

## **The Armed Forces Compensation Scheme:** **The test of service causation.**

**Recent updates to the law surrounding the Armed Forces Compensation Scheme (AFCS) have been well received within the jurisdiction. However, members of the Armed Forces are still required to prove that their injury has a ‘service cause’ in order to found a claim for compensation. On this basis, it remains important to remember the fundamental requirements of causation when bringing a claim under the scheme.**

**This article will explore the causation of injury relating to members of the UK Armed Forces, and the circumstances in which they are able to make a claim under the AFCS.**

### **First, some background context.**

Members of the Armed Forces undertake significant risk as an everyday element of their employment. Sadly, it is a fact of the role that members of the Armed Forces conduct means they are naturally at a higher risk of injury or death than their civilian counterparts, and these injuries may occur whilst in training or on operational deployment. As was seen during recent conflicts<sup>1</sup>, injuries can include life changing situations that can both impact and shorten the quality and lifespan of the individual.

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<sup>1</sup> UK Parliament, 'Afghanistan statistics: UK deaths, casualties, mission costs and refugees' (*House of Commons Library*, 9 December 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-9298/>> accessed 7 March 2026

Over the course of Operation Herrick, a total of 457 members of the UK Armed Forces lost their lives, with 405 of these directly due to enemy action<sup>2</sup>. The public were aware of these significant numbers of casualties due to the open media reporting when service personnel were repatriated<sup>3</sup>. However, it can be argued that it was never widely publicised that during this same conflict, there were 7807 field hospital admissions, 2209 as a result of wounding in action<sup>4</sup>, of which, 616 of these casualties are recorded as “*serious or very serious*”<sup>5</sup>. These injuries sustained can have a significant impact on the employability and the quality of life of service personnel and can include a reduction in their overall life expectancy.

It has been a recognised inherent risk that members of the Armed Forces are placed into environments where there is a high risk of loss of life, with “7,192 ... [*deaths*] as a result of operations in medal earning theatres”<sup>6</sup> since World War 2. Yet it could be argued that the inherent risk of physical or mental injury is less considered, and only came into the public sphere, on a national scale, as a direct result of modern operations and media coverage.

The harm suffered by service personnel can, at times, be caused by insufficient equipment or resources<sup>7</sup>. This may result in a claim in negligence which has been available to the Armed Forces since 1987<sup>8</sup>, but this is a long process to undertake, which carries its own specific legal tests to be met.

*\*As the AFCS is designed as a statutory scheme with its own unique provisions, the process of a civil claim in negligence, and its own legal requirements, are not explored within this article.*

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<sup>2</sup> iBid

<sup>3</sup> Steven Morris, 'Wootton Bassett lowers flag for last time as repatriations move to Brize Norton' (*The Guardian*, 31 August 2011) <<https://www.theguardian.com/uk/2011/aug/31/wootton-bassett-ceremony-repatriations-end>> accessed 26 March 2026

<sup>4</sup> iBid

<sup>5</sup> UK Parliament, 'Afghanistan statistics: UK deaths, casualties, mission costs and refugees' (*House of Commons Library*, 9 December 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-9298/>> accessed 7 March 2026

<sup>6</sup> Ministry of defence, UK armed forces Deaths: Operational deaths post World War II 3 September 1945 to 28 February 2023 (2023)

<sup>7</sup> UK Parliament, 'Ajax Vehicles: Noise' (*Written questions, answers and statements* , 3 December 2025) <<https://questions-statements.parliament.uk/written-questions/detail/2025-12-03/96614/>> accessed 7 March 2026

<sup>8</sup> Crown Proceedings (Armed Forces) Act 1987

Despite the previous restrictions on making a claim against the MOD in negligence, there has been a longstanding appreciation that injured service personnel should be supported by the state in recognition of their service to the Crown. There are historical traces of pension provision being awarded for injuries and death in service, dating as far back as the reign of King Alfred<sup>9</sup>, with provisions being placed upon the statute book during the reign of Queen Elizabeth I<sup>10</sup>. Recognition of service is now enshrined within the Armed Forces Covenant<sup>11</sup>.

### **Development of the current scheme.**

Following a number of ever-changing bodies responsible for the administration of injury pensions, instruments were made available under Royal Prerogative at the start of the Second World War providing for:

*“[disability] attributable to, or aggravated by, war service, but there had to be either ‘definite evidence’ of the wound, injury or disease in contemporary official records, or other definite evidence that left no doubt in the mind of the certifying medical authority that disability was due to war service”<sup>12</sup>.*

The process of reviewing disablement pensions continued until being formally brought under a central scheme via The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983. This scheme remained in statute until replaced in 2006 by the scheme that is currently in force, referred to as the Service Pension Order (SPO)<sup>13</sup>.

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<sup>9</sup> *Halsbury's Laws*, Vol 49(1) (4<sup>th</sup> edn Reissue, LexisNexis), para 665, n 1

<sup>10</sup> Andrew Bano, *War Pensions and Armed Forces Compensation: Law and Practice* (1st edn, Wildy, Simmonds & Hill Publishing 2016), pg 3

<sup>11</sup> Armed Forces (Covenant) Regulations 2022

<sup>12</sup> Andrew Bano, *War Pensions and Armed Forces Compensation: Law and Practice* (1st edn, Wildy, Simmonds & Hill Publishing 2016), pg 4

<sup>13</sup> The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006

The scheme applies to any disablement or death which occurred prior to 6 April 2005, as it is at this point that a new scheme was introduced, that being the Armed Forces Compensation Scheme<sup>14</sup> (AFCS).

### **Causation.**

It has long been recognised that causation of injury can be considered to apply to injuries that do not break the chain of causation. Such matters include injuries that have occurred as the subsequent result of another matter or unknown condition, often referred to as the ‘thin skull’ or ‘eggshell skull’ rule<sup>15</sup>.

When considering this in a military context, the Court Martial appeal of *R v Smith*<sup>16</sup> demonstrated that despite the deceased being provided with inadequate medical treatment, it was the punctured lung, caused by a bayonet stabbing, that was the ultimate cause of death, regardless of the subsequent events leading to the death itself.

However, not all injuries sustained by members of the Armed Forces are considered to be related to service, and when making a claim under AFCS, consideration must be given to the context of the injury setting itself.

It is not uncommon for those who administer the compensation awards, Veterans UK, to refuse an award on the basis that service was not the cause, in their opinion, of the injury itself. A common example often seen relates to those suffering with mental health injuries as a result of service, but who have a recognised trauma in their civilian life. On these occasions, matters are often brought to tribunal to argue causation in the first instance.

This matter was addressed by the Upper Tribunal in the case of *JM v Secretary of State for Defence*<sup>17</sup>, a landmark case in this tribunal chamber where the Upper Tribunal set out to define

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<sup>14</sup> The Armed Forces and Reserve Forces (Compensation Scheme) Order 2005

<sup>15</sup> *Smith v. Leech Vrain & Co. Ltd. and another.* [1962] 2 Q.B. 405

<sup>16</sup> *R v Smith* [1959] 2 All ER 193

<sup>17</sup> *JM v SoS for Defence (AFCS)* [2015] UKUT 332 (ACC)

causation within the context of AFCS, and in doing so set out a test to be applied; later becoming known as the predominancy test.

In this judgement, Upper Tribunal Judge Rowland set out the approach that should be taken when considering whether service should be considered the predominant cause of an injury sustained by the claimant.

Firstly, para 118 of the judgement outlines the four steps to consider when ascertaining how the injury itself was sustained, and in doing so identifying the root cause and whether this is attributed to service:

- i. Identify the potential cause or causes (i.e. what caused the injury);
- ii. Discount causes that are too remote or uncertain;
- iii. Categorise each cause by deciding in each case whether it was service cause or not;
- iv. If all processes are not categorised as service cause, apply the predominancy test.

This approach identifies that when an injury is solely caused in a service role, then a claim can be made, and service is the causative factor. However, when matters are in contention due to a pre-disposed condition, the Upper Tribunal went on to outline a further 2-part test to consider whether service has been the route of the state of the injury a claimant develops:

*“[134] the decision maker ... should firstly consider whether, without the “service cause”, the injury would:*

- a) *Have occurred at all, or*
- b) *Have been less than half as serious*

[135] *If the answer to [a] is that the injury would not have occurred at all in the absence of the service cause, we consider that this can [conclude] service is the predominant cause of the relevant injury.*

[136] *If however, that is not the answer to [a], then the second question will generally answer whether service cause is the predominant cause of the relevant injury.*

This approach fits with the purpose of the scheme when considering the rigours and risks involved in service. If an individual has sustained a previous knee injury, for example, as a youth, but has recovered and is deemed to be medically fit for service, it cannot be said that any further injury caused to the knee should not be considered as a service cause on the basis that the knee was inherently weakened.

Taking this matter a step further, *JM* also goes onto to consider the impact of bullying when considering the impact that it may have on an individual. It identifies that acts of direct bullying would tend to link the impact directly to service, however, given the culture of the Armed Forces there may need to be consideration as to what is considered as harmless teasing and/or ‘banter’ versus that of intentional bullying itself. The court described how breaches of policy<sup>18</sup> in relation to bullying may demonstrate a direct link to service cause<sup>19</sup>.

## **Conclusion.**

Ultimately, case law reminds us that all matters involving injury claims under the AFCS must be taken on a case by case basis, which is reflected in the fact that Veterans UK have a duty to consider every case on its merits, rather than leaving claimants to argue a case at tribunal irrespective of the prospects of success.

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<sup>18</sup> Ministry of defence, 'Ministry of Defence policies to tackle unacceptable behaviour' (*Guidance*, 19 July 2022) <<https://www.gov.uk/guidance/ministry-of-defence-policies-to-tackle-unacceptable-behaviour#defence-is-taking-action>> accessed 7 March 2026

<sup>19</sup> *JM v SoS (AFCS)* [2015] UKUT 332 (ACC), para 111

Yet, as is seen within the tribunal, it can be the case that the authorities of the court are not always applied by the decision makers, requiring claimants to argue their case before the tribunal, often with no professional legal representation.

As the exploration of the topic within this article has sought to highlight, the causation test in this area is specific and nuanced; as a result, taking early advice from a professional with experience in this area is likely to reap dividends.

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*Sam has developed many years of experience in the War Pension and Armed Forces Compensation Chamber. As a veteran himself, he takes immense pride in representing injured members of the Armed Forces Community and is available for instruction in matters relating to the Armed Forces Compensation Scheme.*