



Neutral Citation Number: [2026] UKUT 311 (AAC)
Appeal No. UA-2025-000452-AFCS

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Wilfred Rabone

Appellant

-v-

Secretary of State for Defence

Respondent

Before: **The Rt Hon Sir Gary Hickinbottom, Judge of the
Upper Tribunal**

Heard at: No oral hearing

Date of decision: 20 April 2026

On appeal from:

Tribunal: The First-tier Tribunal (War Pensions and Armed
Forces Compensation Chamber)
Tribunal Case No: AFCS/00516/2023
Tribunal Venue: 20 November 2024
Decision Date: 21 November 2024 (issued to parties 26 November
2024 and Full Written Reasons given on 21 January
2025)

**DECISION OF THE ADMINISTRATIVE APPEALS CHAMBER
OF THE UPPER TRIBUNAL**

The appeal is dismissed.

Subject Matter

Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 –
claim for tinnitus consequential on COVID-19 – meaning of “outbreak” in the
disapplication of the exclusion of exogenous infections from the scope of the
Scheme under Article 12(3)

Cases referred to

None.

DECISION

Introduction

1. This is an appeal from the decision of the First-tier Tribunal (War Pensions and Armed Forces Compensation Chamber) (Judge Freshwater, Medical Member Dr B Arvin and Service Member C Smith, dated 21 November 2024 with written reasons issued on 21 January 2025, dismissing the Appellant's appeal against the decision of the Respondent Secretary of State to reject his claim for compensation under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 ("the 2011 Order", or "the Scheme") for Coronavirus COVID-19 ("COVID") and consequential tinnitus on the basis that these conditions were not caused by service ("the FtT Decision").
2. The President of the War Pensions and Armed Forces Chamber having refused permission to appeal on 5 March 2025, permission was granted by the Upper Tribunal (Judge Mitchell) following an oral hearing on 12 August 2025.
3. The Appellant was given the opportunity to have an oral hearing of the substantive appeal, but he did not take it up; so, I have determined this appeal without an oral hearing, which I consider I am justly and fairly able to do.

The Factual Background

4. The Appellant served in the Royal Navy from 4 May 1990 to 10 May 2022. In January 2021, during the COVID pandemic, he was mobilised in support of the Welsh Ambulance Service. On 23 March 2022, he was demobilised; on 26 March 2022, he tested positive for COVID; and on 28 March 2022, he developed ringing in his ears and was later diagnosed as having tinnitus.
5. On 14 November 2022, the Appellant submitted a claim under the Scheme. That included a claim for his back, which is no longer pursued. The claim for COVID and tinnitus was made on this basis. When supporting the Ambulance Service, the Appellant was based in Anglesey. Shortly before being demobilised, he had tripped and torn a muscle which meant that he was stood down from duties. He remained

at his hotel, where he had been staying whilst in Anglesey. He was taken to Cardiff to be demobilised, which occurred in a compact basement room where social distancing was not observed, people were sitting next to one another and no one wore a face mask. Approximately 60 people were present. The Appellant went straight home afterwards. On 26 March 2023, he woke with a sore throat and tested positive for COVID. A few days later, he developed tinnitus from which he had not suffered before he had contracted COVID. The Appellant's claim was that the COVID and tinnitus were caused by service.

6. The Senior Medical Advice received by the Respondent on 10 October 2023 was that (i) the evidence did not confirm a service cause for the COVID, and (ii) in any event, even if it did, then the illness was short-lived and below tariff. The claim was thus refused on 11 October 2023 and, on reconsideration, on 4 September 2024.
7. The Appellant duly appealed to the First-tier Tribunal which, following an oral hearing, dismissed the appeal on 21 November 2024. The Appellant now appeals that dismissal.

The Relevant Statutory Provisions

8. Article 8(1) of the 2011 Order provides that "benefit is payable to or in respect of a member or former member by reason of an 'injury' which is caused (wholly or partly) by service where the cause of the injury occurred on or after 6 April 2005...".
9. By Article 2(1), "injury" includes "illness...". However, Article 12(1)(f)(iv) provides, as an exception, that benefit is not payable to or in respect of an injury "which is caused (wholly or predominantly) by... an illness which is... an exogenous infection" defined in paragraph 12(3)(a) as "an infectious or contagious disease spread by person to person contact". But the exclusion of an illness in the form of an exogenous infection is disapplied in various circumstances, including, by Article 12(1A)(b), "... where in a temperate region, there has been an outbreak of an exogenous infection in service accommodation or in a workplace", where "an outbreak of an exogenous infection means the occurrence of cases of such infection in excess of what would normally be expected in a particular community, geographical area or season" (Article 12(3)(b) inserted by The Armed Forces and Reserve Forces (Compensation Scheme) (Amendments) Order 2019).

The FtT Decision

10. The First-tier Tribunal dismissed the Appellant's appeal, giving the following succinct reasons:

“18. An outbreak of an exogenous infection means the occurrence of cases of such infection in excess of what would normally be expected in a particular community, geographical area or season.

19. Mr Rabone acquired Covid when in the United Kingdom, which is a temperate region, at a time when the occurrence of Covid in the general population was high. The occurrence in his workplace was not in excess of what would normally be expected.

20. Tinnitus is a symptom of long Covid (as set out on the NHS website). The cause of tinnitus is therefore Covid, not service.

21. ...

22. The appeal is therefore dismissed.”

The Ground of Appeal

11. The Appellant appeals on the following ground:

“The tribunal states covid is the cause of my tinnitus. I agree. What I do not agree with is the fact that the tribunal finds the army has no responsibility in my developing of covid. If the army had managed the demobilising process by either reducing the numbers in the conference room so we were able to socially distance or, by using a larger building such as the room we mobilised from at the gym at Maendy Barracks.”

Discussion

12. It is uncontroversial that (i) COVID is an exogenous infection, (ii) the United Kingdom is a temperate region, and (iii) the Appellant's tinnitus was a consequence of him contracting COVID. For the purposes of this

appeal, I shall assume that the hotel room in which the Appellant demobilised was his “workplace”.

13. On those bases, benefit will not be payable to him for the consequences of the COVID he contracted unless there had been an “outbreak” of COVID in that workplace.
14. As I have indicated (paragraph 9 above), “outbreak” means “the occurrence of cases of such infection in excess of what would normally be expected in a particular community, geographical area or season”.
15. In granting permission to appeal, Judge Mitchell referred to paragraph 36 of the chapter on Coronavirus (COVID-19) and the [Scheme] in the IMEG Sixth Report on Medical and Scientific Aspects of the Armed Forces Compensation Scheme which says:

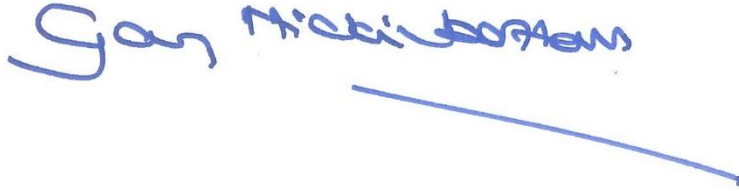
“‘Outbreak’ is defined in the legislation as follows: ‘an outbreak involving exogenous infection means the occurrence of cases of such infection in excess of what would normally be expected in a particular community, geographical area or season’. The phrase ‘would normally be expected’ implies that this addresses exogenous infection endemic to the country. That cannot apply to COVID-19 in the UK. In medical terms, COVID-19 is a new, highly infectious disease never previously seen, which presented acutely, quickly becoming widespread in the community, country and globally; but lacking an ‘expected occurrence of cases in a community, geographical area or season’. Although expert assessment is that in time COVID-19 is likely to become endemic in the UK, that is not the position presently.”

16. In other words, IMEG interpreted “outbreak” in terms of an endemic disease in respect of which there is a predictable baseline presence, which precluded an “outbreak” in an epidemic such as COVID-19 which had no such baseline. If that were so, then there could be no claim for the consequences of COVID under the Scheme because, at least at the relevant time, there could be no “outbreak” of COVID such as to satisfy the test for the disapplication of the exogenous infection exception to the illness criteria.
17. On that basis, the Appellant’s claim would fail, and the First-tier Tribunal were right to dismiss his appeal.

18. The IMEG view depends on the implication it draws that the phrase “would normally be expected” can only apply if the relevant disease is endemic and consequently a comparison can be made between the occurrence of the disease in an “outbreak” and the predictable endemic level in the general population. In my view, it is at least strongly arguable that the relevant provision does not depend upon the disease being endemic, because a comparison can still be made between the occurrence of disease in (e.g.) the relevant workplace and the *actual* occurrence in the general population at the relevant time. This is what the First-tier Tribunal appear to have done, concluding that the occurrence of COVID cases in the workplace (i.e. the demobilisation room) was not in excess of “what would normally be expected”, i.e. the actual occurrence in the general population at that time. That was not only a conclusion to which the tribunal were entitled to come, but a conclusion they were bound to draw on the evidence, there being no evidence that the occurrence rate amongst those who were in the demobilisation room was any higher than that in the general population at the same time.
19. On this alternative interpretation, which favoured the Appellant (and which, as a matter of construction of the statutory provisions, I prefer to the IMEG view), the Appellant’s claim would also fail and the First-tier Tribunal’s conclusion was correct for the reasons they gave.
20. In my view, the Appellant’s ground of appeal is based upon a false premise, namely that benefit is payable in respect of an endogenous disease where the Armed Forces have failed to take steps to reduce the risk of service personnel contracting such a disease. But, even on the alternative interpretation above, benefit is not payable where, as found here, the occurrence of the disease in the services setting is no higher than in the general population at the same time.
21. In any event, on the proper construction of the 2011 Order, the Appellant cannot make good his claim for benefit for COVID or tinnitus; and his appeal fails.

Conclusion

22. For those reasons, I dismiss this appeal.



**The Rt Hon Sir Gary Hickinbottom
President of Welsh Tribunals
Sitting as a Judge of the Upper Tribunal
Authorised for issue on 20 April 2026**