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Building a Brighter Future
for Injured People

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20 December 2023

Dear Sir/ Madam,

Supporting Our Veterans: A Consultation

APIL welcomes the opportunity to provide comments to the Office for Veterans' Affairs consultation seeking evidence on the needs of veterans and their families. We have provided comments below concerning the claims process and the communications to veterans about compensation in response to questions 17 and 18 in Chapter 4.

Information provided on the Gov.UK website

We are concerned that the information on the "Free help with compensation claims for injury in the armed forces" collection [section](#) of the Gov.UK website is inadequate and could mislead service personnel and veterans.

We believe that the word 'compensation' should not be used on that section of the website. 'Compensation' could be misunderstood by service personnel and veterans who may mistakenly think this precludes any civil claim and/or their ability to seek independent legal advice. The War Pension Scheme (WPS) and Armed Forces Compensation Scheme (AFCS) use the terms 'awards' and 'lump sums' which we believe are more appropriate. We suggest that the heading should be changed to 'Free help with claims for awards/lump sums for injury in the armed forces'.
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The website does not clearly on the main page include any information or reference to the right to pursue a civil claim, as well as an award under the AFCS/ WPS.

The right to pursue a civil compensation claim

It is important that service personnel and veterans are informed of all of their options if they have been injured in service. They should be informed that they have the right to seek independent legal advice about the possibility of pursuing a civil claim, as well as the option to pursue a claim through the AFCS/ WPS. We recommend that a new section be added to the website about the right to pursue a civil claim for compensation.

Service personnel and veterans must be aware of their right to bring a civil compensation claim, because often, an award made under the AFCS, being tariff-based, is not truly reflective of the pain, suffering and loss of amenity that the injury has caused. It should be made clear that the AFCS does not compensate/ allow awards for any claims for special damages in particular any loss of earnings which are often the most significant loss in any

military personal injury claim and which can only be recovered as part of a successful civil claim for compensation. Only a civil claim can put the claimant, as closely as possible, back to the position they were in prior to the injury, and ensure that they have access to the appropriate rehabilitation. Civil compensation claims also play an important role in holding the Ministry of Defence to account e.g. the Snatch Land Rover claims. When cases highlight issues with equipment or training, lessons can be learned, and changes implemented to ensure that more people are not harmed or killed by defective equipment or bad practices.

Further, the information regarding civil claims should make clear that there are limitation periods. For example, for claims under the Human Rights Act limitation is only one year and for accidents on planes or boats just 2 years from the date of the accident/ incident. Service personnel and veterans will not be aware of such details, which is why we emphasise the need for them to be aware that they can seek independent legal advice at the earliest opportunity.

APIL also suggests that the website should provide information concerning the options that a claimant has when instructing legal representation. Service personnel and veterans must be informed that many solicitors may be able to provide legal advice either on a pro bono or no-win no-fee basis. This is particularly important in relation to inquests.

Legal assistance with Armed Forces Compensation Scheme claims

Even where the veteran decides to pursue a claim under the Armed Forces Compensation Scheme, they should not be led to believe that they must do so without any independent legal advice. We object to the wording in the guidance on the AFCS that “*You do not need a paid representative such as a solicitor or claims management company to apply for compensation.*”

Veterans are in a vulnerable position – many of them suffering from psychological/psychiatric injuries e.g. post-traumatic stress disorder. Without legal advice and representation, they may not be able to properly navigate the scheme. In many instances, claimants are put in the wrong compensation bracket, but claimants are ill-equipped to know whether their compensation is fair, and so are unlikely to challenge it through an appeal to a tribunal. The role of the tribunal and the judicial process are extremely important in ensuring fairness – claimants have seen high success rates on appeal decisions concerning eligibility and quantum. For instance, 140 appeals had a favourable decision in 2022/23.¹

This example provided by an APIL member shows the importance of independent legal advice. Our member reported that they spoke to a client who was injured during a combat fitness test, had a complex operation on his wrist and was facing medical discharge from the army as a result. He applied for compensation through the Armed Forces Compensation Scheme. Veterans UK refused to pay any compensation to him, on the basis that the claimant’s medical records before joining the army noted an injury to his wrist while playing football. Veterans UK said that all of the injury was caused by that initial injury, and maintained this stance on appeal. The claimant instructed solicitors, and with their help, appealed a second time on the basis that Veterans UK had made a decision in ignorance or mistake of the facts. Veterans UK accepted that they had made a mistake. The claimant in this case eventually received a significant award. This is unlikely to have been the result if the claimant had not subsequently instructed solicitors.

Another member provided an example recently of a veteran who initially sought internal legal advice from an MoD legal advisor following a serious sexual assault and who was advised

¹ Armed Forces Compensation Scheme Statistics: Financial Year 2022/23

<https://www.gov.uk/government/statistics/armed-forces-compensation-scheme-statistics-financial-year-202223>

that they had no potential civil claim(s) or redress. That veteran was also advised by the MoD legal advisor not to bring a claim against the MoD as they were their employer. However, upon that veteran seeking independent legal advice from the member's firm of Solicitors they were able to advise that veteran that they had at least three potential claims for compensation (including a potential civil claim against the MoD) which can include, not only a claim for the physical and often very significant psychological damage caused but also a claim for loss of earnings including due to e.g. loss of promotion/loss of military career and which is often the most significant part of any claim for compensation against the MoD. We understand that compensation is often the last thing any person suffering abuse or assault wants to think about, but it remains one of the only ways in which abusive behaviour can be brought into the open and the MoD held to account.

Legal representation is also vital to ensure that proper checks are carried out e.g. on capacity to protect the vulnerable service person's compensation. A legal representative will ensure that the vulnerable service person is properly advised of their choices and given information and support on how to handle their money, including potentially protecting their entitlement to any Department for Work and Pensions benefits.

We urge the Ministry of Defence to rethink the wording of the advice to veterans/ service personnel, to reflect that they are free to seek independent legal advice at any time and that the Armed Forces Compensation Scheme is not the only route available to them to seek compensation.

We hope that our comments prove useful.

Yours sincerely,

A handwritten signature in black ink that reads 'Ana Ramos' in a cursive, flowing script.

Ana Ramos

Legal Affairs Assistant

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