



The Care Act 2014 – Consultation on draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support

Royal British Legion response

About us

1. The Royal British Legion (RBL) was created as a unifying force for the military charity sector at the end of WWI, and still remains one of the UK's largest membership organisations. We are the largest welfare provider in the Armed Forces charity sector, providing financial, social and emotional support, information, advice, advocacy and comradeship to hundreds of thousands of Service personnel, veterans and their dependants every year. In 2013, we provided services and grants to over 200,000 Service personnel, veterans and dependants – more than ever before – and spent £1.4m every week on welfare support. For further information, please visit www.britishlegion.org.uk
2. The Legion provides long- and short-term care to older people from the ex-service community across the UK in our six registered care homes. All homes provide personal and nursing care, and some also provide dedicated dementia care and respite care. Lister House currently has a specially designed wing to meet the needs of beneficiaries between the ages of 18 and 64 years. We also provide a number of community-based support services, including a handy van service and a community dementia support service through our Admiral Nurses.
3. The Legion also provides a number of welfare services to wounded, injured and sick Service personnel and veterans, and other working age disabled individuals. As well as investing in the Battle Back Centre at Lilleshall and MOD Personnel Recovery Centres, we also assist disabled beneficiaries with accessing state benefits to enable independent living, and with War Pensions and compensation claims.

General Comments

4. RBL is pleased to have the opportunity to respond to this consultation on the proposed cap on care costs introduced via the Care Act 2014.
5. The Royal British Legion is a member of the Care and Support Alliance (CSA) and we support the concerns raised in their response to this consultation. In addition, we have particular points of concern we would like to raise so please read this in conjunction with the CSA response.
6. In 2014, RBL published the largest and most comprehensive survey of the ex-Service community in the UK to date. The Household Survey found that the UK ex-Service community (Veterans and dependants) is comprised of around 6.1 to 6.2 million members, of whom nearly two thirds (64%) are over 65 and nearly half (46%) are over 75 years of age.

7. The Household Survey 2014 further showed that those aged 65 or over in the ex-service population, and particularly those aged 75+ are less likely to report the majority of conditions compared with the UK population of the same age. This suggests that the retired ex-Service community enjoy better health than is average for the UK. However, as life expectancy increases and the National Service generation increasingly moves into the older age brackets, the Legion estimate that the number in the ex-Service community aged 85+ is set to nearly double over the next ten years from 548,000 in 2014 to 1,027,000 by 2025. Correspondingly, well funded and accessible social care provision will become increasingly important to Veterans and their dependents in the UK over the coming decade.
8. For some Veterans with social care need, the provision of Veteran focussed support will be crucial. We would welcome, and be pleased to work on, any measures the Department of Health could undertake with colleagues within the Department of Communities and Local Government to help Local Authorities uphold the pledges of the Armed Forces Community Covenants and ensuring that preference for Veteran-specialised care is taken into account when designing care packages for local residents.
9. The Legion was the key player in the Government's decision in 2011 to enshrine the Armed Forces Covenant in statute. The Covenant is the nation's recognition of its moral obligation to members of the Armed Forces and their families, and establishes how they should be treated, stating that the Armed Forces and their families "deserve our respect and support, and fair treatment". The two key principles underlying the Covenant are:
 - 'No disadvantage': the Covenant commits the Government to removing, where possible, disadvantage experienced as a result of Service. For example, when Service personnel and their families are posted somewhere new, they should not experience difficulty in getting their children into local schools.
 - 'Special treatment': for personnel and veterans who are injured as a result of their Service, or for families bereaved by Service, it is sometimes appropriate for the principle of 'special treatment' to be applied e.g. the provision of higher grade prosthetics for those who lose limbs as a direct result of their Service.

The Care Cap

10. As expressed in the CSA response to this consultation, RBL is particularly concerned that *"the operation of the cap is undermined by the eligibility threshold, since the cap applies only to eligible needs. For many people with progressive conditions the high eligibility threshold means they can spend significantly more than £72,000 before they reach the cap. Failure to meet lower level needs leads to increasing costs elsewhere contributing to avoidable hospital admissions and to disabled people and carers being unable to work. Local authorities will be forced to concentrate their scarce resources on those with the greatest need, so undermining the preventative approach of the Care Act that is so welcome."*
11. Paragraph 9.13 outlines a further source of concern for us. Post military life, like military life itself, can be a mobile lifestyle and it may take those discharged from Service a few years of moving around the country in rented accommodation before they settle and either buy their own home or continue to rent. We are concerned that those who have left the military and may have modest assets built up, yet haven't

invested them in buying a home will be left disadvantaged by the current proposals should they develop care needs. The Royal British Legion would support an extension of the upper capital limit of £118,000 to people who rent their own home.

Daily Living Costs

12. The Royal British Legion are in agreement with the National Care Forum (NCF) when they state in their response to this consultation that they would welcome further information on the elements that make-up the proposed notional daily living cost. We have some concerns over the impact of the introduction of the daily living cost, however without a more detailed breakdown we feel unable to comment whether the notional figure of £230 per week is appropriate.
13. Furthermore, there is an underlying concern at setting this figure in regulation without a firm commitment, preferably within regulations, to either undertake a standard system of yearly uprating using an appropriate inflation measure, or at least to revisit this figure on an annual basis. We understand that the Care Act 2014 contains a requirement to review the legislation after five years. However it is worth bearing in mind that over the last five years the UK and comparable economies have undergone significant turbulence in recovering from the financial crash of 2008. With an incoming new Government likely to be comprised of multiple parties with competing economic priorities, we don't believe that the figure of £230 a week should risk being left unchanged for five years during which time it could be left behind by a recovering or further stalling economy.

The Cost of Care

14. The Care Act 2014 risks posing a significant threat to the provision of high quality care through inaccurate setting of personal budgets and independent personal budgets. In order to provide high quality care for beneficiaries, care providers practice cross subsidisation from private care purchasers to provide lower purchase rates for local authority care packages. As the NCF state, *“greater transparency about what local authorities are paying for residential care compared to self-funders is also likely to bring pressure on providers and potentially will destabilise the market...It will also exacerbate the long standing cross-subsidisation of local authority purchased places by self-funders and increase the number of challenges about fee levels.”* The Government therefore must ensure that local authorities look to the true cost of care provision when assessing a budget for meeting an individual's care needs, and reflect this in personal budgets to avoid escalating top up fees falling onto those who need care most.

Financial Assessments

15. Many of the reforms outlined in the consultation document are predicated on both an effective assessment of need by a local authority and a financial assessment of means (as referenced in paragraph 9.6 of the consultation). It is this means test that we believe unfairly discriminates against a core group of Veterans, injured as a result of Service and currently receiving War Disablement Pension Scheme payments.
16. The War Pension scheme provides regular payments to individuals dependent on the percentage of whole body injury, from 20 to 100 per cent. It also provides

supplementary allowances to recipients. Many of these, such as the Constant Attendance Allowance, which provides for personal assistance at home, mirror the DWP payments of the same name. Those who develop these needs as a result of other illnesses or old age, and not the Service induced condition for which they receive the War Pension, are not eligible for these additional allowances.

17. The Armed Forces Compensation Scheme (AFCS) pays a lump sum to all recipients and a non-taxable payment for life, known as the Guaranteed Income Payment (GIP), to the most severely injured. This scheme does not have additional supplements attached, but the Government has recently legislated to provide those with very high awards (50 per cent GIPs) automatic entitlement to a new benefit, the Armed Forces Independence Payment, which mirrors the new Personal Independence Payment (replacing Disability Living Allowance).
18. Those injured before April 2005 are eligible for the War Pension, whereas those injured after are eligible for AFCS. Therefore two soldiers could be injured just days apart in the same theatre of conflict and be eligible for different schemes despite having the same injury.
19. Despite differences in administration there can be no doubt that the purposes of the Armed Forces Compensation Scheme and the War Disablement Pensions scheme are aligned in providing injury compensation for the pain and loss of amenity from an injury in Service. The current Veterans minister Anna Soubry MP confirmed the purpose of the War Pensions scheme in October 2014 by referring to it as providing, “no fault compensation for Service personnel disabled as a result of their service in HM Forces where the cause of the injury, disability or disease is before 6 April 2005.”¹ Similarly, AFCS is described by Government literature as, “compensation for any injury, illness or death which is caused by service on or after 6 April 2005.”² The payments received under either therefore are not, and should never be treated as, standard income. To do so undermines the compensatory principle of the scheme.
20. Despite the above, it is only War Disablement Pensions that aren’t routinely disregarded by local authorities in Social Care financial assessments. Department of Health Charging Guidance instructs only a £10 disregard of War Pension payments should be in place, with discretion from local authorities to disregard further. Currently we are aware of only 16 percent of English Councils who exercise a full disregard of War Pension payments for Social Care means test. With the Local Government Association highlighting a budget gap of £4.3 billion³ in Social care funding by the end of the decade, we expect this percentage to shrink as Local Authorities try to plug the deficit.
21. The £10 disregard is inconsistent with local authorities’ other means testing policies. Through a Freedom of information Request sent to every council in England, in late 2014 RBL has found that over 90 percent of councils use discretion to provide a full disregard of military compensation from means assessments for both council tax and housing benefit. Similarly we are pleased to note that Universal Credit also discounts both War Pensions and AFCS GIPs from financial means tests. The Social Care financial assessment risks being left behind and unique in not offering parity between civilian, post 2005 military compensation and pre-2005 military compensation.

¹ Anna Soubry, *War Pensions: Written question – 206085*, April 2014

² <https://www.gov.uk/government/publications/armed-forces-compensation/armed-forces-compensation>

³ Local Government Authority, *Adult social care funding: 2014 state of the nation report*, 2014

22. Moreover there is also a clear breach of the military covenant, signed into statute in 2011, which outlines the nation's commitment to those who serve in our armed forces. When civilians pursue their employers for civil damages through the civil justice system, compensation is usually awarded as a lump sum, disregarded as income for the first year, and then must be placed in a trust fund to ensure continued disregard. Not allowing those injured due to service to enjoy the same benefit because of the way their compensation is delivered to them is contrary to the primary principle of 'No disadvantage'. The welcome exclusion of AFCS Guaranteed income payments since 2012 shows that delivery method of the compensation should not pose a barrier to disregarding compensation paid in regular instalments.
23. We recognise that there are complexities involved in assessing War Pensioners, due to the payment of an additional attendance allowance to some disabled veterans. But where that additional attendance allowance isn't paid, the individual is still disadvantaged by only having £10 disregarded from their War Pension entitlement.
24. We do accept that when the additional attendance allowance is paid to some War Pensioners, which is designed to cover some of the costs of care, it could be included in local authorities' income assessments to ensure that the state is not paying out twice for the same care needs. The remaining payments, however, should be fully disregarded.
25. The Royal British Legion firmly believes that this anomaly that results in a small group of veterans paying for their social care out of their military compensation must be rectified as a matter of urgency; The Care Act 2014 regulations provide an excellent opportunity for the Government to provide a commitment that what the state gives in compensation for pain and injury with one hand, isn't taken back with the other.

For further information or clarifications, please contact Andy Pike, Policy Adviser, Royal British Legion, on 0203 207 2124 or apike@britishlegion.org.uk

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