

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2015-16

**HEALTH & WELLBEING SCRUTINY
COMMITTEE**

17 JUNE 2015

**REPORT OF THE DIRECTOR OF
LEGAL & DEMOCRATIC SERVICES**

Agenda Item No. 2

**ROYAL BRITISH LEGION INSULT TO
INJURY CAMPAIGN**

1. PURPOSE OF THE REPORT

The purpose of this report is to inform the Committee of issues in relation to the Royal British Legion 'Insult to Injury' Campaign

2. RECOMMENDATIONS

- 2.1 Members asked to consider the information presented at today's meeting and determine whether the Committee wishes to make any recommendations to the Cabinet and/or Welsh Government.

3. BACKGROUND

- 3.1 At the Council meeting held on 25th March 2015, Members considered a Notice of Motion standing in the names of County Borough Councillors D.H.Williams, R.Lewis, L.M.Adams, (Mrs.)T.Bates, H.Boggis, J.Bonetto, S.A.Bradwick, A.Calvert, P.Cannon,QPM, S.Carter, (Mrs.)J.Cass, (Mrs.)A.Crimmings, W.J.David, A.L.Davies MBE, (Mrs.)A.Davies, J.Davies, (Mrs.)M.E.Davies, (Mrs.)L.De Vet, J.Elliott, S.Evans, M.Forey, A.S.Fox, M.Griffiths, P.Griffiths, (Mrs.)E.Hanagan, G.Holmes, G.E.Hopkins, (Mrs.)S.J.Jones, W.L.Langford, (Mrs.)C.Leyshon, S.Lloyd, C.Middle, K.Montague, A.Morgan, B.Morgan, M.A.Norris, S.Pickering, K.A.Privett, S.Rees, (Mrs.)A.Roberts, J.Rosser, G.Smith, G.Stacey, B.Stephens, (Mrs.)M.Tegg, R.K.Turner, G.Thomas, (Mrs.)J.S.Ward, M.J.Watts, M.Webber, W.D.Weeks, C.J.Williams, T.Williams, C.J.Willis and R.Yeo: namely that:

"This Council should lend its support to the British Legion's Insult to Injury Campaign.

Veterans injured during Service are having to give up most of their compensation to pay for the costs of their social care.

*Military compensation is awarded as recompense for the pain, suffering and loss of amenity experienced by injured Service personnel and veterans; it should **not** be treated as normal income.*

This Council considers it unfair that War Pensioners are treated differently to other injured veterans. It is also unacceptable that War Pensioners are treated less favourably than civilians who have been injured in the work place, who are able to place compensation awarded into a trust fund. This Council believes this point to not take account of the Armed Forces Covenant, which states that Service personnel, veterans and their families should face no disadvantage as a result of Military Service.

The Council believes such an approach to be unfair and therefore requests the appropriate Scrutiny Committee/s to consider this issue to ensure all appropriate measures are taken by this local authority to address this issue. This Council also calls upon the Welsh Government to take the steps to address this issue at an all Wales level by providing the necessary guidance to ensure veterans will not in future be penalised in this way."

- 3.2 Council RESOLVED that the matter should be considered by the appropriate Scrutiny Committee, which following the new scrutiny framework is the Health and Wellbeing Scrutiny Committee.

4. ROYAL BRITISH LEGION'S CAMPAIGN

- 4.1 The Royal British Legion launched its Insult to Injury campaign in January 2015 to highlight the disparity in the way that War Pensioners are treated within the social care system. The Legion is calling on Welsh Government to change existing guidelines so that War Pensioners (injured on or before 5th April 2005) are treated in the same way as those receiving payment through the Armed Forces Compensation Scheme (ie those injured on or after 6 April 2005).
- 4.2 The Welsh Government have responded to the Royal British Legion by saying that they will take these matters into consideration when they consult on the regulations to be made under the Social Services & Wellbeing (Wales) Act 2014 which is being implemented in April 2016.
- 4.3 Attached at Appendix 1 is the argument set out by the Royal British Legion and they have been invited to send a representative to this meeting to address the Committee.
- 4.4 The Service Director, Direct Services, Business and Housing will also be in attendance to outline to Members the current charging policy and the implications of change.

5. CONCLUSION

- 5.1 Having considered the information put before them, Members are asked to consider whether they wish to make any recommendations to Cabinet.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

HEALTH & WELLBEING SCRUTINY COMMITTEE

17TH JUNE 2015

REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

Background Papers

Officer to contact: Mrs A Edwards – Tel. No: 01443 424102



1. Summary

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

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

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

2. Background Information

i. Two Types of Military Compensation

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

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

The AFCS, by contrast, awards all recipients a lump sum, and provides a non-taxable payment for life, known as the Guaranteed Income Payment (GIP), to the most severely injured. The AFCS does not have additional supplements attached to it, but individuals with

very high awards (50 per cent GIPs) are automatically entitled to the Armed Forces Independence Payment.

ii. Compensation vs. Normal Income

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

The UK Government appears to have accepted this in principle as both War Pensions and AFCS GIPs are fully disregarded in means tests for Universal Credit, which rolls six different benefits into one payment. Almost all local authorities will also use their discretion to fully exempt both forms of military compensation from means tests for Council Tax Support and Housing Benefit, indicating that politicians at all levels of government recognise that neither War Pensions or AFCS GIPs should be viewed as normal income. Indeed, a Freedom of Information exercise conducted by the Legion in autumn 2013 found that all local authorities in Wales currently fully disregard War Pension payments from their Council Tax support schemes.

iii. Inconsistency of Government Policy

In October 2012, the UK Government decided that all local authorities should exclude AFCS GIPs from social care means testing, stating: "In recognition of the contribution made by armed forces personnel injured whilst on active service, from 29th October 2012, they will no longer need to use Guaranteed Income Payments (GIPs) paid under the Armed Forces Compensation Scheme (AFCS) to pay for care and support services arranged by local authorities."ⁱ The **Welsh Government** 'Package of Support for the Armed Forces community', published in June 2013, also states: "Local authorities in Wales have discretion to charge for any non-residential care services they provide. Armed Forces Independence Payments and Armed Forces Compensation Scheme GIP are disregarded from the financial assessment process that is applied"ⁱⁱ.

In contrast, when War Pensioners undergo a means test to determine how much they should pay towards the costs of their care, only the first £10 per week of their compensation payments will be routinely disregarded. The rest is typically viewed as normal income. This is because current statutory guidance, as outlined in the Charging for Residential Accommodation Guide (CRAG), only instructs local authorities to exempt the first £10 per week of an individual's War Pension, leaving councils free to set their own exemption thresholds over and above this amount for residential care. This has resulted in something of a postcode lottery for War Pensioners, with only 5% of local authorities in Wales presently choosing to fully disregard War Pensions from all means tests for social Care – that translates as one local authorityⁱⁱⁱ.

Impact of Current Policy

i. Keith Clarke (non-residential care)

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

ii. Fred Cannon (residential care)

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

3. Arguments for Change

i. The Need for Harmonisation

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

ii. The Armed Forces Covenant

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

- ‘No disadvantage’: the Covenant commits the Government to removing, where possible, disadvantage experienced as a result of Service.
- ‘Special treatment’: for personnel and veterans who are injured as a result of their Service, or for families bereaved by Service, it is sometimes appropriate for the principle of ‘special treatment’ to be applied.

We maintain that the treatment of War Pensions in social care means tests must be brought into line with other Government policies regarding military compensation, since a failure to do so would represent a breach of the Armed Forces Covenant principle of ‘no disadvantage’. This is because when civilians pursue civil damages through the civil justice system, compensation is usually awarded as a lump sum, which is then placed in a personal injury trust fund to ensure that it is not regarded as normal income. Where lump sums are not awarded, civilians may alternatively receive regular payments to cover the costs of future care. In this way, War Pensioners are placed at a distinct financial disadvantage compared to civilians who are injured at work because; a) War Pensioners’ basic compensation payments are not calculated to cover the costs of their care; and b) only the first £10 per week of their compensation payments will be routinely disregarded.

4. Acknowledgment of Complexities

We recognise that there are complexities involved in assessing War Pensioners due to the payment of an additional attendance allowance to some disabled veterans. The Legion therefore accepts that the Constant Attendance Allowance that is paid to some War Pensioners, and which is designed to cover care costs, could be included in local authorities’ income assessments. This would ensure that the state is not paying out twice for the same care needs. The remaining War Pension payments, however, should be fully disregarded as injured veterans should not have to use their compensation to pay for the care and support services that they receive from their local authority. We also acknowledge that a maximum charge currently exists in Wales when charging for social care, which may benefit some members of the Armed Forces Community.

5. Our Recommendation

We urge the Welsh Government to amend current statutory guidance to ensure that local authorities fully disregard both War Disablement Pensions and AFCS GIPs from income assessments for social care, whether residential or non-residential, save for the additional attendance allowance that is paid to some War Pensioners to cover certain care costs. To help local authorities meet the additional costs of implementing this policy change, we further recommend that the Welsh Government establish a ring-fenced fund which councils can then access for this purpose.

As of May 2015, the Welsh Government has opened a consultation on the new Social Services and Well-being Act and part 5 relates to the charging and financial assessment elements. The Royal British Legion will be submitting a consultation response, again highlighting our position that the current system of treating WDP and AFCS differently is unfair and represents a breach of the Military Covenant. The Legion has been working with Welsh Government, providing information to help inform potential costings of the policy

change. The legion maintains the Welsh Government should be funding any additional costing for local authorities of a policy change, should that occur.

Peter Evans
Public Affairs Manager Wales
Public Affairs Public Policy Team
The Royal British Legion

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

ⁱⁱ Welsh Government, 'Package of Support for the Armed Forces community' (2013), <http://wales.gov.uk/docs/dsjlg/policy/130625afpackagesec2.pdf> (p.10)

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