

LIVE ON

THE ROYAL BRITISH
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INJURY

1. Summary

Armed Forces personnel who are injured in Service can receive compensation through one of two schemes administered by the MOD, depending on the date that their injury was sustained. Both forms of compensation are awarded in recognition of the pain and loss of amenity experienced by injured veterans, and should be treated equally.

Within the social care system, however, injured veterans on one scheme typically find that their compensation is taken to cover their care costs, while veterans on the other scheme are able to retain their compensation in full. This is unfair, particularly as civilian compensation, which is usually placed in a personal injury trust fund, is also exempted from means tests for social care.

That so many injured veterans should be left financially disadvantaged compared to their civilian peers is in clear breach of the Armed Forces Covenant principle of no disadvantage due to Service, and must be addressed. The Royal British Legion and Poppyscotland urge the UK, Welsh and Scottish Governments to revise existing charging guidelines for both residential and non-residential care so that all injured veterans can retain the compensation that is rightfully theirs.

2. Background Information

i. Two Types of Military Compensation

Service personnel and veterans who are injured in Service, or who develop an illness as a result of their Service, are able to access compensation from the MOD. Those with conditions sustained on or before 5 April 2005 are eligible to claim under the War Pension Scheme, while those with conditions sustained on or after 6 April 2005 can claim under the Armed Forces Compensation Scheme (AFCS).

The War Pension scheme awards eligible veterans a War Disablement Pension, which provides regular payments based on the percentage of whole body injury, typically from 20 to 100 per cent. The scheme can also award supplementary allowances, such as the Constant Attendance Allowance, which provides for personal assistance at home.

The AFCS, by contrast, awards all recipients a lump sum, and provides a non-taxable payment for life, known as the Guaranteed Income Payment (GIP), to the most severely injured. The AFCS does not have additional supplements attached to it, but individuals with very high awards (50 per cent GIPs) are automatically entitled to the Armed Forces Independence Payment.

ii. *Compensation vs. Normal Income*

Despite the slight differences between the two military compensation schemes, both forms of compensation are awarded as recompense for the pain, suffering and loss of amenity experienced by injured Service personnel and veterans: it is not the purpose of the basic War Pension, or the AFCS, to cover the costs of any care needs that might arise from the individual's Service-related condition. As such, injured veterans' compensation payments should not be treated as normal income in means tests for social care in the same way that occupational pensions or benefits typically are.

The UK Government appears to have accepted this in principle as both War Pensions and AFCS GIPs are fully disregarded in means tests for Universal Credit, which rolls six different benefits into one payment. Almost all local authorities also use their discretion to fully exempt both forms of military compensation from means tests for Council Tax Supportⁱ and Housing Benefit, indicating that politicians at all levels of government recognise that neither War Pensions or AFCS GIPs should be viewed as normal income.

iii. *Inconsistency of Government Policy*

In October 2012, the UK Government decided that all local authorities should exclude AFCS GIPs from social care means testing, stating: "In recognition of the contribution made by armed forces personnel injured whilst on active service, from 29th October 2012, they will no longer need to use Guaranteed Income Payments (GIPs) paid under the Armed Forces Compensation Scheme (AFCS) to pay for care and support services arranged by local authorities."ⁱⁱ

In contrast, when War Pensioners undergo a means test to determine how much they should pay towards the costs of their care, only the first £10 per week of their compensation payments will be routinely disregarded. The rest is typically viewed as normal income. This is because current statutory guidance, as outlined in both the Fairer Charging Guidance and the Charging for Residential Accommodation Guide (CRAG), only instructs local authorities to exempt the first £10 per week of an individual's War Pension, leaving councils free to set their own exemption thresholds over and above this amount. This has resulted in something of a postcode lottery for War Pensioners, with only 12% of local authorities in Great Britain with responsibility for delivering social services presently choosing to fully disregard War Pensions from all means tests for social careⁱⁱⁱ.

3. **Impact of Current Policy**

- *Keith Clarke (non-residential care)*

Keith Clarke, 43, is a former submariner who was left paraplegic when attempting to put out a fire on his submarine. Having been medically discharged from the Royal Navy, Keith currently receives social care services from his local council, where a care worker visits daily to help him get dressed in the morning and evening, and to help him look after his two children. Keith is a father of two young boys, one of whom is also disabled. Keith receives a 90% War Pension, along with a Service Attributable Pension, as a result of the injuries he sustained while in the Navy. His local council takes around £100pw of this income to meet the costs of his social care. Keith's only other household income comes from the statutory benefits and tax credits he receives in respect of his children, and his housing benefit.

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- *Fred Cannon (residential care)*

Fred Cannon was 19 when he landed on Gold Beach in Normandy. About three weeks into the assault, Fred's company came under heavy attack and Fred sustained a serious bullet wound to his leg. He was the only survivor of that assault, and the only member of his company to return home alive. As a result of his injury, Fred was left with one leg shorter than the other, which affected his mobility and resulted in him being awarded a 50% War Pension. In his later years, Fred's reduced mobility resulted in a number of falls, one of which broke his hip. Now 90, Fred lives in a nursing home. In line with existing guidelines, his local council is only prepared to disregard the first £10pw of his basic War Pension, meaning that once his care costs have been covered, he has very little money left over.

4. Arguments for Change

i. *The Need for Harmonisation*

We can see no justification for the disparity in how injured veterans' military compensation is treated within the social care system: a veteran who was injured before 6 April 2005 should not see their compensation treated less favourably than a veteran who sustained a similar injury on or after that date. We can also see no reason why social care means tests should regard all but the first £10 per week of an individual's War Pension as normal income, when UK Government policy elsewhere is clearly in favour of excluding military compensation from this category. Put simply, we maintain that the present interaction between military compensation and the social care system is in disarray, and that parity between AFCS GIPs and War Pensions needs to be achieved at the earliest opportunity.

ii. *The Armed Forces Covenant*

The Legion was a key player in the Government's landmark decision to enshrine the Armed Forces Covenant into statute in 2011. The Covenant sets out the nation's moral obligation to members of the Armed Forces and their families, and establishes how they should be treated, noting that the Armed Forces community "deserve our respect and support, and fair treatment". Two key principles underpin the Covenant, namely:

- 'No disadvantage': the Covenant commits the Government to removing, where possible, disadvantage experienced as a result of Service.
- '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.

We maintain that the treatment of War Disablement Pensions within income assessments for social care must be brought into line with other Government policies regarding military compensation; a failure to do so would represent a breach of the Armed Forces Covenant principle of 'no disadvantage'. This is because when civilians pursue civil damages through the civil justice system, compensation is usually awarded as a lump sum, which is then placed in a personal injury trust fund to ensure that it is not regarded as normal income. Where lump sums are not awarded, civilians may alternatively receive regular payments to cover the costs of future care. In this way, War Pensioners are placed at a distinct financial disadvantage compared to civilians who are injured at work because; a) War Pensioners'



basic compensation payments are not calculated to cover the costs of their care; and b) only the first £10 per week of their compensation payments will be routinely disregarded.

5. Acknowledgment of Complexities

We recognise that there are complexities involved in assessing War Pensioners due to the payment of additional allowances to some disabled veterans. The Legion therefore accepts that the Constant Attendance Allowance that is paid to some War Pensioners, and which is designed to cover care costs, could be included in local authorities' income assessments. This would ensure that the state is not paying out twice for the same care needs. The remaining War Pension payments, however, should be fully disregarded as injured veterans should not have to use their compensation to pay for the care and support services that they receive from their local authority.

6. Our Recommendation

We urge the UK Government to amend current statutory guidance to ensure that local authorities fully disregard both War Disablement Pensions and AFCS GIPs from all income assessments for social care, whether residential or non-residential, save for the additional attendance allowance that is paid to some War Pensioners to cover certain care costs. To help local authorities meet the additional costs of implementing this policy change, we further recommend that the Government establish a ring-fenced fund within the Department of Health's budget, which councils can then access for this purpose^{iv}. The UK Government should also work with the devolved administrations to ensure consistency across the UK.

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ⁱ In November 2014, the Legion and Poppyscotland wrote to all local authorities in England, Scotland and Wales to ascertain whether they fully disregard War Pensions in income assessments for Council Tax Support. The responses received revealed that 100% of councils in Scotland and Wales fully exempt War Pensions for Council Tax Support, whilst 99% of councils in England currently do.

ⁱⁱ Department of Health, 'Local Authority Circular 03' (2012), www.gov.uk/government/uploads/system/uploads/attachment_data/file/213043/Local-Authority-Circular-DH201231.pdf (Appendix 1.1)

ⁱⁱⁱ In November 2014, the Legion and Poppyscotland wrote to all local authorities in England, Scotland and Wales to ascertain whether they fully disregard War Pensions in means tests for social care, whether for residential or non-residential care. To date, 347 of the 353 local authorities in England have responded to our Freedom of Information requests, along with all Welsh and Scottish local authorities.

^{iv} This is not without precedent – the Government established a similar fund in 2012 to help councils cover the costs of a full disregard for AFCS GIPs.