

MAKING THE BENEFITS SYSTEM FIT FOR SERVICE

IMPROVING SUPPORT FOR VETERANS WITH MILITARY COMPENSATION





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ABOUT US



The Royal British Legion

The Royal British Legion is at the heart of a national network that supports serving members of the Armed Forces, ex-serving personnel and their families, ensuring their unique contribution is never forgotten.

We are the country's largest Armed Forces charity, with 217,000 members, 120,000 volunteers and a network of partners and charities who help us provide support wherever and whenever it's needed. We've been here since 1921 and we'll be here as long as they need us. We provide lifelong support to our serving and ex-serving personnel and their families.

We provide support with:

- Physical and Mental Wellbeing
- Financial and Employment Support
- Care and Independent Living
- Local Community Connections
- Expert Guidance

The Legion also works with politicians and officials at all levels to bring the principles of the Armed Forces Covenant to life, and to further the interests of the Armed Forces community. Through our research and campaigning, we seek to inform welfare service providers and challenge myths about the Armed Forces community.

We also raise the profile of issues affecting serving and ex-serving personnel and their families and seek to improve government policy.

For more information contact us at:

www.britishlegion.org.uk

or call **0808 802 8080**



Poppyscotland

Poppyscotland provides life-changing support to our Armed Forces community. We are best known for running the iconic Scottish Poppy Appeal but we work all year round to reach out to those who have served, those still serving, and their families at times of crisis and need by offering vital, practical advice, assistance and funding.

Poppyscotland's range of welfare support services include:

- Tailored Support and Funding
- Advice
- Mobility
- Employment support
- Housing support
- Mental Health support

We work in close partnership with a range of organisations to support veterans and their families with the support they need in a timely manner.

For further information, please visit:

www.poppyscotland.org.uk

BENEFITS DEBT AND MONEY ADVICE

The Royal British Legion's Benefits, Debt and Money Advice (BDMA) Service provides free debt and money advice including charitable grant recommendations, benefit checks and income maximisation, as well as benefit claims and challenging decisions up to and including the upper tier tribunal.

The service works closely with the Legion's War Pensions and Compensation Service, other specialists in the Legion and external partners to support veterans and their families.

The BDMA Service works throughout England, Wales and Northern Ireland and has 33 advisers across

the UK, 13 of which are based in our Contact Centre in Wales. In 2018/19, the BDMA Service provided support in 2,121 cases.

Armed Services Advice Project Scotland

The Armed Services Advice Project (ASAP) delivers information, advice and support to members of the Armed Forces community through a Scotland wide helpline and face-to-face casework in 11 regions of Scotland. The project is delivered in conjunction with Poppyscotland. From the period 1 October 2018-30 September 2019, 2,347 individuals were supported with over 12,300 new and repeat issues. The majority of clients are ex-Army, aged 45-59 years old.¹





FOREWORD



The Royal British Legion is at the heart of a national network that supports our Armed Forces community through thick and thin. Since our formation in 1921, we have been proud to be at the forefront of supporting the Armed Forces community of veterans, serving personnel and their families.

From ensuring that those who returned from the First World War and their families received adequate compensation, campaigning for the Armed Forces Covenant to be enshrined in legislation, to successfully campaigning for members of the Armed Forces to be included in the next national census, for nearly a century we have been shining a spotlight on the issues that affect all those who serve and their families.

This report continues that proud legacy by examining the interaction between welfare benefits and Armed Forces compensation. Both social security and the Armed Forces have undergone significant change since British troops were deployed to Afghanistan nearly 20 years ago. The Armed Forces Compensation Scheme was introduced in April 2005, and the implementation of the Welfare Reform Act 2012 has gradually introduced changes to the welfare benefit system which have recently started to impact veterans.

The experiences of the Armed Forces provide a unique perspective on the workings of the social security system. Injured personnel may face particular barriers to accessing the support to which they should be entitled, whether as a result of conditions or experiences unique to Service life; overly complex systems, or financial assessments that are not designed to recognise the purpose of the compensation award. Yet, their experiences of the two systems also present important opportunities for improvement and for best practice to be shared.

I believe that the findings from this research provide an important insight into the way the welfare benefits system works for veterans, and I hope it will be a significant contribution to the wider research on the issue. This report highlights areas of concern, which although sometimes small, can have a life changing impact on the way injured veterans access benefits, and makes practical recommendations to government on how to address them.

In 1921 the Legion highlighted the needs of those injured in Service to their country and asked the Government to listen to their voices. As we approach our centenary, I'm pleased to present this report as the latest step on that same journey.

A handwritten signature in black ink that reads "Charles Byrne".

Charles Byrne
Director General

SUMMARY OF WELFARE BENEFITS

Employment and Support Allowance (ESA)

ESA is the main income replacement benefit for those of working age unable to work or with limited capability for doing so, either due to sickness or disability. It replaced Incapacity Benefit (IB) in 2008 for all new claims and from early 2011 the IB reassessment began, moving those on IB to ESA.

There are two types of ESA: contribution-based ESA (also known as 'New Style ESA') and income-related. 'New Style' ESA relies on a level of National Insurance Contributions being paid over the previous two years before a claim is made; it does not take into account most income (except occupational pensions) and savings. Income-related ESA takes income and savings into account to determine the amount that claimants will receive.

Personal Independence Payment (PIP)

PIP helps with the extra costs of disability or long-term health conditions. It is a non-means tested benefit. To receive PIP claimants must need help with everyday tasks, or getting around, or both; have needed this help for at least three months and expect to need it for another 9 months. Eligibility is decided through assessment. The benefit consists of two components: mobility component and daily living component. The two components are paid at differing rates, enhanced and standard.

Universal Credit (UC)

UC is a means-tested benefit for those out of work or on a low income. It replaces six income-related benefits; Income Support, Income-based Jobseeker's Allowance, Income-related Employment and Support Allowance, Housing Benefit, Child Tax Credit and Working Tax Credit.

SUMMARY OF ARMED FORCES PENSIONS AND COMPENSATION PAYMENTS

War Pension Scheme (WPS)

The WPS compensates for injury, illness or death that occurred before 6 April 2005, whilst in Service in the UK Armed Forces. There is no time limit for submitting a claim, but claimants may have to prove their disablement is directly related to Service if it has been seven years or more since discharge. The scheme applies to both Regular and Reserve forces. Claims can only be made once the individual has been discharged and can be made for any injury or illness caused or made worse by Service. There are two main types of WPS awards; an ongoing payment paid as a weekly or monthly gratuity, and a lump sum payment (often for less severe injuries). Depending on the level of disability there are various supplements that can be added to the basic war pension. For instance, those with high care needs may receive a Constant Attendance Allowance, and those unable to work may receive Unemployability Supplement.

Armed Forces Compensation Scheme (AFCS)

AFCS provides compensation for those injured on or after 6 April 2005. The scheme applies equally to Regular and Reserve forces. Claims must be made within seven years of sustaining the injury. Compensation is paid for injuries which arise as a result of Service and can be made whilst still in Service. AFCS awards include the payment of a lump sum and for more serious injuries, an ongoing payment known as the Guaranteed Income Payment (GIP) which is paid for life as an enhancement to the individual's pension and is index-linked and tax free.

Armed Forces Independence Payments (AFIP)

AFIP provides financial support to those seriously injured as a result of Service. It is designed to cover the extra costs they may have as a result of their injury, similar to PIP. To be eligible for an AFIP, veterans must be entitled to a GIP of 50% or higher through the AFCS.



INTRODUCTION

After over a decade of significant conflict in Iraq and Afghanistan, between 2001 and 2014, 21,756 Service men and women from the Armed Forces were medically discharged for physical and mental health reasons, with 840 sustaining serious or very serious physical injuries or illnesses². Advances in medical technology allowed for unprecedented numbers of ill and disabled ex-Service personnel to survive and, with the correct support, live full and independent lives. There is an array of support services available to injured veterans through Government and charitable initiatives such as the Defence Recovery Capability pathway which ensure that injured veterans can access coordinated support. However, a crucial part of the financial support package for wounded, injured and sick veterans (WIS) comes from military compensation payments and, for some, the welfare benefits system.

In addition to the above cohort, every year around 15,000 people leave the Armed Forces³ after serving our country. The majority leave Service with important skills, experiences and in a good state of health, but due to the demands and rigours of Service on personnel some will inevitably leave with a lifelong, and in some cases, life changing injury or disability. For anyone with an attributable injury due to their time in Service, financial recognition of their sacrifice is provided through two main compensation schemes; the War Disablement Scheme for those injured before 6 April 2005 and the Armed Forces Compensation Scheme (AFCS) for those injured on or after 6 April 2005. Both are designed to compensate for the pain and loss of amenity experienced as a result of a Service-related injury.⁴

For WIS veterans living with an injury or disability, further support to supplement their income and provide for increased living costs is available through the welfare benefits system. According to the latest Government figures, there are over 90,000 veterans of working age in receipt of military compensation,^{5,6} who may be eligible for, or are accessing, further statutory support through welfare benefits. The last decade has seen a number of changes to the way that

statutory support is accessed and this has posed both common and unique challenges for WIS veterans. The Welfare Reform Act 2012 introduced several reforms to welfare benefits in the UK, including:

- Universal Credit (UC) a new working age benefit that replaces several existing benefits, including Income-Related Employment and Support Allowance (ESA) and Housing Benefit, consolidating them into one monthly payment.
- Personal Independence Payment (PIP) which replaced Disability Living Allowance for those under 65.

The reforms mean that veterans in receipt of military compensation who claim benefits have found themselves encountering new, unfamiliar systems that are further complicated by the interaction between Ministry of Defence (MoD) and Department for Work and Pensions (DWP) rules on military compensation.

There is limited research on the impact of the post-2012 benefits system on veterans in receipt of military compensation. The scale and ongoing nature of change within the benefits system, such as the increased frequency of assessments, has meant that veterans with compensation have unique insights and experiences of the system which in turn can inform and improve the policy and delivery of the support they rely on.

As the Legion and Poppyscotland are the largest providers of welfare advice within the veteran charity sector and as such, through collating the experiences of veterans and the people that support them, we have reviewed the interaction between military compensation and welfare benefits. This report will explore the benefit journey through the experiences of veterans living with an illness or injury from Service. More specifically, the report will focus on those aspects of the benefit system that most impact on disabled veterans' ability to access and manage benefit claims and statutory support to gain employment, as well as the idiosyncrasies that arise as a result of being in receipt of a compensation award and how this impacts on their overall health and wellbeing.

METHODOLOGY

The research for this report was undertaken throughout 2019 and a mixed-methods approach was undertaken for this project. This was due to practical concerns such as limited government data on veterans' benefit usage, especially for those on long term disability benefits, and the difficulties associated with recruiting a large number of veterans to take part in focus groups, given that many are too unwell to fully engage in research of this type.

The individual strands of this project consisted of:

- **Desk-based research** – This primarily consisted of a literature review that informed the development of the next phase of the research.
- **Semi-Structured Interviews** – These were carried out with veterans who had left Service, and spoke at length about their experience, providing valuable insights into how they perceived the welfare benefits for which they applied.
- **Focus Groups** – Three focus groups were held around the country comprising of veterans and

relevant practice stakeholders such as Legion BDMA and ASAP staff, War Pensions Representatives and other Legion support staff. The group discussions gave rise to a number of recommendations and highlighted the strengths and weaknesses of the benefits journey.

- **Online Survey** – This collected the responses of those in receipt of military compensation whether WDP or AFCS, and at least one disability benefit.

Limitations of Methods

- **Lack of data** – There were few official sources (e.g. government statistics) that provided data on veterans' benefit usage.
- **Survey** – This relied on veterans being engaged with either the Legion or Poppyscotland services or the respondent being digitally literate enough to complete it.
- **Veteran Wellbeing** – It was difficult to involve large numbers of veterans as some were too unwell to engage fully with the research, due to their conditions.



THE ARMED FORCES COVENANT

‘Those who serve in the Armed Forces, whether Regular or Reserve, those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services. Special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.’



Following a campaign by The Royal British Legion in 2011, the Government enshrined the Armed Forces Covenant into legislation, pledging that:

- The Armed Forces community should not face disadvantage compared to other citizens in the provision of public and commercial services; and
- Special consideration is appropriate in some cases, especially for those who have given the most such as the injured and the bereaved.

All Government departments are committed to upholding the twin principles of the Armed Forces Covenant. The DWP has put in place certain mitigations for the Armed Forces community, which include:

- No longer treating compensation as income under Universal Credit.
- Securing funding to bolster the role of Jobcentre Plus (JCP) Armed Forces Champions across the country. Armed Forces Champions work to raise the profile of the ex-Service community in terms of the skills, knowledge and experience they can offer, and work with colleagues to ease some of the barriers to work faced by veterans.
- Exempting veterans in receipt of compensation from the benefit cap.
- Dependants of serving non-UK personnel (including Gurkhas) who are injured and have not served four years may be able to access benefits such as Carer's Allowance.
- Using Service medical board evidence for severely disabled veterans to determine eligibility to benefits, rather than conduct a face-to-face DWP functional assessment.
- Introducing the Armed Forces Independence Payment (AFIP) which provides financial support to

cover the extra costs incurred as a result of Service-related injury.

- Improving the awareness of Post-Traumatic Stress Disorder (PTSD) among its assessment providers by releasing insight reports.

Throughout the research carried out for this report, at various times the Covenant was raised unprompted. The majority of views expressed of the Covenant could be categorised within two major themes: that it would benefit from being strengthened; and a lack of awareness within DWP frontline staff of both the Covenant and its implementation into practice.

It was widely believed amongst focus group participants that statutory providers did not always take their obligations under the Covenant seriously. These views were most pronounced among older veterans, who at their point of discharge received little in the way of transition support as some of the measures now available under the Covenant were not then in place. For instance, the use of Service medical evidence to determine eligibility to ESA only applies to those recently discharged. This older demographic therefore risk feeling particularly let down by the system and resentful of the processes undertaken.

The introduction of the Covenant has led to significant developments in veteran provision, most recently the funding of Armed Forces Champions, and it is important in ensuring that veterans are not disadvantaged by their Service. Thus, the design and delivery of services and support that veterans may access should always be mindful of the principles of the Covenant.

BENEFITS USAGE AMONGST THE VETERAN POPULATION

The Legion's Household Survey of the ex-Service community from 2014 found that households containing working age adults in the ex-Service community are over twice as likely to receive sickness or disability benefits as UK adults⁷. Within that increased likelihood there will be veterans in receipt of military compensation who may rely on welfare benefits more than their peers, such as those who are unable to undertake civilian employment due to their injury or disability having left Service.

There is no robust data on the number of veterans with compensation who claim disability benefits, as this is not collected by the DWP. However, research by Burdett *et al* on the King's Centre for Military Health Research Cohort⁸, *Veterans and benefits*, provides an epidemiological study of benefit claims within an

ex-Service population. The study does not distinguish between those with or without compensation, but provides more general statistics for disability benefits usage amongst this group.

The study focused on benefit usage immediately after Service and found that:

- Veterans who claimed disability benefits remained on them for a longer period than veterans who accessed unemployment benefits.
- Disability benefits were moderately linked to in-Service mental health and physical health, but strongly linked to post-Service mental health.
- Veterans with unplanned leaving were associated with higher unemployment benefit receipt, and those medically discharged had a higher instance of disability benefit receipt.



WELFARE BENEFITS AND DEVOLUTION



The Legion operates in England, Northern Ireland and Wales (and overseas), whilst support in Scotland is provided by the Legion's sister charity Poppyscotland. Welfare policy has historically been a largely non-devolved policy area, meaning that the differences between the nations are minimal. However, there are a few differences to note:

Scotland

- The Social Security (Scotland) Act 2018 led to the establishment of Social Security Scotland (SSS).
- SSS is responsible for 11 devolved benefits including Funeral Payments and Early Years Assistance. SSS will take on the administration of larger benefits such as Personal Independence Payment by 2024.
- Social Security Scotland plans to redesign the application process and will carry out fewer face-to-face assessments, which will be delivered directly by the agency.

Northern Ireland

- In Northern Ireland, a series of Welfare Supplementary Payments were introduced under a Mitigation Package which was designed to 'top up' UK welfare arrangements until 31 March 2020 and has since been extended beyond this date. The supplementary payments are paid automatically to eligible claimants. Some payments make up the difference between what claimants actually receive in benefits and what they would have received had the Social Sector Size Criteria ("bedroom tax") and the benefit cap not been applied to them.
- These supplementary payments offset any loss of benefits due to a move from Disability Living Allowance (DLA) to PIP.
- British Armed Forces veterans residing in Northern Ireland who have been assessed for PIP and have not been awarded the benefit, are entitled to a top up payment of up to 75% of their benefit for up to one year, if they receive at least four points in their assessment.
- The mitigation package also included one-off grants and loans through a Discretionary Support Scheme and Universal Credit Contingency Fund.

THE DISABILITY BENEFITS JOURNEY

THE APPLICATION

For some veterans with military compensation who may need to claim ESA, PIP or UC the process can seem complex and present barriers to successful claims. Charities such as the Legion and Poppyscotland, through our specialist advisers, work to assist those who require support to navigate the system, and our research has explored some of the issues veterans with compensation face when trying to access benefits.

The process for these benefits follows three main stages: the application, an assessment, and in some cases an appeal. The initial application requires the claimants to complete a detailed form for each benefit. Once the application form is completed,

ASSESSMENTS

the veteran must undergo an assessment via a DWP contracted assessment provider. A summary of the assessment is produced in the form of a report, which forms the basis of the decision on the claim by the DWP. Once a decision has been made, if a veteran is unhappy with the outcome, they are able to appeal, which may lead to a different award.

Research participant responses found common themes arising between benefits, from problems completing application forms to difficulties explaining the impact of Service-related conditions on wellbeing. The research found areas where amendments to policy and practice could bring significant improvements to the experience of injured veteran claimants.

APPEAL



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THE APPLICATION

To apply for PIP, ESA and UC detailed application forms must be completed. Each benefit has a different process for lodging the application. UC applications are started online and in cases where an applicant has limited capability for work and is not in receipt of ESA, a UC50 form can be downloaded or sent to the claimant by post to complete and return. For PIP, claimants must telephone for an application form which is sent for them to complete and return by post. Those eligible for more than one benefit are required to complete a form for each benefit. On each form veterans must provide as much detail as possible about their functionality and ability to complete certain tasks. A survey conducted for the DWP in 2017 on PIP found that 34% of claimants found completing the form more difficult than expected, compared with 14% who found it easier.⁹ These findings were mirrored within our research, with nearly two thirds of ESA claimants in our survey, and three quarters of those who had claimed PIP, struggling to complete the form.

- **63%** (n=31) of respondents who had applied for ESA surveyed found completing the form 'difficult' or 'very difficult'.

- **76%** of respondents (n=38) who claimed PIP felt the same. Many participants said that they had help to complete the form and found it 'very daunting'.

Focus group participants consistently highlighted the length of applications as a reason for not applying for much needed financial support. Additionally, it was noted that a lack of clarity around the appropriate information to be included in the application led to forms being completed sparsely, or with incorrect and unnecessary detail. For this reason, Legion Benefit

Advisers reported that they preferred to support beneficiaries with completing the application, but it was not always possible due to time constraints or the stage at which the veteran requested help (normally after receiving a negative decision).

Other BDMA advisers noted that a low level of literacy acted as a barrier to completing the form. Whilst the Armed Forces encourage and provide opportunities for recruits to obtain academic qualifications, almost two-fifths (39%) of recruits to the Army have the reading ability of an 11-year-old or lower¹⁰. Whilst the number of recruits with low literacy has decreased over time, in 2019, 1,000 recruits out of 6,985 had a reading age below eleven. Candidates with a reading age of five to seven have to attend organised training at a local college to bring them up to the required minimum standard (Entry Level 2) before they commence Basic Training.¹¹ It was suggested by some focus group participants that Service leavers with low literacy who are likely to be eligible for benefits should be supported to complete their application as part of the discharge or resettlement process. This may reduce the time taken for a veteran to be awarded a benefit and avoid the need for appeals and lengthy gaps between application and eventual award.

Being discharged from Service and transitioning into civilian life can be a long, complicated and emotional process, and a time of significant upheaval. One adviser described a veteran so overwhelmed by the discharge process that between making an AFCS claim, finding accommodation, and struggling with the loss of identity that often accompanies an unexpected discharge, making an application for benefits was an added stress that meant he did not complete the required application forms. The adviser noted that this caused the veteran to struggle financially, but also raised other concerns about his future financial wellbeing; as not applying for benefits meant his National Insurance Contributions went unpaid which would ultimately impact on the amount of state pension he would receive later in life.

Completing the application form was seen as the first hurdle in the process of receiving benefits; the length and detail required led to many who took part in the research for this report abandoning their application. In line with the principle of the Covenant that special treatment may be appropriate for those who are injured or bereaved, extra support at this stage of the benefit journey to reduce the burden on the claimant could go some way to mitigating this. Veterans in focus groups suggested that they could be identified at the early stages of the application process and this could trigger the DWP to request information from the MoD such as their compensation award which may be useful at the decision-making stage of the benefits journey. Some data sharing between Government departments already exists for Service personnel being medically discharged. For those being discharged with a severe condition, Service Medical Board Evidence gives them an automatic entitlement to some level of ESA. Replicating this on a larger scale to all veterans with compensation may go some way to creating a smoother application process for many veterans with compensation.

Veterans appear in the DWP's Vulnerability Guidance, which is a guide for DWP staff to support individuals with complex needs, to enable them to access DWP benefits and services.¹² This and the other aforementioned measures are welcome. However, completing application forms remains the one area where support can sometimes be scarce due to time and resource constraints, especially for veterans who have long left Service. As the application form is integral to benefit entitlement, all disabled veterans with compensation could benefit from support with completing forms should they wish to access it.

“

Some conditions such as mine require written forms. I now have very poor fine motor skills, some or all forms should have a word format version online

Survey Respondent

”

Asking the Question

The Government's *Strategy for Our Veterans*, published in December 2018, stated that “Data is essential to understand the Veteran community, contributing to a robust evidence base which can inform policy making and service delivery more effectively”.¹³

The need for data to be routinely captured by services accessed by veterans, and for this data to be shared appropriately and inform the provision of those services, is a recommendation for which the Legion and Poppyscotland have long called. Welfare benefits are an area where enhanced collection and sharing of data between the MoD and the DWP could be improved, and to an extent this already happens with the sharing of Service Medical Records between the MoD and DWP for those recently discharged and applying for 'New Style' ESA.

The ESA application form (ESA50 or UC50 in Universal Credit), asks the question 'Have you served in HM Armed Forces?' The Legion sought, via a Freedom of Information request, to establish from this data how many veterans applied for ESA and the outcome of their application¹⁴. The response from the DWP was that the 'data could not be easily extracted'.¹⁵

To better support veterans this data needs to be captured in a systematic way that enables it to be extracted and published on a routine basis. This data can then be utilised to ensure that veterans are given the correct support throughout their benefit journey.

At present, the lack of data restricts third sector advice agencies from being able to accurately identify how many veterans claim specific benefits, and the barriers to successful claims. With this data, organisations like the Legion and Poppyscotland can tailor service provision accordingly. Equally, Service injury compensation claims cut across other benefits such as ESA or UC and more accurate, seamless data sharing between government departments would improve the experiences of veterans who claim compensation.

RECOMMENDATIONS

Disability Benefits make up a crucial part of a disabled veteran's income. Access to these benefits should be straightforward for all disabled veterans, including those with the most severe and life changing injuries or illnesses. The application stage of the process can be improved if:

- The DWP (and appropriate devolved administrations) redesign current benefit application forms to include a question to identify those who have served in HM Armed Forces.
- The MoD, DWP and SSS, work together to extend and widely implement the data sharing already in place for veterans being medically discharged, to all veterans with compensation who make a claim for disability benefits.
- The MoD and DWP (and SSS) provide appropriate support with completing benefit application forms to all veterans with compensation through agencies such as Veterans UK and the wider veterans support network, such as the Legion's BDMA service and Poppyscotland's ASAP. Support should take on the form of guidance which should clearly detail what information or evidence is most appropriate to include at each stage of the application, and what to expect at the assessment.

THE ASSESSMENTS



Assessments are the foundation for determining eligibility for welfare benefits. They can be conducted in person (face-to-face) or be paper based. The assessment process is managed by DWP contracted organisations who are staffed by health care professionals (HCPs, also known as assessors) who have a range of medical and health backgrounds such as occupational health and nursing. As such, they may not be specialists in the condition being assessed. The assessments are functional as opposed to medical assessments, meaning they assess what a claimant can do instead of their medical condition. However, knowledge and understanding of medical conditions can play a role in assessing and understanding claimants' functionality.

The assessment for ESA is the Work Capability Assessment (WCA) which explores how mental or physical health affects claimants' ability to complete a range of functional activities considered necessary in the workplace. Claimants are allocated points according to their ability to complete these activities and the number of points they are allocated determines whether they are classified as either:

- 'fit for work' - required to look for and eventually undertake full time employment
- 'limited capability for work' (LCW) - deemed likely to become capable of work in the future
- 'limited capability for work and work-related activity' (LCWRA) - deemed not capable of work

These classifications determine both the amount of benefit received and the conditionality, including possible sanctions for not meeting the activity requirements attached to them.

Entitlement to PIP is also determined by a functional assessment. However, in contrast to ESA the assessment measures functionality across ten daily living activities and two mobility activities. Each of these activities has descriptors that indicate a level of functional impact and the associated points score. The descriptors are intended to facilitate the assessment of the impact of a full range of potential health conditions or disabilities. Around 80% of all assessments are conducted face-to-face.¹⁶

Since their introduction, the design and delivery of disability benefit assessments have proved contentious. The WCA is considered by the disability sector to be ineffective 'at assessing claimants with two or more types of impairment, which is probably the case for at least half of all disabled people.'¹⁷ While the PIP assessment and descriptors have been subject to several legal challenges, the most notable for veterans with mental health conditions is the ruling on the mobility descriptor which assesses planning and following a journey. Government amendments to the wording of the descriptor meant that claimants whose impairment is mental, rather than physical, were excluded from the enhanced rate of the PIP mobility component.¹⁸ This was overturned and led to the Government reviewing over 1.6 million cases. Assessments are also seen by focus group participants and the wider disability sector as a reason for the high number of decisions overturned at appeal in favour of the claimant (77% for ESA, and 76% for PIP).¹⁹

- **78%** (n38/50) of survey respondents claiming PIP and **58%** (n28/48) claiming ESA found the assessment was stressful and made my health worse because of stress/anxiety.
- **8%** (n4/50) of survey respondents claiming PIP and **6%** (n3/48) claiming ESA felt that the assessor had knowledge of the Armed Forces and Service-related conditions.
- **6%** (3/50) of survey respondents claiming PIP and **8%** (n4/48) claiming ESA believed that the assessor understood that they received compensation.

When discussing assessments in focus groups and when asked in the survey, veterans, unprompted, contrasted their experiences of military compensation and disability benefit assessments. Unsurprisingly, as compensation assessments are tailored to the Armed Forces, the veterans spoke of them in more positive terms and they were considered a better experience. The veterans pointed to the use of doctors with knowledge and experience of conditions that adversely affect veterans, and an acknowledgement of how the condition affects them. They also felt that the assessment provided an opportunity for a 'fair hearing' where they could clearly express themselves.

For disability benefit assessments, veterans highlighted the following issues with the system which, if rectified, would in their view make accessing benefits easier:

- An emphasis on physical health
- Awareness of Military Culture
- The use of Service Medical Records
- Multiple Assessments

“

I receive a 75% GIP and AFIP. I no longer claim ESA as I don't want to be involved in that particular merry go round again. It was too stressful and impacted greatly on my mental health. And that's my viewpoint as an ex WCA assessor. I dread to think what it does to those with genuine mental health issues.

Survey Respondent

”

Emphasis on Physical Health

In recent years there have been concerted efforts to remove the stigma around poor mental health within the Armed Forces. Many veterans, with common mental health issues such as anxiety and depression, have negative attitudes to treatment or believe they will be treated in a stigmatising way. As a consequence, mental health problems are not always acknowledged.^{20,21}

Receiving military compensation for mental health conditions can be challenging. To be awarded compensation veterans must have a clinical diagnosis and, unlike with physical injuries, it can be harder to pinpoint a start date for mental health injuries meaning that a historic diagnosis is difficult. On top of this, the stigma still experienced around poor mental health means that many do not seek formal treatment. All of this makes claiming compensation for mental health issues difficult and stressful. Therefore, it is understandable why many veterans who took part in the research, having overcome barriers to have their mental health injury acknowledged, were frustrated at a perceived reversion to a focus on physical functionality during their benefit claim assessments.

Our research found that assessments paid insufficient attention to the impact of mental health conditions on functionality. This was important to the veterans who took part in both the survey and the focus groups. Participants noted that when undergoing a WCA, as their mental health conditions did not always manifest as a physical impairment no weight was given to the impact of their mental health condition, despite it precluding them from employment.

- **21%** (n18/86) of survey respondents cited poor mental health as their primary qualifying condition for compensation.
- **38%** (n33/86) survey respondents received compensation for physical health conditions.
- **41%** (n35/86) of survey respondents received compensation for both mental health conditions and physical conditions.

One veteran stated that the assessor had no awareness of Post-Traumatic Stress Disorder (PTSD) impacts:

“Recently had a reassessment face to face. Very stressful and increased my anxiety and insomnia. Luckily had my wife to go with me otherwise wouldn't have gone. I got the impression the assessor hadn't an awareness of how PTSD impacts on concentration, focus and memory.”

One survey respondent claimed that evidence presented to assessors confirming their mental health conditions or explaining how this affected functionality were ignored. The assessor insisted that they only answer the questions asked rather than explore the effects of their mental health condition.

“I have PTSD, borderline personality disorder, anxiety and depression and the assessor said I have no psychological symptoms. I supplied a consultant psychiatrist letter stating all my mental health conditions. I scored zero on mental health. This is laughable.”

In 2016 the Legion worked with the DWP and assessment providers to upskill HCP's on combat-related PTSD²² by working with assessors to create condition insight reports.²³ However, there is evidence that further work may be needed as it was raised repeatedly as a specific area of concern for veterans within the research. For these veterans, there remains little understanding of the condition, and an overall lack of insight into PTSD and how it affects daily life. For many veterans who struggled to access military compensation for their mental health conditions undergoing another assessment for welfare support was an upsetting experience.

According to DWP figures in April 2020 there are 1,840,065²⁴ claims in payment for PIP or ESA where the primary condition is a mental health problem, implying that this is a complaint that may affect veterans and civilians alike. However, the increased barriers and stigma that veterans can face with their mental health, coupled with a cumulative frustration of the extra compensation process, risks exacerbating any negative impact of a poor assessment process further. Many suggested that the assessors could do more to speak to them about their condition and its impact, as opposed to rigidly following the assessment.

RECOMMENDATION

- Allow HCPs more time to explore conditions with claimants. When assessing former Service personnel with a mental health condition, assessors should be encouraged to use open questions to encourage discussion about functionality.



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AWARENESS OF MILITARY CULTURE

A lack of assessor knowledge about the Armed Forces, common Service-related conditions, and particularly military culture, was a theme returned to frequently in both in the survey and in focus groups.

Disabled veterans who find themselves accessing benefits may present pronounced or unique barriers to accurate assessment. Presenting in Service as 'unfit' can result in medical downgrading, and potentially medical discharge. It is not unreasonable to assume that a similar attitude continues when veterans are discharged and become civilians. This mentality can cause an underplaying of any physical or mental limitation as a result of a condition,²⁵ meaning veterans may not receive the financial support they need to maintain their independence and find appropriate employment.

This was best expressed in the way that veterans presented themselves at assessments. Advisers believed that beneficiaries who were smartly dressed and 'well put together'²⁶ were perceived by assessors to not have an illness or condition. There was little understanding of the military mindset; where military personnel are expected to be well presented and turned out at all times. One veteran described the monumental effort it took to look presentable for the assessment. They attributed this to their time in Service, where presentation and 'putting your best foot forward' is an integral part of the culture of the military.

“

Assessors should be given further training to identify and understand the things that affect veterans and due to our training and standards will possibly try and mask or play down.

Survey Respondent

”

It was also noted that the culture of self-reliance and pride within the military meant that veterans will not always explain the extent to which their condition affects them.

“

The system should be more sympathetic towards veterans, they didn't understand that for most of us we were proud to serve and the standard not to be a waster, [sic] to be independent to be strong is ingrained and so to even contemplate actually asking for a hand out goes against our personality. So don't make us repeat every explanation three times just to fill in the correct form or ask us to explain time and time again how the injury occurred or how it affects us please.

Survey Respondent

”

The veterans in focus groups who described their assessments as 'positive' noted that they were put at ease by the assessor thereby relieving their anxiety during the assessment, and they felt they were awarded the right level of support for their disability. One veteran who felt that the assessment was positive attributed it to the fact that an ex-military nurse understood his background and the effects of his PTSD.

Unfortunately, this was the experience of only a minority of participants. However, it shows that if assessors have a strong understanding or appreciation of military culture and Service-related conditions, they are more likely to create an environment that puts claimants at ease, which may contribute to a more appropriate decision and an increased perception of accuracy in the decision making.

The military is a unique environment that gives rise to a culture that may seem alien to those without prior or insider knowledge of the military. The circumstances and conditions under which they operate often mean that certain behaviours, illnesses and disabilities are more prevalent within this population, and the inimitable characteristics of this group should be accurately recognised when they access support that is mainly designed for civilians.

“

I felt that the person assessing me had no knowledge of service conditions and things were written about me that were not fact but assumptions to do with mobility (of which I did not claim).

Survey Respondent

”



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RECOMMENDATIONS

- HCP training should include education on military culture and common Service-related conditions that affect veterans and how these conditions are likely to impact on functionality and ability to work, enabling improved understanding of veterans and the Armed Forces.
- Assessment providers should consider appointing Armed Forces Champions based on the current DWP model as an internal point of reference to support assessors learning and knowledge of the Armed Forces and common Service-related conditions.

USE OF SERVICE MEDICAL RECORDS

Supporting evidence in the form of medical history or patient diaries that keep a record of claimants' functionality can give assessors and Decision Makers a deeper insight into what the claimant is able to do, enabling them to make a fully informed decision. The Disability Benefits Consortium, of which the Legion is a member has long advocated for supporting evidence to be considered as part of a claim and for assessors to give some weight to it when writing their reports and making recommendations.²⁷ The DWP acknowledges that 'Non-functional clinical information and objective functional information not directly relevant to the descriptors can...be very useful to inform the advice on level of functional impairment.'²⁸

For disabled veterans much of this supporting evidence can be found in their Service Medical Records. Unlike civilians, Serving personnel do not receive their healthcare through the National Health Service, but via Defence Medical Services (DMS). Only upon leaving Service, does a veteran's healthcare become the responsibility of the NHS. To access their full Service medical history the individual must request their full clinical records from the MoD.

The research for this report found that there were two main issues with Service Medical Records and their role in making a decision on a claimant's application. Firstly, it was widely believed that Service Medical Records were widely disregarded by HCPs and Decision Makers and secondly access to Service records was difficult as there are challenges with requesting them and the time it takes for them to be received.

For veterans making a disability benefit claim because of a Service-related condition, their Service Medical Records form an important part of the additional evidence they may submit. These records provide insight into Service-related conditions and can explain how they developed. Combined with other supporting evidence, such as a report from a military compensation assessment, this can create a picture of the veteran's functionality, which at the assessment they may not be able to articulate. The records also paint a long-term picture of a claimant's functionality, as

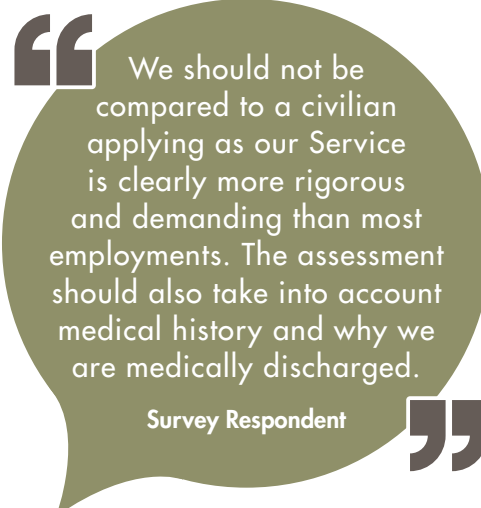
opposed to providing a snapshot of their abilities at the time of assessment.

“
Medical evidence is taken more in to consideration than it is done at the moment.
Survey Respondent
”

Veterans who took part in the research, especially those accessing benefits long after their discharge, largely felt that their records were not widely considered. All respondents to the survey were claiming disability benefits because of Service-related conditions, thus it was expected that more respondents would have included their Service Medical Records. Veterans in focus groups said they struggled to get the assessor to look at their medical notes, particularly when it came to mental health, with one veteran noting that the assessor was 'overriding the psychiatrist's report'.

- **Only 8% (4/48)** of respondents claiming ESA believe the assessor considered service medical records which may have been submitted.
- **20% (10/50)** of respondents claiming PIP believe that the assessor considered service medical records.

One of the reasons that Service medical records may not always be considered is because there is no guidance for assessors on how much weight to give this additional information when they are writing reports and making recommendations. There is also little formal guidance on how additional evidence should be presented and what emphasis should be given to particular types of information. The DWP should include Service Medical Records as a specific category of supporting evidence for veterans with compensation who are making a claim based on their Service-related condition and explicitly state how these should be presented.



RECOMMENDATIONS

- The DWP and SSS should design clear guidance for assessors and Decision Makers on the use of Service Medical Records for WIS veterans who are making a claim for disability benefits based on Service-related conditions.
- The DWP and SSS should produce clear guidance for veterans on how to present Service Medical Records and military compensation assessment reports, including on when to submit it in the benefit process and how it will be used to inform a decision on their claim.



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IMPROVING ACCESS TO SERVICE MEDICAL RECORDS

Whilst the veterans in our survey who submitted Service medical records did not believe that their medical records were widely considered, many did not submit records, or faced barriers in accessing them.

- **50% (25/50)** of survey respondents claiming PIP said they submitted their service medical records with their application.
- **38% or 19/49** of survey respondents claiming ESA included Service Medical Records with application.

Focus group participants stated that their access to Service Medical Records took time to access and often arrived after the deadline for their benefit application had passed. This was consistent with the experiences of an interview participant who found the wait for medical records frustrating. The veteran was only given access to medical records for the years pertaining to their War Pension appeal. However, they needed access to all their records to submit with their PIP application. Ultimately, the records did not arrive on time and could not be submitted, which led to them having to appeal the decision where they stated the records were then taken into account and the original decision overturned.

Upon leaving Service, veterans are given a paper copy of their summary medical record (called an F Med 133), along with information on how to obtain their full Service Medical Record if needed. In England and Wales when registering with a GP an automatically generated letter informs the GP that their patient has been under the care of the DMS. The summary will include their medical history, immunisation and screening status, and current

medication. If this information has been lost GPs must contact the relevant Medical Service for the Army, Royal Navy and Royal Air Force.

The Royal British Legion's 2015 Manifesto called for the Government to improve the system for transferring the medical records of Service personnel.²⁹ It called for: records to be transferred automatically upon registration with a GP surgery; DMS to reduce reliance on paper records (a major cause of delays); and the automatic transfer of records to the relevant civilian GP surgery, then triggering a 'Read code' on NHS records so that every practice thereafter would be aware of the patient's veteran status. The Legion and Poppyscotland also recommended that a 'cradle-to-grave' system of medical records be instated in the long-term.

The Legion and Poppyscotland still support the above recommendation as it would enable veterans to request a comprehensive medical history made up of both Service and civilian medical records and thus would make requesting medical records and demonstrating medical conditions simpler. In recognition of the need to address the transfer of medical records, Programme CORTISONE has been set up by Government to connect healthcare records across all clinical environments, civilian and military and connected to civilian healthcare records.

The MoD originally anticipated that a system to transfer medical records between the DMS and NHS would be in place by 2018. However, this has now been significantly delayed to 2022. A pilot of 'Virtual Transition Practice' began in 2019.

RECOMMENDATION

- The Ministry of Defence and the Department of Health and Social Care (along with devolved governments) should review the reasons for delays and publish a timetable for completion of Programme CORTISONE, with mechanisms for relevant public bodies to be held to account for meeting targets.



MULTIPLE ASSESSMENTS

One of the features of welfare reform is that awards are not permanent and claimants are subject to reassessment. The maximum length of award before reassessment in the ESA Support Group is three years. For PIP the shortest award can be nine months and the longest, known as an 'indefinite award', is subject to review every 10 years.³⁰ Between April 2013 and April 2018, only 18.2% of PIP awards have been for an indefinite period, 81.8% PIP awards have been made for 3.5 years or less and of those 23% of PIP were made for just 1.5 years or less.³¹ Limited awards were introduced to provide interim support for claimants and reassessments were introduced to establish whether a claimant's condition has improved or worsened. The length of the award is decided by the DWP's Decision Makers who use the report and recommendations produced by the HCP.

Military compensation awards, in contrast, are more permanent and reviews are normally only undertaken at the veteran's request. WDP claimants may ask for their award to be reviewed at any time. AFCS awards are designed to be final, but can be reviewed in very specific circumstances such as when more than 10 years have passed or if there has been substantial, unexpected worsening of the injury or illness.

For veterans with deteriorating conditions this can create an extreme situation where they have to undergo multiple assessments in a short period of time. A veteran in a focus group spoke about having WDP assessment as his condition had worsened and a few months later being reassessed for both PIP and ESA in the space of a few weeks. Moreover, one veteran said he wanted to have one assessment to prevent him from 'having to repeat everything multiple times to strangers'.

Other veterans explained that frequent reassessments made them constantly stressed and anxious and that they did not have any certainty.

“

Reassessment for ESA is happening every 18 months. I'm awaiting for the results of a PIP reassessment to see if it's going to be taken off me. The whole process is invasive and a constant source of stress. It is not helping my PTSD. The whole process makes me feel harassed and almost as if I'm a suspected fraudster. It's simply criminal to put people through this repeatedly. I seem to have an ESA review out of the way and then they are at me about PIP. It's profoundly depressing.

Survey Respondent

”

For others the regularity of assessments impacted their mental health:

“

After a suicide attempt... I was placed on DLA/PIP low daily and mobility, ESA support group. I was stable and improving to the point of voluntary work. Every year since, one or more of my benefits has been assessed and benefits have been cut to approximate 1/3 of initial award. This has led to me actually being in a similar mental state...isolated, less mobile, and reliant on help from charity and friends.

Survey Respondent

”

Reducing the length of awards and ensuring that benefit claimants are not left on benefits with no support or interaction from the DWP is difficult to disagree with. However, for this to work well for disabled veterans, there should be more scope for the sharing of information between organisations

such as Veteran's UK, the MoD and the DWP to ensure that veterans do not have to undergo several, often similar, assessments. This would ease the onus on the veteran to continuously prove how their condition affects them and reduce stress and anxiety around the benefits process.

RECOMMENDATIONS

- **DWP should use the most up to date military compensation assessment and report to inform disability benefit assessments, thus reducing the need for multiple and face-to-face assessments.**
- **SSS should use military compensation assessments and reports as the basis of paper-based assessments if the claimant is being assessed for a Service-related condition.**
- **Disabled veterans with compensation should be given the option on all benefit application forms to allow data sharing of their most up to date compensation assessments between Veterans UK and the DWP or SSS.**



MULTIPLE ASSESSMENTS AND UNEMPLOYABILITY SUPPLEMENT

Welfare reform, specifically the introduction of Universal Credit (UC) has meant that some of the most severely disabled War Pensioners may be subject to a WCA. Research for this report and engagement with partner organisations found that this change mainly impacted veterans in receipt of Unemployability Supplement (UnSupp). WDP claimants who are considered to be 60% or more disabled are eligible to claim the supplement. Their condition must be so debilitating that they are unable to work.

Under legacy benefits, War Pensioners with this supplement have the choice of being paid UnSupp in lieu of ESA and claiming other support such as Housing Benefit through their local authority, ensuring that veterans are not subject to any work requirements or conditionality. With the introduction of UC, some War Pensioners with UnSupp were subject to a WCA, as being in receipt of UnSupp did not automatically entitle them to limited capability for work related activity status in UC.

Benefits Advisers in focus groups pointed to examples of veterans with UnSupp who had to undergo a WCA and were subsequently found fit for work and expected to seek employment as part of their conditionality which is one of the underlying principles of UC. Conditionality, sets out the activities and actions claimants are expected to complete to receive the benefit. There are four main conditionality regimes, which may involve keeping details up to date, attending CV writing workshops or spending 35 hours a week applying for work.

The consequences of being found fit for work when they had a disability that precluded them from doing so, impacted on more than just the veterans' mental health. In some cases the outcome of the WCA affected on the financial ability of this group to sustain their accommodation. Under the legacy system, Housing Benefit is claimed through the veteran's local authority and, as outlined above, could be claimed alongside a War Pension. With the introduction of UC, one of the consequences was that their access to

housing cost support was determined by the outcome of a WCA and the conditionality that accompanied it. Advisers cited examples of veterans found fit for work who closed their UC claims, as they could not meet the conditionality. In one case a veteran who had struggled to find suitable accommodation had to give up his fully accessible accommodation and move in with relatives, as he could no longer afford his rent without the housing element.

This practice within the Universal Credit system highlights a lack of consistency within the welfare benefit system for disabled veterans. For example, current DWP policy is that those severely disabled and medically discharged have an automatic entitlement to some level of ESA, whereas older veterans with a similar level of disability on Universal Credit have to prove their eligibility for this support. By extending this cohort's status of being unfit for work to UC this would remove the need for a further assessment, the problems of which have been highlighted above. Moreover, this would also provide an opportunity for the DWP to apply the second principle of the Armed Forces Covenant - that "special consideration is appropriate in some cases, especially...the injured".

“

Medical evidence that was sufficient to warrant medical discharge, and award service-related compensation... Should be sufficient evidence enough, to avoid the need for applications/assessments for state benefits.

Survey Respondent

”

RECOMMENDATION

- The DWP should mirror legacy benefit rules and treat War Pension claimants receiving Unemployability Supplement as having Limited Capability for Work Related Activity, thereby exempting them from a Work Capability Assessment.



APPEALS

The final, possible stage in the benefits journey is the opportunity for claimants to appeal a decision that they feel is incorrect. Appeals data from 2013/14 to 2018 collated by Her Majesty's Courts and Tribunal Service (HMCTS) in Great Britain and the Department for Communities in Northern Ireland found over half (56%) of the 981,000 appeals about disability, sickness and incapacity benefits, were appealed successfully. In 2018, this figure sat higher at around 66% of cases heard in Great Britain finding in favour of the claimant. In Northern Ireland, the figure was around 54% in 2018-19.³²

Focus group participants had a more positive perception of tribunals than the rest of the benefits journey. The composition of the panel that hears appeals was highlighted as contributing to a better experience of this stage of the benefits journey.

The tribunal panel is made up primarily of a doctor and a judge, but for PIP appeals a disability expert also sits on the panel. Research participants cited the range of expertise within the panel as leading to a strong understanding of the functional limitations of Service-related conditions.

It is important to note that not everyone who is unhappy with their benefit decision lodges an appeal. Some advisers who took part in the research for this report felt that claimants may incorrectly believe that they need legal representation to attend a tribunal or they felt that the process was undignified and burdensome.

“

I didn't appeal because at that time the whole begging for help was just more than my self-respect would allow me to do.

Survey Respondent

”

“

Upon the original decision to place me into the WRAG I attended an interview at the local Jobcentre Plus where I was informed that there was nothing they could help me with due to the level/type of disability I have. My appeal took 10 mins to decide in my favour and placed me into the Support Group.

Survey Respondent

”

“

I scored 0 and did not appeal because I felt like I was a burden. Now I receive no help from them.

Survey Respondent

”

Waiting times were also another reason raised for not appealing. Before an appeal, a Mandatory Reconsideration (MR) has to be lodged. MRs were introduced in 2013 and give the DWP the opportunity to review and possibly revise the award. Upon introduction, the DWP stated the MR process was intended to 'resolve disputes as early as possible'³³ and 'reduce unnecessary demand on HMCTS by resolving more disputes internally'. However, the participants in our research repeatedly expressed the view that MR's were a 'rubber stamping exercise' of the initial decision and unnecessarily prolonged the appeals process. DWP Figures show that the chances of receiving an improved award at the MR stage were low: for PIP 23%³⁴ of decisions were overturned; and 17% for ESA decisions.³⁵

Legion Benefit advisers reported that in some areas of the country they experienced waits of 12-18 months for a tribunal to be heard and this again causes further stress and anxiety.

“

I am still waiting on an appeal date for ESA, it has been over 1 year now. I received ESA for one year and now the DWP wants to cancel the award of ESA as it deems me fit for work, going against all doctors and specialists' advice.

Survey Respondent

”

The research for this report also highlighted the importance of being able to use all of the information available to challenge a decision. Advisers noted that often, where the Legion has supported a veteran with a War Pension appeal, they will request the War Pension appeal bundle from the War Pensions and Compensation Team and use the information about the client's functionality to present their case at Social Security Tribunals, presenting a complete picture of the veteran's functionality. The use of all available information and the way that is used by tribunal can be applied to the decision-making stage of the benefits journey where all information should be used to inform the decision.

Overall, there was a greater level of trust and transparency within the tribunal stage of the appeals system. Veterans had more confidence in the system and felt that their Service and sacrifice in sustaining an injury or disability were acknowledged at tribunal. This was largely due to the knowledge and insight of the panel at hearings which seemed to create significant trust within the tribunal system which was not always present in the assessment or application stage of the process. The panel also provides scope for the inclusion of diverse viewpoints, which can be applied to Decision Makers who should not make isolated decisions based solely on written guidance and the assessment report, but should be able to collaborate with colleagues who may be able to offer different points of view.

RECOMMENDATIONS

- The DWP should undertake a study of the tribunal process to find out why there is significant trust in the system and find out what learning points can be implemented at earlier stages of the benefits journey to ensure that there is trust throughout the system.
- The DWP should give consideration to the creation of specialist assessors, especially with knowledge of the Armed Forces and Service-Related Conditions.

MILITARY COMPENSATION AND MEANS TESTS

Once disabled veterans have been able to secure their entitlement to welfare benefits, there is another peculiarity in the design of the welfare benefits system that impacts directly on their finances and does not adhere to both principles of the Armed Forces Covenant. As aforementioned, military compensation is awarded to serving personnel and veterans in recognition of their pain and loss of amenity brought about by an injury caused in Service. As a no-fault compensation scheme for injury, it is distinct from income replacement benefits, such as ESA.

For many veterans, who look to welfare benefits to make up their income, only the first £10 of their

income is not means tested. This is known as a 'disregard'. When compensation is disregarded for means tests, it is not considered as income and therefore not included in the benefit calculation.

The treatment of the two compensation schemes within benefits legislation differs significantly. AFCS is widely disregarded whereas WDP's are considered as income when claiming some benefits. For example, War Pensioners who claim ESA are only entitled to keep the first £10 of their compensation and the rest is considered normal income. This rule also applies to other means tested benefits such as Pension Credit.



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The table shows the various rules applied to the compensation schemes and benefits.

	WDP	AFCS	SIPs and SAPs
Council Tax Reduction [^]	Discretionary	Discretionary	Income*
Universal Credit	Disregarded	Disregarded	Income
Child Tax Credit	Disregarded	Disregarded	Disregarded ^{^^}
Income Support	£10 Disregard	Capital limits	Income
Income-based Jobseeker's Allowance	£10 Disregard	Capital limits	Income
Income-related Employment and Support Allowance	£10 Disregard	Capital limits	Income
Working Tax Credit	Disregarded	GIP Disregarded	Disregarded [^]
Pension Credit	£10 Disregard	GIP considered, Capital limits, AFIP**	Income
Social Care	Disregarded (except NI)	Disregarded (except NI)	Discretionary
Disabled Facilities Grants***	£10 Disregard	Capital Limits	Unknown

[^]Not always disregarded widely disregarded under the Severe Mental Impairment Act

*SIPs considered income, SAPs are discretionary

^{^^}SAPs are tax free hence not considered as income for Working and Child Tax credits

NB. Capital Limits for those who have not put their lump sum into trust to protect it from being regarded as savings within means tests

**Passporting Benefit that automatically provides pension credit

*** Only in England and Wales

As can be seen from the table above, this practice also affects veterans receiving certain payments for injury from Armed Forces occupational pension schemes. There are two types of payments from this scheme for Service-related injuries; Service Invaliding Pensions (SIPs) and Service Attributable Pensions (SAPs). Some of these veterans may also be in receipt of a War Pension or AFCS which will complicate their

entitlement further and, in some cases, may result in no benefit entitlement as the veteran is considered to have adequate income. These can also restrict entitlement to other benefits such as free dental treatment and prescriptions where being in receipt of a 'passporting' benefit (such as ESA) is necessary.

Military Compensation will be fully disregarded under UC but not all claimants will be able to access it until 2024, when the roll out is expected to be completed. Until they are moved onto UC, many veterans will continue to see their compensation considered as normal income.

Veterans who took part in the research were united in the view that treating their compensation as income was an affront to the sacrifices that they had made whilst in Service. Many were unaware of the rule until they were in receipt of benefits and found themselves with a lower than expected income or unable to cover debts that they had accumulated.



I was recently awarded a 30% war pension at £56 per week, this was for injuries and conditions caused due to service, while getting that in one hand, I got a letter telling me I would be getting my ESA reduced by £46 per week, due to the fact I was awarded a war pension. The war pension is meant to improve my standard of life, but that's impossible if they just take the money off you through the ESA, I fought for nearly two years to get the war pension after going through the appeals process. If I knew my ESA would be affected, I wouldn't have bothered fighting for the war pension...

Survey Respondent



This rule can also have a significant impact on the finances of disabled veterans who claim their pensions after discharge. There is no time limit on a War Pension claim and disabled veterans who sustain injuries in Service may not always apply for compensation at the time the injury was incurred or immediately after discharge, this may be because they are unaware of the schemes, have late onset of an illness, or did not believe they would be eligible, or life events such as an unexpected discharge from Service presented more pressing challenges, such as navigating support for housing.

As a result some veterans may apply for their compensation years after discharge or it may have taken some time to reach a favourable decision on their claim, in which case their payments are backdated to the date of the application (which can be several years) and this is paid in a lump sum followed by ongoing weekly or monthly payments.

In the meantime, the veteran would have been claiming ESA as part of their income and the lump sum from the backdated War Pension was automatically taken to repay his ESA as the rules state that only the first £10 of a WDP is not considered as income. Advisers noted in cases such as these that veterans were on low incomes and often had priority debts such as utilities and rent that they were hoping to clear with the back payment from their WDP. One adviser noted of a veteran they supported that they were 'unable to get out of the debt trap' and in some ways was 'worse off with the War Pension'.

RECOMMENDATION

- Compensation and payments awarded for illness and injury as a result of Service should never be treated as normal income. The Government should ensure that no statutory means test treats compensation as normal income, and that injured veterans are not forced to give up compensation payments in order to pay for support their civilian counterparts can access.



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SERVICE INVALIDING PENSIONS AND SERVICE ATTRIBUTABLE PENSIONS

Although differing from War Pensions and AFCS in administration, Service Invaliding Pensions (SIPs) and Service Attributable Pensions (SAPs) are an additional type of compensation awarded to those whose conditions and illnesses preclude them from continuing in Service.

SIPs and SAPs are awarded under certain Armed Forces Pension Schemes which are occupational pension schemes. Potentially because they are awarded under an occupational scheme, they are often considered income which in turn negates or reduces entitlement to welfare benefits. They are not mentioned within Universal Credit legislation and organisations who took part in this research note from experience that there is no consistent treatment of SAPs under UC. There have been cases where they have been disregarded and others where they have been treated as income. There has been no confirmation from official sources on how these payments should be treated so this remains a grey area.

One area where a complete disregard of SIPs and SAPs would be beneficial would be around 'New Style' ESA which is a contribution-based benefit. 'New Style' ESA³⁶ can be claimed on its own or at the same time as UC. As the benefit takes occupational pensions into account, SIPs and SAPs are treated as income when veterans make a claim for 'New Style' ESA.

'New Style' ESA allows claimants to keep the first £85 of their occupational pension per week and for every £1 over £85 they lose 50p of benefit. For example, a veteran in receipt of ESA with a pension of £100 per week would have an excess of £15. The amount of ESA payable is reduced by half which is £7.50.

“ My award of a Service Invaliding Pension...makes me worse off than if I didn't have it. They should disregard it as my council do. They should not penalise by classing as earned income a payment for being injured.

Survey Respondent ”

Many advisers in focus groups found the lack of guidance or regulation regarding SIPs and SAPs frustrating. They noted that 'New Style ESA' was a way for them to ensure that veterans kept some of their compensation. However, as not all veterans have a strong working knowledge of the benefits system many would have applied for UC and possibly not had any entitlement as their pension counted as income. They called for SIPs and SAPs to be included in regulations and guidance and be treated in line with WDP and AFCS as they are compensation for injury.

“ ... I wish they would recognise that a Service Invaliding Pension is non declarable and should not be regarded as income like most councils do as this wipes out income support related benefits such as prescriptions, dental etc..

Survey Respondent ”

RECOMMENDATIONS

- The DWP and local authorities should fully disregard all compensation from statutory means tests.
- DWP and local authorities should recognise SIPS and SAPS as military compensation and guidance should be issued to ensure that their treatment is consistent, throughout the benefits system.



MOVING FROM UNIVERSAL CREDIT TO PENSION CREDIT



Pension Credit was introduced in October 2003 as the main means-tested benefit for those of State Pension Age. Qualification for Pension Credit depends on income and savings. If state pensioners do not have enough contributions to entitle them to the full State Pension, or do not have income from occupational pensions, they are able to claim Pension Credit, which will top up their income if it is below £167.25 for a single person and £255.25 for couples.

Pension Credit applies a £10 disregard to WDP and the Guaranteed Income Payment (GIP) element of AFCS. Certain supplements of War Pensions such as Allowance for Lower Standard of Occupation (ALSO) and Armed Forces Independence Payments (AFIP) are fully disregarded. For veterans close to retirement age who claim UC and are eligible for Pension Credit, their compensation payments will once again be considered as income creating a potential cliff edge of income at state retirement age.

According to MoD figures there are roughly 19,500 War Pensioners between the age of 60 and 69.^{37,38} With the delays to the roll out of UC, some of this group may reach retirement age before they are eligible for UC, thus never benefitting from the full disregard of their WDP.

Universal Credit regulations have accepted the principle that compensation payments should not be treated as income and seeks to ensure that working age injured veterans are not forced to give it up to pay for statutory support their disabled civilian peers are entitled to. Disregarding compensation from Pension Credit for those of retirement age, would create parity through life and ensure that it is a principle that is not removed when eligibility for UC ends.

RECOMMENDATION

- All military compensation should be fully disregarded for means tested pension age benefits.



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DISABLED VETERANS AND JOBCENTRE PLUS

The conflicts in Iraq and Afghanistan saw many individuals survive serious injuries that would have proved fatal in previous conflicts. This has created a cohort of individuals who will have lifelong debilitating injuries that greatly impact upon their ability to undertake and access employment through conventional means.

For some disabled veterans, employment related welfare benefits will be a temporary provision whilst they adjust to a disability or sudden medical discharge from the armed forces and are eventually able to undertake employment. Within this group of disabled ex-Servicemen and women it is important to recognise that they have a wide range of needs and abilities which require a suitably broad range of support and provision.

Work, self-reliance and being strong are key values of Service and Armed Forces culture, and those who can, will want to do some work. However, for disabled veterans on benefits there are challenges to taking up employment. The civilian workplace may be unfamiliar and difficult to navigate and there is also the challenge of finding employment that is both fulfilling and flexible enough for them to be able to manage their health.³⁹ This can often mean retraining and relearning skills.

WIS veterans currently transitioning out of the Armed Forces with disabilities can access support through the Career Transition Partnership Assist⁴⁰ and funding for retraining through Enhanced Learning Credits.⁴¹ However, some veterans who took part in the research stated that at the point of their discharge they were not ready or able to engage in this support and found themselves relying on the support available through the Jobcentre Plus (JCP) when they were ready to engage in employment.

Work is an integral part of the design of the welfare benefits system and this is reflected through features such as the WCA and conditionality. In 2016, the Government set out to reduce the Disability Employment Gap through measures which included

encouraging disabled people (including disabled veterans) to look for work where possible. Survey respondents noted that support from work coaches, and the enhancement of Armed Forces champions, as essential in helping them to begin their journey into employment.

Work Coaches

Work coaches are front-line DWP staff based in job centres. Their main role is to support claimants into work by providing personalised advice and applying their knowledge of local labour markets. This involves conducting work-focused interviews and agreeing tailored "Claimant Commitments". Work coaches have discretion to change conditionality if a claimant has good reason for not being able to meet their initial requirements and they are expected to work closely with the claimant to help them find employment should they wish to.

Many veterans will have a face-to-face interview with a work coach where they will discuss their work experience and any barriers to employment that they may face. Some injured veterans involved in our research were awarded the status of Limited Capability for Work after their WCA and were expected to engage in activities to prepare them for employment such as updating CV's or interview preparation.

Views on the work coaches from the research for this report were mixed. Some veterans in focus groups stated that they were able to build relationships with their work coaches who had good knowledge of the employment market in the area and others noted that their conditionality was adjusted to be more manageable after speaking with work coaches. Some, however, found that work coaches lacked knowledge of the Armed Forces and military compensation schemes.

This meant that some of those who wished to take up employment found working with a work coach challenging. For these Wounded Injured and Sick ex-Service personnel there was little understanding

of their skills and experience or how compensation schemes worked with benefits which impacted on the work coaches' ability to provide suitable advice. Moreover, the impact of their health condition was not always considered when trying to prepare for employment.

Research from the University of Salford noted that many of the participants in their research disclosed their status as members of the Armed Forces community, but 'there were significant differences in the responses of Jobcentre Plus (JCP) Work Coaches/advisors to this disclosure, although the majority of veterans felt that it made little difference to the support that was subsequently provided.'⁴² This interview with a work coach provides an opportunity for formal disclosure of claimant's status as a disabled veteran, which may allow for the work coach to signpost the veteran to relevant veterans employment support services and charities, as well as

to other JCP support, mainly, making Armed Forces champions aware of veterans in their district. For many disabled veterans, the JCP network can be the primary statutory service they approach for support with employment. The service they receive needs to be consistent, and work coaches must have a strong understanding of military culture and the interaction of compensation with benefits and how this may affect some veterans' fitness to undertake employment. Overall, work coaches should have a strong understanding of the unique experience and needs of disabled ex-Service personnel, as has been covered earlier in this report.

“

Work coaches often don't have the knowledge about the Armed Forces Community and sometimes supporting veterans can be complex for them..

Benefits Adviser

”

RECOMMENDATIONS

- **Work coaches should ask whether a claimant is a veteran at their initial interview with a work coach and this should be recorded on the veteran's record to facilitate signposting to appropriate services if needed.**
- **The DWP work coaches should be 'veteran friendly', meaning they are sufficiently trained to understand the impact of military life on their fitness for work, and have a strong understanding of the interaction between Armed Forces compensation schemes and welfare benefits.**

ARMED FORCES CHAMPIONS

The role of the Armed Forces champion is to: 'develop and maintain joint working arrangements between Jobcentre Plus and the Armed Forces community in their Jobcentre Plus district; and provide information to Jobcentre Plus staff about specific armed forces initiatives'.⁴³ There are currently 46 Armed Forces Champions in the UK. In 2019, the Government announced a £6 million investment to create a further 100 Armed Forces Champion posts. The DWP have stated that this funding will provide specialist, individual support to former Service personnel and their families.⁴⁴

Advisers and veterans in focus groups struggled to define the role of Armed Forces Champions and the support they offered. There were also concerns raised about the resourcing and training provided to Champions, which risked leaving them without

the specialist knowledge necessary. Many struggled to identify what training Champions received that was specific to the Armed Forces community in general and about disabled veterans specifically. There was also the issue of high turnover amongst the Champions, making it difficult to build a beneficial relationship.

The increase in funding for Armed Forces Champions is positive and there is scope for improvement in the role. Our research found a desire for the remit of the Champions to be clearly defined, and the type of support they provide clearly explained to veterans and those who support them. Training, including specialist training on WIS veterans, and possible routes into employment for this group, as well as a strong understanding of the Armed Forces and their culture were also identified as areas for improvement.



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RECOMMENDATIONS

- The DWP should consult on the remit and job descriptions of Armed Forces Champions with key stakeholders including (veterans, veterans' charities and the wider Armed Forces community) to ensure that the support offered to WIS veterans is tailored to their needs.
- Armed Forces Champions training should be standardised and ensure a strong understanding of both military culture and the barriers to employment faced by disabled veterans of working age.



ACCESS TO WORK

Access to Work is a government funded employment support programme that aims to help more disabled people start or stay in work. It can provide practical and financial support for those with a disability or long term physical or mental health condition. It can provide high levels of support for disabled people to stay in employment.

For veterans of working age in receipt of military compensation who leave Service with health conditions, and want to take up employment, this scheme can be beneficial. The Armed Forces Veterans Annual Population Survey found that veterans were more likely than civilians to report long term problems with hearing (10% v 7%) and

musculoskeletal issues, particularly concerning the back and neck (30% v 23%).⁴⁵ As with their disabled civilian peers, veterans will require flexibility in their working patterns and reasonable adaptations to allow them to sustain their employment and manage their condition.

However, injured veterans who are accessing compensation but have secured employment without contacting Job Centre Plus services may not know what support is available to improve their experience at work. Government schemes such as Access to Work provide funds that can assist with specialist equipment and support in the work place in order to keep people in employment.



RECOMMENDATION

- Access to Work should be widely promoted to WIS veterans by Veterans UK during a claim for compensation. For those who are in the transition phase of their medical discharge, information should be included in discharge literature.



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CONCLUSION

This report has highlighted the complexities and peculiarities in the benefits system faced by veterans who receive military compensation for injuries or illness caused by Service. Compensation provides much needed recompense in recognition of the pain and loss of amenity injuries or loss of amenity experience by injured veterans who served in the UK Armed Forces, and welfare benefits provide vital statutory financial and practical support. However, compensation adds a level of complexity when trying to secure benefits that can leave some injured veterans worse off than their civilian counterparts and others struggling to navigate a complex system. Assessments and decision making may not consider Service medical history and the means testing of compensation does not always follow the principle set out in the Armed Forces Covenant of no disadvantage as a result of Service.

The DWP are beginning to introduce measures that are intended to benefit WIS veterans and improve the use of Service Medical Records for assessments. However, there needs to be parity within the system for all veterans, regardless of when they served, the type of compensation they have been awarded or the disability benefit that they claim. This particularly applies to those veterans on legacy benefits or over state pension age who cannot claim UC and who are at a financial disadvantage because of this.

In the experiences of those interviewed for this report, more needs to be done to ensure that they are able to seamlessly access welfare benefits, with military

compensation not serving as a barrier to that. This includes recognising veterans' Service by making certain that the principles of the Armed Forces Covenant guide the creation and delivery of policy and systems, and the culture they espoused whilst serving is recognised by those who support them such as assessors and work coaches. Better training and awareness of the Armed Forces for assessors and Decision Makers has the ability to create a system more responsive to the needs of disabled veterans.

Identifying veterans at the beginning of their benefit journey is vital to ensuring that they receive adequate support. However, identification in the application stage is not enough. Their status as veterans should follow them through their benefit journey and identification would also allow for more integration between the MoD and DWP, meaning that information such as that related to compensation assessments and Service Medical Records can be more widely shared, reducing the need for veterans to repeat the same information multiple times.

It is important to note that the welfare system works well for many veterans. Indeed, research for this report came across examples of where assessors understood military experiences or DWP staff provided tailored support. However, the issues raised in this report should be addressed to make sure that the benefit system works well for disabled veterans and that they are not deterred from accessing much needed support.

RECOMMENDATIONS

The Disability Benefits Journey

The Application

1. The DWP (and appropriate devolved administrations) redesign current benefit application forms to include a question to identify those who have served in HM Armed Forces.
2. The MoD, DWP and SSS, work together to extend and widely implement the data sharing already in place for veterans being medically discharged, to all veterans with compensation who make a claim for disability benefits.
3. The MoD and DWP (and SSS) provide appropriate support with completing benefit application forms to all veterans with compensation through agencies such as Veterans UK and the wider veterans support network, such as the Legion's BDMA service and Poppyscotland's ASAP. Support should take on the form of guidance which should clearly detail what information or evidence is most appropriate to include at each stage of the application, and what to expect at the assessment.
6. Assessment providers should consider appointing Armed Forces Champions based on the current DWP model as an internal point of reference to support assessors learning and knowledge of the Armed Forces and common Service- related conditions.
7. The DWP and SSS should design clear guidance for assessors and Decision Makers on the use of Service Medical Records for disabled veterans who are making a claim for disability benefits based on Service-related conditions.
8. The DWP and SSS should produce clear guidance for veterans on how to present Service Medical Records and military compensation assessment reports including on when to submit it in the benefit process and how it will be used to inform a decision on their claim.

The Assessment

4. Allow HCPs more time to explore conditions with claimants. When assessing former Service personnel with a mental health condition, assessors should be encouraged to use open questions to encourage discussion about functionality.
5. HCP training should include education on military culture and common Service-related conditions that affect veterans and how these conditions are likely to impact on functionality and ability to work, enabling improved understanding of veterans and the Armed Forces.
9. The Ministry of Defence and the Department of Health and Social Care (along with devolved governments) should review the reasons for delays and publish a timetable for completion of Programme CORTISONE, with mechanisms for relevant public bodies to be held to account for meeting targets.
10. DWP should use the most up to date military compensation assessment and report to inform disability benefit assessments, thus reducing the need for multiple and face-to-face assessments.
11. SSS should use military compensation assessments and reports as the basis of paper-based assessments if the claimant is being assessed for a Service-related condition.

12. Disabled veterans with compensation should be given the option on all benefit application forms to allow data sharing of their most up to date compensation assessments between Veterans UK and the DWP or SSS.

13. The DWP should mirror legacy benefit rules and treat War Pension claimants receiving Unemployability Supplement as having Limited Capability for Work Related Activity, thereby exempting them from a Work Capability assessment.

Appeals

14. The DWP should undertake a study of the appeals process to find out why there is significant trust in the system and find out what learning points can be implemented at earlier stages of the benefit journey to ensure that there is trust throughout the system.

15. The DWP should give consideration to the creation of specialist assessors, especially with knowledge of the Armed Forces and Service-Related Conditions.

Military Compensation and Means Tests

16. Compensation and payments awarded for illness, injury as a result of Service should never be treated as normal income. The Government should ensure that no statutory means test treats compensation as normal income, and that injured veterans are not forced to give up compensation payments in order to pay for support their civilian counterparts can access.

17. The DWP and local authorities should fully disregard all compensation from statutory means tests.

18. DWP and local authorities should recognise SIPS and SAPS as military compensation and guidance should be issued to ensure that their treatment is consistent, throughout the benefits system.

19. All military compensation should be fully disregarded for means tested pension age benefits.

Disabled Veterans and JobCentre Plus

20. Work coaches should ask whether a claimant is a veteran at their initial interview with a work coach and this should be recorded on the veteran's record to facilitate signposting to appropriate services if needed.

21. The DWP work coaches should be 'veteran friendly', meaning they are sufficiently trained to understand the impact of military life on their fitness for work, and have a strong understanding of the interaction between Armed Forces compensation schemes and welfare benefits.

22. The DWP should consult on the remit and job descriptions of Armed Forces Champions with key stakeholders including (veterans, veterans' charities and the wider Armed Forces community) to ensure that the support offered to WIS veterans is tailored to their needs.

23. Armed Forces Champions training should be standardised and ensure and develop an understanding of both military culture and the barriers to employment faced by disabled veterans of working age.

24. Access to Work should be widely promoted to WIS veterans by Veterans UK during a claim for compensation. For those who are in the transition phase of their medical discharge, information should be included in discharge literature.

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GLOSSARY

AFCS	Armed Forces Compensation Scheme
AFIP	Armed Forces Independence Payment
AFPS	Armed Forces Pension Scheme
ALSO	Allowance for a Lowered Standard of Occupation
ASAP	Armed Services Advice Project
BDMA	Benefits Debt and Money Advice
DMS	Defence Medical Services
DWP	Department for Work and Pensions
ESA	Employment and Support Allowance
HCP	Health Care Professional
HMCTS	Her Majesty's Courts and Tribunal Service
JCP	Jobcentre Plus
LCW	Limited Capability for Work
LCWRA	Limited Capability for Work Related Activity
MoD	Ministry of Defence
MR	Mandatory Reconsideration
PIP	Personal Independence Payment
PTSD	Post-Traumatic Stress Disorder
SAP	Service Attributable Pension
SIP	Service Invaliding Pension
UC	Universal Credit
UnSupp	Unemployability Supplement
WCA	Work Capability Assessment
WDP	War Disablement Pension
WIS	Wounded, Injured and Sick
WPS	War Pension Scheme

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