Neutral Citation Number: [2025] UKUT 250 (AAC)

Appeal No. UA-2025-000195-AFCS

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

J.K.

Appellant

- v -

Secretary of State for Defence

Respondent

Before: Upper Tribunal Judge Wikeley
Hearing date(s): 22 July 2025
Decision date: 28 July 2025

Representation:
Appellant: In person
Respondent: Mr Paul Carolan, Veterans UK, Defence Business Services

On appeal from:
Tribunal: First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber)
Tribunal Case No: WP/2024/0826
Tribunal Venue: Remote hearing
Hearing Date: 11 November 2024
Decision Date: 26 November 2024

<u>Anonymity:</u> The appellant in this case is anonymised in accordance with the practice of the Upper Tribunal approved in *Adams v Secretary of State for Work and Pensions and Green (CSM)* [2017] UKUT 9 (AAC), [2017] AACR 28.

Keywords

56.5 Armed Forces Compensation Scheme

SUMMARY OF DECISION

The Appellant made a claim for injury benefit under the Armed Forces Compensation Scheme (AFCS) Order 2011. His relevant conditions were originally assessed at Level 13 and so there was no entitlement to a Guaranteed Income Payment (GIP). Later, following an Article 59 review, his relevant conditions were re-assessed at Level 11, and so GIP became payable. However, Veterans UK decided that GIP was payable only from the end of the Appellant's (reserve) service as per Article 16(10) and *GE v Secretary of State for Defence* [2024] UKUT 92 (AAC). The Appellant argued that *GE v SSD* should be distinguished and Article 64(6) enabled payment of the GIP to commence before the end of his service. The FTT dismissed the Appellant's appeal, ruling it was bound by *GE v SSD* (which concerned an Article 64(2)(b) case, not an Article 64(6) case). The Upper Tribunal refused the Appellant's further appeal.

DECISION

The decision of the Upper Tribunal is to dismiss the appeal.

REASONS FOR DECISION

Introduction

1. The issue that arises for decision in this appeal is the correct commencement date for a Guaranteed Income Payment under the Armed Forces Compensation Scheme following an Article 59 review.

The Upper Tribunal's decision in summary

2. I dismiss the Appellant's appeal to the Upper Tribunal. The decision of the First-tier Tribunal does not involve any legal error. The decision of the Upper Tribunal in *GE v Secretary of State for Defence* [2024] UKUT 92 (AAC) on the correct start date for payment of a Guaranteed Income Payment also applies where the award is the result of an Article 59 review.

Abbreviations

3. The following abbreviations are used in this decision:

AFCS	Armed Forces Compensation Scheme
AFCS Order 2011	Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (SI 2011/517)
FTRS	Full-time Reserve Service
FTT	First-tier Tribunal
GIP	Guaranteed Income Payment
PTRS	Part-time Reserve Service
RNR	Royal Navy Reserve
SoS	Secretary of State

An overview of the Guaranteed Income Payment

4. The AFCS provides for the payment of lump sum awards of compensation based on a tariff. These amounts range from the highest award (Level 1, now £650,000) to the lowest (Level 15, now £1,236). The Guaranteed Income Payment (GIP) is an additional monthly payment but is only payable in respect of the higher-level descriptors between Level 1 and Level 11 (inclusive). The GIP is a lifetime benefit intended to compensate for long-term loss of earning capacity and pension, and for loss of promotion prospects

The factual background

5. The factual background to this appeal is not in dispute. The Appellant joined the Royal Navy in 2000, serving as a regular member until 2002 and for various periods in the Royal Naval Reserve, both part-time and full-time. He had two periods of mobilisation to regular service. The Appellant was injured while serving in Iraq and claimed compensation under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (SI 2011/517) (albeit initially under the 2005 predecessor to the AFCS Order 2011). He remained in the Part-time Reserve Service and (at the time of the relevant Tribunal decision) was expected to leave service in February or March 2025.

6. The Secretary of State accepted that service was the cause or predominant cause of his injuries and on 6 May 2010 made an award under the AFCS for two conditions listed in Tables 4 and 9 respectively, which were both assessed at Level 13. In April 2018 the Appellant applied for a review of the award, but this was refused on the basis that the request was out of time.

7. On 29 August 2018 the Appellant requested an exceptional review of the award under Article 59 of the AFCS. This too was refused, but the Appellant appealed successfully to a First-tier Tribunal, which found that the criteria for an exceptional review had been met, namely that the Secretary of State's decision was made in ignorance of, or under a mistake as to, the facts. The claim was then remitted to the Secretary of State to consider afresh the claim for a new medical condition.

8. On 26 March 2021 the Secretary of State issued a fresh decision refusing the new claim. On appeal, however, a further First-tier Tribunal, held in 2022, allowed the appeal and substituted awards for two conditions under Table 4, each of which was assessed at Level 11. It followed that the Appellant only qualified for a GIP after his successful appeal against the outcome of the Article 59 review.

9. A Veterans UK decision implementing the 2022 Tribunal's decision to make the Level 11 award notified the Appellant that he would receive his GIP payable monthly from the date of his discharge. The Appellant appealed against the Secretary of State's decision dated 13 February 2023 that the implementation date for his GIP would be his date of discharge (which, as noted, was anticipated to be in early 2025). The Appellant, on the other hand, asserted (on the basis of Article 64(6)) that his award of GIP was payable with effect from 29 August 2012, being the date six years before the date he had requested the ultimately successful Article 59 review.

The statutory framework

10. The AFCS Order 2011 sets out several relevant definitions in Article 2, the interpretation provision. These include:

> "forces" means the armed forces and the reserve forces;
>
> "guaranteed income payment" is the payment referred to in article 15(1)(c) and determined in accordance with article 24;

> "member" member means a member of the forces;
>
> "service" means service as a member of the forces;

11. Article 15(1)(c) of the AFCS Order 2011 makes provision for "a guaranteed income payment payable until death" as one of the various benefits payable under the Scheme for injury.

12. Article 16 of the AFCS Order 2011 sets out some general principles applicable to injury benefit. So far as the GIP is concerned, these are as follows:

> (7) Guaranteed income payment is payable only in respect of injuries giving rise to an entitlement within tariff levels 1 to 11 and is to be determined in accordance with article 24.
>
> (8) Subject to article 79(2), a person is only entitled to one guaranteed income payment regardless of the number of injuries which are sustained.
>
> (9) If a person has sustained more than one injury in separate incidents the guaranteed income payment which is payable is the highest such payment which has been awarded.
>
> (10) Guaranteed income payment is not payable until the day after the day on which the service of the member to whom it was awarded ends, and no such payment is payable in respect of any period before that day.

13. The present appeal turns on the applicability of Article 16(10). In summary, the Appellant argues that it is a general but not an absolute or universal rule and is subject to express provisions to the contrary. In short, he relies on the canon of statutory construction that the general gives way to the specific. The Respondent, on the other hand, submits that Article 16(10) is simply a general rule that admits of no exceptions.

14. Article 24 details the method for calculating the amount of the GIP but is not in issue here and so need not be set out in full in this decision. Notably, however, that calculation includes as one element the "relevant salary", a term which is defined by Article 24(6)(b) as meaning "……the salary of a member on the day on which the member's service ends or in the case of a former member, the salary on that day up-rated for inflation to the date of claim." I return later to the significance of what Article 24(6)(b) says – or rather what it does not say.

15. The date on which awards of benefit become payable is covered by Article 64. Omitting provisions which have no relevance to the present context, this provides as follows:

> **64.**— …
>
> (2) Subject to paragraphs (5) and (6) an award of guaranteed income payment becomes payable—

(a) where a member is discharged from the forces on medical grounds and the award is for the injury which caused the member to be discharged on medical grounds, on the day after the discharge;

(b) where a member is awarded injury benefit which includes an award of guaranteed income payment, on the day after the day on which the member's service ends;

(c) in any case where sub-paragraph (a) or (b) does not apply, on the date of claim.

…

(5) Subject to article 16(10), an award—

(a) revised under article 53 becomes payable on the date of claim;

(b) revised under article 55 becomes payable on the day after the member's service ends;

(c) revised under article 56 or 57 becomes payable on the date the application for review is sent to the Secretary of State;

(d) subject to paragraph (6), revised under 59 becomes payable—

(i) on the date the application for review is sent to the Secretary of State; or

(ii) where no application for a review has been made, the date on which the decision in relation to the revised award is sent to the claimant.

(6) Subject to paragraph (8), where a decision of the Secretary of State is revised under article 59 so as to award benefit or increase the amount of benefit awarded, guaranteed income payment, survivor's guaranteed income payment or child's payment becomes payable from the beginning of the period starting 6 years—

(a) before the date on which the application for review is sent to the Secretary of State; or

(b) where no application for a review has been made, before the date on which the decision in relation to the revised award is sent to the claimant.

(7) Where the amount of an award is reduced following a review under article 58 or 59, the reduced amount becomes payable on the date on which notification of the revised award is given or sent to the claimant.

(8) Except where paragraph (4)(a)(ii) applies, no benefit is payable for any period before the date of claim.

16. I now turn to consider the relevant case law.

The case law

17. The issue of the correct start date for a GIP award was considered by Upper Tribunal Judge Wright in *GE v Secretary of State for Defence* [2024] UKUT 92 (AAC). In summary, Judge Wright concluded, as the FTT in that case had also found, that the GIP is only payable when service in the armed forces ends, irrespective of whether the service was in the regular forces or the reserve forces.

18. Judge Wright explained his reasoning as follows (the reference in paragraph 26 of his decision to *R(O)* is to the Supreme Court's decision in *R(O) v SSHD* [2022] UKSC 3; [2023] AC 255):

> **Discussion and conclusion**
>
> 25. The answer on this appeal, with respect, is obvious and can be stated quite shortly. It is the one the FTT gave.
>
> 26. The wording of the statutory scheme plainly and clearly provides that a Guaranteed Income Payment is only payable once service ends. That is what the words of article 16(10) of the AFCS Order say. To have awarded the appellant (that is, made payable to him) the Guaranteed Income Payment for the period before his service in the Armed Forces ended on 12 July 2019 would be contrary to article 16(10) and, accordingly, unlawful as having no statutory basis. No recourse is needed to the Explanatory Notes because, per *R(O)*, when considered on its own and in the context of the statutory scheme as a whole, the wording of article 16(10) is clear and unambiguous and does not create any statutory absurdity. For all members of the Armed Forces – regular as well as reserve members, see article 2(1)(c) of the AFCS Order – if they qualify for a Guaranteed Income Payment it can only become payable from when their service ends. All the Explanatory Notes do is to confirm the plain meaning of the statutory text.
>
> 27. Moreover, the context provided by the rest of the relevant provisions in the AFCS Order reinforce, and are obviously consistent with, the direction in which article 16(10) clearly points. No distinction is drawn by the AFCS Order in terms of 'service' between service as a regular member of the Armed Forces and service in the reserve forces: article 2(1)(c). Further, the calculation of the Guaranteed Income Payment is based on the service member's salary on the day when their service ends. If the Guaranteed Income Payment were to be payable before the end of service, it is unclear what the statutory basis would be for calculating the Guaranteed Income Payment for the period before the service in fact ends.
>
> 28. Nor does article 64(2)(c) of the AFCS Order point persuasively against the Guaranteed Income Payment only becoming payable from the point service in the Armed Forces ends. Firstly, the appellant's case came within article 64(2)(b) and, as a result, and for that reason alone, article 64(2)(c)'s opening words of "in any case where sub-paragraph (a) or (b) does not apply", precluded sub-paragraph (c) from applying. Secondly, Article 64

must be read consistently with the rest of the provisions in the AFCS. So read, article 64(2)(c) cannot confer a right to be paid the Guaranteed Income Payment from a date of claim where that claim was made before the end of service as such a reading would plainly be inconsistent with article 16(10). What article 64(2)(c) is therefore addressing is cases not covered by sub-paragraphs (a) or (b), but this benign fact alone cannot mandate a reading of sub-paragraph (c) to confer payment of a Guaranteed Income Payment which is expressly precluded by the rest of the statutory scheme. In fairness, Mr Cheetham accepted before me that the appellant's reliance on article 64(2)(c) was not sustainable given the terms of article 16(10) of the AFCS Order.

29. I may add, though I heard little or no argument on this, that it may be difficult to read the language of section 1(1)(a) of the Armed Forces and Pensions Act 2004 as providing the vires for an AFCS Order conferring a benefit to be payable in respect of a period before termination of service or retirement. However, it may be said that all section 1(1)(a) is concerned with is the point at which the benefit may be payable rather than from when it is payable.

30. Given the clear meaning of the wording in the statutory scheme, I do not consider general arguments about fairness assist in construing that wording. In any event, it may be thought fair that both regular and reserve members of the Armed Forces are treated in the same way in terms of when a Guaranteed Income Payment becomes payable.

31. Nor do I find the argument around the Guaranteed Income Payment being an 'income replacement' benefit of any great help in construing the statutory words of the AFCS Order. The intention as to how that income replacement was to be effected still has to depend on construing the words in their relevant statutory context. And the income replacement 'purpose' or 'intendment' is rationally consistent with the Guaranteed Income Payment being (i) calculated based on the service member's income, and (ii) compensating for the loss of income once that person has left, or had to leave, service.

32. Lastly, I do not consider the appellant's argument based on his being released from call out for service on 5 August 2014 assist him as he returned to service (including serving in Afghanistan) after this date. I pressed Mr Cheetham on this point at the hearing and about what 'service ends' means in the context of being released from call out. He (rightly) accepted it could not just mean when the call up ends, as the reservist may continue (and continue to be able to continue) to be in service as a reserve member of the Armed Forces long after this release date. The appellant's argument was that the release from call up would have to coincide with the reserve service member no longer being capable of carrying out their functions as a reserve forces member. However, that circumstance is covered by article 64(2)(a) of the AFCS Order and so removes the need to read article 64(2)(b) as also covering this situation. Given this, article 64(2)(b) of the AFCS Order must

> be covering a different situation, and that situation is where the (reserve) service member ends their service in the Armed Forces, here by the appellant retiring. Moreover, if the appellant's 'release from call up' situation was intended to allow the Guaranteed Income Payment to become payable the AFCS Order (i) could have said so, (ii) would need to be modified so as to explain how the Guaranteed Income Payment was to be calculated in such a circumstance.

The decision of the First-tier Tribunal

19. The FTT in the present appeal usefully summarised the Appellant's submissions as follows:

> 16. [The Appellant] relied on two alternative arguments. Firstly, he relied upon the specific commencement provisions for a GIP award contained in Article 64, which he contended overrode the more general provisions in Article 16. Secondly, he contended that upon a proper understanding, his date of discharge for the purposes of Article 16 was the date that he was discharged form mobilisation, i.e. 4 February 2010, that this date had passed and GIP could be backdated 6 years from the date of his successful request for a review.

20. The submissions by the Veterans UK presenting officer were likewise concisely summarised:

> 15. On behalf of the SoS, Mr Ferguson contended that the commencement date for the award of GIP was governed by Article 16(10) and could not be before [the Appellant]'s service ends. That date had not yet been reached. There had been no break in service, [the Appellant] had been in the RNR since 2002 and remaining in the RNR was a requirement for service in the FTRS. He accepted that where a person had served full time in the services and had left service with an award including a GIP, and subsequently entered the reserves, that person could continue to receive the GIP: but that was not this situation. As [the Appellant] had never left service, Article 16(10) currently prevented the payment of the GIP.

21. Having next considered the Upper Tribunal's decision in *GE v Secretary of State for Defence*, the FTT then concluded with its own reasoning in the following terms:

> 19. [The Appellant] sought to distinguish his position from that of *GE* by pointing out that *GE* was seeking a GIP based on a conventional interim award by the SoS, whereas he was seeking a GIP based on an award made (by a tribunal) under Article 59. *GE* therefore was seeking backdating under Article 64 (2), whereas [the Appellant] was seeking backdating under Article 64(5)(d)) or 64(6). Although Article 64(5) was specifically qualified as 'Subject to article 16(10)', Article 64(6) was not so qualified. He argued that it should therefore be read as not subject to such a qualification, and therefore as overriding the general provision in Article 16(10). This, he

> contended, would be fair as a review under Article 59 was predicated on the SoS having made a mistake or having been in ignorance of a fact, and that the claimant should not be prejudiced by such mistake or ignorance. In his case, had he known that the consequence of remaining in the RNR would have been to delay the start of the payment of a GIP, he would doubtless have considered leaving the RNR.
>
> 20. A claimant is certainly entitled to expect that the AFCS will be administered fairly. This is a requirement of good public administration and also of public or administrative law. However, individual concepts of fairness cannot take precedence over the terms of the scheme. It is the correct meaning of the terms of the scheme that must be decided. In this respect we were bound by, and accepted, the reasons given by the Upper Tribunal in paragraph 30 of the decision in *GE*.
>
> 21. It is difficult to understand why Article 64(5) is qualified by the words 'subject to Article 16(10)', but Article 64(6) is not. But Article 64(2) (which applies where the decision relied upon was not a review decision) similarly is not qualified by such words. In *GE* the Upper Tribunal nevertheless found that the clear terms of Article 16(10) took precedence, and we can see no good reason to distinguish this case on the basis that Article 64(6) applies.
>
> 22. Although we are conscious that as a matter of statutory interpretation, specific provisions override general ones, that is subject to the canon that provisions within a single instrument should be interpreted in a harmonious way. The manifest intention and meaning of the AFCS taken as a whole is that a GIP cannot commence before the date that service ends, and (subject to that) a GIP is payable from the date identified within Article 64.
>
> 23. That leaves us to consider [the Appellant]'s second argument, that his service ended when he was discharged from mobilisation, and therefore payment of his GIP is not precluded by Article 16(10). Again, we are bound by the decision of the Upper Tribunal, with which we also agree. [The Appellant] had no break in service. Article 2(1) defines service as including service in the armed forces and the reserve forces. At no time has [the Appellant] ceased to serve in the armed forces and reserve forces. Although some standard form letters referred to his discharge, that should be understood (and would have been understood) as his discharge from mobilisation, and not to affect his continuing membership of the reserve forces. This issue was decided contrary to [the Appellant]'s arguments in paragraph 32 of *GE* [175 reverse].
>
> 24. For these reasons we felt bound to conclude that Article 16(10) of the AFCS operates to defer the commencement date of [the Appellant]'s GIP entitlement until he leaves service, probably in the Spring of 2025.

22. The FTT subsequently granted the Appellant permission to appeal to the Upper Tribunal, giving the following explanation:

4. It is unlikely that the First-tier Tribunal erred in law given the general provisions of the Scheme relating to the effective date of the GIP. However, the Tribunal followed the Upper Tribunal decision *GE v Secretary of State for Defence* [2024] UKUT 92 (AAC), which specifically does not deal with Article 64(6) (see paragraph 6 of the Upper Tribunal's decision).

5. Therefore, guidance is still required from the Upper Tribunal as to the effective date of GIP when entitlement arises due to an award being reviewed under Article 59.

6. Permission to appeal is granted to obtain guidance on the proper approach to Article 64(6).

The grounds of appeal to the Upper Tribunal and the parties' submissions

23. I held an oral hearing of this appeal by CVP on 22 July 2025. The Appellant ably represented himself while Mr Paul Carolan appeared on behalf of the Respondent, the Secretary of State. I am grateful to both gentlemen, but especially to the Appellant for the very clear, thoughtful and well-argued submissions in support of his appeal. It was agreed that the underlying facts of the case were not in dispute and that the appeal turned on a question of pure statutory construction. As to that, the parties' core and competing submissions can be summarised as follows.

<u>The Appellant's case</u>

24. The Appellant advanced two grounds of appeal in support of his case. First, he argued that the Upper Tribunal's decision in *GE* was not binding on the FTT as it was dealing with a different set of circumstances. *GE* was an ordinary case which arose from the application of Article 64(2)(b), whereas his GIP award had been made as a result of an exceptional Article 59 review on the basis of the Secretary of State's ignorance or mistake. Although he understandably did not frame it in quite these terms, the Appellant's submission was that the *ratio decidendi* (the reason for the decision) in *GE* did not read across to the different statutory context involved with his own case. Secondly, the Appellant contended that the FTT had erred in law by relying on the general rule in Article 16(10) and disregarding the express and specific provision made for Article 59 cases in Article 64(6), the latter being a provision directly concerned with fixing the 'Date on which awards of benefit become payable' (as the heading to Article 64 puts it).

<u>The Respondent's case</u>

25. Mr Carolan, for the Secretary of State, and resisting the appeal, essentially relied upon the Respondent's written submissions and, in particular, on the formal response to the Appellant's Upper Tribunal appeal. The Respondent acknowledged that the decision in *GE* did not deal expressly with Articles 59 and 64(6), but contended that the same principle applied in the Appellant's case, namely that (in accordance with Article 16(10)) a GIP does not become payable

until a member's service ends. In particular, the definition of "relevant salary" (see Article 24(6)(b)) illustrated that the correct calculation for a GIP could not be completed until the individual's salary on the last day of service was known. Furthermore, as a matter of statutory construction, the Respondent argued that the phrase "subject to article 16(10)" applies to Article 64(5)(d), so the provision for backdating for six years (in Article 64(6)) can only apply to the extent that it does not pre-date the last day of service. To hold otherwise, according to the Respondent, would be contrary to Article 16(10) and unlawful. Mr Carolan accordingly submitted that the FTT had not erred in law and so the Appellant's appeal should be dismissed.

Analysis

26. Anticipating my conclusion, I find that neither of the Appellant's grounds of appeal is made out. My reasons are as follow.

27. As to the first ground of appeal, that *GE* was not binding on the FTT, the Appellant acknowledged that there were some similarities between the circumstances in *GE* and the facts of his own case but stressed that there were also important differences. Thus, one of the Appellant's principal arguments was that the FTT had erred in law by stating (at paragraph [17] of its reasons) that it was bound by *GE* – this was not the case, he contended, as *GE* was concerned with the application of Articles 64(2)(b) and 64(5)(c) whereas his case turned on the application of Articles 59 and 64(6). It is certainly true that the judgment in *GE* explicitly excluded consideration of cases involving Article 59 (see paragraph [6] of *GE* – and indeed the FTT in *GE* had itself found that the Article 59 criteria were not met on the facts of that case: see paragraph [1] of *GE*).

28. However, it may be noted that the FTT did not express itself quite so baldly to the effect that it was *always* bound to follow *GE*. Rather, the FTT observed (correctly) that it was "legally bound to follow this decision *to the extent that it decided the issues of law that arose in [the Appellant's] appeal*" (emphasis added). True, a narrow reading of the *ratio decidendi* of *GE* – confining the decision to the particular circumstances of cases involving Articles 64(2)(b) and 64(5)(c) – would support the Appellant's argument. However, such a narrow reading is wholly untenable. This is because the reasoning in Upper Tribunal Judge Wright's decision in *GE* was expressed in more general terms. For example (see paragraph 26, with emphasis added):

> *The wording of the statutory scheme plainly and clearly provides that a Guaranteed Income Payment is only payable once service ends. That is what the words of article 16(10) of the AFCS Order say.* To have awarded the appellant (that is, made payable to him) the Guaranteed Income Payment for the period before his service in the Armed Forces ended on 12 July 2019 would be contrary to article 16(10) and, accordingly, unlawful as having no statutory basis. No recourse is needed to the Explanatory Notes because, per *R(O)*, *when considered on its own and in the context of the statutory scheme as a whole, the wording of article 16(10) is clear and unambiguous and does not create any statutory absurdity*. For all members

> of the Armed Forces – regular as well as reserve members, see article 2(1)(c) of the AFCS Order – if they qualify for a Guaranteed Income Payment it can only become payable from when their service ends. All the Explanatory Notes do is to confirm the plain meaning of the statutory text.

29. Furthermore, Judge Wright observed that "If the Guaranteed Income Payment were to be payable before the end of service, it is unclear what the statutory basis would be for calculating the Guaranteed Income Payment for the period before the service in fact ends" (paragraph 27). The same observation applies with equal force in the context of the present appeal. Regulation 24 defines the 'Amount of guaranteed income payment' and is referenced in the definition of a GIP at Article 16(7), which provides that the GIP "is to be determined in accordance with article 24". Yet Article 24 assumes the base salary is the veteran's salary as at the end of service (up-rated as and if necessary). There is no provision for an individual's salary in service to be used in calculating the "relevant salary" (see Article 24(6)(b)). The Appellant valiantly sought to counter this argument by advancing several alternative methodologies that could, and fairly he argued, be used for assessing salary for the purposes of computing the GIP. However, the very fact that he was driven to make such submissions throws into stark relief the very difficulty that he faced – namely, that the GIP methodology is premised on using the individual's salary at the end of service and at no date before.

30. I therefore conclude that the FTT correctly directed itself that the principles in *GE* applied with equal force in the context of the Appellant's case. In particular, the FTT was bound to accept the Upper Tribunal's ruling that the "clear meaning" of the legislative wording was such that general arguments about fairness did not assist in the process of statutory construction (see *GE* at paragraph 30 and the FTT's decision at paragraph 20). Moreover, as the FTT summarised their conclusion:

> 22. Although we are conscious that as a matter of statutory interpretation, specific provisions override general ones, that is subject to the canon that provisions within a single instrument should be interpreted in a harmonious way. The manifest intention and meaning of the AFCS taken as a whole is that a GIP cannot commence before the date that service ends, and (subject to that) a GIP is payable from the date identified within Article 64.

31. This leads on to the second ground of appeal, concerning the inter-relationship between the general rule in Article 16(10) and the specific provision made for Article 59 review cases in Article 64(6). In summary, the Appellant submitted that Article 16(10) was a general but not universal provision and as such there could be circumstances where it did not apply. He argued that, by contrast to Article 16(10), Article 64(6) was a specific rule stipulating the start date for a GIP award in a case arising from an Article 59 review. Furthermore, he contended, Article 64(6) did not state it was subject to either Article 64(5) or Article 16(10). Accordingly, the Appellant submitted, the express provision in Article 64(6) for six-year backdating in Article 59 cases took precedence over the general principle in Article 16(10) that a GIP was only payable from the end of service.

32. However, the difficulty with this line of argument is that it involves reading Article 64(6) in isolation and so out of context. The starting point in understanding Article 64 is Article 64(2). This provides that an award of GIP becomes payable "where a member is awarded injury benefit which includes an award of guaranteed income payment, on the day after the day on which the member's service ends" (see Article 64(2)(b)). That rule is made expressly "subject to paragraphs (5) and (6)", according to the opening words of Article 64(2). Next, Article 64(5) makes provision for four sets of circumstances where an award has been revised under a series of different powers. These relate to Article 53 (Article 64(5)(a)), 55 (Article 64(5)(b)), 56/57 (Article 64(5)(c)) and 59 (Article 64(5)(d)). (I note in passing that the word 'article' in the first line of Article 64(5)(d) has been omitted in error from the original Queen's Printer version of the AFCS Order 2011, but the meaning is clear enough).

33. Article 64(5)(d)(i) lays down the general rule that an award revised under Article 59 becomes payable "on the date the application for review is sent to the Secretary of State". Furthermore, as the Appellant rightly points out, Article 64(5)(d) is expressly made "subject to paragraph (6)". Article 64(6) in turn provides that where the result of an Article 59 review is to award or increase the amount of benefit awarded, any GIP "becomes payable from the beginning of the period starting 6 years–(a) before the date on which the application for review is sent to the Secretary of State…". However, it is wrong to read Article 64(5)(d) as qualified only by paragraph (6). Each of the four review scenarios contemplated in Article 64(5)(a) to (d) inclusive, and so including Article 64(5)(d), is "subject to article 16(10)", as stipulated by the opening words of Article 64(5). The Appellant's reading of the relevant statutory provisions therefore involves reading Article 64(6) in isolation and out of context. In short, Article 64(6) qualifies Article 64(5)(d) but sub-paragraph (d) – just like sub-paragraphs (5)(a), (b) and (c) – is subject at all times to the general rule in Article 16(10). It follows that Article 16(10) in effect overrides Article 64(6) rather than the other way round. I therefore agree with the Respondent's submission that, as a matter of statutory construction, the phrase "subject to article 16(10)" applies to the whole of Article 64(5)(d), so the provision that enables backdating for six years (in Article 64(6)) can only apply to the extent that it does not pre-date the last day of service.

34. To digress for a moment, the FTT stated that "It is difficult to understand why Article 64(5) is qualified by the words 'subject to Article 16(10)', but Article 64(6) is not" (paragraph [21]). However, on reflection it is not so difficult to understand at all. This is because Article 64(6) is not a standalone provision – it operates to carve out an exception to the provision in Article 64(5)(d) but remains "subject to Article 16(10)" as per the instruction in the opening words to Article 64(5), so including that qualification in Article 64(6) as well would be mere surplusage. The same point can be reinforced by a drafting hypothetical that proceeds as follows. Article 64(6) is a qualification to Article 64(5)(d). It would have been perfectly open to the draftsperson to omit the proviso "subject to paragraph (6)" at the commencement of Article 64(5)(d) and instead to incorporate the substance of the provision now contained in Article 64(6) entirely within the text of Article 64(5)(d) itself (although the drafting would undoubtedly have become somewhat unwieldy). If that course had been taken, there could be no argument but that the

six-year backdating rule was subject to Article 16(10) in just the same way as was each of the situations covered by Article 64(5)(a)-(c) inclusive. The happenstance of the choice of legislative drafting technique in such circumstances could and should not result in a different outcome of the process of statutory construction.

35. I have not overlooked the Appellant's arguments that the effect of the sequence of events relating to his AFCS claim was that he was not in a position to make an informed decision (particularly as to the financial implications of that choice) back in 2010 or 2011 about whether to remain in service or not. In short, he argued that he had been financially disadvantaged because of the way that the GIP is calculated according to the Table of Factors in Schedule 4 of the AFCS Order 2011. The Appellant further submitted that it was unconscionable that Veterans Uk should in effect be able to make a financial saving on the costs of GIP because of their own mistakes and to the detriment of the claimant. While one can sympathise with the Appellant's predicament, and I do not underestimate the stress involved in a long-running series of Tribunal hearings, the short answer to that submission is, as Judge Wright observed in *GE*, that "Given the clear meaning of the wording in the statutory scheme, I do not consider general arguments about fairness assist in construing that wording" (paragraph 30).

Conclusion

36. I therefore conclude that the decision of the First-tier Tribunal does not involve any error of law. My decision is also as set out above.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judge for issue on 28 July 2025