) is discharged on medical grounds; or

(b) dies whilst serving in the forces.

(2) It is not a condition of entitlement to additional benefit that a claim be made, and article 46 does not apply in relation to these awards of benefit.

(3) This paragraph applies where a member dies in the circumstances specified in paragraph (1) leaving an eligible child and either—

(a) leaves no surviving spouse, civil partner or surviving adult dependant; or

(b) the child is not living with the surviving spouse, civil partner or surviving adult dependant, as the case may be, on the date on which the member died.

(4) Where paragraph (3) applies, it is a condition of entitlement to child's payment that a claim is made by or on behalf of the child.

(5) Paragraph (1)(a) applies only to injury benefit for the injury which caused the member to be discharged on medical grounds and any injuries arising from that injury or from the same incident that caused that injury.

(6) Paragraph (1)(b) applies only to death benefit.

ARTICLE 47 - Time for making a claim - general

47.—(1) Subject to articles 48 and 49, the time specified for making a claim for injury benefit is 7 years beginning with whichever is the earlier of the following days—

(a) the day on which the injury occurs;

(b) the day an injury which is not caused by service is made worse by service;

(c) the day on which the member's service ends;

(d) the day a member first seeks medical advice in relation to an illness.

(2) Paragraph (1)(d) applies only if the claim is in respect of an illness.

(3) The time for making a claim for injury benefit is extended by 3 years from the date of diagnosis where—

(a) an illness first presents within the period specified in paragraph (1); but

(b) the diagnosis of the illness is not made until less than 1 year before the end of that period.

(4) The time specified for making a claim for a fast payment is 6 months beginning with the day on which the injury occurs.

(5) A claim for medical expenses must be made prior to the expenses being incurred except in circumstances where the Secretary of State is satisfied that prior approval was not reasonably practicable due to a medical emergency.

(6) The time specified for making a claim for death benefit is 3 years beginning with the date of death where the death occurs—

(a) after the day on which the service of the former member ends; and

(b) within 7 years starting with that day.

SCHEDULE 1 – Meaning of “Substantial and Exclusive Relationship

PART 1 – Substantial Relationship

1. In deciding whether a relationship of a deceased member (“the deceased”) and the claimant is a substantial relationship, the Secretary of State is to have regard to—

(a) any evidence which the claimant considers demonstrates that the relationship is substantial; and

(b) must in particular have regard to the examples of the evidence specified in paragraph 2 which could, either alone or together, indicate that the relationship is substantial.

2. The evidence referred to in paragraph 1(b) is—

(a) evidence of regular financial support of the claimant by the deceased;

(b) evidence of a valid will or life insurance policy, valid at the time of the deceased's death, in which—

(i) the deceased nominates the claimant as principal beneficiary or co-beneficiary with children; or

(ii) the claimant nominates the deceased as the principal beneficiary;

(c) evidence indicating that the deceased and the claimant were purchasing accommodation as joint owners or evidence of joint ownership of other valuable property, such as a car or land;

(d) evidence of a joint savings plan or joint investments of a substantial nature;

(e) evidence that the deceased and the claimant operated a joint account for which they were co-signatories;

(f) evidence of joint financial arrangements such as joint repayment of a loan or payment of each other's debts;

(g) evidence that the deceased or the claimant had given the other a power of attorney;

(h) evidence that the names of both the deceased and the claimant appeared on a lease or rental agreement, if they lived in rented accommodation;

(i) evidence that the deceased and the claimant shared responsibility for children;

(j) evidence of the length of the relationship.

SCHEDULE 1 – Meaning of “Substantial and Exclusive Relationship

PART 2 – Exclusive Relationship

3. A relationship is not an exclusive relationship if—(a) one or both of the parties to the relationship is married to, or is the civil partner of, someone other than the other party to the relationship; or
(b) one or both of the parties is a party to another relationship which is, or could be considered to be, a substantial and exclusive relationship having regard to the provisions of this Schedule.

THE ARMED FORCES PENSION SCHEME 1975 - TRI-SERVICE ARMED FORCES PENSION SCHEME 1975 AND ATTRIBUTABLE BENEFITS SCHEME PREROGATIVE INSTRUMENTS 2010 (AFPS 75)

PART E - DEATH BENEFITS

Pensions for surviving spouses and civil partners (service on or after 31st March 1973)

E.1 - Surviving spouse or civil partner's pensions

- (1) This rule applies if any of conditions A to C is met.
- (2) Condition A is that—
 - (a) an active member dies; and
 - (b) the member leaves a surviving spouse or civil partner.
- (3) Condition B is that—
 - (a) a deferred or pensioner member dies;
 - (b) the member was in pensionable service on or after 31st March 1973; and
 - (c) the member leaves a widow.
- (4) If the marriage was solemnized after the member ceased pensionable service, paragraph (3) has effect as if in sub-paragraph (b) "6th April 1978" were substituted for "31st March 1973".
- (5) Condition C is that—
 - (a) a deferred or pensioner member dies;
 - (b) the member was in pensionable service on or after 1st October 1987; and
 - (c) the member leaves a widower or a surviving civil partner.
- (6) If the member was an active or pensioner member, the surviving spouse or civil partner is entitled to a short-term pension, payable for the immediate bereavement period.
- (7) The surviving spouse or civil partner is entitled to a pension for life.
- (8) A pension under paragraph (7) is payable—
 - (a) if paragraph (6) applies, from the day after the last day of the immediate bereavement period;
 - (b) otherwise, from the day after the date of the death.
- (9) In this rule "the immediate bereavement period" means—
 - (a) if, on the last day of the period of 13 weeks beginning with the day after the date of the death, any person entitled to a pension under rule E.12 or E.15 (child's pensions) is living in the same household as the

surviving spouse or civil partner, the period of 26 weeks beginning with the day after the date of the death;
(b) otherwise, the period of 13 weeks beginning with the day after the date of the death.

(10) For the purpose of paragraph (9)(a) a person who was living with the surviving spouse or civil partner until ceasing full-time secondary education is to be treated as still doing so.

(11) Paragraphs (6) and (7) are subject to—
(a) paragraph (12);
(b) rule E.8(2) (effect of temporary allowance); and
(c) rule E.9 (suspension of pension on marriage etc).

(12) If the marriage was solemnized, or the civil partnership formed, less than six months before the death, the Defence Council may determine that a pension which would otherwise be payable under this rule is to be reduced or withheld.

But this is subject to rule E.11 (guaranteed minimum pensions).

(13) Where—
(a) an active, deferred or pensioner member dies,
(b) a person is entitled to compensation in respect of the death—
(i) under AFAB, by virtue of being a surviving eligible partner of the member within the meaning of that scheme, or
(ii) under AFCS 2005, by virtue of being a surviving adult dependant of the member within the meaning of that scheme, and
(c) had that person been the member's surviving spouse (if they were of opposite sexes) or the member's civil partner (if they were of the same sex), one of conditions A to C would be met, this rule applies as if that condition were met.

(14) Where this rule applies by virtue of paragraph (13)—
(a) references in this rule to the surviving spouse or civil partner are to the person mentioned in paragraph (13)(b); and
(b) in paragraph (12) and rules E.4(4) and E.5(5), references to the time when the marriage was solemnized, or the civil partnership formed, are to the earliest time at which that person would have been the member's surviving eligible partner or surviving adult dependant (as the case may be) if the member had died at that time.

THE ARMED FORCES PENSIONS SCHEME ORDER 2005 (SI 438/2005) (AFPS 05)

D.2 Retirement before reaching pension age

(1) A member who ceases to be in service by virtue of which he is eligible to be an active member of the Scheme before reaching pension age is entitled to a pension for life and a lump sum if the member attains pension benefit age and either—

- (a) he has at least two years' qualifying service, or
- (b) he was formerly entitled to rights under a personal pension scheme or a retirement annuity contract in respect of which a transfer value payment has been accepted by the Scheme under Part F (transfers).

(2) The pension and the lump sum become payable immediately on the member attaining pension benefit age.

(3) The amount of the annual pension payable under this rule is calculated by multiplying one seventieth of the member's final pensionable earnings by the member's reckonable service, expressed as a number of years.

(4) The amount of the lump sum payable under this rule is calculated by multiplying the amount of the annual pension so payable by 3.

(5) This rule does not apply to pensions derived from pension credit rights.

E.1 Surviving spouses' and civil partners' pensions

(1) If an active member, a deferred member or a pensioner member dies leaving a surviving spouse or civil partner, the surviving spouse or civil partner is entitled to a pension for life.

(2) Paragraph (1) does not apply if the member is an active member who would not have qualified for a pension under rule D.2 (retirement before reaching pension age) if his service had ceased on the date of death otherwise than by reason of death.

E.2 Other adult dependants' pension

(1) If an active member, a deferred member or a pensioner member dies leaving a surviving adult dependant and no surviving spouse or civil partner, the Secretary of State may award the surviving adult dependant a pension for life.

(2) Paragraph (1) does not apply if the member is an active member who would not have qualified for a pension under rule D.2 (retirement before reaching

pension age) if his service had ceased on the date of death otherwise than by reason of death.

(3) A person is a surviving adult dependant in relation to a member for the purposes of this rule if the person satisfies the Secretary of State that at the time of the member's death –

- a) The person and the member were cohabiting as partners in an exclusive and substantial relationship,
- b) The person and the member were not prevented from marrying (or would not have been so prevented apart from both being of the same sex), and
- c) Either the person was financially dependent on the member or the member or the person and the member were financially interdependent.

E.21 Nominations for lump sum death benefits

(1) For the purposes of rule E.15 (death of a member: lump sum benefits)—

- (a) a member may nominate one or more persons, and
- (b) if he nominates two or more persons, he may specify in the nomination the proportions of the payment he wishes each of them to receive.

(2) The member must make his nomination by notice in writing to the Scheme administrator in such form as the Secretary of State may require or is willing to accept.

(3) A member may revoke or alter a nomination by a further notice in writing to the Scheme administrator in such form as the Secretary of State may require or is willing to accept.

(4) The nomination of a person is invalid—

- (a) if—
 - (i) the person nominated is an individual who was the spouse or civil partner of the member at the date the nomination was made and is not the spouse or civil partner of the member immediately before the member's death, and
 - (ii) the member did not confirm the nomination by notice in writing to the Scheme administrator after the marriage or civil partnership ended, or

(b) if the person nominated is an individual who predeceases the member.

(5) If a person nominated is convicted of the offence of murder or manslaughter of the member, the person's nomination is to be treated as invalid from the member's death.

(6) If a person nominated is convicted of any other offence of which the unlawful killing or wounding of the member is an element, the Secretary of State may determine that the nomination is to be treated as invalid from the member's death.

THE ARMED FORCES REDUNDANCY SCHEME 2006, THE ARMED FORCES REDUNDANCY ETC. SCHEMES 2010 AND THE ARMED FORCES PENSION SCHEME 2005 (AMENDMENT) ORDER 2011 (SI 2013/2011) – WITH EFFECT FROM 10 JANUARY 2012

E.15 Death of a member: lump sum benefit

(1) If a member dies before reaching the age of 75, the Secretary of State may pay a lump sum to any of the following—

- (a) the person or persons nominated by the member in accordance with rule E.21;
- (b) if there is no person within sub-paragraph (a), to any person who is entitled to a pension under rule E.1 in respect of the member, or to whom a pension may be awarded under rule E.2 in respect of the member;
- (c) if there is no person within sub-paragraph (a) or (b), to any person who, but for the application of rule E.1(2) or rule E.2(2), would be so entitled or to whom a pension may be awarded; or
- (d) if there is no person within sub-paragraphs (a), (b) or (c), to the member's personal representatives.

(4) A lump sum paid under this rule may not be paid more than two years after the day on which the Scheme administrator first knew, or could reasonably be expected to have known, of the member's death.

(5) The annual amount of pension paid to a person under this Part shall be increased by such amount as the Defence Council, after consulting with the Scheme actuary, may determine, if—

- (a) the Defence Council have determined that a lump sum should be paid to the person under this Part, but the lump sum is not paid within two years of the date of the death; or
- (b) the Defence Council have determined that, but for paragraph (1), a lump sum would have been paid to the person.

RESERVE FORCES PENSION SCHEME REGULATIONS 2005

E.2 Other adult dependants' pensions

(1) If an active member, a deferred member or a pensioner member dies leaving a surviving adult dependant and no surviving spouse or civil partner, the Secretary of State may award the surviving adult dependant a pension for life.

(2) Paragraph (1) does not apply if the member was an active member or deferred member who was not entitled to count at least two years' qualifying service in total under the Scheme on the date of his death, unless he was formerly entitled to rights under a personal pension scheme or a retirement annuity contract in respect of which a transfer value payment has been accepted by the Scheme under Part F (transfers).

(3) A person is a surviving adult dependant in relation to a member for the purposes of this rule if the person satisfies the Secretary of State that at the time of the member's death—

(a) the person and the member were cohabiting as partners in an exclusive and substantial relationship,

(b) the person and the member were not prevented from marrying (or would not have been so prevented apart from both being of the same sex), and

(c) either the person was financially dependent on the member or the person and the member were financially interdependent.

ARMED FORCES PENSION SCHEME – JOINT SERVICE PUBLICATION 764

CHAPTER 4

0418. If an active member or a deferred member with two years' qualifying service or a **pensioner member** dies leaving a surviving **eligible partner** and no surviving spouse or civil partner, the surviving eligible partner is entitled to a pension for life providing they can demonstrate that at the time of the member's death:

(a) the person and the member were cohabiting as partners in a substantial, exclusive, committed relationship,

(b) the person and the member were not prevented from marrying or entering a civil partnership, and

(c) either the person was financially dependent on the member or they were financially interdependent. To support such a claim, SPVA(GL) would expect to see some of the following as evidence:

- nomination for receipt of the scheme member's pension under the scheme;
- evidence of regular financial support by the scheme member;
- provision under a will naming the partner as a beneficiary in relation to a substantial proportion by value of the scheme member's estate (or vice versa);
- a life insurance policy, valid at the time of the scheme member's death, which was taken out by the deceased naming his partner as beneficiary or which was taken out by the partner naming the scheme member as beneficiary;
- joint ownership of a dwelling or other property of a substantial nature;
- a lease or rental agreement relating to a dwelling where the scheme member and the partner lived, under which both the deceased and the partner were liable to pay rent;
- joint bank or building society accounts from which money could be withdrawn by either the scheme member or the partner;
- financial arrangements entered into by the scheme member and the partner jointly;
- a valid power of attorney exercisable by the scheme member in relation to the partner or the partner in relation to the scheme member;
- payment by the scheme member of the partner's debts or by the partner of the deceased's debts;

- shared responsibility for children.

This list is not exhaustive. If the claim for the scheme member's pension is rejected the individual can pursue the claim through IDRPs.

EXAMPLES OF ADDITIONAL EVIDENCE

COHABITATION
<ul style="list-style-type: none">❖ Documentation required legally to be linked to current address:<ul style="list-style-type: none">○ Driving licence○ Motor insurance○ Electoral role❖ Joint rental/tenancy agreement❖ Joint mortgage❖ Utility bills in joint names❖ Utility bills in one or other name❖ Magazine subscription❖ Petrol bills❖ Shared houses❖ Personal belongs or furniture at the house❖ Joint ownership of valuable assets e.g. car, land❖ Holiday invoices for both at same address❖ *Television subscription❖ *Regular gifts❖ Council Tax❖ JPA Entry
'SUBSTANTIAL' RELATIONSHIP
<ul style="list-style-type: none">❖ Evidence in AFCS, Schedule 1, part 1, para 1, one or more of (a) to (j)❖ Evidence in AFPS, JSP 764, para 0418❖ Length of relationship❖ Named as beneficiary in Will❖ Shared responsibility for Children❖ Evidence of power of attorney❖ Life insurance beneficiary, or visa versa❖ Deposit receipt for wedding/civil partnership venue❖ Surnamed changed by deed poll to partner's name❖ <u>Any</u> evidence from claimant demonstrating relationship is substantial:<ul style="list-style-type: none">○ Engagement cards, photos etc○ Wedding plans○ Photos of family occasions e.g. Christmases○ Holiday photos, invoices over a number of years○ Personal letters, cards, emails, face book chats indicating commitment○ Independent Witness Statements○ Engagement ring○ Expensive gift receipts○ Tattoos bearing partner's name

NOT PREVENTED FROM MARRYING

- ❖ Declaration on claim form
- ❖ Decree absolute
- ❖ Service documents
- ❖ Medical documents indicating there is a spouse
- ❖ JPA entry
- ❖ Annulment

NO SPOUSE/PARTNER (AFCS)

- ❖ Declaration on claim form
- ❖ Service documents
- ❖ JPA entry

FINANCIAL DEPENDENCY/ INTERDEPENDENCY

Dependency

- Unemployed & living on partner
- Unemployed but undertaking training paid by deceased
- Staying at home to look after children
- Unable to work due to disability
- Regular payments to bank account

Interdependency

- Joint bills in both names
- Utility bills in one or other name
- Shared current/savings account
- Debit/credit cards in joint names
- Required to keep a reasonable standard of living e.g. heating, food, housing
- Regular funding for training courses, kids activities etc

- ❖ Receipts for household items
- ❖ Paying for university fees
- ❖ Standing orders in children accounts
- ❖ Council tax bills
- ❖ Gifts, parties for partner's children
- ❖ Furniture receipts
- ❖ Car loan agreement
- ❖ Other joint loans
- ❖ Direct debit for 'Love Film'
- ❖ *Television subscription
- ❖ * Regular gifts

* also applicable to cohabitation

EXAMPLES OF CASE STUDIES

Example 1

A claim is made by a partner for an allowance for a surviving adult dependant following the death of a serviceman whilst deployed on active service overseas. The claimant produced evidence to demonstrate the couple were cohabiting for more than 2 years in a substantial and exclusive relationship and were financially interdependent. This is despite the fact that the prospective eligible partner was not named as a next of kin, nominated for AFPS death in service lump sum or named as a beneficiary in the deceased's Will. However, correspondence is received from a third party that indicates the relationship would not have lasted or led to marriage in the long term.

If it appears from the evidence that the potential eligible partner satisfies the key tests required to meet the surviving adult dependant criteria this case should succeed. A third party would not be in possession of the full extent of the evidence. Additionally, the prospect of marriage is not a requirement for qualifying as a surviving adult dependant. The decision maker should therefore rely more heavily on the facts of the case leading up to the death of the service person rather than on an opinion of what might have happened in the future.

Example 2

Prior to the death of a service person, a couple were cohabiting but ceased the tenancy on the property to enable the non service partner to reside with one or other of their parents during the service person's deployment overseas. All other evidence, including witness statements, indicates that the couple were in a substantial and exclusive relationship prior to the partner being deployed. There is evidence the couple had a shared bank account indicating there was financial interdependence.

All the criteria for fulfilling the surviving adult dependant criteria would seem to be met with the exception of cohabitation. However, the state of the relationship at the exact time of death is not a legal test. What is required is to look at the situation in the lead up to the event that led to the circumstances that caused the death i.e. the impact of service life on a couples arrangements. Up until the time of deployment the couple were cohabiting and if there is nothing to suggest this would not have resumed on return, but for the service person's untimely death, the decision maker should consider exercising discretion in relation to the cohabitation criteria.

Example 3

A couple in a relationship for a number of years who had been cohabiting in a rented flat ceased the tenancy agreement when notified of the Service person's deployment overseas. Witness statements confirm that the couple continued to cohabit in one of their parent's home when the enforced absence allowed. A parent is the principle beneficiary in the Will but the partner is also named. The deceased service person had been funding his partner's training course and there is also evidence of a joint

bank account plus regular cash payments from the Service person into the partner's personal account.

The evidence indicates that the couple were cohabiting in a substantial and exclusive relationship when service conditions allowed. Although, there were no formal financial arrangements, the surviving adult dependant was reliant on the Service person to fund a training course and bank statements confirm regular cash transactions from one account to the other. This case would appear to fulfil all the key elements of the criteria.

Example 4

A claimant making a claim for surviving adult dependant was named on a deceased person's Will but not as the principle beneficiary. The Service person lived in barracks Monday to Friday but spent every weekend in the partner's home and they had been in a relationship for more than 2 years. Bank statements supported financial inter-dependency.

There is enough evidence to suggest a substantial and exclusive relationship and that the couple cohabited in a substantial and exclusive relationship when the exigency of service allowed. There is also clear evidence of financial inter-dependence.

Example 5

A third party produced old documentary evidence that the address used for such things as bank correspondence and insurance documents was not that shared by the couple. However, the surviving adult dependent was able to produce more recent evidence that their shared address was used for correspondence from a current insurance company and that they were also the named driver of the car. In addition, there was evidence that prior to death the Service person had requested a posting closer to the home he shared with his partner. JPA also recorded the surviving adult dependant as his partner for the last year.

It is important to put more weight on evidence that is up to date which in this case, together with other available evidence, supports the surviving adult dependant's claim.

Example 6

Prior to the service person's death (suicide), a couple were cohabiting in a rented property owned by the non-service person's father. There was no rent book but it was confirmed in a letter from the non-service person's father that the tenancy was in joint names for 7 months prior to the death. The letter stated the tenancy ended the day before the deceased killed himself. It was accepted that the couple were cohabiting in a substantial and exclusive relationship which just left the consideration of whether there was financial dependency or inter-dependency.

The non-service person was not named in the deceased's will. There was no documentary evidence to confirm the utilities, council tax or other finance was in joint names. There was evidence of multi car insurance with the non-service person as the nominated administrator of the policy. There was evidence of a joint bank account but

the deceased's name was removed from the account 6 months prior to his death as he had been gambling heavily. The deceased did make payments into the account following removal from his name however; these appear to be to pay off the gambling debts as the amounts were variable and not made at regular intervals. The decision was made that there was insufficient evidence to establish financial dependence or interdependence and the claim was rejected.