



# Ministry of Defence

Ministry of Defence  
Main Building  
Whitehall  
London SW1A 2HB  
United Kingdom

Our Reference:FOI2017/06058

[REDACTED]

19 July 2017

Dear [REDACTED],

Thank you for your e-mail to the Ministry of Defence (MOD) dated 23 June 2017 in which you requested the information on the Armed Forces Compensation Scheme (AFCS). I am treating your correspondence as a request for information under the Freedom of Information Act (FOIA) 2000. A review of our data holdings has been completed, and I can confirm that the MOD does hold some information within the scope of your request; this is provided in the annexes at the end of this letter.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail [CIO-FOI-IR@mod.uk](mailto:CIO-FOI-IR@mod.uk)). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>

Yours sincerely,

Defence People

With regard to the AFCS, Schedule 3, Part 1, Table 3 - Mental Disorders, in the case of "Secretary of State for Defence v MJ (AFCS) [2014] UKUT 0094 (AAC)" (Case No. CAF/1289/2013) the Secretary of State accepted that:

"Table 3 has a clear hierarchy of levels which demonstrate that any condition which lasts beyond 5 years is to be considered as permanent".

Question	Answer
<p>1) In light of the above acknowledgement from the Secretary of State for Defence, why has AFCS Legislation not been amended to make explicitly clear that a Mental Disorder lasting more than 5 years is to be considered as permanent?</p>	<p>We note and accept the above extract from UKUT 0094(AAC) but point out that later in the judgement the judge further comments "I am not currently convinced that the First Tier Tribunal erred in considering the ordinary meaning of " permanent" or that the Scheme shows that any condition lasting more than five years is necessarily to be considered permanent. That is not the necessary implication of the Table, given the terms of the third item, which could include mental disorder of any level of functional limitation and restriction lasting at least five years but not permanent, so as to cover permanent minor functional limitation and restriction and long-term but not permanent, moderate or severe functional limitation or restriction. " The judge goes on to say that the point is not strictly relevant in this appeal in the light of the Secretary of State's concession that the claimant's condition in this case is permanent.</p> <p>Further interpretative provisions were added to AFCS order 2011 coming into force in May 2011. This sets out the meaning of terms including functional limitation or restriction and at Article 5 (7) the definition of permanent.</p> <p>Article 5 of the AFCS Order 2011 is headed 'Descriptor - further interpretive provisions'. This sets out the meaning of functional limitation or restriction and defines duration of effects in relation to Table 3 disorders as from the date the claimant first sought medical advice for the mental disorder. Finally, it sets out how functional limitation or restriction is to be assessed and the meanings of 'permanent' functional limitation or restriction and the word 'significant'. The term 'permanent' is defined as 'where, following appropriate clinical management of adequate duration, an injury has reached a steady or stable state at maximum medical improvement and no further improvement is expected.' 'Significant' means that the functional effect or restriction has an extensive effect.</p>

Question	Answer
2) As the primary legislation has not been amended, can the MOD confirm that personnel responsible for assessing/processing AFCS claims have been informed of this precedent regarding Mental Disorders being judged as Permanent if lasting more than 5 years?	Defence Business Services include claims decision makers and medical advisers who are routinely informed of legislative amendments and policy changes and these issues will, as required, also be the subject of adjudication guidance. It is Departmental policy that mental health claims routinely receive medical input including, where relevant, on the issue of permanence.
3) Can the MOD please provide the DIN or email or other communication which was used to update staff dealing with the AFCS about this precedent.	The issue of permanence is discussed in the 2013 IMEG report on mental health disorders. DBS medical advisers are all licensed with the General Medical Council and meet regularly for Continuing Professional Development. A link to the 2013 IMEG report is available below: <a href="https://www.gov.uk/government/publications/imeg-report-on-medical-and-scientific-aspects-of-the-armed-forces-compensation-scheme">https://www.gov.uk/government/publications/imeg-report-on-medical-and-scientific-aspects-of-the-armed-forces-compensation-scheme</a>