



Armed Forces Compensation Scheme

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The Armed Forces Compensation Scheme (AFCS) replaced both the War Pensions Scheme and 'attributable' benefits payable under the old Armed Forces Pension Scheme (AFPS) for service personnel experiencing ill health, injury or death arising from service-related incidents on or after 6 April 2005. The AFCS provides a lump sum payment for pain and suffering and a regular tax-free 'Guaranteed Income Payment' (GIP), payable for life, alongside higher level tariff awards for those who suffer significant loss of earning capacity.

The Labour Government argued that the AFCS would be a significant improvement on the existing arrangements, with more generous help for the most seriously injured and providing, for the first time, in-service awards. It would also have fewer anomalies and inconsistencies, and be simpler to administer, than the previous schemes. However, the scheme was criticised from the outset by ex-service organisations on various grounds, including the rules on the burden and standard of proof, time limits for claims and how multiple injuries were compensated. Media reports have also made unfavourable comparisons between AFCS awards and amounts awarded to civilians by the courts for lesser injuries, but such comparisons do not always take into account all the elements of AFCS awards. The Government was also criticised last year for seeking to overturn Tribunals' decisions to increase awards to two injured soldiers who had suffered further complications following medical treatment for their injuries, although it argued that this was necessary in order to clarify the law.

From February 2008, compensation awards were increased for the most seriously injured with multiple injuries. In addition, from December 2008 lump sum payments for the most seriously injured were doubled, and all injured personnel received an uplift of between 10 and 100 per cent in their lump sum payments. In September 2009 it was announced that the former Chief of the Defence Staff, Lord Boyce, would chair a review of the AFCS.

The review was published in February 2010 and the Labour Government announced that it accepted all of its recommendations. Changes to be made to the scheme (to be applied retrospectively) include increases in lump sum payments for all tariff levels except the highest, increased awards for mental health conditions, new interim payments, changes to how multiple injuries are considered, and increases to GIPs to take account of likely

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promotions. Other changes include the establishment of an independent Expert Medical Group to advise on compensation for particular conditions, an increase in the time limit for claims, a shift in the burden of proof in cases where records are lost or missing, and a commitment to improving communications and awareness of the scheme and better support for those claiming. The Government stated however that it could take up to twelve months to implement all of the changes.

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1 Background and overview of the Scheme

The Armed Forces Compensation Scheme (AFCS) replaced both the War Pensions Scheme and the 'attributable' benefits payable under the old Armed Forces Pension Scheme in respect of service personnel experiencing ill health, injury or death arising from service-related incidents on or after 6 April 2005. The AFCS provides a **lump sum payment for pain and suffering** and a regular tax-free, index-linked '**Guaranteed Income Payment (GIP)**', payable for life, alongside higher level tariff awards for those who suffer significant loss of earning capacity. Neither of the two components are intended cover on-going medical care which is expected to be provided by the NHS. AFCS recipients are also eligible to claim for disability benefits from the Department for Work and Pensions (e.g. Disability Living Allowance).

The new scheme was introduced by the *Armed Forces (Pensions and Compensation) Act 2004*, and the detailed rules are in *The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005¹*, made under the Act. Information and guidance on the scheme rules is available at the [Veterans Agency website](#).

Detailed background to the new scheme can be found in [Library Research Paper 04/05, Armed Forces \(Pensions and Compensation\) Bill 2003-04](#). The Library has also produced a standard note on the new [Armed Forces Pension Scheme](#) (AFPS).

The Veterans Agency website gives the following brief overview of the scheme:

The Armed Forces Compensation Scheme is the compensation package for members of the Armed Forces. It is designed to provide compensation, irrespective of fault, across the full range of circumstances in which illness, injury or death may arise as a result of Service on or after 6 April 2005. The legislation replaced the previous arrangements under the War Pensions Scheme and the attributable elements of Armed Forces Pension Scheme 1975.

The Scheme covers all Regular (including Gurkhas) and Reserve personnel. For the first time compensation claims from serving personnel can be considered. Tax free lump sum awards for injury can be paid in service.

Ex-Members of the Armed Forces who served prior to 6 April 2005 or who are receiving a current War Disablement Pension or War Widows Pension are not affected by the scheme. They will continue to receive their War Pension or War Widows pension and any associated benefits in the normal way. The new scheme applies for deaths, injury or illness sustained on or after 6 April 2005.

The Armed Forces Compensation Scheme provides modern, fair and simple arrangements with more generous benefits for the more severely disabled. It provides compensation for significant injuries, illness and death that are caused by service including when they result from warlike incidents or terrorism. It is a 'no fault' scheme which means that individuals still have the option to sue the MoD for negligence although compensation provided by the AFCS would be considered if a court directed that damages were to be paid.

Under the terms of the scheme a lump sum is payable to Service or ex-Service personnel based on a 15-level tariff which is graduated according to the seriousness of the condition. A Guaranteed Income Payment (GIP), payable for life, will also be paid to those who could be expected to experience a significant loss of earning capacity. A

¹ SI 2005/439

GIP will also be paid to surviving partners (including unmarried and same sex partners) where the service person's death was caused by service and in the case of unmarried partners a substantial relationship can be demonstrated.²

The **15-tier tariff** was originally based upon the Judicial Studies Board *Guidelines for the Assessment of General Damages in Personal Injury Cases*. Level 1 gives the highest payment covering the most severe conditions. Level 15 covers less severe injuries (such as minor burns or a dislocated knee). Awards currently vary from £1,155 for Level 15 injuries to £570,000 for Level 1, but following the February 2010 *Review of the Armed Forces Compensation Scheme* awards for all tariff levels (except the top level) are to be increased. Further details are given at the end of this note.

A regular Guaranteed Income Payment (GIP) is payable in addition to a lump sum for injuries at higher levels (1-11). The GIP is set at different levels, dependent on the expected loss of earnings capacity. The Veterans Agency website explains how the GIP is calculated:

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 because there will be longer to normal retirement age.

The final amount of GIP payable is a percentage dependent on the tariff level of the condition for which an award is made. Awards made in tariff levels 12 to 15 do not attract a GIP. The percentages are in four bands as follows:

Band A - tariff levels 1 to 4- 100%

Band B - tariff levels 5 to 6 - 75%

Band C - tariff levels 7 to 8 - 50%

Band D - tariff levels 9 to 11- 30%

Example 1:

A man aged 23 is invalided out of the Armed Forces having lost a foot as a result of service. He was receiving a salary of £20,000. The appropriate factor is applied for a person his age. The factor is 0.878. The full annual GIP is calculated as: Salary x GIP factor, ie £20,000 x 0.878 = £17,560.

As the injury is in tariff level 8 the person will receive 50% of the full GIP, so he will be entitled to £8,780 per year. This is tax free.

Example 2:

A woman aged 36 loses a leg as a result of service and is invalided out of the Armed Forces. She was receiving a salary of £35,000. The appropriate factor is applied for a person aged 36. The factor is 0.799. The full annual GIP is calculated as: Salary x GIP factor, ie £35,000 x 0.799 = £27,965.

As the injury is in tariff level 5 she will receive 75% of the full GIP ie £20,973 per year. This is tax free.

Again however, these examples do not take into account the changes announced following the AFCS Review in February 2010. These are outlined later in this note.

² [AFCS general information](#)

[Statistics](#) on the Armed Forces Compensation Scheme are published by Defence Analytical Services and Advice (DASA).

2 Criticisms of the AFCS

Compared with the previous compensation arrangements comprising the War Pensions Scheme and 'attributable' benefits payable under the old Armed Forces Pensions Scheme, the government argued that new Armed Forces Compensation Scheme would have a number of advantages. In particular, it argued that the AFCS would:

- Reduce anomalies and inconsistencies by bringing together a number of existing schemes with different claims procedures and rules of entitlement
- Provide, for the first time, in-service awards for all for pain and suffering, including for injuries arising from warlike acts and terrorism
- Provide more generous benefits for the most seriously injured, with improved up-front funding to help pay for the special arrangements a disabled lifestyle might require
- Be simpler and more straightforward to administer

However, the new scheme was criticised from the outset by organisations concerned with service and former service personnel, including the Royal British Legion. In 2007 the Legion launched a campaign – '[Honour the Covenant](#)' – which, among other things, made the case for a number of changes to the AFCS. In particular, the Legion argued that:

- The onus should be put on the Government to prove that service was not responsible for causing or worsening an injury or illness for AFCS claims
- For those who have suffered multiple injuries, the Government should fully compensate for each and every injury sustained from a single incident.
- Time limits for AFCS claims should be removed.

The first and last issues were also brought up during the passage of the *Armed Forces (Pensions and Compensation) Bill* in 2004 and are already covered in some depth in the Library's Research Paper on the Bill. The three issues are considered further below.

2.1 Burden and standard of proof

Under the AFCS, claims are decided according to the "balance of probabilities", with the onus on the claimant to make a case. This is in contrast with the War Pensions Scheme where, provided the claim was submitted within seven years, the onus was on the Secretary of State to show beyond reasonable doubt that service did not play a part in causing or worsening the condition. In a memorandum submitted to the Defence Select Committee in 2002, the MoD argued:

The burden of proof chosen (the balance of probabilities) is already a feature of the AFPS attributable benefits and reflects modern practices in the civil courts. The burden of proof which operates for the War Pension scheme was devised at a time when there was no developed social welfare system on which soldiers returning from the First World War could depend on for medical or financial support. In addition, the medical understanding of the causes and course of illness or injuries was much more limited than now. Hence the burden of "disproof" was placed on the Government rather than

the individual. In introducing a new scheme it seems right to adopt modern practice and require a burden of proof based on "a balance of probabilities".³

In its May 2002 report, the Defence Select Committee questioned the Government's assertion that under the existing rules regarding the burden of proof War Pensions were sometimes awarded for conditions "only tenuously linked to service".⁴ It felt that the Government's proposals had been influenced too greatly by the desire to reduce the number of civil negligence claims brought against it, and that the civil claims model was not appropriate to the Armed Forces.⁵

Respondents to the MoD's consultation on the March 2001 *Joint Compensation Review* voiced widespread concern that a balance of probabilities standard of proof would place an undue burden on individual claimants. The general view was that the burden of proof should be the same as that which currently applies under the War Pensions Scheme.⁶ The MOD's response in light of the consultation is given below:

The new scheme follows wider modern practice, including that in the civil courts, in seeking evidence-based decisions using a balance of probabilities standard of proof. Where there is reasonable evidence that a condition is due to service, a claim will succeed. The onus of proof would be on the individual, given that it is generally the individual who will know when and how a condition first arose, including the extent to which events outside his/her work life may have contributed. However, the MoD would be required to support any claimant by releasing any relevant information (such as Service medical records). There will also be an independent judicial tribunal (the Pensions Appeal Tribunal (PAT)) to hear appeals where the claimant considers that the Department's decision is wrong.⁷

In its response, the Royal British Legion argued that the change in the burden of proof, combined with the new time limit for claims, would be detrimental to claimants. It also argued that the changes would not, in the medium term at least, result in significant cost savings, and could be divisive:

It is the change from the current proof of evidence from reasonable doubt to balance of probabilities, combined with a five year time limit to claim after April 2005 that is the key. The Legion contends that this change will reduce the number of successful claims. To illustrate this point the Legion processed over 5,000 new claims during 2002-03 and using the proposed criteria of balance of probabilities together with the five year time limit up to 60% of these claims would have failed on these restrictions alone. This together with the new arrangements that require allowances to be claimed through the DWP we believe will have a severely negative effect on the level of compensation that is currently provided for, under the War Pensions Scheme.

The MoD's claim that continuance of the "reasonable doubt" criteria would be unaffordable looks less than convincing bearing in mind that the majority of applications for War Disablement Pensions for at least the next five years are likely to be under the current rules.

With the reduction in the size of the Armed Forces over the last 40 years, coupled with the adoption of the proposed new scheme criteria, the number of cases arising from

³ HC 666 2001-02, Memorandum from the Ministry of Defence, 1 March 2002, Ev 42

⁴ *ibid.* para 94

⁵ *ibid.* para 150

⁶ [New Armed Forces Compensation Scheme: Report on Consultation Process](#), 15 September 2003

⁷ *Ibid.* p 6

service post-2005 will be far less. To introduce a burden of proof based upon the balance of probabilities is likely to be very divisive as the majority of acceptable claims will be from the pre 2005 ex service population under the rules for the War Pension Scheme with the conditions post 2005 being far more restrictive.⁸

In its December 2003 report, the Defence Select Committee argued that there were special considerations which meant that a balance of probabilities test might not be appropriate in the Armed Forces context:

The essential difference between the armed services and almost all other employment is that Armed Forces personnel can be asked to put themselves in harm's way, indeed to die for their country. This makes compensation for injury a rather different issue for the Armed Forces than for civilians. Armed Forces personnel can be required to submit in circumstances of some urgency to unusual medical precautions—combinations of vaccines, for example—and to experience unusual situations both on the battlefield and off. It may not be entirely clear either during or after the event what those precautions and situations involved, let alone what their consequences might be for the health of personnel, even given the ever-advancing state of modern medical knowledge. Veterans who attribute their illnesses to service during the first Gulf War would have been less likely to succeed in their claims for compensation using a balance of probabilities standard of proof for precisely these reasons. **Because of the special risks that Armed Forces personnel are required to run, and because they are likely to be involved in situations of great uncertainty, with uncertain effects on their health, we continue to believe that the onus should remain on the Government to prove that service was not responsible for causing or worsening a condition for which a compensation claim is made.**⁹

The Legion's briefing paper for the 'Honour the Covenant' campaign mentions the above comments of the Defence Committee. It goes on:

The Legion again raised the issue during the first year review of the AFCS, stating that the standard and burden of proof should be reversed (Legion, 2006). The MoD said in 2007:

"[T]he 'balance of probabilities' standard of proof is the accepted approach in other occupational schemes as well as in the civil courts. No AFCS case should fall where there is reasonable, reliable evidence that injury ill-health or death was caused by Service."

The difficulty with this statement is the expectation that people will be able to provide "reasonable, reliable evidence" and that it is available. One of the major problems with presenting such evidence is the gap in medical knowledge on the cause(s) of many illnesses. Another is the fact that Service personnel are also not always able to provide full medical records. This second point was also raised by the HoC Defence Committee in 2003:

"Armed Forces personnel are also put in an unusual position by the fact that their medical records are in the hands of the employer against whom any claim for compensation will be made. There is no doubt about military doctors' honesty, but it is wrong in principle that they should be put in the position of creating the documents on which compensation claims will be based while at the same time relying for employment on the very employer against whom those compensation claims will be made.

⁸ HC 96-II 2003-04, Memorandum from the Royal British Legion, October 2003, Ev 28-29

⁹ HC 96-I 2003-04 para 69; original emphasis

“Moreover, as the Minister himself has acknowledged, the MoD’s history of medical recordkeeping is less than perfect.”

Both of these points are clearly demonstrated by the continuing difficulties being experienced by Gulf War veterans suffering ill-health as a result of their Service in the first Gulf War. If we were to again have a series of unexplained illnesses, coupled with lost or destroyed records, it would be impossible for Armed Forces personnel to be compensated by the AFCS.

The government has argued that any scheme for compensation must be evidence based. However, the WPS is evidence based. The claimant must produce some reliable evidence to support their claim. If the Secretary of State can produce evidence to the contrary, the claim is disallowed. However, if there is doubt, the benefit of this will be given to the claimant.

The Legion believes that the burden of proof should be on the Secretary of State to prove that death, injury or illness was not due to Service; and that the benefit of the doubt, in all cases, should be given to the claimant.¹⁰

The Legion’s briefing paper does on to give a number of examples of cases which were successful under the War Pensions Scheme but which were rejected under the “balance of probabilities” test for benefits under the old Armed Forces Pensions Scheme.

The issue of the “balance of probabilities” test was also raised by a number of organisations which contributed to the MoD evaluation of the first year of the AFCS. The MoD evaluation report commented that organisations had voiced-

4.17.1 Concern that the legal test of proof used in the Scheme; “balance of probabilities” disadvantages the claimant when compared with the test in the War Pensions Scheme, in particular the rule that Service must have been the predominant cause of any injury, illness or death for benefit to be paid. It was suggested that any factor of Service should apply.

Comment: The “balance of probabilities” standard of proof is the accepted approach in other occupational schemes as well as in the civil courts. No AFCS case should fail where there is reasonable, reliable evidence that injury, ill-health or death was caused by Service. Of the in-service claims made in the first year more than two thirds succeeded. “Predominant cause” is the test of entitlement that is applied when there is more than one possible cause of an injury, illness or death. The AFCS will make a full award for any such injury, etc, if it is mainly caused or worsened by Service even where there are other contributory causes unrelated to Service.¹¹

2.2 Time limit for claims

The issue of the time limit for claims under the AFCS was one of the main areas of controversy during the consultations on the MoD’s initial proposals for the new scheme (see pp43-44) of Library Research Paper 04/05). Under the War Pensions Scheme, there was no time limit for initial claims. Under the AFCS, however, a person must usually make a claim within five years of the injury occurring. The MoD’s initially proposed a three year limit, but agreed to five years following consultations. The Royal British Legion thinks the rules are however still unfair:

¹⁰ [Honour the Covenant policy briefing](#), September 2007

¹¹ *ibid.* p12

The current time limit for an initial claim under the AFCS is five years from the date the injury occurred, or the date that medical treatment for an illness was first sought. The time limit for a claim in the case of a death is one year, although, where there is a possible beneficiary, these are automatically referred to the SPVA.

Where an award has already been made, but the condition deteriorates, the time limit imposed by the AFCS is 10 years. BLESMA has reported that worsening of conditions is a particular problem for amputees, as they are likely to develop problems at a later stage (i.e. beyond 10 years). However, the MoD has reported that the intention of the AFCS is that “awards should be full and final” (MoD, 2007). During the first year review, when the issue of time limits for claims for worsening conditions was again raised, the MoD responded:

“The matter was discussed with experts taking into account that AFCS recipients would have access to current best practice medical management with its emphasis on people with disabilities keeping as fit as possible and would therefore be unlikely to suffer the same levels of deterioration that past generations may have. A time limit of 10 years from the date of the award was introduced to allow sufficient time for any departure from the expected course to be detected but would also protect the Scheme from paying for developments that are unrelated to Service (such as age-related effects).”

It seems that the only justification for this decision was the possible financial implications for the AFCS – rather than the protection and support of those who have suffered a loss as a result of their Service.

The case for removing time limits relates to both the nature of illnesses and injuries and the culture within the Armed Forces. Time limits restrict claims for late onset illnesses (provision for recognised conditions). Further, issues relating to promotion and the chain of command could make Armed Forces personnel reluctant to put in a claim against their employer while still serving.

The Legion believes that there is no justification for setting time limits for claims and that they are simply an unnecessary restriction. The Military Covenant outlines a life-long duty of care, and therefore, any time restrictions should be removed from the scheme.¹²

The ten year limit for reviews of deteriorating conditions was raised by organisations involved in the MoD’s evaluation of the first year of the AFCS:

4.11 Review for exceptional deterioration - 10 year limit. This was another issue raised and debated prior to the introduction of the Scheme. Concerns have been raised that there should not be a time limit on reviews, particularly for amputees who, it is asserted, are more likely to develop problems at a later stage. Although the intention of the AFCS, in line with many other compensation arrangements, is that awards should be full and final, the Scheme contains a provision exceptionally to review and revise an award for cases where the injury has unexpected consequences outside of the expected prognosis. The matter was discussed with experts taking into account that AFCS recipients would have access to current best practice medical management with its emphasis on people with disabilities keeping as fit as possible and would therefore be unlikely to suffer the same levels of deterioration that past generations may have. A time limit of 10 years from the date of award was introduced to allow sufficient time for any departure from the expected course to be detected but would also protect the Scheme from paying for developments that are unrelated to Service (such as age-related effects).

¹² ‘Honour the Covenant’ AFCS briefing, p7

4.12 *Comment:* This is an issue that can be considered over the next few years as evidence builds up from real claims. Officials will monitor use of the exceptional review process to establish whether there is any evidence to suggest any issues around the 10 year limitation.¹³

2.3 Compensation for multiple injuries

Where a person suffered multiple injuries from a single incidence, the Armed Forces Compensation Scheme rules only allowed lump-sum payments for the three most serious conditions. In addition, the percentage of the tariff payment was reduced for the second and third injuries. The Royal British Legion argued that this was unfair:

As outlined earlier, the AFCS only allows for three injuries to be claimed where all of the injuries have resulted from the same incident. Additionally, the lump-sum provided for each individual injury reduces with each one claimed. In the case of maximum of three injuries: the first injury will receive 100% of the lump-sum tariff; the second 30% of the lump-sum tariff will be paid; and for the third 15%.

This effectively means that people are suffering from injuries, but are not being compensated for them; the only reason being that they were more seriously injured than the AFCS allows for. Of particular concern is that, in a Ministerial statement on 15 September 2003, during consultation, it was stated that the AFCS would have “more focus on the more severely disabled” (HCDC, 2003).

In addition, these types of multiple injuries are becoming more common. This is related to improvements of field first-aid and the treatment provided in field hospitals in operational theatres. Since 2003, many more people are surviving serious wounds sustained in Iraq, who might previously have died. Field hospitals have treated 267 people wounded as a result of action, of which 196 were classified as “Seriously” or “Very Seriously Injured or Wounded”.

Field hospitals have had a total of 2,117 admissions since 2003 of which 1,096 had to be evacuated back to the UK for further treatment. Multiple injuries, commonly resulting in serious disabilities, need to be adequately compensated for. There is no justification for not fully compensating Armed Forces personnel for each and every injury sustained by a single incident.¹⁴

The rules on the calculation of lump sums for multiple injuries were also criticised by families of service personnel who had sustained serious injuries in operations in Afghanistan and Iraq. The Government had already announced a review of the rules on multiple injuries but initially suggested that any change in the rules as a result would not have retrospective effect; however, the MoD subsequently announced that existing awards made under the AFCS would be reviewed as well.¹⁵

On 11 October 2007 the Ministry of Defence announced changes to the AFCS following a review of the rules on compensation for multiple injuries. The following MOD press notice gives details:

¹³ p11

¹⁴ ‘Honour the Covenant’ AFCS briefing note, p7

¹⁵ See for example ‘Soldier’s mother in legal battle over ‘insulting’ compensation for his wounds’, *The Times*, 29 August 2007; ‘Disabled soldier’s pay-out victory’, *The Observer*, 2 September 2007; ‘Ministry backs down over payouts’, 3 September 2007

MoD announces proposals to increase compensation for the most severely injured military personnel

233/2007 11 October 2007

The MoD has completed its review of the Armed Forces Compensation Scheme's multiple injury rules.

The Secretary of State for Defence, Des Browne, said:

"Our Armed Forces are unique in making a vital contribution to the security of our nation and we have a responsibility to continue to look after them properly when they get injured. This review will benefit those with the most serious multiple injuries - and they will be compensated for all their injuries up to the full £285,000 lump sum payment."

Additional benefits will be paid to the most seriously injured whose multiple injury claims have been paid since the start of the scheme in April 2005. This will bring their lump sum awards to the same level as those who will benefit from the proposed changes in future.

Under the new proposals, the lump sum compensation payment for the most seriously injured will be based on the full rate for all their injuries in a single incident, up to the highest lump sum of £285,000. In addition, they will continue to receive the 100% tax-free index-linked Guaranteed Income Payment for life.

The proposed changes follow the completion of a review into the multiple injury rules of the scheme commissioned by the Under Secretary of State for Defence, Derek Twigg, and have the full support of the Service Chiefs of Staff. The Government continues to look at ways in which we can further assist and support our injured personnel.

Currently the most seriously injured receive lump sum compensation payments for only the three worst injuries. Lump sum compensation is paid at 100% for the first injury with the second and third injuries being discounted to 30% and 15% respectively. In addition, the most seriously injured receive a tax-free index-linked 100% Guaranteed Income Payment to compensate for loss of earnings. This can amount to hundreds of thousand pounds over a lifetime.

The changes that are proposed are now subject to a period of consultation, principally with the Central Advisory Committee on War Pensions (CAC). The CAC includes representatives from ex-service organisations including the Royal British Legion and Combat Stress. This process will take around four weeks. Payments will be processed as quickly as possible after this consultation has concluded and the legislation has been amended, ideally before the end of the year.

The changes came into force on 8 February 2008.¹⁶ Following the changes, a person who suffered more than one injury in one incident, and who was in receipt of a full Guaranteed Income Payment, would receive the full award for each injury that was payable in accordance with the tariff, but subject to an overall cap of £285,000. Those who sustained multiple injuries before the new rules came into force would also be eligible for an additional payment to bring their total award up to the same level as those injured after the introduction of the new rules.

¹⁶ *The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2008*; SI 2008/39

The proposals had widespread support from the organisations that responded.¹⁷ Some organisations argued however that the maximum lump sum for multiple injuries should not be restricted to £285,000. This was however rejected by the Government:

Awards are payable based on a comprehensive tariff with those at the maximum tariff level 1 for the most severe injury, examples of which are: loss of both arms and legs or brain injury with persistent vegetative state. It would be difficult to justify a higher award to an individual with two or more less severe, although still serious, injuries than someone with an injury at the highest tariff. The lump sum is paid in addition to the guaranteed income payment, which is paid on discharge as a tax-free index-linked monthly payment for life. Based on personal circumstances this has no upper limit and can amount to hundreds of thousands of pounds over a lifetime.¹⁸

The Government also rejected suggestions that the change in the rules should also be extended to those with multiple injuries in the lower tariffs, pointing out that the new rule was in line with the original intent of the Scheme to focus benefit on the most severely injured.¹⁹

The Royal British Legion welcomed the increase in compensation awards for multiple injuries as a 'small step in the right direction'. However, it said that the changes would benefit only about 10 personnel a year, with the majority of injured personnel left unaffected. The Legion also called for the value of the awards to be increased across the board and recommended that the scheme needed a full overhaul, rather than a limited amendment.²⁰

2.4 The value of AFCS awards

In May 2008 the Royal British Legion published a further submission to the Government setting out its ongoing concerns about the support available for Armed Forces personnel, veterans and their families.²¹ In relation to the Armed Forces Compensation Scheme, the submission reiterated the concerns already voiced in the 'Honour the Covenant' campaign about the burden of proof, and time limits for claims. The submission also noted there had been considerable media attention given to the level of awards made under the AFCS:

10.2 The value of AFCS awards

The value of AFCS awards has been the focus of much media attention over the last year. In particular, payments for those with multiple injuries and the upper limit of £285,000 pounds. Much of the coverage in the media has focused on comparing AFCS lump-sum awards the payments made in civil claims. These comparisons have often not taken account of Guaranteed Income Payments (GIPs) or the fact that the AFCS is a no fault scheme. However, there are some areas where comparisons are useful, specifically, in the areas where civil claims provide funds for ongoing care costs and home adaptations. In these areas, the MoD has stated that claimants under the AFCS should be provided for by State benefits, the NHS or local authority schemes.

We believe that the military covenant affords Service personnel an enhanced duty of care, over and above other citizens of the UK, and that for these reasons, relying on an already overstretched welfare State is unacceptable.

¹⁷ Ministry of Defence, *Armed Forces and Reserve Forces Compensation Scheme: The Ministry of Defence's proposals for changes to the rules on more than one injury sustained in one incident: Summary of responses*, February 2008

¹⁸ *Ibid.* para 2.2.2

¹⁹ *Ibid.* para 2.2.3

²⁰ Royal British Legion press release, *Forces compensation scheme changes don't go far enough, says Legion*, 8 February 2008

²¹ Royal British Legion, *Response to Service Personnel Command Paper*, April 2008

During the consultation phase of the introduction of the AFCS the Legion's Solicitors Referral Group made some comparisons on payments that would be made by the AFCS compared to the civil claims (Legion, 2005). One example cited a claim worth £1,510,204 (on full liability) for a civil claim that would have attracted £461,193 (on full liability) under the AFCS. The heads of damage included in the civil claim, which are not taken into consideration for AFCS awards, include loss of pension, future care and case management, respite care, occupation therapy, accommodation and housing adaptations, increased holiday costs, physiotherapy, computer and software requirements.

We believe that the AFCS should be subject to an independent review. Calls for improvements to the scheme, both during implementation and since its introduction, have continued to go unaddressed by the MoD. This review should be in advance of the already scheduled five-year review. We are also seeking an immediate review of the level of tariffs available for awards under the scheme.²²

3 Service Personnel Command Paper

On 17 July 2008 the Government published the Service Personnel Command Paper, *The Nation's Commitment: Cross-Government support to our Armed Forces, their Families and Veterans*.²³ The new strategy includes around 40 measures including improvements to compensation, health care, access to housing, and education for the Armed Forces and veterans, as well as greater support for families and for foreign and Commonwealth Service personnel. In relation to the Armed Forces Compensation Scheme, the Command Paper announced that the upfront lump sum payment for injury would be doubled for the most serious injuries. It also announced that all recipients would receive an uplift of between 10 and 100 per cent of their lump sum payment, the increase depending on the severity of their injury. The following extract gives details:

Armed Forces Compensation Scheme Review

Under the Armed Forces Compensation Scheme (AFCS), payments are made to members of the Armed Forces who are injured or fall ill due to service. It was introduced in 2005 replacing the War Pension Scheme (WPS). An AFCS award to Service or ex-Service personnel can be made up of two parts – a lump sum payment from a tariff graduated according to the seriousness of the condition and, for more serious injuries or illnesses, a Guaranteed Income Payment.

a. The upfront lump sum payment for injury under the AFCS will be doubled for the most serious injuries, including, for example, loss of a limb or the most severe burns. All recipients, according to severity of injury, will have an uplift of between 10 and 100% in their upfront lump sum payments. MOD also intends to confer additional benefits to extend this effect to those who have already made claims under the Scheme. We will conduct a short consultation as we did with the changes we made to the rules governing multiple injuries, and then lay amending legislation before Parliament.

b. The Guaranteed Income Payment element will remain unchanged. It will continue to provide the most seriously injured with a substantial tax-free income following discharge for the rest of their lives to compensate for their potential loss of earnings and pension. This aspect of the current arrangements has not always been well understood in the media when AFCS payments have been falsely contrasted with

²² *Ibid.*

²³ Cm 7424

other kinds of compensation payments designed to cover lifetime costs. To give an example, under the current arrangements, a 25 year old seriously injured soldier receives the maximum lump sum of £285,000, plus a guaranteed income payment of £19,000 a year tax free and index-linked for life. If he lives to average life expectancy, this is a further million pounds, tax free, on top of the lump sum payment. This will continue, but the lump sum payment will be doubled from £285,000 to £570,000, meaning that the maximum total compensation under the new arrangements is now likely to be over £1.5M.²⁴

The changes came into force of 15 December 2008.²⁵

The following press release of 15 December gives the Royal British Legion's response:

The Government responds: MoD improves compensation for injured troops

The Royal British Legion today expressed its delight that the Government is delivering one of the promises made in its Service Personnel Command Paper.

In its Honour the Covenant campaign, and subsequent submissions, the Legion called for the Armed Forces Compensation Scheme (AFCS), particularly the lump sum limit of £285,000 and multiple injuries, to be brought into line with awards which would be made in civil claims.

From today, compensation payments for the most serious injuries have been doubled to a new maximum lump sum of £570,000. All injured personnel will receive an increase of between 10 and 100% to their tax-free lump sum payment under the AFCS. For the most seriously injured, this is in addition to their tax-free index linked Guaranteed Income payment that is paid monthly for life after leaving the Armed Forces.

The Honour the Covenant campaign highlighted that the AFCS did not take into consideration ongoing costs such as future care, physiotherapy, loss of pension and increased holiday costs.

Chris Simpkins, Director General of The Royal British Legion, said:

"We are very happy that the Ministry of Defence listened to the concerns outlined in the Legion's Honour the Covenant campaign and that today, in respect to improvements to compensation arrangements for those with conditions relating to Service, the Government's promises are being implemented.

"It is particularly good news coming just before Christmas and will be a welcome boost for all those who have been injured."

The press release added however that the Legion would not be 'resting on its laurels' and that it would continue to press the Government to ensure that the policy changes announced in the Command Paper were actually delivered.

4 The Duncan and McWilliams cases

At the end of July 2009 there was coverage in the media of the cases of two soldiers injured the course of duty: Light Dragoon Anthony Duncan; and Royal Marine Matthew

²⁴ *Ibid.* pp11-12

²⁵ *The Armed Forces and Reserve Forces (Compensation Scheme) (Amendment No. 3) Order 2008*; SI 2008/2942

McWilliams.²⁶ Duncan was shot in the thigh while on patrol in Iraq in September 2005, while McWilliams suffered a fracture to his thigh bone during a training exercise. Both men had their initial compensation awards under the AFCS increased by tribunals, after successfully arguing that they had suffered a number of subsequent health problems during their treatment and that these should not be regarded as separate from their original injuries. The MOD had argued that the purpose of the AFCS was to compensate only for initial injuries and not subsequent complications caused by medical procedures, but in February 2009 an Upper Tribunal ruled against the Government, saying that it was “entirely artificial and absurd... to exclude the effects of medical treatment that would not have been carried out if the service incident or circumstance had not occurred.”²⁷ The Secretary of State was however given leave to appeal and the Court of Appeal hearing took place at the end of July 2009.

The Government argued that the appeal was not about reducing compensation but was an attempt to clarify the rules.²⁸ A BBC News report on 2 August 2009 quoted the then Armed Forces Minister Bill Rammell as saying:

"The reason we appealed the principle of the tribunal ruling is that it would have fundamentally breached the crucial principle that the most compensation should go to those most seriously injured,"

[...]

"Had we not launched the appeal, I believe the tribunal ruling, if it were allowed to stand, would have been an injustice and unfair to those troops who had been most seriously injured."²⁹

An earlier BBC report quoted the Defence Minister Kevan Jones as saying that the original tribunal ruling had “...put an amputee along par with someone who had broken their leg, for example”.³⁰

The Government’s decision to go to the Court of Appeal was however criticised strongly. The former head of the British Army, Sir Mike Jackson, described the MOD’s move as “virtually incredible”, and Eric Joyce, Parliamentary Private Secretary to Bob Ainsworth, said it was “profoundly wrong” and “politically bonkers”, adding that if the Government succeeded it would represent “a victory for bureaucracy over bravery”.³¹ Eric Joyce subsequently resigned his position as PPS, criticising the Government’s strategy for continuing military involvement in Afghanistan.³²

The Court of Appeal gave its judgment on 12 October 2010.³³ The Court concluded that the appeal tribunals that had increased the original awards had misunderstood the AFCS rules, but dismissed the principal argument put forward by the Secretary of State that compensation should be assessed solely on the basis of the original injury, and ordered that

²⁶ See for example ‘Ministers to cut wounded soldiers’ awards’, *Daily Telegraph*, 26 July 2009; ‘Back on front line, but MOD wants his payout cut’, *Daily Telegraph*, 29 July 2009

²⁷ *S of S v AD and MM*; [2009] UKUT 10 (AAC), para 26

²⁸ BBC News, ‘MOD bid to cut payouts criticised’, 28 July 2009

²⁹ BBC News, ‘MoD payout decision ‘incredible’’, 2 August 2009

³⁰ BBC News, ‘MOD bid to cut payouts criticised’, 28 July 2009

³¹ ‘MOD appeal over awards ‘is bonkers’’, *Daily Telegraph*, 3 August 2009; ‘Defence aide won’t be sacked for attacking ‘bonkers’ policy’, *The Guardian*, 3 August 2009

³² BBC News, ‘Aide quits over Afghan strategy’, 3 September 2009

³³ [2009] EWCA Civ 1043

the issue of compensation be referred back to the First-Tier Tribunal for reconsideration in the light of the guidance given by the Court. In his judgment, Lord Justice Carnwath commented that, while the cases had generated adverse publicity, the Secretary of State was in his view "entirely justified" in bringing the appeal, at least from the legal point of view.³⁴

Service organisations hailed the judgment as a victory. The Royal British Legion issued the following press release:

Legion lands victory for Forces wounded

12 October 2009

The Royal British Legion has won a landmark judicial victory for the principles underlying fairer compensation for wounded Armed Forces personnel following Monday's ruling by the Court of Appeal, the Legion said today.

"This is a tremendous win for the compensation rights of our brave wounded soldiers, many of whom are represented by the Legion," said Chris Simpkins, Director General of The Royal British Legion.

The Legion represents one-third of all compensation claims from Afghanistan and acted for Corporal Anthony Duncan and Marine Matthew McWilliams, whose awards were heard by the Court of Appeal.

Cpl Duncan was originally awarded £9,250 under the Armed Forces Compensation Scheme (AFCS) which was increased to £46,000 by a Pensions Appeal Tribunal. Marine McWilliams's £8,250 award was increased to £28,750.

The 27-year-old corporal was shot in Iraq in 2005 and overcame two years of rehabilitation to ship out in April this year with his Light Dragoons colleagues to fight in Afghanistan for six months. Marine McWilliams fractured his thigh in training.

Their cases will now be reassessed at the first tier tribunal in light of the Court of Appeal's ruling.

However, the Court of Appeal ruled that where injuries are exacerbated by proper and appropriate medical treatment, those consequential injuries fall under the AFCS. This opens the door for service personnel not only to be compensated for the initial injury suffered, but also for the consequences of that injury.

MoD lawyers argued that under the scheme, compensation was payable for the injury itself at the time it occurred and not for future disability resulting from it, a position rejected by the Court of Appeal.

"This issue goes to the heart of the AFCS and to the principle of fairness," said Mr Simpkins. "We now have a judicial foothold for our ongoing efforts to improve the AFCS, including our representations before the AFCS review to be heard under an independent chairman, Admiral the Lord Boyce."

Nathasha Gunney, a senior associate in the disputes team at Lovells LLP, which acted pro bono for Cpl Duncan and Marine McWilliams, said "the Court of Appeal has allowed for Service men and women to be better compensated not only for the injuries which they sustain in Service, but also for the consequences of such injuries."

³⁴ *Ibid.* para 116

The Legion's campaign to Honour the Covenant has already resulted in MoD improvements to the compensation scheme which has placed more than £7.5 million in the pockets of the most seriously injured personnel, and news reports have indicated the Court of Appeal ruling could open a floodgate of more claims.

However, "if the claims are just and fair, then they should be paid," said Mr Simpkins. "Our Armed Forces never fail to place themselves in harm's way on behalf of the nation. The least a grateful nation can do is compensate them fairly if they are injured."

5 Review of the AFCS

5.1 Announcement of the review

In the face of mounting criticism, the Secretary of State for Defence announced in July 2009 that the Government would bring forward a planned review of the Armed Forces Compensation Scheme. The following MOD press release of 29 July gives details:

MOD brings forward review of Armed Forces Compensation Scheme

Defence Secretary Bob Ainsworth has announced today, 29 July 2009, plans to review the compensation paid to Forces personnel who are injured in the line of duty.

The announcement follows debate over the current scheme and an appeal by the Ministry of Defence against a recent ruling in two cases.

The Defence Secretary said:

"We ask our Armed Forces to risk their lives for the safety of this country. As a government we have a responsibility to do all that we can to support them, and their families, when they suffer injuries in the line of duty.

"The purpose of the current appeal process was to ensure that our Armed Forces Compensation Scheme remains fair and compensates most those more seriously injured. As Defence Secretary I cannot allow the situation to continue that leaves the public in any doubt over my or the Government's commitment to our servicemen and women.

"Therefore, in order to deal with this complex issue in the most sensitive, effective and fair way possible, I have ordered the planned review of the compensation scheme to be brought forward from next year. The review will begin immediately in consultation with stakeholders including Service charities and families. We will confirm exactly how the review will be conducted shortly.

"The scheme is a relatively new one and is already a much fairer system than its predecessor. Only last year we doubled the lump sum payments for the most serious injuries to £570,000.

"However, I recognise that the changing requirements of our people mean that we cannot stand still. The world class medical care that we provide on operations means that more people are surviving very serious injuries than before. We need to ensure that the scheme is responsive enough to meet their needs.

"The current scheme is not fully equipped to deal with anomalies, legal complexities and wider issues relating to how we compensate our servicemen and women."

Defence Secretary Bob Ainsworth:

"The debate in recent weeks has also demonstrated that the current scheme is not fully equipped to deal with anomalies, legal complexities and wider issues relating to how we compensate our servicemen and women.

"We always said that we would review the scheme. Now that the recent hearings in court have finished, I have decided that this review must begin. In particular it will look at whether current awards adequately provide both for the injuries sustained on operations by our servicemen and women, and for their recovery.

"The underlining principle of the scheme, that those most seriously injured should receive the most compensation, is an important one that we will maintain.

"I can offer an assurance, however, that new arrangements will benefit those with claims under the existing scheme, including those mentioned in the current court case."

The announcement of a review was broadly welcomed, but the Confederation of British Service and Ex-Service Organisations (COBSEO) argued that if the Government wanted to reassure the service and veterans community and the public of its commitment to look after service personnel, the review should be "open, transparent and fair" and should have an independent chair.³⁵

On 17 September 2009, the Government announced that both the MOD's review of the AFCS and an 'independent scrutiny group' to support the review would be chaired by the former Chief of the Defence Staff, Admiral the Lord Boyce. The following Ministry of Defence press release gives details:

MOD announces independent chair of AFCS review

A Defence Policy and Business news article

Former Chief of the Defence Staff Admiral The Lord Boyce has been chosen as the independent chair of the MOD review of the Armed Forces Compensation Scheme (AFCS), the MOD has announced today, Thursday 17 September 2009.

On 29 July this year the Secretary of State for Defence Bob Ainsworth announced that he was bringing forward a review of the Armed Forces Compensation Scheme.

As well as chairing the MOD's review, Admiral The Lord Boyce will also chair an independent scrutiny group which will support the review. The group will comprise representatives of ex-Service organisations, a Service families' representative, a beneficiary of the AFCS, and medical and legal experts.

Defence Secretary Bob Ainsworth said:

"I am extremely grateful to Lord Boyce for agreeing to lead the review of the Armed Forces Compensation Scheme, and I look forward to working with him. This review needs to be thorough and wide-ranging, and I hope the Royal British Legion and other Service charities can play a role in achieving this.

"I am determined that the brave men and women injured on operations have confidence in the compensation scheme. And while we have made improvements, including doubling the lump sum for the most serious injuries, we can and we will do more."

³⁵ 'Review military payouts now, say charities', *Daily Telegraph*, 6 August 2009

Speaking about his appointment, Admiral The Lord Boyce said:

"I am delighted to have the opportunity to be involved in the AFCS review. As a former Chief of the Defence Staff, I am all too aware of the devastating injuries that our personnel can sustain while serving their country. I want to ensure that any scheme adequately meets the needs of those who have risked their lives for us."

Chief Executive of the Royal British Legion, Chris Simpkins, said:

"The Legion has called on Government for an independent review of the Armed Forces Compensation Scheme in its campaign to Honour the Covenant. We welcome the appointment of Admiral The Lord Boyce as independent chair and head of the independent scrutiny group.

"We are confident that the conditions are now in place where real improvements can be made to the treatment of our wounded heroes and, based on our vast experience, we look forward to representing their interests in our evidence to the review."

Anthony Stables, chair of the Confederation of British Service and Ex-Service Organisations (COBSEO), said:

"Having campaigned for an independent chairman, we very much welcome the appointment of Admiral The Lord Boyce to chair this important review. A distinguished former Chief of the Defence Staff, he brings to the role a deep knowledge and understanding of the Armed Forces and the War Pensions and AFCS.

"COBSEO is also delighted that an independent scrutiny body will be put in place to peer review the work. We look forward to contributing to the review to ensure AFCS is a fair and just scheme of compensation in which the whole Service community has faith and confidence."

5.2 The report

The *Review of the Armed Forces Compensation Scheme* was published on 10 February 2010³⁶ and the then Secretary of State, Bob Ainsworth, said that the Government would implement its recommendations in their entirety.³⁷ The report also included the following statement, signed by each of the members of the Independent Scrutiny Group:

As the Independent Scrutiny Group formed to provide support and challenge to Admiral the Lord Boyce in his role as independent Chairman of the Ministry of Defence's Review of the Armed Forces Compensation Scheme, we confirm that we:

- are in full agreement with the analysis laid out in Lord Boyce's report
- are confident that all substantive input received by the Review team has been appropriately considered
- fully support the Review's recommendations as a package to be implemented in full including the further work to be done³⁸

In his foreword to the report Lord Boyce stated that, having explored all the relevant issues, he was content that the Scheme was "fundamentally sound." However, a number of

³⁶ Cm 7798

³⁷ HC Deb 10 February 2010 cc926-936

³⁸ Cm 7790 p19

“significant adjustments” should be made to the Scheme to ensure that it was “properly fit for purpose to provide appropriate recognition and financial support”.³⁹

The Review concluded that the original principles that guided the design of the AFCS remained “broadly sound”, although greater clarification of some of the principles was needed, in particular with regard to the relationship between the Scheme and other state provision such as health and social care, the principle that those with the most serious injuries should receive the most compensation, and the need for the Scheme and its operation to be transparent.⁴⁰

The Review considered how the AFCS compared with other arrangements for compensating people for illness, injury or death, including compensation schemes for UK public sector employees, the Industrial Injuries Scheme, common law negligence claims, and equivalent no-fault schemes for military forces in other countries. It concluded that while it was difficult to compare schemes because of the very different contexts, comparisons had not of themselves identified a need to make changes to the Scheme.⁴¹ The Review also commented that adverse comparisons made in the media about common law settlements in the UK and the AFCS often neglected to consider the considerable value of Guaranteed Income Payments, and suggested that the MoD should use every opportunity to explain the full value of AFCS awards.⁴²

The recommendations of the Review, which were accepted in full by the Labour Government, are outlined at the Veterans Agency website as follows:

³⁹ p13

⁴⁰ pp13-14 and paras 2.2-2.9

⁴¹ pp42-43

⁴² para 2.75

The Size of the Lump Sum

In 2008, the Government increased the top level of tax-free lump sum award to £570,000, a level that the Review found was commensurate with the life-changing nature of the injuries involved. However, the Review found that the other tariffs should be increased, with the awards for the most seriously injured below the top two levels increasing by over 50%. This will give award levels of:

Tariffs	Current Award	Proposed Award	Proposed Increase
1	£570,000	£570,000	No change—the Review found this to be an appropriate highest payment.
2	£402,500	£470,000	£67,500
3	£230,000	£380,000	£150,000
4	£172,500	£290,000	£117,500
5	£115,000	£175,000	£60,000
6	£92,000	£140,000	£48,000
7	£63,825	£90,000	£26,175
8	£48,875	£60,000	£11,125
9	£34,100	£40,000	£5,900
10	£23,100	£27,000	£3,900
11	£13,750	£15,500	£1,750
12	£9,075	£10,000	£925
13	£5,775	£6,000	£225
14	£2,888	£3,000	£112
15	£1,155	£1,200	£45

Example (lump sums)

Pte Smith is injured in training and fractures the patella on one knee, causing significant functional limitation which is expected to last for more than 26 weeks. The injury is assessed as level 13. Under current arrangements, Pte

*Smith will receive a lump sum of £5,775. Under the proposed changes, he would receive a lump sum of £6,000, **an increase of £225.***

Expert Medical Group

The Review proposes the creation of a new independent expert medical group to provide specialist advice on the Scheme, drawing on the example of the Industrial Injuries Advisory Council. As one of their first tasks, the new group will look at a number of specific types of injury to make sure that awards are adequate and fair (including hearing loss, mental health and injuries to genitalia). They will also draw up a list of recognised diseases to make it clearer to individuals which illnesses are likely to be due to service and therefore covered by the Scheme.

Mental Illnesses

The Review also looked at mental illness. It proposes increasing the highest award for mental illness. It also believes that mental illness should be covered in a separate section of the Scheme to physical illness, in recognition of the differences between the two. The new expert medical group will also ensure that the revised Scheme continues to provide the right level of compensation in this very difficult and complex area.

Guaranteed Income Payment (GIP)

Even after personnel have recovered, serious injuries will often have long term effect, including on their future careers and earnings. The tax-free and index linked Guaranteed Income Payment is intended to address this by supplementing whatever income and pension they are able to earn. In this way the AFCS does not have a capped total payment – those most seriously injured will continue to receive payment for the rest of their lives. It is paid from the moment that the Service man or woman leaves the Armed Forces. The payment takes into account their age, their salary, the severity of their injuries, the pension an individual might have earned, and the ill health pension they will also be paid.

Taking account of promotions (GIP)

The biggest change the Review proposes is that GIP payments should be increased to reflect the average number of promotions someone of a particular age would achieve if they had not been injured. The Review also proposes other changes to reflect that most people work until 65 rather than 55. In real terms, for a 21 year old Private suffering life changing injuries these changes will result in a 35% increase in the monthly payment they receive. These changes will also benefit those who, as a result of a bereavement due to service, are in receipt of Survivor's Guaranteed Income Payment or Child's Payment under the Scheme.

Example (GIP)

A 21 year old Private infantry soldier joined the Army at age 18. Whilst on foot patrol he is injured in an IED attack and loses both his legs from the knee down. He suffers no other injuries. He is a member of Armed Forces Pension Scheme 2005 (AFPS05). His final salary is £17,605. Under the existing rules for calculating GIP, he will receive £15,616 a year tax free and index-linked from his GIP and ill-health pension. Under the new rules, he will receive

*£21,056 a year tax free and index-linked from his GIP and ill-health pension. This represents **an increase of £5,440 a year, or the equivalent of a rise in income of 35%.***

Bereavement Grant

The Review also proposes an increase in the future level of bereavement grant provided when an individual dies due to service. For most people this will rise from £20,000 to £25,000; for some Reservists it will be even more. The Review also proposes that all these levels are reviewed periodically.

Multiple Injuries

The Review believes that it is right that the most seriously injured receive the highest awards – regardless of whether they have received one or many injuries. But the Review believes it is important to injured personnel that each of his or her injuries have been recognised in the compensation they are awarded.

The new system will mean that injuries will be analysed and grouped according to the five different zones of the body: the head and neck; the torso; upper and lower limbs), impact on the senses; and, mental health. A percentage will then be applied (100, 80, 60, 40 and 20) to each zone by order of severity to form the total award. All injuries will therefore in future receive some compensation.

Example (multiple Injuries)

A soldier sustained multiple injuries, allocated to the body areas the injuries are:

A. Head and Neck

skull fracture Level 13 £5,775

jaw fracture Level 14 £2,888

severe facial lacerations Level 8 £48,875

B. Upper and Lower Limbs

leg injury Level 9 £34,100

fractured shoulder Level 11 £13,750

injury to foot Level 10 £23,100

C. Torso

Gun shot wound Level 10 £23,100

D. Sensory Impairment

Permanent hearing loss in one ear Level 11 £13,750

E. Mental Health

mental disorder Level 14 £2,888

Total awards for body areas are:

A) Head and Neck £57,538

B) Upper and Lower Limbs £70,950

C) Torso £9,075

D) Sensory Impairment £13,750

E) Mental Health £2,888

Under current rules, where only the three most serious injuries are considered, the total would be: 100% of £48,875 + 30% of £ 34,100 + 15% of £23,100 = £62,570.

*Under the new rules the total would be:
100% of £70,950 + 80% of £57,538+ 60% of 13,750 + 40% of £9,075 + 20% of £2,888 = £129,438 **This represents an increase of £66,868***

New Interim Payment

In future, greater use should be made of interim payments where an injury is clear, but its ongoing effect is not. For the more serious injuries, a new form of payment will also be created so that some compensation can be paid early on, even when a decision on the full extent of the injuries is not possible.

Timescales for claiming and lodging appeals

Timescales will also be increased to aid decisions being taken once the individual's medical condition is clear. The time for individuals to make a claim will be increased from 5 to 7 years; the time to request reconsiderations and appeals will be increased to 12 months; and the time to make a claim for a late onset illness (including relevant mental illness) will increase to 3 years after the injury develops. In cases where additional significant and unexpected problems occur a further ability to review an award after 10 years will also be created.

The aim in future will be to provide decision-makers with the ability to revise the compensation awarded until the precise nature and effect of the injury is clear. This will ensure individuals receive the right compensation for their injury. The Review does not believe the Scheme should be entirely administered by trained medical officers, but it is important they are involved at the right stage. In particular, it proposes that they have more opportunity to comment prior to Tribunal hearings.

Example (reconsideration)

A pilot is involved in a crash and sustains injuries that requires a below-knee amputation. He functions well with a prosthetic limb; however, fifteen years later, due to unforeseen and unexpected complications relating to the original injury and its treatment, the leg needs to be amputated above the knee. Because this deterioration is unforeseen and unexpected, the pilot can have his award re-assessed under the Scheme.

Burden of proof - lost/missing records

The Review has examined the burden of proof arrangements used in the scheme and recommends they are not changed. Most of the work in this area should still fall to the Ministry of Defence so as not to burden the individual. However, two specific elements require some change. Firstly, if key records are incomplete or have been lost by the Ministry of Defence then the individual will have the benefit of presumption

Disease due to Service

Secondly, for cases involving disease, the Scheme will in future follow a similar approach to that used by the Industrial Injuries Compensation Scheme. The new

expert medical advisory group will create a list of recognised illnesses which, on the balance of probability, are likely to be due to service. This will add greater clarity for those with illnesses.

Communication and Awareness

The Review was greatly concerned at the low level of awareness and understanding of the Scheme among service personnel and their families. Substantial improvements are required to the way in which the Scheme is communicated. Information on the Scheme is already provided to new entrants, as part of training before deployment on operations, and at defence medical facilities. The level of support provided to individuals in making claims, understanding what the Scheme is for, and making informed decisions about how to manage the potentially substantial sums involved, must be improved.

Key Conclusions

It is crucial that the Armed Forces know that if they are injured due to Service they will be properly supported by the Nation, and this includes that they will receive the right compensation. The Review concludes that the Armed Forces Compensation Scheme already goes a long way to meeting this goal, but makes a number of recommendations about how it should be improved. The Government has accepted all those recommendations.⁴³

Changes to legislation will be required before the changes can be implemented; this may take around twelve months. Once the legislation has been amended, the Veterans Agency will review all existing awards since April 2005. Existing recipients will be contacted automatically with details of changes to their awards and will not be required to re-apply.⁴⁴

On 30 March 2010 the terms of reference and membership of an interim "Medical Expert Group" – to advise on appropriate levels of compensation for specific injuries and conditions highlighted in the AFCS Review as being areas of concern – was announced.⁴⁵

5.3 Responses

The Royal British Legion issued the press release describing the Government's announcement as a 'welcome victory':

Legion victory: major improvements to AFCS announced

10 February 2010

Major improvements to the compensation scheme for injured Armed Forces personnel announced today come as a "welcome victory" for The Royal British Legion, said Director General Chris Simpkins.

"Two years ago, The Royal British Legion drew public attention to shortcomings in the compensation scheme with our **Honour the Covenant** campaign," Mr Simpkins said. "Today, we can declare a welcome victory in our campaign to make the scheme a more generous reflection of the nation's debt to our wounded heroes."

⁴³ [Armed Forces Compensation Scheme Review](#)

⁴⁴ *Ibid.*

⁴⁵ HC Deb 30 March 2010 cc95-97WMS

The changes announced today will be made retrospective to the introduction of the present compensation scheme five years ago. While it is not known how much more money will be available to the seriously wounded as a result, Mr Simpkins said the total is certain to amount to "tens of millions of pounds".

The recommendations for improvements in compensation are included in an MoD review into the Armed Forces Compensation Scheme chaired by Admiral the Lord Boyce. The Legion participated on an independent scrutiny group which presided over the review, also chaired by Lord Boyce.

"The Legion is very satisfied that the review carefully considered the positions of the Armed Forces charities and experts on the independent group," Mr Simpkins added. "This is reflected in its findings which, taken as a package, will lead to substantial improvements."

The recommended changes include improvements to many of the lump-sum payments made in compensation for pain and suffering, as well as to tax-free annual payments which are intended to compensate for lost income. Mr Simpkins said substantial gains were also achieved in the calculation of awards for multiple injuries from a single incident, many of which will be more than doubled.

"Given the frequency that we are seeing such injuries as the result of explosive devices used against our Armed Forces on operations in Afghanistan, this is a timely and necessary amendment," he added.

Previous changes to double the lump-sum payments for the most seriously injured have already resulted in more than £12 million additional compensation payments.

"None of this could have been achieved without the support of the British public, who shared our concerns over the financial payments made to our wounded personnel," said Mr Simpkins. "More than 25,000 responded to our campaign by contacting their MP by letter, telephone call, or personal visit. This was a tidal wave of support that the Government simply could not ignore."

BLESMA (the British Limbless Ex-Service Men's Association) also welcomed the Review. Its General Secretary, Jerome Church, said:

BLESMA has played an important part in the Independent Review which has now been accepted by the Government for implementation. As a member of the Independent Scrutiny Board under the Chairmanship of Admiral The Lord Boyce, I was able to represent the interests of the Confederation of Service and Ex Service Organisations and BLESMA. We went through the scheme with a fine toothcomb. We felt that the scheme was basically sound but with distinct areas for improvement – and these we achieved. I believe the scheme rightly focuses on those whose injuries will be of lasting and disabling consequence.

But, we have looked at all levels of the scheme and we have been able to address concerns about multiple injuries as well as adjusting lump sum levels and most importantly improving the life long, index linked, tax free Guaranteed Income Payment. BLESMA's particular concern about time limits and late in life deterioration for amputees have also been significantly alleviated.

Fair and just compensation is vital and much has been achieved. What we as a Country must do is to keep the care and support we are all responsible for under proper review for our very disabled soldiers for the rest of their lives.

We owe that to them above all.⁴⁶

5.4 Injuries before 6 April 2005

The announcement of increased compensation under the Armed Forces Compensation Scheme has focused attention on the level of awards made to service personnel injured before April 2005 under the War Pensions Scheme. The issue of whether to increase compensation for those injured before April 2005 was considered in the AFCS Review, but the report noted the general principle that changes to pension and compensation schemes in the public sector do not have retrospective effect:

2.174 Successive governments, across all public sector pension and compensation schemes, have held the general policy of making improvements prospectively with no retrospective element. Given the relative newness of the AFCS and the importance attached by Government to it, this Review will exceptionally adopt the same practice as the two previous reviews of the AFCS.

2.175 The Review has considered whether any improvements should be made available to those who were injured before the start of the Scheme on 6 April 2005. The Review recognises the difficulties of providing AFCS benefits before the start of the Scheme, and notes that other compensation arrangements exist for injuries before that date and does not recommend extending the provisions to before the start of the AFCS.⁴⁷

In an article in *The Daily Telegraph* on 4 March 2010, Colonel Richard Kemp, a former Commander of British Forces in Afghanistan, described the justification for not extending improvements to those injured before April 2005 as “hideously bureaucratic”. By not improving payments to those injured between the beginning of the “war on terror” in 2001 and April 2005 the country was, he argued, failing to discharge its “moral obligations” to those who risked life and limb to ensure the safety and security of the nation. He added:

We are not talking about opening the floodgates. Those who are receiving compensation under the new scheme already number in the thousands. But according to the Government’s own figures, only around 100 servicemen and women were seriously wounded between September 2001 and April 2005...⁴⁸

On 5 March the *Telegraph* reported that the then Shadow Secretary of State for Defence, Liam Fox, had pledged that a Conservative Government would review payments to service personnel injured before the introduction of the AFCS:

Dr Fox said last night: “It is difficult to see a moral justification for giving different financial treatment to soldiers injured in the same war. We would want to review this quickly when we have a chance to assess the state of the seemingly chaotic defence budget.”⁴⁹

Colonel Kemp launched a campaign – “Lives on the Line” – to lobby the Government to increase compensation to personnel wounded between 2001 and 2005, and an [e-petition](#)

⁴⁶ BLESMA press release, [BLESMA welcomes the findings of the Armed Forces Compensation Scheme Review](#)

⁴⁷ Cm 7790 p61

⁴⁸ ‘They put their lives on the line. We must fight for fairness for them’, *Daily Telegraph*, 4 March 2010

⁴⁹ ‘Tories’ pledge on injury payments’, *The Daily Telegraph*, 5 March 2010

was submitted to the Downing Street website calling on the Prime Minister “to change the law and extend the current Armed Forces Compensation scheme to cover all those injured in the War on Terror.”

The issue of whether the improvements to compensation should be backdated to 2001 was raised by Harry Cohen following the Ministerial Statement announcing the outcome of the AFCS Review in February 2010. In response, the then Secretary of State for Defence, Bob Ainsworth, said:

Why do we not consider backdating to this date, that date or whichever date? The previous scheme goes back to 1917. Where do we draw the line? The complexity is enormous. Benefits have been paid under completely different arrangements over time, from which other issues potentially flow. I have concentrated on trying to ensure that this scheme is as good as it possibly can be by continually updating it and by continually being prepared to look at it.⁵⁰

On 4 March 2010 the Liberal Democrat Defence Spokesman Bob Russell tabled the following Early Day Motion, which was also sponsored by Labour and Conservative backbenchers:

EDM 1022 LIVES ON THE LINE CAMPAIGN

That this House recognises the bravery, dedication and sacrifice of members of the armed forces in Afghanistan and Iraq; applauds the recent review and enhancement of the Armed Forces' Compensation Scheme; and calls on the Government to amend the qualifying date of 6 April 2005 to 1 January 2001, which marks the beginning of the war on terror, that ensures equality of treatment for personnel injured in Iraq and Afghanistan and thereby honours its duty of care to this loyal and dignified group of service men and women and their families.

The EDM attracted 149 signatures. An identical EDM was tabled by Mr Russell on 25 May 2010.⁵¹

⁵⁰ HC Deb 10 February 2010 c933

⁵¹ EDM 56 2010-11