



*"I just want the politicians to make sure my family is looked after."*

## Do your bit for Service personnel and their families

Service personnel and their families need the next government to:

- Keep the **Armed Forces Compensation Scheme** under continual, independent review and:
  - change the **standard of proof** so that where evidence is inconclusive, the benefit of the doubt is given to the injured Service person;
  - remove the **link between lump-sum awards and ongoing payments** to reflect the fact that they are paid for different reasons;
  - allow claims relating to injuries or illnesses caused by **medical treatment**;
  - remove the **time limits** to lodge a claim; and
  - exempt payments when carrying out **means-testing** for State benefits.
- Stop breaches of **harmony guidelines** (deployment rates) in order to reduce family separation and breakdown.
- Bring all **single and family accommodation** up to the highest standard within the lifetime of the next parliament and ensure that the Ministry of Defence publishes full details of the funding and timescales needed to upgrade Armed Forces housing.
- Introduce **health screening and monitoring** for Service personnel and vulnerable dependants and ensure priority is given to those deployed for extended periods, their partners and those medically downgraded.
- Introduce more effective prevention and treatment strategies to tackle **mental health problems**, binge drinking and drug abuse.
- Assess the **impact of mobility** on Armed Forces families, especially in relation to health, employment and education.

## Armed Forces Compensation Scheme

The Armed Forces Compensation Scheme (AFCS) was introduced on 6 April 2005. The AFCS is a no fault compensation scheme open to anyone who has suffered an injury or loss (death) as a direct result of Service in the Armed Forces on or after 6 April 2005.

For those who suffered an injury or loss on or before 5 April 2005, the War Pension Scheme continues to operate. Unlike the War Pension Scheme, the AFCS allows claims to be made while still serving in the Armed Forces.

### What we're calling for:

- Keep the Armed Forces Compensation Scheme under continual, independent review.

### Why?

The AFCS is still a relatively new scheme for the Armed Forces. In 2005, it introduced significant changes to the compensation arrangements for Service personnel.

At the time of its introduction there were genuine concerns about how the Scheme would operate in practice; the heightened operational tempo of the Armed Forces has intensified these concerns over recent years. When introduced, the Government made a commitment to review the Scheme after five years of operation, this review was due to take place from April 2010. The Government has since announced that it will bring forward this review, in an attempt to address some of the ongoing concerns.

The AFCS has already undergone two internal reviews by the Ministry of Defence. The first review was carried out after 12 months of operation, and concluded that no changes were necessary. The second review, carried out in 2007, resulted in an increase in lump-sum payments and changes to the rules regarding multiple injuries. Both of these changes were introduced in late 2007.

However, there continue to be significant concerns regarding some of the general principles of the AFCS, in particular how suitable it is for the Armed Forces. Past reviews have tended to focus on specific issues raised by individuals in the press, and not on making a scheme which is fair and just.

People who serve in the Armed Forces are unique as their job requires them to wilfully stand in harm's way. We need a compensation scheme that reflects the nature of the job our Armed Forces carry out on our behalf. We believe that the next and most significant review of the AFCS, and future reviews, should be carried out independently of the Ministry of Defence.

In addition to the issues outlined in the sections below there are two ongoing issues from the last review of the scheme. These need to be picked up by the forthcoming review; these are the increases to lump sums and the changes to multiple injury rules.

In 2007, the Government announced increases to the lump sum awards under the AFCS. These graduated from 10% increases for payments for low level injuries to 100% for severe injuries; at the time there were around 15 people that benefited from a 100% increase in their lump sum. These increases were obviously welcome, but they did not recognise the fact that greater increases at the lower levels were also

required. We believe that further consideration should be given to the value of awards during the forthcoming review.

When the increases in payments were announced, the Government also conceded that if someone had multiple injuries, the AFCS should compensate for each and every injury. However, this was limited to those with one to two major injuries. Effectively, those with a high number of less serious injuries continue to only be compensated for three of these injuries, and two of the three do not receive a full payment. At the time the Legion stated that all injuries assessed should be fully compensated, this remains our position.

### **What we're calling for:**

- Change the standard of proof so that where evidence is inconclusive, the benefit of the doubt is given to the injured Service person.

### **Why?**

The AFCS requires the claimant, or the injured Service person, to prove on the balance of probabilities that their injury or illness was caused or has been worsened by Service in the Armed Forces. The balance of probabilities is the standard of proof used in civil courts on cases such as negligence. In most cases this is not difficult, but there are issues which need to be considered; these generally relate to how and where evidence is collected and held.

For Armed Forces personnel the Ministry of Defence is their employer, and therefore the organisation or body that has, in some way, contributed to the cause of their injury. It is also the provider of medical treatment either through unit medical staff or Defence Medical Services. All relevant medical records are produced and held by the Ministry of Defence, both during and following discharge. The Ministry of Defence also operates the compensation scheme. Yet when it comes to making a claim, it is the injured person who must provide evidence of the link to Service and this must be done to the standard of the balance of probabilities.

The issue has been raised in the past and in 2007 the Ministry of Defence responded by stating that:

*“although the balance of probabilities standard of proof used in the AFCS differs from the previous War Pension Scheme, individuals are not disadvantaged and no claim should fail where there is reasonable, reliable evidence that injury, ill-health or death is due to Service.”<sup>1</sup>*

While the number of claims being submitted by those still serving does not indicate an issue, the proportion of claims from veterans rejected last year was 81%<sup>2</sup>. This compares to a rejection rate of 12% for the War Pension Scheme. Unfortunately, the reasons for rejection are not reported.

We should also learn from well documented legacy health issues, where the causes of injuries, and in particular illnesses, are not always clear. While veterans of the first Gulf War have been successful in claiming compensation for Gulf War Syndrome from the War Pension Scheme all such claims would fail under the AFCS due to the lack of medial evidence linking exposures to harmful substances and the illnesses currently being experienced by these veterans.

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<sup>1</sup> Armed Forces and Reserve Forces Compensation Scheme – Evaluation of First Year – April 2005 to March 2006 - March 2007, Ministry of Defence

<sup>2</sup> Armed Forces Compensation Scheme Statistics 31 March 2009, Defence Analytical Services and Advice (DASA), J Edgell and A Byers

The Legion believes that the standard of proof required by the AFCS should state that where a reasonable doubt exists about the cause of an injury, the benefit of that reasonable doubt should be given to the claimant.

### What we're calling for:

- Remove the link between lump-sum awards and ongoing payments to reflect the fact that they are paid for different reasons.

### Why?

The AFCS contains two types of payments, the lump sum payment for pain and suffering and the Guaranteed Income Payment (GIP) for loss of earning capacity.

Awards under the AFCS relate to Tariff levels, which range from 1 to 15. Each Tariff dictates the lump sum payment amount and a percentage of the GIP calculation which will be awarded.

### Armed Forced Compensation Scheme – Tariff Levels

Tariff	Lump Sum	Band	% of GIP*	Multiple Injuries
Tariff 1	£570,000	Band A	100%	100% of all
Tariff 2	£402,500	Band A	100%	100% of all
Tariff 3	£230,000	Band A	100%	100% of all
Tariff 4	£172,500	Band A	100%	100% of all
Tariff 5	£115,000	Band B	75%	If 2, 100% of all
Tariff 6	£92,000	Band B	75%	If 2, 100% of all
Tariff 7	£63,825	Band C	50%	100%, 30%, 15%
Tariff 8	£48,875	Band C	50%	100%, 30%, 15%
Tariff 9	£34,100	Band D	30%	100%, 30%, 15%
Tariff 10	£23,100	Band D	30%	100%, 30%, 15%
Tariff 11	£13,750	Band D	30%	100%, 30%, 15%
Tariff 12	£9,075		Nil	100%, 30%, 15%
Tariff 13	£5,775		Nil	100%, 30%, 15%
Tariff 14	£2,887		Nil	100%, 30%, 15%
Tariff 15	£1,155		Nil	100%, 30%, 15%

\*Percentage of the GIP calculation, based on earnings and the nature of the condition. The GIP is calculated by multiplying the pensionable pay of the Service person by a factor which depends on age at last birthday, the younger the person the higher the factor reflecting the fact that there will be more years to normal retirement age.

While lump sum awards were increased in 2007, there was no increase to the GIP that an individual would receive. This is not an issue in itself. However, the way in which the GIP is awarded is a concern for some people accessing the Scheme.

This issue relates to the fact that lump sums and ongoing payments for loss of earnings are linked according to the Tariff level awarded, but are paid for very different reasons (as stated above). The issue can be demonstrated by the following examples:

Both of the following injuries are Tariff 8 conditions, which would attract an award of £48,875 and are Band C, so therefore attract 50% of the GIP calculation upon discharge.

- Claim 1 - Table 3 - Mental health – permanent mental disorder, causing severe functional limitations and restrictions; and
- Claim 2 - Table 5 – Physical Disorders & Infectious Diseases – infertility.

Using the Claim 1 example above, one could argue that the lump sum for pain and suffering for a mental health condition is about right. However, the impact of a permanent mental health disorder on future employment prospects is significant, and therefore, an award of 100% of the GIP would be much more appropriate than the current 50% award.

Using the Claim 2 example above, in the case of infertility, while the pain and suffering would be great, and impact significantly on family life, one could argue that the impact on potential earnings is minimal. It would therefore make sense to have a higher lump sum award with a much lower GIP.

Linking the lump sum award and the GIP under the Tariff system makes this kind of distinction impossible. We believe that each injury should be awarded its own GIP Band.

#### **What we're calling for:**

- Allow claims relating to injuries or illnesses caused by medical treatment.

#### **Why?**

The Legion has long held the view that conditions worsened by consequential medical treatment should be compensated for under the AFCS. The Scheme currently exempts injuries or conditions made worse by medical treatment except where the person was on military operations outside the UK or where medical facilities were limited, but excludes all other circumstances. The Ministry of Defence's position is that:

*"Injuries arising from medical treatment of an injury would fall to be considered as medical negligence and would be appropriate for a common law claim for compensation."*<sup>3</sup>

The issue also relates to when an injury is assessed for the purpose of an award i.e. when the injury was sustained, or after the individual has made some recovery. The Ministry of Defence's view on when an injury should be assessed is that only the "immediate physiological or mental change"<sup>4</sup> should be considered. For this reason any consequent medical treatment issues are not taken into consideration. The Legion believes that injuries should be assessed at the time of the claim decision, taking into account subsequent issues relating to the treatment and recovery of the injury. We have recently supported two clients who successfully appealed this interpretation at tribunal. However, the Secretary of State has since appealed the tribunal ruling. At the time of writing, this issue was awaiting judgement by the Court of Appeal.

<sup>3</sup> Armed Forces and Reserve Forces Compensation Scheme – Evaluation of First Year – April 2005 to March 2006 - March 2007, Ministry of Defence

<sup>4</sup> S of S v AD and MM Upper Tier Tribunal of the War Pensions and Armed Forces Compensation Chamber, Appeal Nos CAF/2162/2007 and CAF/1412/2007

**What we're calling for:**

- Remove the time limits to lodge a claim.

**Why?**

Unlike the War Pension Scheme, which still operates for injuries or illnesses suffered before 2005, the AFCS has time limits for making a claim. These are five years from the date of the incident or event that caused the injury, or for illnesses, five years from the date medical advice was first sought. The AFCS also allows for extensions for late onset conditions, certain mental health disorders and exceptional deterioration for existing accepted conditions.

We can see no reason why a person who has been injured by Service should have their claim rejected on the basis that it was not lodged within a predetermined time frame, particularly as the Government recognises a life long duty of care to those who have been injured by their Service<sup>5</sup>. The only possible reason for time limits to exist within the Scheme is to limit financial liability.

Now that claims can be made while a person is still serving (unlike under the War Pension Scheme), real consideration must be given to the perception of those still serving as to how making a claim might affect their opportunities for promotion.

**What we're calling for:**

- Exempt payments when carrying out means-testing for State benefits.

**Why?**

There are still some benefits where compensation from the Armed Forces Compensation Scheme (AFCS) is taken into account for the purpose of capital means-testing. The Legion believes that all lump sum payments should be disregarded for the purposes of means-testing, and that GIPs should be taken into consideration for income-related benefits only, such as Employment Support Allowance.

Lump Sum payments should be disregarded as they are compensation for injuries relating to Service in the Armed Forces, and should not affect other State support mechanisms.

**Harmony Guidelines (Deployment Rates)****What we're calling for:**

- Stop breaches of harmony guidelines (deployment rates) in order to reduce family separation and breakdown.

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<sup>5</sup> The Military Covenant, Ministry of Defence

## Why?

The Ministry of Defence describes harmony guidelines in the following way:

*“The Armed Forces have Harmony Guidelines, which are not rigid rules, designed to ensure we can perform the tasks that the Government requires of us without expecting our people to bear excessive separation. We acknowledge that these guidelines are being breached as our troops are currently working at such a high operational tempo but this is improving and the latest figures we have show that the level of breaches is decreasing.”<sup>6</sup>*

The Fourteenth Report of the House of Commons Defence Committee recently looked at this issue in reference to recruitment and retention within the Armed Forces. The figures published in the report (from the Ministry of Defence) show that all three Services are currently operating below the “manning balance” – the manning balance described as an indicator of the stretch of the Armed Forces. In terms of improvements, these have been shown in the RAF and the Navy, while the figures for the Army show decreases in the overall personnel requirement since April 2006.<sup>7</sup>

The continual breaches of harmony guidelines mean that Service personnel and their families are being separated for longer than the Ministry of Defence’s own recommendations. This is putting unnecessary strain on families and needs to be rectified as a priority.

## Accommodation

### What we’re calling for:

- Bring all single and family accommodation up to the highest standard within the lifetime of the next parliament and ensure the Ministry of Defence publishes full details of the funding and timescales needed to upgrade Armed Forces housing.

## Why?

The Ministry of Defence provides accommodation to its personnel in the form of Single Living Accommodation (SLA) or Service Family Accommodation (SFA). However, the Legion is concerned that the poor standard of much of the accommodation provided for members of the Armed Forces means that personnel and their families are not receiving fair treatment or being rewarded by commensurate terms and conditions of Service.

There are more than 120,000 single living spaces in the UK with 44% of units categorised as being of the lowest standard. Only 25% are considered to be at the highest standard.

Under the current plans 75,000 single bed spaces will have been modernised or upgraded to the highest standard by 2013. There will still be a shortfall of 35,000 single bed spaces at the highest standard by 2013<sup>8</sup>. There are 25,000 Army bed spaces alone for which there are no modernisation or improvement plans. Modernisation of SLA slows down after 2012 under current plans.

<sup>6</sup> Ministry of Defence, Press Statement, January 2009

<sup>7</sup> Defence Committee, House of Commons, Fourteenth Report, Session 2007/8

<sup>8</sup> Managing the Defence Estate, National Audit Office, Session 2006-2007, HC 154, March 2007

There are nearly 50,000 Service family homes in the United Kingdom, of which 68% do not meet the Ministry of Defence's definition of high quality accommodation<sup>9</sup>. Properties falling below this standard can require a range of work including new kitchens, decoration, bathrooms, wiring or windows. Only 770 family homes are to be upgraded per year under current plans meaning it will be 20 years before all family accommodation reaches the highest standard<sup>10</sup>.

The Ministry of Defence admits that the poor standard of accommodation is a factor in some Service personnel's decision to leave the Armed Forces. When the House of Commons Defence Committee visited Cavalry Barracks, Hounslow and Elizabeth Barracks, Pirbright in 2007, members found that "poor accommodation was having a serious effect on morale and retention, especially amongst NCOs [Non-Commissioned Officers]"<sup>11</sup>. If the Armed Forces are to retain both new recruits and experienced members it is vital that accommodation is provided at the highest standard.

The Army Families Federation reported that for the first half of 2009, 59% of all enquiries to them for advice were in regard to housing problems, with 43% of these relating to repairs and maintenance<sup>12</sup>. The condition of Service accommodation is clearly of concern, as the Families Continuous Attitude Survey found that 33% of officers' families and 32% of soldiers' families stated the standard of their housing would be much better if their spouse were to leave the Army.

Criticism of Service accommodation has also come from non-military sources. The National Audit Office (NAO) reported that despite efforts at improvement over the last five years there is still a great deal of work to be done to bring all accommodation up to a high standard. The NAO highlighted that the Ministry of Defence has yet to develop a plan to upgrade a considerable amount of both family and single person accommodation.

The Defence Estate Development Plan 2009 outlines that the Ministry of Defence wishes to bring all accommodation up to a decent standard but makes it clear that funding is restricted<sup>13</sup>. Unless more resources are provided by the next government a significant number of Service personnel will be housed in poor quality accommodation for 20 years or more.

## Mental Health

For most people, a career in the Armed Forces is positive and rewarding. However, for some this is not the case and extra support is required to ensure their good health and wellbeing.

### What we're calling for:

- Introduce health screening and monitoring for Service personnel and vulnerable dependants and ensure priority is given to those deployed for extended periods, their partners and those medically downgraded.

<sup>9</sup> Defence Estates Development Plan, Defence Estates, 2009

<sup>10</sup> Service Families Accommodation, National Audit Office, Session 2008-09, HC 13, March 2009

<sup>11</sup> The Work of Defence Estates, House of Commons Defence Committee, 15th Report of Session 2006-2007, July 2007, HC 535

<sup>12</sup> Families Concerns Jan-June 2009, Army Families Federation, 2009

<sup>13</sup> Kevan Jones, Minister for Armed Forces, House of Commons, 29/6/09 (Hansard 41W)

## Why?

The current health surveillance for personnel deployed to Iraq and Afghanistan has identified an increase in psychological symptoms among personnel who have been deployed for 13 months or more in a three year period<sup>14</sup>.

Further, between seven and 10% of all Service personnel are medically downgraded, or are awaiting a decision on medical downgrading<sup>15</sup>. Although few people are downgraded due to psychiatric conditions, psychological health problems are highly prevalent among medically downgraded personnel, particularly those with a chronic medical condition due to the physical injury or illness and their inability to continue in their chosen field of work<sup>16</sup>.

It is essential that identification systems are put in place, with extra emphasis on groups known to be at risk, including medically downgraded personnel and those who have been deployed for long periods, to ensure mental health problems are identified as early as possible and to allow for the most effective treatment. It is also important that family members affected by the tempo of operations and prolonged separation are identified. Identification of people suffering from mental health conditions continues to be a major issue for the Ministry of Defence as people can become isolated or are unwilling to come forward for help.

Introducing health screening and monitoring is one of the ways that the Government can begin to identify those who need assistance and deliver treatment early. The Ministry of Defence also needs to consider ways to reduce the stigma associated with mental health within the Armed Forces to empower personnel to seek help more easily.

## What we're calling for:

- Introduce more effective prevention and treatment strategies to tackle mental health problems, binge drinking and drug abuse.

## Why?

The number of personnel officially recorded as experiencing mental health problems remains low. The latest figures from Defence Analytical Services and Advice (DASA) show there were around 3,000 personnel diagnosed with a mental health problem at the Ministry of Defence's out-patient facilities in 2008, 60 of whom were diagnosed with PTSD<sup>17</sup>.

However, the Legion is concerned that many personnel do not come forward due to the stigma which exists within the Military or for other more complex reasons. The level of alcohol use in the Services now indicates that many personnel with psychological problems misuse alcohol in an attempt to cope with or mask their symptoms. Some sufferers of Post Traumatic Stress Disorder (PTSD) withdraw from people close to them and use alcohol as a coping strategy, which can create more problems<sup>18</sup>. We believe that a tendency not to seek help and alcohol misuse might be disguising a much larger mental health problem within the Armed Forces.

<sup>14</sup> Rona, R J, Fear, N T, Hull, L, Greenburg, N, Earnshaw, M, Hotopf, M, Wessely, S, (2007). Mental health consequences of overstretch in the UK Armed Forces: first phase of a cohort study. BMJ, published online June 2007

<sup>15</sup> King's College London, University of London, King's Centre for Military Health Research: A Ten Year Report, What has been achieved by a decade of research into the health of the UK Armed Forces? September 2006

<sup>16</sup> Rona, R J, Fear, N T, Hull, L, Greenburg, N, Earnshaw, M, Hotopf, M, Wessely, S, (2007) Mental health consequences of overstretch in the UK armed forces: first phase of a cohort study. BMJ, published online June 2007

<sup>17</sup> Defence Analytical Services Agency, Armed Forces Psychiatric Morbidity Report, 2009

<sup>18</sup> National Institute for Health and Clinical Excellence, Post-traumatic stress Disorder: The management of PTSD in adults and children in primary and secondary care, 2006

Alcohol plays an important role in military tradition and group bonding. However, personnel today are drinking more than ever. This is particularly the case for personnel who have been deployed over and above harmony guideline recommendations - links have been made between overstretch, problematic drinking, and mental health problems.

Binge drinking is more common within the military than in the general population, and alcohol intake has increased more among Service personnel in recent years than among the civilian population<sup>19</sup>. Research has shown that nearly three quarters of personnel deployed for longer than 13 months in a three year period had severe alcohol problems. Service personnel are more likely to drink if they are male, in the Army, single, of junior rank and have a parent with an alcohol or drug problem<sup>20</sup>.

Meanwhile, drug use in the Armed Forces is significantly less prevalent among Service personnel than in corresponding civilian demographic groups. However, the number of Army personnel testing positive for illegal substances has increased in recent years, with a four fold rise in the number found to have taken cocaine<sup>21</sup>. There are concerns that the continuing stress of operations will cause more personnel to use drugs to help them cope, impacting not just their health and career chances but also the strength of the Armed Forces.

It is important that effective education, prevention and treatment programmes are put in place to make personnel aware of the links between substance misuse and mental health and enable them to tackle their problems before they become dependent.

## The Impact of Mobility on Armed Forces Families

### What we're calling for:

- Assess the impact of mobility on Armed Forces families, especially in relation to health, employment and education.

### Why?

The cross-Government Command Paper 7424, published in July 2008, cemented the principle that no Service person or their family should be disadvantaged by Service life. The paper also described some of the issues that arise from the mobility of Service life. These included losing a place on NHS waiting lists and the allocation of school places for children. The Legion believes that career opportunities for spouses could be added to this list.

However, what is lacking in this area is an analysis of the social disadvantages of the continuous relocation of families during Service careers; a full review of the impact of mobility and the benefits associated with "super garrisons" should be undertaken.

<sup>19</sup> Rona, R J, Fear, N T, Hull, L, Greenburg, N, Earnshaw, M, Hotopf, M, Wessely, S, (2007) Mental health consequences of overstretch in the UK Armed Forces: first phase of a cohort study. *BMJ*, published online June 2007

<sup>20</sup> Fear, N T, Iversen, A, Meltzer, H, Workman, L, Hull, L, Greenburg, N, Barker, C, Browne, T, Earnshaw, M, Horn, O, Jones, M, Murphy, D, Rona, R J, Hotopf, M, Wessely, S, Patterns of drinking in the UK Armed Forces. *Addiction* 2007; 102; 1749-1759

<sup>21</sup> Royal United Services Institute, [www.rusi.org/news/ref:N47616079DFD16/](http://www.rusi.org/news/ref:N47616079DFD16/)