

Military Factsheet

When a person is injured through their service there are options available designed to help put that person back in the position he or she would have been in had the injury not occurred. These options are addressed below, but injured personnel should be encouraged to seek independent legal advice as soon as possible following an injury.

The Armed Forces Compensation Scheme

The Armed Forces Compensation Scheme (AFCS) is a no-fault scheme for injured service personnel. This means that the scheme is not concerned with who is to blame for an accident, and is factually limited to whether a member of the armed forces has sustained an injury as a result of service.

The AFCS deals with injuries, illnesses or deaths which have occurred in service on or after 6 April 2005. For matters preceding this date the War Pension Scheme applies (see below).

The system is tariff-based, and deals with soft tissue injuries to the most significant of conditions. Both physical and mental injuries are capable of compensation under the scheme. From time to time the tariffs are reviewed; detail in respect the current tariff is available on the Veterans Agency's website (www.veterans-uk.info).

It is important to note that serving personnel can claim; they should not wait until they have left service. There is sometimes misinformation in relation to this, as the previous War Pension system only applied post-discharge.

In terms of the compensation awarded, a tax free lump sum compensation payment is made for the pain and suffering caused by the injury. For the most serious injuries and illness, the AFCS also provides a tax free monthly payment, called a Guaranteed Income Payment, which is paid from the point of discharge for life.

Claim forms under the AFCS can be downloaded from the Veterans Agency's website (www.veterans-uk.info); these forms need to be submitted to the Service Personnel and Veterans Agency. They have a free helpline which provides assistance with completing the form (0800 169 2277).

In addition, the Royal British Legion also provides assistance (08457 725 725). A claim must be lodged with the Service Personnel and Veterans Agency within 7 years of the date of an accident. There are some exceptions to this time limit, including conditions and illness with a late onset; in such situations, a claim under the AFCS should be submitted within 3 years of seeking medical advice. Fatal claims brought by dependants should be made within 3 years of the date of death.

Civil Claim

In addition to bringing a claim under the AFCS, service personnel can also submit a civil claim. However, it should be noted that the law does not allow what it refers to as 'double recovery' of compensation. Therefore, the effect is that service personnel will effectively only receive the higher award.

There are a couple of legal principles to be borne in mind at the outset. There is a principle known as 'combat immunity', which is codified in the Crown Proceedings Act 1947. This principle is a policy decision by Parliament, and states that proceedings cannot be brought against the Crown for injuries caused in the theatre of war. There have been recent inroads into this principle, and it is important to distinguish between decisions that are taken on the battlefield to those taken in Whitehall. Decisions such as procurement of equipment and training issues arguably fall outside this principle. Legal advice should always be sought on the issue.

Another well established principle is that for injuries and illnesses caused in service before 15 May 1987, the law does not permit a civil claim to be made. This is because before this date there was an Act of Parliament which prevented such claims.

With the above caveats, a civil claim can be brought if it can be demonstrated that the Ministry of Defence has in some way breached a duty of care which it owes to a member of the armed forces, and that such a breach of its duty has caused the person to sustain an injury. Such a breach may include providing defective equipment when on a training exercise, or engaging in an unsafe practice.

The time limit for a civil claim is much shorter than that for a claim under the AFCS. A claim needs to be settled or issued in Court on or before the 3rd anniversary of the date of an accident, or on or before the 3rd anniversary of the date of knowledge that an illness or condition was attributed to person's service.

As well as seeking compensation for pain and suffering, a civil claim allows for claims for treatment costs, any care and assistance provided, loss of earnings, aids and equipment purchased and any reasonable expense that can be attributed to the injuries or illness caused.

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War Pension

As noted above, the AFCS is only applicable for those who are injured as a result of their service since 6 April 2005. Those who suffer injuries or illness preceding this date must follow the rules of the War Pension Scheme. The relevant claim forms are available on the Veterans Agency's website (www.veterans-uk.info); these forms need to be submitted to the Service Personnel and Veterans Agency. They have a free helpline which provides assistance with completing the form (0800 169 2277). In addition, the Royal British Legion also provides assistance (08457 725 725).

Insurance Policy Payments

Sometimes service personnel will hold policies with providers such as PAX and ABACUS in relation to their service. Following an injury they may be entitled to an award of compensation under such a policy. It should be noted that such payments do not impact upon awards made under the AFCS or civil claim; it is a contractual arrangement between the member and the insurance provider.

Meet the Team



David Robinson

David Robinson is Thompsons Solicitors Military Claims Specialist, and he daily deals with claims from service personnel from across our forces. Such is his commitment to his clients that David has become an Associate Member of the Royal British Legion Solicitors' Group. As an example of his work, David was involved in the landmark decision in the Court of Appeal in which compensation was secured for an RAF Corporal who had been denied compensation for a neurological condition for over 17 years. David's experience and expertise is such that he has been asked to write in the legal press on military issues and is asked for comment by the media.

Key Contacts

Royal British Legion

08457 725 725

www.britishlegion.org.uk

Service Personnel and Veterans Agency

0800 169 2277

www.veterans-uk.info

Thompsons Solicitors are the most experienced personal injury practice in the UK with over 1,000 staff in a network of offices nationwide.

Within our practice we have a specialised team of Lawyers who are experienced in pursuing claims for members of the UK's armed forces.

Our expert team will guide service personnel through the process of making a claim, and they will be happy to answer any questions that may arise.