

Ombudsman's Determination

Applicant	Mr N
Scheme	Armed Forces Pension Scheme (AFPS 15)
Respondent	Veterans UK

Outcome

1. I do not uphold Mr N's complaint, and no further action is required by Veterans UK.

Complaint summary

2. Mr N has complained that he has not been awarded the appropriate tier of ill health retirement benefits. He contends that his level of benefit should be upgraded.

Background information, including submissions from the parties

3. Mr N is a deferred member of both The Armed Forces Pension Scheme 2005 (**AFPS 05**) and The Armed Forces Pension Scheme 2015 (**AFPS 15**).
4. Mr N was medically discharged from the Army in October 2020. He was then age 24. The Medical Board Record (FMed 23) noted his principal conditions as hip dysplasia and low mood. He was awarded Tier 1 benefits; that is, a preserved pension for payment at his pension benefit age (65) and an immediate lump sum.
5. The relevant provisions of the AFPS 05 are contained in 'The Armed Forces Pension Scheme Order 2005' (SI2005/438) (as amended) (**the 2005 Order**) and 'The Armed Forces Early Departure Payments Scheme Order 2005' (SI 2005/437) (**EDPS 2005**). The relevant provisions for the AFPS 15 are contained in 'The Armed Forces Pension Regulations 2014' (SI 2014/2336) (as amended) (**the 2014 Regulations**) and 'The Armed Forces Early Departure Payments Scheme Regulations 2014' (SI 2014/2328) (**EDPS 2014**).
6. Three tiers of benefit are available for members of the AFPS 05 and the AFPS 15 who leave the Armed Forces as a result of ill health. The level of benefit is related to the severity of the impact the individual's condition has on their capacity for civilian employment. Tier 2 is awarded to those whose ability to undertake other gainful employment is significantly impaired. Tier 3 is awarded to those who are permanently

incapable of any full-time employment. Tier 1 is awarded to those who were unable to do their service job, but whose ability to undertake other gainful employment is not considered to be significantly impaired.

7. Extracts from the aforementioned provisions are provided in Appendix 1.
8. On discharge from the Army, Mr N worked for the South Central Ambulance Service as an Emergency Care Assistant (**ECA**).
9. On 29 April 2022, Mr N requested a review of his Tier 1 award. He said surgery had not resolved his hip pain, he remained under investigation, he was walking with a permanent limp and was suffering with secondary injuries, most recently low back pain and achilles tendonitis. He said his disability had deteriorated, and he had been on long-term sick leave since 18 August 2021 from his ECA role.
10. Medical evidence was obtained from Mr N's GP and copies of his hospital case notes.
11. On 19 July 2022, an MA (**the first MA**) assessed Mr N. In summary the first MA said:

“Mr [N] is still young at 26 years of age. He remains under investigation and treatment for hip problems. I acknowledge that he may struggle with a physical job such as that of an Emergency Care assistant, however, the evidence, currently available does not support that he will be significantly limited in his ability to achieve gainful civilian employment on a permanent basis until retirement age. In future he may be better suited to a sedentary role, of which there are many opportunities within the civilian world.”
12. In August 2022, Veterans UK issued its decision that a Tier 1 award remained appropriate. It said that the first MA acknowledged that Mr N may struggle with a physical job, such as an ECA, however he advised that Mr N may be better suited to a sedentary role. The first MA concluded that the evidence did not support that he would be significantly limited in his ability to achieve gainful civilian employment on a permanent basis until retirement age.
13. On 8 December 2022, Mr N wrote to Veterans UK asking it to reconsider the previous decision not to increase his level of Tier award under the Scheme's single stage Internal Dispute Resolution Procedure (**IDRP**). He said this was because he was unable to work having been assessed by the DWP, who deemed him to have a limited capability to work and did not expect him to look for work or do any work-related activities. He said his current employer, the South Central Ambulance Service had deemed that he would never be fit enough to return to his role.
14. Further medical evidence was obtained from Mr N's GP and treating hospital. Mr N's appeal was reviewed by a different MA (**the second MA**), and Veterans UK's Deciding Officer (**DO**) on 20 March 2023. The DO considered all of the medical evidence including Mr N's service medical records and the opinion of the first and second MAs. The DO concluded that Mr N would realise benefit from his current

hospital investigations and follow-on treatments, allowing him to work in a sedentary role without heavy manual handling. Based on the evidence at that time, the DO agreed with the MAs that a Tier 1 award was appropriate.

15. On 28 March 2023, Veterans UK wrote to Mr N with its IDR response to his appeal. It said the DO had reviewed all the medical evidence, including Mr N's Army medical records, the FMed 23 and the medical opinion of its own MAs. Additionally, it said the DO had reviewed the civilian medical records from the last five years and case notes from Queen Alexandra Hospital covering 2022. It did not uphold Mr N's complaint. It said:

"The MA is also of the opinion that there is a likelihood of significant improvement in your hip pain because of treatment outlined above. You have not yet had the benefit of full and optimal treatment and this along with your age are good prognostic indicators with regards to future employment. Your hip conditions are treatable. Your prognosis is good and on the balance of probability you will be able to work full time in a civilian occupation over the next 40 years or so prior to retirement age.

The Occupational Health Report you provided was reviewed by both the Medical Advisor and DO. The DO states the OH Report is limited in terms of its relevance to his determination since the purpose of the report is explicitly different from the considerations he must make about the likelihood of you achieving employment. In particular, he notes that Dr Yusuf considers your current role, rather than your current or future ability to achieve employment in any other civilian roles. The report highlights the opinion of Dr Yusuf: that you are no longer fit for your current role; that he doubts that you could undertake the role of emergency call-taker; that you cannot do any heavy manual handling; that your condition and pain is likely to endure; and, finally, that he supports an application for ill-health retirement. This was a telephone assessment and did not involve a physical assessment."

Mr N's position

16. Mr N submits:-

- The NHS has assessed him as unfit for any sedentary role within its workforce. Given the vast range of roles available within the NHS, including those that cater to various disabilities, its conclusion strongly indicated that he was unfit for gainful civilian employment in any capacity. This directly contradicted the assumption made by Veterans UK's MA that he could work in a sedentary role.
- The DWP also assessed him and determined that he was unfit for both work and work-related activities. Its assessment process evaluated an individual's capacity to work across all employment sectors, and its conclusion further supported his claim that he was unable to undertake any form of employment.

- Unless Veterans UK can provide concrete medical evidence that directly contradicted both the NHS and the DWP's professional assessments, it is unreasonable to argue against their conclusions. His unfitness for work was confirmed by two independent and authoritative organisations, and any assumption to the contrary appeared speculative rather than evidence based.
- Veterans UK's response mentioned his age as a factor in determining his employability. If he was 60 years old, would this conversation be taking place? If his assessment was being influenced by his age rather than his actual medical condition, this constituted direct age discrimination. The assessment should be based on his physical and mental capability, not on his age or any assumptions about future potential.
- Veterans UK's decision suggested that his ability to work may improve over time. However, no one can predict the future with certainty. This assumption was speculative and disregarded the fact that his condition has persisted without improvement for the past five years. Given this history, it is more reasonable to conclude that his condition would unlikely improve significantly enough to allow him to return to work. So, potential future recovery should not be a deciding factor in his assessment.

Veterans UK's position

17. Veterans UK submits:-

- Mr N was medically discharged from the Army due to hip dysplasia and low mood. After reviewing the medical board's report and Mr N's personal statement, he was deemed to be unfit for service in the Armed Forces because of his physical and mental impairment, but his ability to obtain gainful civilian employment was not deemed to be significantly impaired. This assessment warranted a Tier 1 award.
- Mr N requested it review his Tier award. It obtained medical evidence from Mr N's GP and copies of his hospital case notes. The medical evidence was referred to its MA to review. The MA acknowledged that Mr N might struggle with a physical job, such as an ECA, however, he advised that Mr N might be better suited to a sedentary role. The MA concluded the evidence did not support that Mr N would be significantly limited in his ability to achieve gainful civilian employment on a permanent basis until retirement age. A Tier 1 award was appropriate.
- Four months later, Mr N appealed the decision not to increase his Tier 1 award. Further medical evidence was obtained from his GP and hospital. Mr N's appeal was reviewed by a different MA, and a DO. The DO considered all the medical evidence, including Mr N's service medical records and the opinion of the MAs. The DO concluded that Mr N would realise benefit from his current hospital investigations and follow-on treatments, allowing him to work in a sedentary role

without heavy manual handling. Based on the evidence at that time, the DO agreed with the MA and caseworker that a Tier 1 award was appropriate.

Adjudicator's Opinion

18. Mr N's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Veterans UK. The Adjudicator's findings are set out below in paragraphs 19 to 36.
19. It was not disputed that Mr N was permanently unfit for his role in the Army and that he was currently unable to work. What was disputed was whether Mr N's capacity for gainful employment was significantly impaired to his Normal Pension Age (**NPA**).
20. Members' entitlements to benefits when taking early retirement due to ill health were determined by the relevant scheme rules or regulations. The scheme rules or regulations determined the circumstances in which members were eligible for ill health benefits, the conditions which they must satisfy, and the way in which decisions about ill health benefits must be taken.
21. In this case, the relevant rules for the AFPS 05 are D5 (Tier 3), D6 (Tier 2) and D8 of the 2005 Order and Article 16 of EDPS 2005 (Tier 1) and for the AFPS 15 regulations 51 (Tier 3), 52 (Tier 2) and 58 of the 2014 Regulations and regulation 19 (Tier 1) of EDPS 2014.
22. Under rule D8 (in respect of Mr N's pensionable service under the AFPS 05) and regulation 58 (in respect of Mr N's pensionable service under the AFPS 15), because Mr N was awarded Tier 1 on service discharge, the review was limited to considering whether he satisfied the conditions for Tier 2 benefits (respectively set out in rule D6 and regulation 52).
23. Rule D6 required Mr N to have "suffered a breakdown in health as a result of which his capacity for gainful employment was significantly impaired".
24. There is no definition of "gainful employment" or "significantly impaired" in the AFPS 05 rules. But the interpretation of these terms has been considered in a number of previous Ombudsman decisions. In summary, the Ombudsman has determined that:-
 - Looking at rule D5 helped to interpret rule D6. This was because rule D5 was specific as to the level of impairment required to qualify for benefit and provided a higher level of benefit. Rule D6 provided a lower level of benefit than D5 and, therefore, a lower level of impairment was required to qualify for benefits.
 - Rule D5 applied if the member had suffered a permanent breakdown in health involving incapacity for any full-time employment. If the member was only capable of part-time employment, they could qualify for benefits under rule D5. Therefore, the gainful employment referred to in rule D6 must mean that the member was capable of some full-time employment (and not just part-time employment).

- The question presented by rule D6 could not be answered by asking whether the applicant was capable of any paid employment in the civilian sector. That was the question to be answered under the stricter test in rule D5 and was the gateway criterion for the highest level of ill health retirement benefits (Tier 3).
 - The eligibility test in rule D6 was essentially a 'before and after' test; what was the member functionally capable of doing without the impairment and what were they functionally capable of doing with it?
 - The impairment to qualify for benefits under rule D6 must be significant. It would not be sufficient for the member simply to identify a small number of roles which they were unable to do.
25. In respect of Mr N's pensionable service under AFPS 15, a Tier 2 pension would be paid under regulation 52 if, in the opinion of the scheme manager, (i) Mr N had suffered a breakdown in health, as a result of which, his capacity for any gainful employment was significantly impaired; and (ii) the breakdown would continue until Mr N reached NPA. Again "significantly impaired" was not defined.
26. Regulations 51 and 52 (of AFPS 15) required much the same eligibility tests as D5 and D6. If an applicant was permanently incapable of full-time employment, he/she qualified for the higher benefit in regulation 54. It therefore followed that the lower benefit was payable where there was a lesser degree of incapacity and this must mean the applicant was capable of some form of full-time employment.
27. Consequently, if Mr N did not qualify for a Tier 2 pension it must be because Veterans UK took the view that he was, or would be before NPA, capable of undertaking some form of full-time employment. That employment did not have to be the same or similar to the role he undertook for the Army, but it must be full-time.
28. The decision as to whether Mr N satisfied the conditions for Tier 2 benefits was for Veterans UK (on behalf of the Scheme Manager) to make. Before making its decision, rule D8 and regulation 58 required Veterans UK to have consulted with the MA as to Mr N's capacity for any full-time employment. Veterans UK was not, however, bound by any advice it received from its MA. It was still expected to reach a decision of its own. That being said, the weight which Veterans UK placed on any evidence relating to Mr N's case was for it to decide. It was open to Veterans UK to accept the advice of its MA; unless there was good reason for it not to do so. The kind of things the Adjudicator had in mind were errors or omissions of fact or a misunderstanding of the relevant rules by the MA.
29. MAs do not come within the Pensions Ombudsman's jurisdiction as far as their medical opinions are concerned. They are answerable to their own professional bodies and the General Medical Council. The Pensions Ombudsman would simply consider whether the MAs provided sufficient and appropriate advice on which it was reasonable for Veterans UK to rely on when making its decision. It was accepted that Veterans UK could only review medical advice from a lay perspective and could not be expected to challenge a medical opinion as such.

30. The first MA considered Mr N's service medical records, medical evidence from Mr N's GP and his hospital case notes.
31. The first MA acknowledged that Mr N might struggle with a physical job, such as an ECA, however, he advised that Mr N might be better suited to a sedentary role. The first MA's opinion was that the evidence did not support that Mr N would be significantly limited in his ability to achieve gainful civilian employment on a permanent basis until NPA and that a Tier 1 award was appropriate.
32. Following Mr N's appeal, Veterans UK's DO considered further medical evidence from Mr N's GP and hospital. The DO considered all the medical evidence, including Mr N's Army service medical records and the opinions of the first and second MAs. The second MA's opinion was that there was a likelihood of significant improvement of Mr N's hip pain as a result of the treatment he had and was to receive. His opinion was that Mr N's hip conditions were treatable, his prognosis was good and on the balance of probability he would be able to work full time in a civilian occupation over the next 40 years or so prior to retirement age. The DO's opinion was that Mr N would realise benefit from hospital investigations and follow-on treatments, allowing him to work in a sedentary role without heavy manual handling. The DO agreed with the MAs that a Tier 1 award was appropriate.
33. The Adjudicator did not identify any reason why Veterans UK should not have accepted the advice it received from the DO and MAs.
34. Mr N had said that he had been assessed by the NHS as unfit for any sedentary role within its workforce and unfit for both work and work-related activities by the DWP. While the Adjudicator appreciated the point that Mr N was making, he was mindful that neither the NHS nor the DWP were assessing Mr N in accordance with the Scheme's 2005 Order and the 2014 Regulations which were more stringent for a Tier 2 award. Nonetheless, Veterans UK's decision was not bound by decisions made in respect of different awards from other sources.
35. In the opinion of the Adjudicator, Veterans UK considered all the relevant information it was provided with and subsequently accepted the opinions of the MAs and DO, effectively attaching more weight to them, which Veterans UK was entitled to do. The Adjudicator noted that a difference of opinion, say between Mr N's treating doctors and the MAs and DO, was not normally sufficient for the Ombudsman to say that by accepting the MA's and DO's opinions, Veterans UK's decision was not properly made.
36. The Adjudicator's opinion was that there were no grounds to direct Veterans UK to retake its decision.
37. Mr N did not agree with the Adjudicator's Opinion and the complaint was passed to me to consider.

38. Mr N provided his further comments in response to the Opinion. He said:-

- Veterans UK ignored, failed to obtain and give weight to treating clinician's evidence.
- Despite medical evidence being available or submitted, Veterans UK relied primarily on its MA's opinion, which stated that he "may be capable of sedentary work in the future."
- His GP completed the medical section of his NHS IHRP application in August 2025 and certified that he was permanently unfit for any employment. This new medical evidence post-dates Veterans UK's decision and demonstrated that his incapacity was both permanent and total.
- Veterans UK did not comply with statutory requirements and natural justice.

39. I have considered Mr N's points; however, they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

40. My role in this matter is not to review the medical evidence and come to a decision as whether Mr N has been awarded the appropriate tier of ill health retirement benefits. My role is to consider the decision-making process undertaken by Veterans UK. That is, whether appropriate evidence was obtained and considered on which to base a decision; whether the relevant regulations were applied correctly; and, whether the decision was supported by the available evidence.
41. Mr N says that medical evidence was ignored by Veterans UK which was submitted during the IDRPs and that Veterans UK relied primarily on the MA's opinion. Mr N also says that proper weight was not given to his treating clinician's evidence.
42. However, for the reasons given by the Adjudicator, I find that Veterans UK considered all of the relevant evidence. The weight it attached to the medical evidence was for Veterans UK to decide. As the Adjudicator stated, a difference of opinion between Mr N's treating doctors and Veterans UK's MA is not normally sufficient for me to find that by accepting the MA's opinion Veterans UK's decision was not properly made.
43. Mr N has provided an application for an IHRP with the NHS, with the medical section having been completed by his GP in August 2025. Mr N says this new medical evidence post-dates Veterans UK's decision and demonstrates that his incapacity is both permanent and total.
44. A decision can only be assessed based on the evidence which was, or could have been, available to the decision-maker at the time it was made. Clearly, this piece of evidence was not available to Veterans UK at the time it decided not to increase Mr N's Tier award and so it is not relevant to assessing whether its decision was taken in a proper manner.

45. I would add, the fact that expectations relating to a member's future capacity for work expressed at the time a decision is made are not subsequently realised does not, in and of itself, invalidate the decision. A decision is made on the balance of probabilities and there will always be an element of uncertainty about the prognosis. An assessment as to the propriety of the decision-making process should not apply the benefit of hindsight.
46. Mr N says Veterans UK did not comply with statutory requirements and natural justice. I find that Veterans UK applied the relevant AFPS provisions and its decision was properly made.
47. I do not uphold Mr N's complaint.

Dominic Harris

Pensions Ombudsman
23 October 2025

Appendix 1

The Armed Forces Pension Scheme Order 2005 (as amended)

1. Rule D.5, 'Early payment of benefits: active members with permanent serious ill-health' provides:

- "(1) An active member who ceases to be in service by virtue of which he is eligible to be an active member of the Scheme is entitled to immediate payment of a pension and a lump sum before reaching pension age if -
 - (a) in the opinion of the Secretary of State the member has suffered a permanent breakdown in health involving incapacity for any full-time employment,
 - (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and".
 - (b) the member either -
 - (i) has at least two years' qualifying service, or
 - (ii) is entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit) because of a transfer value payment having been accepted.
- (2) For the purposes of this Rule and Rule D.8 a member's breakdown in health is "permanent" if, in the opinion of the Secretary of State, it will continue at least until the member reaches pension age.
- (3) For the purpose of these Rules a member's breakdown in health involves incapacity for any full-time employment if, in the opinion of the Secretary of State, as a result of the breakdown the member is incapable of any gainful full-time employment ..."

2. Rule D.6, 'Early payment of benefits: active members with significant impairment of capacity for gainful employment', provides:

- "(1) An active member who ceases to be in service by virtue of which he is eligible to be an active member of the Scheme is entitled to immediate payment of a pension and a lump sum before reaching pension age if -

- (a) in the opinion of the Secretary of State the member has suffered a breakdown in health as a result of which his capacity for gainful employment is significantly impaired,
- (aa) the Secretary of State has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on his occupation because of physical or mental impairment, and
- (b) the member either -
 - (i) has at least two years' qualifying service, or
 - (ii) is entitled to short service benefit by virtue of section 71 of the Pension Schemes Act 1993 (basic principles as to short service benefit) because of a transfer value payment having been accepted, and
- (c) the member is not entitled to a pension under rule D.5.(1) ...”

3. Rule D.8, ‘Member’s requests for review of ill-health awards’, provides:

- “(1) this rule applies if a member -
 - (a) is entitled to a pension under rule D.6, or
 - (b) has received a lump sum under article 16 of the Armed Forces Early Departure Payments Scheme Order 2005(25) (lump sum awards: incapacity for armed forces service) (“article 16”).
- (2) The member may request a review of his condition under this rule -
 - (a) at any time before the fifth anniversary of the day on which the member became entitled to the pension or lump sum, or
 - (b) after that time if in the opinion of the Secretary of State the circumstances are exceptional.
- (3) The request must be made by notice in writing in such form as the Secretary of State requires.
- (4) If a member within paragraph (1)(a) requests a review of his condition under this rule, the Secretary of State must—
 - (a) review the question whether the member has suffered a permanent breakdown in health involving incapacity for any employment (see rule D.5(2) and (3)), and
 - (b) if, he is of the opinion that he has suffered such a breakdown, determine whether—

(i) the member had suffered such a breakdown at the time when he became entitled to the pension under rule D.6, or

(ii) the condition by virtue of which he became so entitled has deteriorated so that he suffered such a breakdown later.

(5) If—

(a) on any review under paragraph (4), the Secretary of State is of the opinion that the member—

(i) has suffered such a breakdown as is mentioned in paragraph (4)(a), and

(ii) had done so at the time when he became entitled to the pension under rule D.6, and

(b) the member meets the condition in rule D.5(1)(b),

then the member's entitlement under rule D.6 ceases and rule D.5 applies as if the conditions mentioned in that rule were met at the time the member ceased to be in service by virtue of which he was eligible to be an active member of the Scheme, and accordingly the member immediately becomes entitled to payment of such an amount as is specified in paragraph (6).

...

(7) If on any review under paragraph (4), the Secretary of State is of the opinion that—

(a) the member has suffered such a breakdown as is mentioned in paragraph (4)(a), but

(b) the condition by virtue of which he became entitled to the pension under rule D.6 has deteriorated so that he suffered such a breakdown later,

then the member's entitlement to a pension under rule D.6 ceases and the member is entitled to a pension calculated in accordance with paragraph (7A) from the date on which the review was requested.

...

(8) If a member within paragraph (1)(b) requests a review of his condition under this rule, the Secretary of State must -

(a) review the question whether the member has suffered a breakdown in health as a result of which his capacity for gainful employment is significantly impaired, and

(b) if, after consultation with the Scheme medical adviser, he is of the opinion that the member has suffered such a breakdown, determine whether -

- (i) the member had suffered such a breakdown at the time when he became entitled to payment of the lump sum under article 16, or
- (ii) the condition by virtue of which he became so entitled has deteriorated so that he suffered such a breakdown later.

(9) If -

(a) on any review under paragraph (8), after consultation with the Scheme medical adviser, the Secretary of State is of the opinion that the member -

- (i) has suffered such a breakdown as is mentioned in paragraph (8)(a), and
- (ii) had done so at the time when he became entitled to payment of the lump sum under article 16, and

(b) the conditions in rule D.6(1)(aa) and (b) are met,

then rule D.6 applies from the time when the ill-health condition (as defined in paragraph 1 of Schedule 28 to the Finance Act 2004) is first met, and accordingly the member is entitled to a lump sum under that rule and to a pension under that rule payable from that time (subject to paragraph (12)).

(10) If -

(a) on any review under paragraph (8), after consultation with the Scheme medical adviser, the Secretary of State is of the opinion that -

- (i) the member has suffered such a breakdown as is mentioned in paragraph (8)(a), but
- (ii) the condition by virtue of which he became entitled to payment of the lump sum under article 16 has deteriorated so that he suffered such a breakdown later, and

(b) the conditions in rule D.6(1)(aa) and (b) are met,

then rule D.6 applies from the date when the ill-health condition (as defined in paragraph 1 of Schedule 28 to the Finance Act 2004) is first met, and accordingly the member is entitled to a lump sum under that rule and to a pension under that rule payable from that date (subject to paragraph (12)).

(11) If paragraph (9) or (10) applies and the lump sum paid to the member under article 16 was less than the lump sum to which he is entitled

under rule D.6, the lump sum to which the member is so entitled is a lump sum equal to the difference.

- (12) If paragraph (9) or (10) applies and the lump sum paid to the member under article 16 exceeded the lump sum to which he is entitled under rule D.6, then the member is not entitled to a lump sum under D.6 and the excess must be repaid.”

The Armed Forces Early Departure Payments Scheme Order 2005 (as amended)

1. Article 16 provides:

“Lump sum awards: incapacity for armed forces service

- (1) A person who ceases to be in service as a member of the armed forces is entitled to immediate payment of a lump sum if -
- (a) in the opinion of the Secretary of State the person is unfit for service as a member of the armed forces because of physical or mental impairment,
 - (aa) the Secretary of State has received evidence from a registered medical practitioner of that unfitness,
 - (b) the person has at least two years' relevant service,
 - (c) immediately before the service ceases the person is an active member of the AFPS 2005, and
 - (d) the person is not entitled to payments under article 9 of the Scheme or the immediate payment of a pension or lump sum under -
 - (i) rule D.1 of the AFPS 2005 (retirement after reaching pension age),
 - (ii) rule D.5 of that Scheme (early payment of benefits: active members with permanent serious ill-health),
 - (iii) rule D.6 of that Scheme (early payment of benefits: active members with significant impairment of capacity for gainful employment), or
 - (iv) rule D.11 of that Scheme (option for members in serious ill-health to exchange whole pension for lump sum).
- (2) The amount of the lump sum payable under this article is calculated by multiplying one eighth of the person's final relevant earnings by his calculation service (expressed in years and fractions of a year), except where paragraph (3) or (4) applies.

- (3) If the amount calculated under paragraph (2) would be less than one-half of the person's final relevant earnings, that amount is payable instead.
- (4) If the amount calculated under paragraph (2) would be more than twice the person's final relevant earnings, that amount is payable instead.
- (5) This article is subject to rule D.8 of the AFPS 2005 (under which a person may ask for a review of his entitlement under rule D.6 of that Scheme and in some circumstances some of the amount paid under this article must be repaid)."

The Armed Forces Pension Regulations 2014

Entitlement to ill-health pension: active members with permanent serious ill-health (Tier 3)

"51.

- (1) An active member who has not reached normal pension age is entitled to immediate payment of an ill-health pension if -
 - (a) in the opinion of the scheme manager, the member has suffered a permanent breakdown in health involving incapacity for any gainful full time employment;
 - (b) the scheme manager has received evidence from a registered medical practitioner that the member is, and will continue to be, incapable of carrying on their occupation because of physical or mental impairment;
 - (c) the member has at least 2 years' qualifying service or a transfer value payment otherwise than from another occupational pension scheme has been accepted in relation to the member under Part [8] (Transfers); and
 - (d) the scheme manager has agreed to the member becoming so entitled.
- (2) For the purpose of these Regulations, a member's breakdown in health is "permanent" if the scheme manager is of the opinion that the breakdown will continue until the member reaches normal pension age."

Entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment (Tier 2)

"52.

- (1) An active member who has not reached normal pension age is entitled to the immediate payment of an ill-health pension if—
 - (a) in the opinion of the scheme manager—

- (i) the member has suffered a breakdown in health, as a result of which, their capacity for any gainful employment is significantly impaired; and
- (ii) the breakdown will continue until the member reaches normal pension age;
- (b) the scheme manager has received evidence from a registered medical practitioner that the member is, and will continue to be, incapable of carrying on their occupation because of physical or mental impairment;
- (c) the member has at least 2 years' qualifying service or a transfer value payment otherwise than from another occupational pension scheme has been accepted in relation to the member under Part [8] Transfers; and
- (d) the scheme manager has agreed to the member becoming so entitled."

Member's request for review of ill-health awards

"58.

- (1) This regulation applies if a member—
 - (a) is entitled to a pension under regulation [52] (entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment); or
 - (b) has received a lump sum under regulation [19] of the Armed Forces Early Departure Payments Scheme Regulations [2014] (lump sum awards: incapacity for armed forces service) ("EDP regulation [19]").
- (2) The member may request a review of the member's condition under this regulation—
 - (a) at any time before the fifth anniversary of the day on which the member became entitled to the pension; or
 - (b) after that time if, in the opinion of the scheme manager, the circumstances are exceptional.
- (3) The request must be made by notice in writing to the scheme administrator in such form as the scheme manager requires, including reasons for the review.
- (4) If a member requests a review of their condition under this regulation, the scheme manager must—
 - (a) review the question whether the member has suffered a permanent breakdown in health involving incapacity for any gainful employment in relation to regulation [51] (entitlement to ill-health pension: active members with permanent serious ill-health), and
 - (b) if the scheme manager is of the opinion that the member has suffered such a breakdown, determine whether—

- (i) the member had suffered such a breakdown at the time when her became entitled to the pension under regulation [52] (entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment); or
 - (ii) the condition, by virtue of which the member became so entitled, has deteriorated so that the member suffered such a breakdown later.
- (5) If on any review under paragraph (4), the scheme manager is of the opinion that the member—
 - (a) has suffered such a breakdown as is mentioned in paragraph (4)(a), and
 - (b) had done so at the time when the member became entitled to the pension under regulation [52] (entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment), then the member's entitlement under regulation [52] (entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment) ceases and regulation [51] (entitlement to ill-health pension: active member with permanent serious ill-health) applies as if the conditions mentioned in that regulation were met at the time the member ceased to be in service by virtue of which the member was eligible to be an active member of this scheme, and accordingly the member immediately becomes entitled to payment of such an amount as is specified in paragraph (6).
- (6) The amount referred to in paragraph (5) is such an amount as represents the difference between the pension payment that have been made to the member under regulation [52] (entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment) and those to which the member was actually entitled under regulation [51] (entitlement to ill-health pension: active member with permanent serious ill-health).
- (7) If on any review under paragraph (4), the scheme manager is of the opinion that—
 - (a) the member has suffered such a breakdown as is mentioned in paragraph (4)(a), but
 - (b) the condition by virtue of which the member became entitled to the pension under regulation [52] (entitlement to ill-health pension: active members with significant 33 impairment of capacity for gainful employment) has deteriorated so that the member suffered such a breakdown later, then the member's entitlement to a pension under regulation [52] (entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment) ceases and the member is entitled to a pension calculated under regulation [51] (entitlement to ill-health pension: active member with permanent serious ill-health) from the date on which the review was requested.

(8) If a member within paragraph (1)(b) requests a review of the member's condition under this rule, the Secretary of State must—

(a) review the question whether the member has suffered a breakdown in health as a result of which the member's capacity for gainful employment is significantly impaired; and

(b) if, he is of the opinion that the member has suffered such a breakdown, determine whether—

(i) the member had suffered such a breakdown at the time when the member became entitled to payment of the lump sum under regulation [19], or

(ii) the condition by virtue of which the member became so entitled has deteriorated so that he suffered such a breakdown later.

(9) If—

(a) on any review under paragraph (8), the Secretary of State is of the opinion that the member—

(i) has suffered such a breakdown as is mentioned in paragraph (8)(a), and

(ii) had done so at the time when the member became entitled to payment of the lump sum under EDP regulation [19], and

(b) the conditions in regulation [52(1)(b) and

(c) are met then regulation [52] applies from the time when the ill-health condition (as defined in paragraph 1 of Schedule 28 of the Finance Act 2004) is first met, and accordingly the member is entitled to a pension under that regulation payable from that time and the scheme manager may set off against such entitlement the amount of the lump sum paid under EDP regulation 19.

(10) If—

(a) on any review under paragraph (8), the Secretary of State is of the opinion that—

(i) the member has suffered such a breakdown as is mentioned in paragraph (8)(a), but

(ii) the condition by virtue of which he became entitled to payment of the lump sum under EDP regulation [19] has deteriorated so that he suffered such a breakdown later, and (b) the conditions in regulation [52(1)(b) and (c) are met, then regulation [52] applies from the date when the ill-health condition (as defined in paragraph 1 of Schedule 28 of the Finance Act 2004) is first met, and accordingly the member is entitled to a pension under that regulation payable from that date."

Option for members in serious ill-health to exchange whole pension for lump sum

“60.

- (1) An active member, deferred member or pension credit member may opt to exchange the whole of the member’s pensions under this Part for a lump sum if the scheme manager—
 - (a) is satisfied that the member is expected to live for less than 12 months, and
 - (b) has received evidence from a registered medical practitioner that this is the case.
- (2) The option must be exercised before the pension becomes payable.”
- (3) A member who exercises the option is to be paid as soon as is reasonably practicable.
- (4) Where an active member exercises the option, the amount of the lump sum is equal to the total annual amount of an ill-health pension under regulation [51] (entitlement to ill-health pension: active member with permanent serious ill health), multiplied by 5.
- (5) Where a deferred member exercises the option, the amount of the lump sum is equal to the total amount of ill health pension under regulation [56] (entitlement to ill health pension: deferred member with permanent serious ill health), multiplied by 5.
- (6) Where a pension credit member exercises the option, the amount of the lump sum is equivalent, in the opinion of the scheme manager, having regard to guidance from the scheme actuary, to the value of their pension credit rights.
- (7) In paragraph (4) and (5), “annual amount” in relation to a pension means the sum of the following amounts—
 - (a) the amount of the annual rate of the pension to which the member would be entitled under this Part apart from the option; and
 - (b) the amount of any increase in the annual rate of pension payable under the PIA 1971, calculated—
 - (i) as at the time payment would otherwise first be due; but
 - (ii) disregarding any service that the member might have accrued if the member had continued in service until that time.
- (8) The option under this regulation is to be exercised by notice in writing to the scheme administrator in such form as the scheme manager requires.”

The Armed Forces Early Departure Payments Scheme Regulations 2014

Lump sum awards: incapacity for armed forces service

“19.—(1) A person who ceases to be in service as a member of the armed forces is entitled to immediate payment of a lump sum if—

- (a) in the opinion of the scheme manager the person will continue to be unfit for service as a member of the armed forces because of physical or mental impairment, and
- (b) the scheme manager has received evidence that the person is unfit for the purposes of sub-paragraph (a) from a registered medical practitioner, and
- (c) the person has at least 2 years' qualifying service, and
- (d) immediately before the service ceases the person is an active member of AFPS 14, and
- (e) the person is not entitled to payments under either-
 - (i) regulation [9] (entitlement to early departure payments), where the scheme manager determines that payment should be made instead of a payment under this regulation, or
 - (ii) the immediate payment of a pension under-
 - (aa) regulation [43] (retirement on or after reaching Normal Pension Age-active service) of the AFPS 14, or
 - (bb) regulation [51] (entitlement to ill-health pension: active members with permanent serious ill-health) of the AFPS 14, or
 - (cc) regulation [52] (entitlement to ill-health pension: active members with significant impairment of capacity for gainful employment) of the AFPS 14, or
 - (dd) regulation [60](option for members in serious ill-health to exchange whole pension for lump sum) of the AFPS 14.”

Appendix 2

Medical evidence

A considerable volume of medical evidence has been submitted in relation to Mr N's case. It would not be practical, or helpful, to reproduce all of the material submitted. The various medical evidence has been reviewed but what follows is, of necessity, a summary of the main relevant submissions received.

Report to Mr N's GP from Mr Langdown, consultant orthopaedic surgeon, 20 July 2021

"Diagnosis:

Previous left hip arthroscopy, labral repair, decompression and derotational femoral osteotomy.

[Mr N] is now two and a half years post surgery. In actual fact he did very well following his original surgery. It is about a year ago that he started getting recurrence of groin symptoms for no specific reason and he still has some discomfort. He is now out of the military and is working for the ambulance service with plans to do his paramedics exams which is great news.

To clinical examination, he has got a much more balanced range of movement than he had beforehand but now left hip is irritable.

I am arranging for [Mr N] to have an up-to-date MR scan to see if there is any evidence of re-tear of his labrum. Hopefully we can address his issues possibly with an injection, I would be reluctant to offer further surgery and it is absolutely necessary. In the meantime I have advised him to keep going and do whatever activity he wants, I am quite convinced that he is not going to be doing any damage to his hip joint itself. I will see him with the results of the MR scan."

Report to Mr N's GP from Mr Goriainov, consultant orthopaedic surgeon, 28 April 2022

"I reviewed [Mr N] back in the clinic today. Unfortunately, he still is quite symptomatic in the left hip and to a lesser degree in the right. He has been off work since September last year whereby he used to work in the ambulance service. He claims to be in pain all the time when he is mobilising, walking, sitting or lying down.

Certainly, the last MRI scan has revealed no obvious re-tear of the labrum on the left and the femoral head being reduced from being retroverted in the past to a few degrees of anteversion. The left hip is less symptomatic and does not to have a labral tear.

Therefore in the first instance, I have suggested re-examining [Mr N's] hips under sedation. Therefore, I have listed him today for bilateral hip injection and EUA. He is aware of the small risks of infection and persistent recurrent symptoms".

Report to Mr N's GP from Mr Goriainov, consultant orthopaedic surgeon, 5 May 2022

"I reviewed [Mr N] back in the clinic today. Unfortunately, he still is quite symptomatic in the left hip and to a lesser degree in the right. He has been off work since September last year whereby he used to work in the ambulance service. He claims to be in pain all the time when he is mobilising walking, sitting or lying down.

On examination today, he is FADIR positive on the left but the rotational profile is very well about 50 degrees of internal rotation, 45 degrees of external rotation. balanced with

Certainly, the last MRI scan has revealed no obvious re-tear of the labrum on the left and the femoral head being reduced from being retroverted in the past to a few degrees of anteversion. The left hip is less symptomatic and does not to have a labral tear.

Therefore in the first instance, I have suggested re-examining [Mr N's] hips under sedation. Therefore, I have listed him today for bilateral hip injection and EUA. He is aware of the small risks of infection and persistent recurrent symptoms."

First MA's report, 19 July 2022

"[Mr N] is 26 years old. He had a tear of the lining of the hips due to an abnormal position of the bones at the hip joint (congenital condition). The left hip has always been the most troublesome and he had surgery on this in January 2019 whilst still in service. The orthopaedic records describe a good recovery and he was discharged with DMRC rehabilitation input prior to discharge from service. Whilst in service he does not appear to have had any trouble with symptoms in the right hip.

He requested a referral back to orthopaedics around the time of discharge. He reports pain in both hips but mostly the left. Investigations have confirmed there is no tear, the hips are in good position with good movement. As the cause of this deterioration is still unknown he has been scheduled for an examination and injection under anaesthetic. He had been advised to keep active.

Given that he is still under investigation and may have further treatment the long-term prognosis is unclear. If he has further surgery then there is the possibility that hip pain will reduce. If there is no cause for his pain identified then he may benefit from input through a chronic pain team which could help him to function with his condition. Additionally, [Mr N] documented his weight as 98kg (NHS suggests ideal weight for height is between 56.7-76.6Kg) in 2020 which would make his BMI 32. This may also be impacting on his hips and back and is something which can be improved.

The tier is based on the PICs at discharge. There is no evidence that he was physically limited by any condition other than left hip dysplasia. Achilles tendonitis, if present, and low back pain are therefore not considered a part of the tier review. Even if they were to be considered the MA stated he would not

consider them significant enough to limit employment. This is based on the fact that the MA could see no evidence of a diagnosis of Achilles Tendonitis. With regards to his back he has seen his GP once regarding this, there has been no investigation, diagnosis or treatment.

He had low mood in service due to his chronic hip problem. He had low intensity therapy through DCMH and appeared to improve. He called 111 reporting low mood, anxiety and suicidal thoughts with no intent to act. He was given some self-help advice only. The MA could see no evidence that he has had any further assessment or treatment of his mental health and therefore the MA does not consider this condition to be of such severity that it would limit his ability to achieve employment.

[Mr N] is still young at 26 years of age. He remains under investigation and treatment for hip problems. I acknowledge that he may struggle with a physical job such as that of an Emergency Care Assistant (ECA), however, the evidence currently available does not support that he will be significantly limited in his ability to achieve gainful civilian employment on a permanent basis until retirement age. In future he may be better suited to a sedentary role, of which there are many opportunities within the civilian world."

Extracts from Hospital Notes 2 January 2023

"An injury illness or health problem was the reason for the contact.

The individual was conscious at the time of the assessment. It was appropriate to speak to the patient. There was no blood loss.

An illness or health problem was the main problem.

User Comments: ABDO·PAIN

The individual was not fighting for breath.

The main reason for the assessment was not an allergic reaction, a heart attack, chest/upper back pain, probable stroke, recent fit/seizure or suicide attempt.

The main reason for assessment was not new confusion, declared diabetic hypo/hyperglycaemia, successful resuscitation or ICD shock.

The skin on the torso felt normal, warm or hot. Pathway selected - Abdominal Pain

User Comments: 48/24 HX UPPER RIGHT-SIDED ABDO PAIN DESCRIBED AS UNDER BOTTOM RIB

There was no vomiting, diarrhoea, rectal bleeding, groin pain or groin swelling.

There was no new genital pain or swelling. The individual was still able to carry out some normal activities.

User Comments: PAIN ON MOVEMENT AND WALKING

There did not seem to be severe pain. There had been no previous diagnosis of Marfan's syndrome. There was no crushing or severe aching chest, upper back or upper abdominal pain, or pain spreading to the arm, neck, jaw or shoulder.

The individual had not ingested a harmful or toxic substance. There had been no black and tarry or red/maroon bowel motions. There was no new or worsening confusion.

User Comments: BO AS NORMAL THIS MORNING

PU AS NORMAL NO URINARY SYMPTOMS REPORTED

Breathing harder or faster when doing nothing was not described. User Comments: DEEP BREATHING MAKES PAIN WORSE

There was no new shoulder tip pain or pain in the lower right abdomen.

The individual did not use anticoagulant medication or have a bleeding/clotting disorder.

There was constant pain for 4 hours or more.

Instructions given were: The individual needs to contact a local service within 6 hours."

Report from Dr Yusuf, Consultant Occupational Physician, 12 January 2023

"As you know [Mr N] has suffered with bilateral hip pain for many years. Whilst in the army he was diagnosed with congenital bilateral hip dysplasia. In 2016 he had a left hip reconstruction, but the pain has persisted; in December 2022 he had steroid injections to both hips, but without benefit. The only remaining option is another left hip arthroscopy, but the future is uncertain. At this time [Mr N] has constant hip pain and his mobility is severely restricted...I suspect that [Mr N] will continue to suffer painful hips and his current physical impairment could become permanent...Given the severe physical impairment I now doubt that [Mr N] could even do the role of a call handler, or any other similar non-handling role. So, in these circumstances, I do support an application for ill health retirement."

Second MA's report, 20 March 2023

"[Mr N] is a 27-year-old man with bilateral hip pain and low mood. I note the history so far including a previous left hip arthroscopy and de-rotational osteotomy in 2019 from which he made an excellent initial recovery. [Mr N] has been under the care of the orthopaedic surgeons with continuing bilateral hip pain. MRI was mostly unremarkable (letter 28/4/22) and an examination under anaesthetic (EUA) was performed to further evaluate the cause of his pain. The operation note dated 24/11/22 notes a balanced rotational profile bilaterally with likely bilateral pincer and cam lesions bilaterally. He was given hip steroid injections and the plan was an outpatient clinic appointment in 3 months. I do not have any more recent information. The occupational health opinion dated 12/1/23 was done over the telephone with no physical examination. I note the findings but cannot give this opinion too much weight given that the claimant was not seen or examined.

Cam and pincer lesions can be treated surgically. 60% of cam lesions can be treated without the need for surgery. DWP assessments for SSCS benefits are 'in the here and now' and do not take into consideration future improvements or prognosis. The test for AFPS is employability before retirement age which in [Mr N's] case is around 40 years away.

Based on the findings above, [Mr N] will be/has been assessed by the orthopaedic surgeons following his EUA and joint injection. Depending on that consultation, [Mr N] will either have physical treatment, such as physiotherapy or surgical treatment or both. A further option is that he will be referred to the pain clinic, or for a psychological assessment. All of these options will potentially improve [Mr N's] hip pain and his low mood.

There is a likelihood of significant improvement in [Mr N's] hip pain as a result of treatment outlined above. He has not yet had the benefit of full and optimal treatment and this along with his age are good prognostic indicators with regards to future employment.

[Mr N] is 27 years old and his hip conditions are treatable. His prognosis is good and on the balance of probability he will be able to work full time in a civilian occupation over the next 40 years or so prior to retirement age."