



Spending Review 2015

The Royal British Legion Submission

About us

1. The Royal British Legion was created after WW1 as a unifying force for the military charity sector, and remains one of the UK's largest membership organisations. We are the largest charity welfare provider to the Armed Forces community, offering financial, social and emotional support, information, advice, advocacy and comradeship to Service personnel, veterans and their families. In 2014, we responded to over 450,000 requests for help – 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 also provides a number of specialist 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 assist disabled beneficiaries with accessing state benefits to enable independent living, and with War Pensions and compensation claims.
3. The Legion recognises the initiatives undertaken by recent governments and devolved administrations to support the Armed Forces community across the UK. We will continue to liaise constructively with all administrations to ensure the principles of the Armed Forces Covenant are upheld.
4. The Legion welcomes the opportunity to submit representations to HM Treasury for the upcoming Spending Review in 2015. In addition to our own representation, the Legion fully endorses submissions made by cross-sector coalitions of which we are a part, such as the Care and Support Alliance and the Home Adaptations Consortium. Our representation will focus on three policy proposals that will bring tangible benefit to the Armed Forces community and rectify outstanding shortfalls in the Government's commitment to the principles of the Armed Forces Covenant.
5. For the sake of clarity, our policy proposals in this representation are concise and summarised. However, we would be happy to provide further information as required.

The Armed Forces Covenant

6. Following a Legion campaign, the Government enshrined the Armed Forces Covenant in statute in 2011. The Covenant represents the nation's recognition of its moral obligation to members of the Armed Forces community, and states 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 with families are posted to a new location, they should not face difficulty in getting their children into local schools
- ‘Special treatment’: for those injured in Service, or for families bereaved by Service, it can be appropriate for the principle of ‘special treatment’ to be applied, such as the provision of higher grade prosthetics to those who lose limbs as a direct result of their Service.

Policy Proposal 1

Establish a ring-fenced fund to enable councils to disregard military injury compensation from Social Care financial assessments

1. Executive Summary

- 1.1. Veterans injured in Service before 6 April 2005 are currently disadvantaged by having to give up most of their compensation payments to pay for their own social care. Social care provision in the UK is predicated on both an assessment of need by a local authority and a financial assessment of means. It is this means test that we believe unfairly discriminates against a core group of veterans, by treating their War Pension Scheme compensation payments as normal income.
- 1.2. This unfair treatment amounts to a breach of the Armed Forces Covenant because civilian compensation is treated more favourably. To remedy this we propose a ring-fenced funding allocation should be added to the social care budget. Following discussions with the Legion, we understand that officials at the Department of Health have produced internal estimates of the costs involved.

2. Background

- 2.1. Accessible and well-funded social care provision will become increasingly important to veterans in the UK over the coming decade. In 2014, the Legion published the largest and most comprehensive survey of the UK ex-Service community to date. The Household Survey found that the UK ex-Service community (veterans and dependants) comprises 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.
- 2.2. The Legion’s Household Survey further showed that those aged 65+ in the ex-Service population are less likely to report the majority of health conditions compared with the UK population of the same age. This suggests that the retired ex-Service community enjoy better health than the UK average. However, as life expectancy increases and the National Service generation moves into the older age brackets, the Legion estimates that the number in the ex-Service community aged 85+ is set to nearly double from 548,000 in 2014 to 1,027,000 by 2025. Thus, ensuring fair treatment in the social care system is an extremely pressing issue affecting a growing cross-section of the Armed Forces community.

3. Compensation schemes

- 3.1. 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 certain eligible recipients.
- 3.2. 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.
- 3.3. Those injured in Service before April 2005 (in wars stretching from World War Two to Afghanistan), are eligible for the War Disablement Pension, whereas those injured after April 2005 are eligible for AFCS. Therefore, two soldiers in Afghanistan in 2005 could be injured just days apart in the same theatre of conflict and be eligible for different schemes despite having the same injury. As this section outlines, the first injured soldier will subsequently see his/her compensation treated far less favourably.
- 3.4. Despite administrative differences, there can be no doubt that the purposes of the Armed Forces Compensation Scheme and the War Pension Scheme are aligned in providing compensation for the pain and loss of amenity from an injury in Service. The previous Veterans Minister, Anna Soubry MP, confirmed in 2014 that the purpose of the War Pension Scheme is to provide “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, Government literature describes AFCS as, “compensation for any injury, illness or death which is caused by service on or after 6 April 2005.”² The payments received under both schemes are therefore not, and should never be, treated as normal income.

4. A breach of the Armed Forces Covenant

- 4.1. Only War Disablement Pensions are not routinely disregarded in full by local authorities in social care financial assessments. Department of Health charging guidance³ instructs only a £10 disregard of War Disablement Pension payments, with discretion for local authorities to disregard further. Currently, only 9 per cent of English councils exercise a full disregard of War Disablement Pension payments for social care means tests⁴. With the Local Government Association highlighting a budget gap of £4.3 billion⁵ in social care funding by 2020, we fear this percentage will shrink, further worsening the treatment of injured veterans in the social care system.
- 4.2. The present arrangements amount to a clear breach of the Armed Forces Covenant, which was passed into statute in 2011 and outlines the nation’s commitment to those who serve in our Armed Forces. When civilians pursue their employers for damages for workplace injury, compensation is usually awarded as a lump sum, disregarded as income for the first year, and then

¹ Anna Soubry MP. 2014. *House of Commons Written Answer 206085*.

² Ministry of Defence. 2014. *Armed Forces Compensation: what you need to know* [Online]. Available at: <https://www.gov.uk/government/publications/armed-forces-compensation>

³ Department of Health. 2013. *Fairer Charging Policies for Home Care and other non-residential Social Services*.

⁴ The Royal British Legion. 2014. Freedom of Information request on social care charging.

⁵ Local Government Association. 2014. *Adult social care funding: 2014 state of the nation report*.

placed in a trust fund to ensure continued disregard. Denying those injured due to Service the same benefit because of the way their compensation is delivered to them is contrary to the primary Covenant principle of 'no disadvantage'. The welcome exclusion of AFCS Guaranteed Income Payments since 2012 shows that the delivery method of the compensation – regular instalments - should not pose a barrier to disregarding it.

- 4.3. Furthermore, the £10 disregard is inconsistent with local authorities' other means testing policies. Through a Freedom of Information request in late 2014 the Legion found that over 90 per cent of councils in England fully disregard military compensation from financial assessments for both council tax and housing benefit. Similarly we are pleased to note that Universal Credit also discounts both War Disablement Pensions and AFCS GIPs from financial means tests. If left unchanged, social care financial assessments will become unique in failing to offer parity between civilian injury compensation, post-2005 military compensation and pre-2005 military compensation.

5. Recent developments

- 5.1. We have undertaken productive discussions with the Department of Health, and counterparts within the devolved nations, on this issue. However, due to the resources currently allocated to social care falling short of the estimated need, it is apparent that only an additional ring-fenced grant by HM Treasury could guarantee an end to the disparity. We understand that estimated costs of implementing this change in England are held by the Department of Health.
- 5.2. Norfolk County Council recently changed their charging policy to provide a full disregard of War Disablement Pension payments in its means test for social care. This progress, though welcome, further serves to highlight the 'postcode lottery' currently faced by injured veterans. Additional funding from Government is crucial to financing this policy change on a sustainable basis and enabling all local authorities to amend their policies.
- 5.3. The Royal British Legion understands that the Department of Health and Local Government Association are also considering including this issue in their submissions to this Spending Review. The Legion firmly believes that this anomaly, which results in a particular group of veterans paying for their social care out of their military compensation, must be rectified as a matter of urgency.

Policy proposal 2:

Provide adequate compensation to veterans with Service-related mesothelioma

Executive Summary

- 5.4. The Legion calls on the Government to address a major breach of the Armed Forces Covenant by allowing military veterans diagnosed with mesothelioma, a form of terminal cancer, the option of a lump sum compensation payment of comparable value those offered to civilian counterparts by the Diffuse Mesothelioma Scheme. To enable this, we recommend HM Treasury makes

funds available, possibly placed under the curatorship of Veterans UK, for the establishment of appropriate compensation payments for veterans.

- 5.5. The current limitations of the War Pension Scheme are disadvantaging a particular group of veterans by potentially over £150,000 per person compared to the compensation offered to civilians. Funding granted from HM Treasury would address this disparity and in doing so resolve a breach of the Covenant.

6. Background

- 6.1. Mesothelioma is a particularly aggressive form of terminal cancer almost always caused by exposure to asbestos, which affects the pleura of the lungs. Mesothelioma can take decades to materialise but once diagnosed it is terminal. The condition causes shortness of breath, heavy sweating, fever, chest pain, weight loss, persistent coughing and loss of appetite. According to Cancer Research UK, the vast majority of people diagnosed with Mesothelioma have a life expectancy of under a year. Only around 30% of males who have contracted mesothelioma will survive for a year or more, dropping to only 20% who will survive more than 2 years. A small minority will survive longer, with just 8% living 5 years or more after diagnosis⁶.
- 6.2. Mesothelioma typically affects individuals who worked in professions such as carpentry or construction, but it has also afflicted a significant number of veterans. Many ex-Service personnel with mesothelioma were exposed to asbestos while working in the boiler rooms of naval ships, where the boilers were lagged with asbestos. Indeed, the Legion has received anecdotal evidence of naval veterans “fighting their way through clouds of asbestos dust” and even “blowing it off the top of their tea”.

7. Comparing levels of compensation between veterans and civilians

- 7.1. The Mesothelioma Act, passed in January 2014, enables civilians diagnosed with mesothelioma on or after 25th July 2012 (or their surviving dependants) to apply for compensation for this illness, even when no liable insurer can be traced. The Diffuse Mesothelioma scheme, which awards lump sums of up to £271,000, depending on age, is funded by insurers. The average payment since April 2014 is £122,000.
- 7.2. Veterans cannot sue the Crown for harm relating to their Service if that harm was caused prior to 1987, so veterans with Service-attributable mesothelioma are left to apply for a War Disablement Pension. If their spouse or partner lives for some time after their death, this may prove more generous than a lump sum under the Diffuse Mesothelioma Scheme, so it is important this option is not lost. But most live for less than a year post-diagnosis and if they have no living spouse or civil partner to receive a War Widow(er)'s Pension, their compensation amounts to very little compared to the painful and devastating effects of an illness caused wholly by Service.

⁶ Cancer Research UK. 2015. *Statistics and outlook for mesothelioma* [Online]. Available at: <http://www.cancerresearchuk.org/about-cancer/type/mesothelioma/treatment/statistics-and-outlook-for-mesothelioma>

7.3. A 63 year old civilian claimant, for instance, could expect to receive around £186,000 in compensation should they develop this aggressive and terminal cancer, yet 1 year's worth of 100% War Pension for a veteran amounts to just over £31,000. Thus, the veteran is over £150,000 worse off than their civilian contemporary as a direct result of being in Service.

8. Numbers affected and estimated costings

8.1. Professor Julian Peto, an epidemiologist specialising in asbestos-related cancers at the London School of Hygiene and Tropical Medicine, has predicted that just over two and half thousand British veterans will die from mesothelioma between 2013 and 2047 (see figure 1).

Figure 1: Projected Numbers of mesothelioma deaths in men who served in the Navy by year of death and age at death

Age at death:	50-54	55-59	60-64	65-69	70-74	75-79	80-84	85-89	Total
2008-12	2	7	51	76	188	200	428	250	1202
2013-17		4	11	69	98	228	205	370	986
2018-22			7	15	90	117	244	183	656
2023-27				9	20	107	125	224	486
2028-32					12	24	116	117	269
2033-37						15	26	109	151
2038-42							17	25	42
2043-47								16	16
Total	2	11	68	170	408	691	1162	1295	3808
Total without 2008-12:	0	4	18	93	220	491	734	1045	2606

8.2. The Independent Medical Expert Group, which advises the Minister for Defence Personnel and Veterans on medical and scientific aspects of military compensation, estimated the numbers affected in its March 2015 report⁷. It is suggested that of the naval veterans likely to be diagnosed with Mesothelioma by the year 2050, around 800 individuals are expected to be single, unmarried, or widowed. The IMEG report states that “while numbers of new cases of mesothelioma will diminish over time, they are projected to continue to occur until about 2050... Based on 30% single pensioners without eligible dependents, the total cases in this group might be about 800”.

8.3. The estimated cost to HM Treasury, were this to be financed purely from Government funding, would be likely to come in at an average of £2.8million per annum (not adjusted for inflation) to cover the period 2015-2050. This upper estimate is based on an assumption of 800 veterans receiving the average payment of £122,000, but would be offset by an estimated £0.69million per annum in savings from War Disablement Pensions not taken. The final sum, estimated at around £2million per annum, would depend on uptake of the lump sum option, variations from projected populations and age at time of death.

⁷ Independent Medical Expert Group. 2015. *IMEG third report on medical and scientific aspects of the Armed Forces Compensation Scheme*.

Policy proposal 3:

Protect the lifetime incomes of those injured as a result of Service

9. Executive summary

- 9.1. The Legion believes that the Government should index link employment-related aspects of War Disablement Pensions and Armed Forces Compensation Scheme payments to the 'Triple Lock' (the higher of CPI price inflation, average earnings or 2.5 per cent).
- 9.2. Armed Forces Compensation Scheme (AFCS) Guaranteed Income Payments (GIPs) and supplementary allowances under the War Pension Scheme specifically relate to employment. Such payments are currently uprated annually in line with price inflation, rather than average earnings, meaning that the real terms value of the payments is decreasing year-on-year.

10. Background

- 10.1. Price inflation has historically been lower than the rate of increase in average earnings. The Office for Budget Responsibility have forecasted that long term price inflation will average 1.7% per annum for the next five years; while average earnings will increase at around 4% per annum. This is set to persist should the economy continue to grow and inflation remain at current record low rates. The rate of increase in military pay has also historically been higher than price inflation.
- 10.2. On the other hand, from April 2011, benefits, including War Disablement Pensions and AFCS payments, have been indexed to the Consumer Price Index (CPI) instead of the Retail Price Index (RPI). According to this measure of inflation they are uprated by just 1.5 per cent.

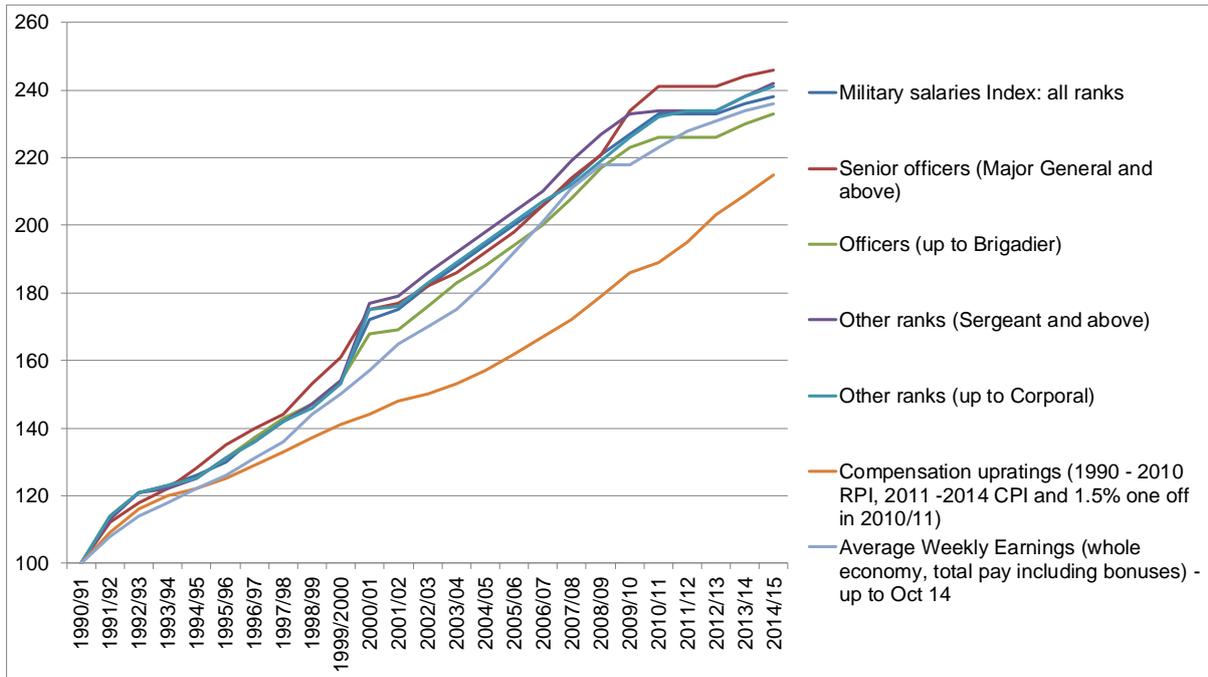
11. Veterans' compensation is being left behind

- 11.1. The clear link between the MOD compensation schemes and a loss of earnings was highlighted by former Armed Forces Minister of State Mark Francois MP in December 2012 when he said, "A service person who sustains an injury is compensated, under the Armed Forces Compensation Scheme, for loss of earnings that would otherwise have been earned through post-service civilian employment."⁸
- 11.2. Similarly, War Disablement Pensions contain allowances (Unemployability Supplement and Allowance for Lowered Standard of Occupation) directly related to a reduced ability to work. Therefore, AFCS GIPs and those elements of the War Disablement Pension that are directly related to work should be guaranteed to keep pace with earnings rather than social security benefits.
- 11.3. The cumulative effect of years of uprating by less than average earnings can be dramatic. For instance, an annual payment of £5,000 awarded in 1982 would now be worth £22,000 if uprated by average earnings, but if indexed to inflation it

⁸ Mark Francois MP. 2012. *House of Commons Written Answer 126933*.

would be worth only £15,000. Indexation to CPI is the least generous option (compared to RPI, average earnings, or the triple lock), and means that injured service personnel are disadvantaged, compared both to civilians in employment and their peers who remain in military Service. Figure 2 illustrates how compensation payments have fallen behind military salaries and average weekly earnings since 1990.

Figure 2: Growth in salaries, compensation and average earnings 1990-2014⁹



12. Costs and benefits of applying the 'triple lock'

- 12.1. The Legion has consulted actuaries Punter Southall to examine the costs and benefits of this proposal. They have calculated that applying the triple lock to AFCS GIPs for five years from 2016 would cost around £6m during that period. The total benefit for injured veterans, over their working lifetime and expressed in present value terms, of applying the triple lock to AFCS GIPs for five years is an extra £61m.
- 12.2. Punter Southall have further calculated the benefit to injured veterans of applying the triple lock to those War Disablement Pension supplements available to working age injured veterans in compensation for a lack of earnings. The total lifetime benefit of applying the triple lock to the Unemployability Supplement for 5 years is £25m. Of this around £3m relates to increased payments in the five year fixed period. The total benefit to injured veterans of applying the triple lock to the Allowance for Lowered Standard of Occupation for 5 years is £33m. Around £4m of this relates to increased payments in the five year fixed period. In all of these

⁹ Office for National Statistics. 2014. *Average weekly earnings, RPI and CPI data, and DASA published upratings on military salaries.*

cases the remainder of the increased figure represents the rise in value over the lifetime of the beneficiaries following the 5 years application of the triple lock.

- 12.3. Therefore if the Government were to apply the triple lock to AFCS GIPs, the War Pension Unemployability Supplement and the Allowance for Lowered Standard of Occupation for the fixed term of this parliament, it would cost the Treasury an initial £13m yet benefit injured servicemen and women by £119m over the course of their lifetimes.

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