



House of Commons  
The Select Committee on the  
Armed Forces Bill

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**The Armed Forces Bill**

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**Special Report of Session 2010–11**

*Ordered by the House of Commons  
to be printed 8 March 2011*

## Select Committee on the Armed Forces Bill

The Select Committee on the Armed Forces Bill was appointed by an Order of the House of Commons to consider the Armed Forces Bill.

### Current membership

Rt Hon James Arbuthnot MP (*Conservative, North East Hampshire*) (Chair)  
Alex Cunningham MP (*Labour, Stockton North*)  
Thomas Docherty MP (*Labour, Dunfermline and West Fife*)  
Gemma Doyle MP (*Labour/Co-operative, West Dunbartonshire*)  
Mr Tobias Ellwood MP (*Conservative, Bournemouth East*)  
Mr Mark Francois MP (*Conservative, Rayleigh and Wickford*)  
Mr Kevan Jones MP (*Labour, North Durham*)  
Mark Lancaster MP (*Conservative, Milton Keynes North*)  
Jack Lopresti MP (*Labour, Filton and Bradley Stoke*)  
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)  
Christopher Pincher MP (*Conservative, Tamworth*)  
Mr Andrew Robathan MP (*Conservative, South Leicestershire*)  
Bob Russell MP (*Liberal Democrat, Colchester*)  
David Wright MP (*Labour, Telford*)

### Powers

Extract from the Votes and Proceedings, 10 January 2011:

“Armed Forces Bill,—Ordered, That the following provisions shall apply to the Select Committee on the Armed Forces Bill:

1. The Committee shall have 14 members, to be nominated by the Committee of Selection.
2. The Committee shall have power—
  - (a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place and to report from day to day the minutes of evidence taken before it;
  - (b) to admit the public during the examination of witnesses and during consideration of the Bill (but not otherwise); and
  - (c) to appoint specialist advisers either to supply information not readily available or to elucidate matters of complexity relating to the provisions of the Armed Forces Bill.”

### Publications

The Report and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: [www.parliament.uk/afbcom](http://www.parliament.uk/afbcom).

### Committee staff

The current staff of the Committee are Georgina Holmes-Skelton (Clerk) and Miguel Boo Fraga (Committee Assistant).

### Contacts

All correspondence should be addressed to the Clerk of the Select Committee on the Armed Forces Bill, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5857; the Committee’s email address is [afbcommittee@parliament.uk](mailto:afbcommittee@parliament.uk). Media inquiries should be addressed to Alex Paterson on 020 7219 1589.

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# 1 Introduction

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## The Armed Forces Bill

1. An Armed Forces Bill is required every five years to provide the legal basis for the Armed Forces and the system of military law which exists in the UK. It also offers an opportunity to make amendments to existing primary legislation. Armed Forces Bills are, by convention, committed to an ad-hoc select committee of the House of Commons after Second Reading. The current Armed Forces Bill received Second Reading on 10 January 2011 and the Committee was appointed on 17 January 2011 with a tight deadline to Report the Bill back to the House by 10 March. As a select committee, we had the power to:

- take oral and written evidence on the substance of the Bill;
- undertake UK and overseas visits;
- deliberate in public to consider formally and amend the Bill as we saw fit; and
- publish a Special Report setting out any conclusions or recommendations.

2. When the Select Committee on the last Armed Forces Bill was established in 2006, the power to undertake formal consideration of the Bill in public was an innovation, introduced in part on the recommendation of its predecessor Committee in 2001.<sup>1</sup> Since our predecessor conducted its work in 2006 the House has established the practice of public bill committees, which similarly take evidence and deliberate in public, although they may not travel.

3. The convention of committing the Armed Forces Bill to a select committee rather than a general committee allows the Bill to receive thorough scrutiny. We welcomed the freedom to determine our programme of evidence taking and the opportunity to analyse the various aspects of the Bill in depth. We have greatly benefited from the power to undertake visits away from Westminster, giving us the opportunity to see facilities first hand and speak to personnel and their families directly. We also recognise the value of the greater degree of consensus and collaboration that a select committee format encourages. Therefore, **while we recognise there may be scope to consider committal to a public bill committee in future, we recommend that select committee scrutiny continues to be the convention for the Armed Forces Bill, where the content of the Bill is significant enough to warrant it.**

## Our inquiry

4. Following the precedent set by past Armed Forces Bill Committees, we resolved to undertake a select committee-style evidence-based inquiry, followed by formal line-by-line consideration of the Bill. For this latter stage we adopted public bill committee procedure for the consideration of clauses and amendments. We launched our inquiry on Tuesday 25 January 2011, issuing a public call for written evidence. We also decided upon a number of

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<sup>1</sup> See the House of Commons Select Committee on the Armed Forces Bill, *Armed Forces Bill*, Special Report of Session 2005–06, p 4

witnesses for oral evidence sessions and resolved to undertake a number of visits within the UK, namely, to the Reserve Training and Mobilisation Centre in Chilwell, near Nottingham, the Defence Medical and Rehabilitation Centre Headley Court in Surrey, and the Military Court and Army Garrison in Colchester. These visits were helpful and informative and provided valuable opportunities to gauge the views of ordinary Service men and women on a range of issues, both matters directly significant to the Bill and in relation to broader welfare concerns.

5. We received 24 written submissions from a range of organisations and held four oral evidence sessions. We took evidence from Ministry of Defence (MoD) officials, the Service Complaints Commissioner for the Armed Forces, the Deputy Chief of Defence Staff (Personnel and Training) and the three Service Principal Personnel Officers. We also took evidence from the three Provost Marshals and the Chief Constable of the Ministry of Defence Police. Finally we heard from the Royal British Legion, Help for Heroes and the Confederation of British Service and Ex-Service Organisations, and the three Service Families Federations and the Forces Pension Society. The written and oral evidence to the Committee and transcripts of the deliberative sessions have been included alongside this Special Report. We are grateful to all those who contributed to our inquiry by providing evidence, either in writing or in person, and to those who contributed to our visits.

6. This Special Report does not provide a detailed summary of the contents of the Bill, the evidence we received or the discussions had during the formal consideration of the Bill.<sup>2</sup> This Report instead gives an outline of the issues we considered in greatest detail and makes a number of observations and recommendations on matters requiring the Government's attention. We hope that bringing the oral and written evidence we have taken and the discussions had during the formal consideration together into one document will assist the House in its further consideration of the Bill.

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2 For further information on the Bill itself, see the Explanatory Notes to the Bill, Bill 122—EN

## 2 The Armed Forces Covenant

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7. The most controversial aspect of this Armed Forces Bill relates to the Military Covenant. The Covenant is, at present, a largely unwritten social and moral commitment between the Nation, Government and Service personnel, which implies that in return for the sacrifices that Service personnel make, the State has an obligation to recognise that contribution and retains a long term duty of care toward Service personnel and their families. At present the Military Covenant has no statutory basis. The Coalition Government made a commitment in their “*Programme for Government*”, published in May 2010 to “work to rebuild the Military Covenant”.<sup>3</sup> The Government subsequently indicated an intention to enshrine the Military Covenant in law for the first time. On a visit to HMS Ark Royal in June 2010, the Prime Minister commented:

It's time for us to rewrite the Military Covenant to make sure we are doing everything we can.

[...]Whether it's the schools you send your children to, whether it's the healthcare that you expect, whether it's the fact that there should be a decent military ward for anyone who gets injured.

I want all these things refreshed and renewed and written down in a new Military Covenant that's written into the law of the land.<sup>4</sup>

8. An independent Task Force on the Military Covenant, chaired by Professor Hew Strachan, was established in summer 2010 to support the work to “rebuild the Military Covenant” and published its Report on 8 December 2010.<sup>5</sup> The Task Force made various recommendations as to how the Government could rebuild the Covenant through various local and national initiatives, such as the Armed Forces Community Covenant. During our evidence session with Covenant policy officials on Thursday 3 February, Gavin Barlow, Director Service Personnel Policy, MoD, said that the Government would be replying to the Task Force’s Report in the spring.<sup>6</sup>

9. Clause 2 of the Bill makes provision for the Secretary of State to make an annual report to Parliament on the Armed Forces Covenant. The clause refers to various broad and undefined categories of welfare that must be covered by an annual report covering “healthcare”, “housing”, “education” and any other “field” that may be determined by the Secretary of State.<sup>7</sup>

10. As a Committee, we found that there were some aspects of the Government’s plans in relation to the Covenant on which we were unable to find a consensus, as evidenced by the robust debate in the formal consideration stage of our deliberations.<sup>8</sup> To a certain extent

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3 HM Government, *The Coalition: Our Programme for Government*, 20 May 2010, p 15

4 MoD press notice, “Military covenant to be enshrined in law”, 25 June 2010, available at [www.mod.uk](http://www.mod.uk)

5 MoD, *Report of the Task Force on the Military Covenant*, 8 December 2010. See also MoD press notice, “Government commits to progress on rebuilding Military Covenant”, 8 December 2010, available at [www.mod.uk](http://www.mod.uk)

6 Q 59

7 See HC Deb January 10 2011, Col 48

8 Annex, 10 February 2011 and 15 February 2011

our disagreement reflects the strong opinions and emotions that discussions about the Armed Forces Covenant evoke. There were, however a number of conclusions on which there was clear consensus. First and foremost, **we are of the view that military service is a sacrifice of a unique nature, and individuals who undertake to serve their country in this way should be recognised as having made a special contribution to British society.**

11. The evidence that we received, particularly from Service charities and voluntary organisations, highlighted to us the importance of recognising the needs of all three Services. A clear difficulty begins with the commonplace reference to the “Military Covenant”, a concept familiar within the Army, but far less so in the other Services.<sup>9</sup> This is a problem that clearly requires further thought and clear communication from the MoD. As a first step, **in the interest of inclusivity, we recommend that effort be made to refer consistently to the “Armed Forces Covenant” rather than the “Military Covenant”.**

12. In relation to the planned Annual Report on the Armed Forces Covenant, there was particular debate as to the future role of the External Reference Group.<sup>10</sup> While consensus was not clear as to whether the Group should have a particular role in relation to the Report, it was clear from our evidence with the Charities and Family Federations who sit on the Group that it played a key role in a broader sense, and had improved engagement between the MoD and these key stakeholders.<sup>11</sup> **It was apparent to all of us that the work of the External Reference Group has been highly valuable. Our evidence clearly shows that this Group presents a vital means by which the voluntary sector can relay key messages from personnel and their families and make a genuine contribution to policy. It would be a considerable loss if this Group were disbanded or sidelined as a result of this legislation. It is essential that this important forum continues and we recommend that a change to its terms of reference is made to give the Group a broader, more permanent role for the future.**

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9 Q 180, Qq 183–184, Q 310, Q 339, Q 369, and Q 388

10 The External Reference Group consists of officials from across Government along with other stakeholders, including charities and voluntary organisations, with a remit to examine the implementation of the Service Personnel Command Paper published July 2008. For further details on remit and membership, see *The Nation’s Commitment: Cross Government Support to our Armed Forces, Their Families and Veterans: External Reference Group Annual Report 2010*, 12 November 2010

11 Q 312, Qq 314–316, Q 320, Qq 348–357, and Qq 380–383



## 3 Other provisions

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### Independence and powers of Service police

13. We took detailed evidence on the proposed new powers for Service police from the three Service Provost Marshals, and the Chief Constable of the Ministry of Defence Police. In addition we received written evidence from the Defence Police Federation.<sup>12</sup> We also visited the Military Court in Colchester on 14 February and had the opportunity to meet the Judge Advocate sitting that day, with whom we were able to discuss the provisions of the Bill on an informal basis. This supplemented the written evidence received from the Judge Advocate General.<sup>13</sup> On the basis of these various sources of evidence, **we support the provisions in the Bill in relation to the independence and powers of Service police.**

### Drug and alcohol testing

14. The vast majority of our witnesses supported the provisions of the Bill relating to a bespoke drug and alcohol testing scheme for the Armed Forces.<sup>14</sup> We sought clarification from the MoD on a number of matters, most notably in relation to concerns raised by the British Medical Association regarding the taking of blood samples by doctors providing care for patients<sup>15</sup> and to differences between the requirements for blood and urine samples under this legislation and existing civilian Road Traffic legislation.<sup>16</sup> We were satisfied with the responses to all queries and therefore **we support the provisions in the Bill relating to drug and alcohol testing.**

### Service complaints procedures

15. Our predecessor committee looked in detail at Service complaint procedures during the passage of the Armed Forces Bill 2006. It is a subject that also attracted the attention of the House of Commons Defence Committee<sup>17</sup> and significant other scrutiny in light of Sir Nicholas Blake's inquiry into Deepcut.<sup>18</sup> The changes that were made in the 2006 Act, including the introduction of the Service Complaints Commissioner for the Armed Forces, have now been implemented. This Bill makes a number of minor changes to the makeup of Service Complaint Panels and the role of the Defence Council in handling complaints. We thought it appropriate therefore, to take evidence from the Service Complaints Commissioner, Dr Susan Atkins, both on the Bill and more widely on the success of the 2006 Act and the scope for further improvements to be made to Service

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12 Ev 82

13 Ev 93, paras 5–7

14 Qq 43–48, Q 130, and Ev 84

15 See BMA briefing paper, available at: [http://www.bma.org.uk/lobbying\\_campaigning/westminster/armedforcesbill.jsp](http://www.bma.org.uk/lobbying_campaigning/westminster/armedforcesbill.jsp)  
See also Q 47 and Q 130

16 Qq 43–44, 48 and Ev 109

17 House of Commons Defence Committee, Third Report of Session 2004–05, *Duty of Care*, HC 63-I, para 423 and House of Commons Defence Committee, Fourteenth Report of Session 2005–06, *Armed Forces Bill: proposal for a Service Complaints Commissioner*, HC 1711

18 The Deepcut Review, Nicholas Blake QC, 29 March 2006, HC 795

complaints procedures. On the basis of her evidence and comments from MoD officials, **we support the provisions in the Bill which aim to provide greater independence of Service Complaints Panels, where circumstances demand.**

16. However, it was clear from Dr Atkins' evidence and comments from other witnesses, notably from the Families Federations and written evidence from the British Armed Forces Federation,<sup>19</sup> that despite the real progress that has been made, there are areas in which significant improvements could be made, particularly in relation to the powers of the Commissioner and the complexity of the system as a whole. Dr Atkins also had concerns about the handling of complaints made by veterans. She noted that she would be commenting on all these matters in greater detail in her forthcoming Annual Report.<sup>20</sup>

17. We welcome the work of the Service Complaints Commissioner thus far, and note her view that improvements could still be made to the complaints procedures. **We recommend that the MoD review these procedures and the powers of the Commissioner in light of her evidence and her forthcoming Annual Report to ensure that the system is as effective as it can possibly be.**

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<sup>19</sup> Qq 362–364, Qq 396–402 and Ev 121, paras 2–12

<sup>20</sup> Ev 90, para 2.2

## 4 Matters not in the Bill

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18. There were a few matters that were raised with us that are not in the Bill.

### Veterans ID Card

19. We had a robust discussion during formal consideration of the possibility of a veterans identity card, which would assist former members of the Armed Forces in obtaining access to public services and other benefits.<sup>21</sup> **The Committee felt the matter of a veterans ID card could usefully be explored further.**

### Recruitment of Under-18s

20. The matter of the recruitment of minors to service in the Armed Forces is a perennial issue for Armed Forces Bill Committees. We have received a great deal of written evidence on the matter, and raised concerns with the Deputy Chief of Defence Staff, Lt Gen. Sir William Rollo, who clarified the MoD's position regarding the discharge of unhappy minors.<sup>22</sup> We also discussed the matter at length in our formal consideration.<sup>23</sup> **We do not advocate any change to existing policy in relation to the recruitment of under-18s.**

### Civilian Courts

21. During our visit to the Military Court in Colchester on February 14 we had the opportunity to meet the Judge Advocate sitting that day, Judge Advocate Emma Peters. She raised with us the matter of Service personnel being tried in civilian courts, which she believed lacked the proper specialist knowledge and experience to deal with them appropriately. It was the opinions of the Judge Advocates that there was capacity within the Service Justice system to undertake some of these cases instead. Her comments reflected points raised in the written evidence from the Judge Advocate General, His Honour Judge Jeff Blackett.<sup>24</sup> The MoD also provided us with further information on the Government's position on this matter.<sup>25</sup>

**22. We recommend that the MoD give consideration to the matter of Service personnel being tried in civilian courts, in coordination with the Director of Public Prosecutions and relevant Government departments as appropriate. If there is capacity within the Service justice system, there may be a benefit in transferring the handling of some cases to the Military Courts where circumstances permit. There may also be scope for the creation of a power in civilian courts to remit cases to the Military Courts for sentence.**

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21 Annex, 17 February 2011, cols 89–103

22 Qq 238–240

23 Annex, 17 February 2011, cols 103–115

24 Ev 93, paras 5–7

25 Ev 123

## 5 Conclusions and recommendations

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1. While we recognise there may be scope to consider committal to a public bill committee in future, we recommend that select committee scrutiny continues to be the convention for the Armed Forces Bill, where the content of the Bill is significant enough to warrant it. (Paragraph 3)
2. We are of the view that military service is a sacrifice of a unique nature, and individuals who undertake to serve their country in this way should be recognised as having made a special contribution to British society. (Paragraph 10)
3. In the interest of inclusivity, we recommend that effort be made to refer consistently to the “Armed Forces Covenant” rather than the “Military Covenant”. (Paragraph 11)
4. It was apparent to all of us that the work of the External Reference Group has been highly valuable. Our evidence clearly shows that this Group presents a vital means by which the voluntary sector can relay key messages from personnel and their families and make a genuine contribution to policy. It would be a considerable loss if this Group were disbanded or sidelined as a result of this legislation. It is essential that this important forum continues and we recommend that a change to its terms of reference is made to give the Group a broader, more permanent role for the future. (Paragraph 12)
5. We support the provisions in the Bill in relation to the independence and powers of Service police. (Paragraph 13)
6. We support the provisions in the Bill relating to drug and alcohol testing. (Paragraph 14)
7. We support the provisions in the Bill which aim to provide greater independence of Service Complaints Panels, where circumstances demand. (Paragraph 15)
8. We recommend that the MoD review the Service complaints procedures and the powers of the Commissioner in light of her evidence and her forthcoming Annual Report to ensure that the system is as effective as it can possibly be. (Paragraph 17)
9. The Committee felt the matter of a veterans ID card could usefully be explored further. (Paragraph 19)
10. We do not advocate any change to existing policy in relation to the recruitment of under-18s. (Paragraph 20)
11. We recommend that the MoD give consideration to the matter of Service personnel being tried in civilian courts, in coordination with the Director of Public Prosecutions and relevant Government departments as appropriate. If there is capacity within the Service justice system, there may be a benefit in transferring the handling of some cases to the Military Courts where circumstances permit. There may also be scope for the creation of a power in civilian courts to remit cases to the Military Courts for sentence. (Paragraph 22)

# Formal minutes

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**Tuesday 25 January 2011**

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois

Mark Lancaster  
Jack Lopresti  
Mr Andrew Robathan  
David Wright

## **Declarations of interest**

Members disclosed their interests, in accordance with the resolution of the House of 13 July 1992. (*For details of declaration of interests, see Appendix 1.*)

## **Chairmanship**

Mr James Arbuthnot was called to the Chair.

## **Committee working methods**

*Ordered*, That the public be admitted during the examination of witnesses unless the Committee orders otherwise.

*Resolved*, That those who submit written evidence to the Committee have leave to publish it, in accordance with the provisions of Standing Order No. 135, except in cases of particular sensitivity, where the Clerk is authorised to refer the matter to the Committee for consideration.

## **Future Programme**

The Committee considered this matter.

## **Visits**

*Resolved* That the Committee visit the Reserve Training and Mobilisation Centre, Nottingham, in connection with its inquiry into the Armed Forces Bill.

*Resolved* That the Committee visit the Defence Medical Rehabilitation Centre, Headley Court, Epsom, in connection with its inquiry into the Armed Forces Bill.

*Resolved* That the Committee visit the Military Corrective Training Centre, Colchester, in connection with its inquiry into the Armed Forces Bill.

[Adjourned till Tuesday 3 February at 10.00 am

APPENDIX 1

DECLARATIONS OF [MEMBERS'] INTERESTS

*25 January 2011: declaration of Members' interests*

**ARBUTHNOT, Rt. Hon. James (North East Hampshire)**

**2. Remunerated employment, office, profession etc.**

Member of Lloyd's (resigned as from 31 December 2002).

*Categories of business underwritten until resignation - CBS Private Capital Ltd.: All categories.*

Received a tie (value £5) for giving a speech on 22 March 2010. Hours: 2.5 hrs. Address of payer: The Royal Aeronautical Society, 4 Hamilton Place, London W1J 7BQ. *(Registered 6 April 2010)*

**8. Land and Property**

Two flats in London, both providing rental income.

**11. Miscellaneous**

Non-practising barrister.

Chairman of the Conservative Friends of Israel (unremunerated).

**CUNNINGHAM, Alex (Stockton North)**

**1. Directorships**

Tees Valley Communicators Ltd, 10 Lapwing Lane, Norton, Stockton on Tees, Cleveland TS20 1LT. Communications and web design.

**2. Remunerated employment, office, profession etc**

Surveys completed for Ipsos MORI, 79-81 Borough Road, London SE1 1FY.

June 2010, £75 fee donated to constituency party. Hours: 30 mins. *(Registered 2 September 2010)*

Surveys completed for ComRes, Four Millbank, London SW1P 3JA.

June 2010, £75 fee donated to charity. Hours: 30 mins. *(Registered 2 September 2010)*

August 2010, £75 fee donated to constituency party. Hours: 30 mins. *(Registered 2 September 2010)*

14 September 2010, £75 fee donated to constituency party. Hours: 30 mins. *(Registered 14 September 2010)*

October 2010, £75 donated to charity. Hours: 30 mins. *(Registered 22 November 2010)*

October 2010, £75 donated to constituency party. Hours: 30 mins. *(Registered 22 December 2010)*

Surveys completed for Populus, 10 Northburgh Street, London EC1V 0AT:

November 2010, £50 fee donated to constituency party. Hours: 30 mins. *(Registered 22 December 2010)*

December 2010, £50 fee donated to constituency party. Hours: 15 mins. *(Registered 7 January 2011)*

**4. Sponsorships**

(a) Donations to the constituency party or association, which have been or will be reported by the party to the Electoral Commission:

Name of donor: Unison

Address of donor: 140-150 Pilgrim Street, Newcastle upon Tyne, NE1 6TH.

Amount of donation or nature and value if donation in kind: £2,490 to fund a newspaper and election leaflet.

Donor status: trade union

*(Registered 3 June 2010)*

**5. Gifts, benefits and hospitality (UK)**

Name of donor: Grand Central Railway Company Ltd

Address of donor: River House, 17 Museum Street, York, YO1 7DJ.

Amount of donation or nature and value if donation in kind: first class rail pass for the period June 2010 to December 2011. Used for parliamentary travel only. Without this pass, the cost of standard class rail travel would be met from parliamentary allowances. Value: approximately £5,000 per year.

Date of receipt of donation: 1 June 2010

Date of acceptance of donation: 14 June 2010

Donor status: company, registration number 03979826

*(Registered 29 June 2010)*

**9. Shareholdings**

(a) Tees Valley Communicators Ltd. Communications and web design. See also category 1.

**DOCHERTY, Thomas (Dunfermline and West Fife)****4. Sponsorships**

(a) Donations to my constituency party or association, which have been or will be reported by my party to the Electoral Commission:

Name of donor: Unison Labour Link (Unison Scotland)

Address of donor: Unison House, 14 West Campbell Street, Glasgow

Amount of donation or nature and value if donation in kind: £2,150

Donor status: trade union

*(Registered 7 June 2010)*

**6. Overseas visits**

Name of donor: Minister of Foreign Affairs, Bahrain

Address of donor: c/o The Embassy of the Kingdom of Bahrain, 30 Belgrave Square, London SW1X 8QB

Amount of donation (or estimate of the probable value): £3,279

Destination of visit: Bahrain

Date of visit: 21-25 October 2010

Purpose of visit: in my capacity as member of the All-Party Parliamentary Group on Bahrain I was invited to visit the country to meet with Government Ministers and others and to observe the Parliamentary elections that were taking place during the visit.

*(Registered 16 December 2010)*

**DOYLE, Gemma (West Dunbartonshire)**

Nil

**ELLWOOD, Tobias (Bournemouth East)****5. Gifts, benefits and hospitality (UK)**

Name of donor: John Lewis

Address of donor : private

Amount of donation or nature and value if donation in kind: my wife and I received tickets to the Conservative Party general election fundraising dinner. Value: £2,000.

Date of receipt of donation: 1 February 2010

Date of acceptance of donation: 1 February 2010

Donor status: individual

*(Registered 11 February 2010)*

**FRANCOIS, Mark (Rayleigh and Wickford)****4. Sponsorships**

(a) Donations to my constituency party or association, which have been or will be reported by my party to the Electoral Commission:

Name of donor: Mr Neil Chapman

Address of donor: private

Amount of donation or nature and value if donation in kind: £2,000

Donor status: individual

*(Registered 7 June 2010)*

**LANCASTER, Mark (Milton Keynes North)****2. Remunerated employment, office, profession etc**

Serving Officer, Royal Engineers Territorial Army. Payments received from the Army Pay Office, Kentigern House, 65 Brown Street, Glasgow G2 8EX:

31 December 2009, received payment of £1350.39 from for 14 days military service between 1 November-31 December 2009. *(Registered 6 January 2010)*

28 February 2010, received payment of £377.54 for 4 days military service between 1 January-28 February

2010. (*Registered 2 March 2010*)

31 October 2010, received payment of £1256.80 for 17 days military service between 1 August-31 October

2010. (*Registered 1 November 2010*)

#### **4. Sponsorships**

(a) Donations to the constituency party or association, which have been or will be reported by the party to the Electoral Commission:

Name of donor: Caledonia Investments PLC

Address of donor: Cayzer House, 30 Buckingham Gate, London SW1E 6NN

Amount of donation or nature and value if donation in kind: donation of £5,000

Donor status: company

(*Registered 4 March 2010*)

Name of donor: Peter J Wilson

Address of donor: Private

Amount of donation or nature and value if donation in kind: donation of £1600

Donor status: individual

(*Registered 8 June 2010*)

Name of donor: The Portcullis Club

Address of donor: Sycamore House, Grange Way, Willington, MK 44 1JP

Amount of donation or nature and value if donation in kind: donation of £2000

Donor status: unincorporated association

(*Registered 8 June 2010*)

Name of donor: The 1900 Club

Address of donor: 6 Barton Street London SW19 3NG

Amount of donation or nature and value if donation in kind: donation of £2500

Donor status: company

(*Registered 8 June 2010*)

Name of donor: Simon Cuthbertson

Address of donor: private

Amount of donation or nature and value if donation in kind: donation of £5000 to my constituency association.

Donor status: individual

(*Registered 8 June 2010*)

#### **9. Registrable shareholdings**

(a) Kimbolton Fireworks Ltd

#### **11. Miscellaneous**

Parliamentary adviser (unpaid) to the Royal Society of Chemistry.

**LOPRESTI, Jack (Filton and Bradley Stoke)**

#### **2. Remunerated employment, office, profession etc**

Member of Territorial Army Reserve Forces.

#### **4. Sponsorships**

(a) Donations to my constituency party or association, which have been or will be reported by my party to the Electoral Commission:

Name of donor: Cllr John Godwin

Address of donor: private

Amount of donation or nature and value if donation in kind: 2 donations; total £1,750

Donor status: individual

(*Registered 9 June 2010*)

Name of donor: Mr R C Griffin

Address of donor: private

Amount of donation or nature and value if donation in kind: £2,000

Donor status: individual

(*Registered 9 June 2010*)



**ROBATHAN, Andrew (South Leicestershire)**

**8. Land and Property**

Farm in Leicestershire, including rented residential property, from which income is received.

**WRIGHT, David (Telford)**

Nil

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**Tuesday 1 February 2011**

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones  
Mark Lancaster

Jack Lopresti  
Sandra Osborne  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

**Declarations of interest**

Members disclosed their interests, in accordance with the resolution of the House of 13 July 1992. (*For details of declaration of interests, see Appendix 2.*)

**Future Programme**

The Committee considered this matter.

**Visits**

The Committee considered this matter.

**The Armed Forces Bill**

The Committee considered this matter.

[Adjourned till Thursday 3 February at 10.00 am]

**APPENDIX 2**

**DECLARATIONS OF [MEMBERS'] INTERESTS**

***1 February 2011: declaration of Members' interests***

**JONES, Kevan (North Durham)**

Nil

**OSBORNE, Sandra (Ayr, Carrick and Cumnock)**

Nil

**PINCHER, Chris (Tamworth)**

Nil

**RUSSELL, Bob (Colchester)**

Nil

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**Thursday 3 February 2011**

MORNING SESSION

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones

Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

**Future Programme**

The Committee considered this matter.

**The Armed Forces Bill**

Mr Gavin Barlow, Director Service Personnel Policy, Mr Gary Lewitt, Head Service Personnel Policy, Service Conditions and Welfare, Mr Humphrey Morrison, Head of Legislation, Central Legal Services, Commodore Andrew Jameson, Director Naval Legal Services (Navy), Brigadier Mike Griffiths, Director Personal Services (Army), and Air Commodore Ross Paterson, Assistant Chief of Staff Services Personnel Policy (RAF), Ministry of Defence; Mr Gavin Barlow, Director Service Personnel Policy, Simon Lowe, Head Service Personnel Policy, Armed Forces Covenant team, Mr Gary Lewitt, Head Service Personnel Policy, Service Conditions and Welfare, Jeff Garrett, Head Service Personnel Policy, Pensions Compensations and Veterans, Air Commodore Charlie Wilcock, Head of Medical Strategy and Policy for Defence Medical Services, Ministry of Defence, gave oral evidence.

[Adjourned till Thursday 3 February at 2.00 pm]

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**Thursday 3 February 2011**

AFTERNOON SESSION

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty

Jack Lopresti  
Christopher Pincher

Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones

Mr Andrew Robathan  
Bob Russell  
David Wright

### **Future Programme**

The Committee considered this matter.

### **The Armed Forces Bill**

Dr Susan Atkins, Service Complaints Commissioner for the Armed Forces and Mr Darren Beck, Head of Office, Office of the Service Complaints Commissioner for the Armed Forces gave oral evidence.

[Adjourned till Tuesday 8 February at 10.00 am

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## **Monday 7 February 2011**

### ***Visit to the Reserve Training and Mobilisation Centre***

*The Chair, Alex Cunningham, Gemma Doyle, Mr Tobias Ellwood, Mr Mark Francois, Kevan Jones, Mark Lancaster, Jack Lopresti, Christopher Pincher, and Mr Andrew Robathan visited the Reserve Training and Mobilisation Centre, Chilwell, Nottinghamshire in connection with the Committee's inquiry into the Armed Forces Bill, in accordance with the Committee's decision of 25 January.*

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## **Tuesday 8 February 2011**

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones  
Mark Lancaster

Jack Lopresti  
Sandra Osborne  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

### **Committee working practices**

The Committee considered this matter.

### **Future Programme**

The Committee considered this matter.

Question put, That the Committee seek oral evidence from Mr Andrew Robathan.

The Committee divided.

Ayes, 6

Noes, 7

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Kevan Jones  
Sandra Osborne  
David Wright

Mr Tobias Ellwood  
Mr Mark Francois  
Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

Question accordingly negatived.

#### **Written evidence**

*Ordered*, That the following written evidence relating to the Armed Forces Bill be reported to the House for publication on the internet:

- Forces Pension Society
- The Coalition to Stop the Use of Child Soldiers
- Defence Police Federation (DFP)
- General Assembly of Unitarian and Free Christian Churches
- Religious Society of Friends (Quakers)
- David Gee

#### **The Armed Forces Bill**

Lieutenant General Mark Mans, Adjutant-General, Vice-Admiral Charles Montgomery, Second Sea Lord, Air Marshal Andy Pulford, Air Member for Personnel, and Lieutenant General Sir William Rollo, Deputy Chief of the Defence Staff; Brigadier Eddie Forster-Knight, Provost Marshal (Army), Chief Constable Stephen Love, Chief Executive, Ministry of Defence Police and Guarding Agency, Mr Humphrey Morrison, Head of Legislation, Central Legal Services, Ministry of Defence, Commander Tony West, Provost Marshal (Navy), and Group Captain John Whitmell, Provost Marshal (RAF) gave oral evidence.

[Adjourned till Tuesday 8 February at 10.00 am

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### **Wednesday 9 February**

#### ***Visit to the Defence Medical Rehabilitation Centre***

*Gemma Doyle, Jack Lopresti, Mr Andrew Robathan and the Clerk visited the Defence Medical Rehabilitation Centre, Headley Court in a representative capacity, in connection with the Committee's inquiry into the Armed Forces Bill, in accordance with the Committee's decision of 25 January.*

## Thursday 10 February 2011

### MORNING SESSION

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones

Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
David Wright

### Future Programme

The Committee considered this matter.

### The Armed Forces Bill

Chris Simpkins, Director General, Royal British Legion, Air Vice-Marshal (Retired) Tony Stables, Chairman, COBSEO - Confederation of Service Charities, and Bryn Parry, Chief Executive Officer, Help for Heroes; Kim Richardson OBE, Chair, Naval Families Federation, Julie McCarthy, Chief Executive, Army Families Federation, Dawn McCafferty, Chairman, RAF Families Federation, and John Moore-Bick CBE DL, General Secretary, Forces Pension Society gave oral evidence.

[Adjourned till Thursday 10 February at 2.00 pm]

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## Thursday 10 February 2011

### AFTERNOON SESSION

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones

Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

The Committee deliberated.

*Resolved*, That the Armed Forces Bill be now considered.

Clause 1 agreed to.

Clause 2.

Amendment (2) proposed. – (*Gemma Doyle*.)

Question proposed, That the Amendment be made.

The Committee divided.

Ayes, 5

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Kevan Jones  
David Wright

Noes, 7

Mr Tobias Ellwood  
Mr Mark Francois  
Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

Question accordingly negatived.

[Adjourned till Tuesday 15 February at 10.00 am

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### Monday 14 February 2011

#### *Visit to Colchester Garrison*

*The Chair, Gemma Doyle, Mr Mark Francois, Jack Lopresti, and Bob Russell visited Colchester Garrison, in connection with the Committee's inquiry into the Armed Forces Bill, in accordance with the Committee's decision of 25 January.*

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### Tuesday 15 February 2011

#### MORNING SESSION

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones  
Mark Lancaster

Jack Lopresti  
Sandra Osborne  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

The Committee deliberated.

*Resolved*, That the Armed Forces Bill be now considered.

Clause 2.

Amendment (3) proposed. –(*Gemma Doyle*.)

Question proposed, That the Amendment be made.

The Committee divided.

Ayes, 6

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Kevan Jones  
Sandra Osborne  
David Wright

Noes, 7

Mr Tobias Ellwood  
Mr Mark Francois  
Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

Question accordingly negatived.

Amendment (4) proposed. –(*Gemma Doyle.*)

Question proposed, That the Amendment be made.

The Committee divided.

Ayes, 6

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Kevan Jones  
Sandra Osborne  
David Wright

Noes, 7

Mr Tobias Ellwood  
Mr Mark Francois  
Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

Question accordingly negatived.

Amendment (6) proposed. –(*Mr Kevan Jones.*)

Question proposed, That the Amendment be made.

The Committee divided.

Ayes, 6

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Kevan Jones  
Sandra Osborne  
David Wright

Noes, 7

Mr Tobias Ellwood  
Mr Mark Francois  
Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

Question accordingly negatived.

Amendment (7) proposed. –(*Mr Kevan Jones.*)

Question proposed, That the Amendment be made.

The Committee divided.

Ayes, 6

Noes, 7

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Kevan Jones  
Sandra Osborne  
David Wright

Mr Tobias Ellwood  
Mr Mark Francois  
Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

Question accordingly negatived.

Amendment (8) proposed. –(*Mr Kevan Jones.*)

Question proposed, That the Amendment be made.

The Committee divided.

Ayes, 6

Noes, 7

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Kevan Jones  
Sandra Osborne  
David Wright

Mr Tobias Ellwood  
Mr Mark Francois  
Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

Question accordingly negatived.

Clause agreed to.

[Adjourned till Tuesday 15 February at 2.00 pm

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## Tuesday 15 February 2011

### AFTERNOON SESSION

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones  
Mark Lancaster

Jack Lopresti  
Sandra Osborne  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

The Committee deliberated.

*Resolved*, That the Armed Forces Bill be now considered.

Clauses 3 – 23 agreed to.



Clause 24.

Amendment (9) proposed. –(*Bob Russell*.)

Question proposed, That the Amendment be made:-Amendment, by leave, withdrawn.

Clause agree to.

Clauses 25 – 33 agreed to.

Schedules 1- 5 agreed to.

[Adjourned till Thursday 17 February at 10.00 am

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### Thursday 17 February 2011

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones  
Mark Lancaster

Jack Lopresti  
Sandra Osborne  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

The Committee deliberated.

*Resolved*, That the Armed Forces Bill be now considered.

A Clause (NC1) – (*Alex Cunningham*) – brought up, and read the first time.

Question proposed, That the Clause be read a second time: - Clause, by leave withdrawn.

A Clause (NC2) – (*Alex Cunningham*) – brought up, and read the first time.

Question proposed, That the Clause be read a second time: - Clause, by leave withdrawn.

A Clause (NC3) – (*Thomas Docherty*) – brought up, and read the first time.

Question proposed, That the Clause be read a second time: - Clause, by leave withdrawn.

*Resolved*, That the Committee do sit in private.

#### **Armed Forces Bill**

The Committee considered this matter.

#### **Written evidence**

*Ordered*, That the following written evidence relating to the Armed Forces Bill be reported to the House for publication on the internet:

- Archbishops' Council of the Church of England

- Ministry of Defence
- Dr Susan Atkins, Service Complaints Commissioner for the Armed Forces
- His Honour Judge Jeff Blackett, Judge Advocate General
- Daniels Trust
- The Peace Pledge Union
- ForcesWatch
- AT EASE
- The Welsh Assembly Government
- The Scottish Government
- British Armed Forces Federation

[Adjourned till Tuesday 8 March at 10.00 am

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**Tuesday 8 March 2011**

Members present:

Mr James Arbuthnot, in the Chair

Alex Cunningham  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones  
Jack Lopresti

Sandra Osborne  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

**Armed Forces Bill**

The Committee considered this matter.

Draft Special Report (*Armed Forces Bill*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Special Report be read a second time, paragraph by paragraph.

Paragraphs 1 – 22 read and agreed to.

Several papers were appended to the Report as Appendix 1.

*Resolved*, That the Report be the Special Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That the Armed Forces Bill, without amendment, be reported to the House.

# Witnesses

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## Thursday 3 February 2011 [Morning]

Page

**Mr Gavin Barlow**, Director Service Personnel Policy, **Brigadier Mike Griffiths**, Director Personal Services (Army), **Commodore Andrew Jameson**, Director of Naval Legal Services (Navy), **Mr Gary Lewitt**, Head Service Personnel Policy, Service Conditions and Welfare, **Mr Humphrey Morrison**, Head of Legislation, Central Legal Services, and **Air Commodore Ross Paterson**, Assistant Chief of Staff Services Personnel Policy (RAF), Ministry of Defence.

Ev 1

**Mr Gavin Barlow**, Director Service Personnel Policy, **Mr Jeff Garrett**, Head Service Personnel Policy, Pensions Compensation and Veterans, **Mr Gary Lewitt**, Head Service Personnel Policy, Service Conditions and Welfare, **Mr Simon Lowe**, Head Service Personnel Policy, Armed Forces Covenant Team, **Mr Humphrey Morrison**, Head of Legislation, Central Legal Services, and **Air Commodore Charlie Wilcock**, Head of Medical Strategy and Policy for Defence Medical Services, Ministry of Defence.

Ev 10

## Thursday 3 February 2011 [Afternoon]

**Dr Susan Atkins**, Service Complaints Commissioner for the Armed Forces, and **Mr Darren Beck**, Head of Office, Office of the Service Complaints Commissioner for the Armed Forces.

Ev 22

## Tuesday 8 February 2011

**Lieutenant General Mark Mans**, Adjutant-General, **Vice-Admiral Charles Montgomery**, Second Sea Lord, **Air Marshal Andy Pulford**, Air Member for Personnel, and **Lieutenant General Sir William Rollo**, Deputy Chief of the Defence Staff.

Ev 30

**Brigadier Eddie Forster-Knight**, Provost Marshal (Army), **Chief Constable Stephen Love**, Chief Executive, Ministry of Defence Police and Guarding Agency, **Mr Humphrey Morrison**, Head of Legislation, Central Legal Services, Ministry of Defence, **Commander Tony West**, Provost Marshal (Navy), and **Group Captain John Whitmell**, Provost Marshal (RAF).

Ev 42

## Thursday 10 February 2011

**Bryn Parry**, Chief Executive Officer, Help for Heroes, **Chris Simpkins**, Director General, Royal British Legion, and **Air Vice-Marshal (Retired) Tony Stables**, Chairman, COBSEO - Confederation of Service Charities.

Ev 51

**Kim Richardson OBE**, Chair, Naval Families Federation, **Dawn McCafferty**, Chairman, RAF Families Federation, **Julie McCarthy**, Chief Executive, Army Families Federation, and **John Moore-Bick CBE DL**, General Secretary, Forces Pension Society.

Ev 64

## List of written evidence

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1	The Forces Pension Scheme	Ev 74
2	The Coalition to Stop the Use of Child Soldiers	Ev 75
3	The Defence Police Federation	Ev 82
4	General Assembly of Unitarian and Free Christian Churches	Ev 84
5	Religious Society of Friends (Quakers)	Ev 85
6	David Gee	Ev 87
7	Archbishops' Council of the Church of England	Ev 88
8	Ministry of Defence	Ev 89: Ev109: Ev 110: Ev 120: Ev 123: Ev 125: Ev 126
9	Dr Susan Atkins, Service Complaints Commissioner for the Armed Forces	Ev 90
10	His Honour Judge Jeff Blackett, Judge Advocate General	Ev 93
11	Daniels Trust	Ev 95
12	Peace Pledge Union	Ev 97
13	ForcesWatch	Ev 104
14	AT EASE	Ev 111
15	Welsh Assembly Government	Ev 120
16	Scottish Government	Ev 121
17	British Armed Forces Federations	Ev 121

# Oral evidence

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## Taken before the Select Committee on the Armed Forces Bill on Thursday 3 February 2011

Members present:

Mr James Arbuthnot (Chair)

Alex Cunningham	Mark Lancaster
Thomas Docherty	Jack Lopresti
Gemma Doyle	Christopher Pincher
Mr Tobias Ellwood	Mr Andrew Robathan
Mr Mark Francois	Bob Russell
Mr Kevan Jones	David Wright

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### Examination of Witnesses

*Witnesses:* **Mr Gavin Barlow**, Director Service Personnel Policy, **Brigadier Mike Griffiths**, Director Personal Services (Army), **Commodore Andrew Jameson**, Director of Naval Legal Services (Navy), **Mr Gary Lewitt**, Head Service Personnel Policy, Service Conditions and Welfare, **Mr Humphrey Morrison**, Head of Legislation, Central Legal Services, and **Air Commodore Ross Paterson**, Assistant Chief of Staff Services Personnel Policy (RAF), Ministry of Defence, gave evidence.

**Q1 Chair:** Gentlemen, thank you very much for coming to give evidence to this Select Committee on the Armed Forces Bill, and thank you for having given us an informal briefing on Tuesday. Despite that informal briefing, I think for the record it would be most helpful if you would be kind enough to introduce yourselves.

**Mr Barlow:** My name is Gavin Barlow. I am the Director of Service Personnel policy at the Ministry of Defence.

**Mr Lewitt:** My name is Gary Lewitt. I have responsibility for the formulation of policy for conduct, discipline and welfare areas for Service personnel.

**Mr Morrison:** Humphrey Morrison. I am Head of legislation at the MoD and head, therefore, of the legal team for the Bill.

**Commodore Jameson:** Good morning, Chairman. Commodore Andrew Jameson. I am the Director of naval legal services.

**Brigadier Griffiths:** Brigadier Mike Griffiths, Director of Personnel Services for the Army.

**Air Commodore Paterson:** Chair, good morning. Air Commodore Ross Paterson, Personnel Policy for the RAF.

**Q2 Chair:** Thank you very much. There are two parts to the evidence session this morning. The first part relates to the Bill Team overall. The second part, with which there will be some overlap, will deal with issues about the Military Covenant arising under clause 2 of the Bill. There will be some overlap in the questions we ask, but we would like, during the second part of the session, to concentrate mostly on the Military Covenant. I wonder whether, in the first part of this morning—which should run until about 11.30 am—you could give brief answers on the Military Covenant, and keep it tight so that we can expand on it later.

Clause 1 deals with the renewal of the primary legislation, which happens every five years. Does the

fact that there is a five-year gap mean that it is harder to deal promptly and effectively with any practical and legal problems that might arise during the course of the five years?

**Mr Barlow:** Chair, thank you for that. First of all, it is important to make the point that, for us, the five-year period is more of an assistance than a hindrance. It effectively forms a guaranteed place in the timetable for the MoD to deal primarily with matters affecting the Service justice system, but also with other matters that we wish to include in primary legislation. Without that firm place in the timetable, we might find it more difficult to get a place at the right time. It also provides a basis for planning forward how we can deal with these legislative matters on a reasonably secure basis. It is really more of a help than a hindrance from our point of view. In practice, if we have to bring legislation forward in between times, and there is a sufficient case for it, as there would be for any other piece of Government business, then we have been able to do so, including in rare instances when we have used legislation brought forward by other Government Departments. Humphrey, do you want to give any examples of that?

**Mr Morrison:** If that would be helpful. We have had a number of other Acts from the 1990s onwards. In addition to the five-yearly Armed Forces Acts, we have had the Reserve Forces Act 1996, another Act in 2000 and the Armed Forces (Pensions and Compensation) Act 2004. So, where there is a need for primary legislation, we apply for the time. The Armed Forces Act 2006 was certainly a huge exercise, but at the same time it was a practical exercise, rather than a political one. We might have found it very difficult to plan and carry out such an exercise without having the opportunity of a guaranteed five-year slot to relate it to. We also have, in section 323 of the Act, a power that enables us to keep in touch with all new criminal justice enactments. We have also included specific provision for the Armed Forces in legislation from other Government Departments; for example, in

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3 February 2011 Mr Gavin Barlow, Brigadier Mike Griffiths, Commodore Andrew Jameson, Mr Gary Lewitt, Mr Humphrey Morrison and Air Commodore Ross Paterson

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the Bribery Act 2010, the Corporate Manslaughter and Corporate Homicide Act 2007, the Civil Partnership Act 2004 and so on. We are constantly in touch with other Government Departments so that where they are making changes we will, if we can, put in the provisions that we need, if they are different for the Armed Forces. Sometimes, particularly with the rapid pace of legislation and the changes that may take place during the passage of a Bill through Parliament, we cannot immediately decide what we want, but in those cases what we look for is a specific power, if necessary, to catch up with a particular area included in that Act.

**Chair:** Right. Thank you.

**Q3 Mr Jones:** Can I ask about clause 2? I am trying to understand how the areas in the Annual Report were decided on, including the final one, which mentions any other field that the Secretary of State may be determined to include. What was the process in moving from the Hew Strachan report, which set out certain things that clearly are not in the Bill, to what we have before us now, which says that we will have an annual report that includes certain areas? Can you talk us through that policy process?

**Mr Barlow:** The Bill mentions three areas. We determined that those were the most appropriate to include in the Bill on the basis that, in our judgment, they were likely to represent matters of interest every year and that it was a reasonable assumption that we would always wish to report on those.

**Q4 Mr Jones:** Some of them are quite abstract, aren't they? There is no legal requirement on any local authority, for example, to carry out certain things. These things are quite abstract. How did the Hew Strachan morph into this? What process took place?

**Mr Barlow:** I don't think we saw the Strachan report, which was looking at specific measures that we needed to take to pursue the Government's objective of rebuilding the Covenant, as a direct influence on the policy process for developing the legislation. The two have been conducted in parallel, rather than in sequence.

**Q5 Mr Jones:** So the Strachan report was not involved at all in what we have now on the Covenant?

**Mr Barlow:** It flowed from a similar policy requirement, which was the Government's desire to establish a firmer basis for the Covenant and to pursue that in a number of ways.

**Q6 Mark Lancaster:** To follow on from Kevan, what, apart from health care, housing and education, was considered as potentially being one of the three reporting lines? Why, ultimately, were they dismissed?

**Mr Barlow:** We have considered a lot of possible options, including wide definitions of welfare. Some commentators would have wanted us to go into broad interpretations, which would have brought in equipment and almost every aspect of defence policy. In the end, we felt that the group of policy areas that we put on the table in the Bill was representative of

what the proper focus of work on the Covenant would include on a regular basis. We have then included the ability for Ministers to draw in other areas as required, including areas that may be required by the External Reference Group and other stakeholders. We are trying to create neither something that will be too focused and too limiting on the one hand nor coverage that will simply be unrealistic and too broad to be of use.

**Q7 Mark Lancaster:** I accept that a balance has to be struck, but could you—very briefly because of the time—put a bit of meat on what you consider to be covered in the three areas, because they are not clearly defined in the Bill?

**Mr Barlow:** That itself will vary over time. Again, we're trying not to be too constraining. We had a discussion during the informal session about what education, for example, might cover. Clearly, our initial focus would be on the education of Service children, whether in schools in the UK or in schools overseas, but we certainly would not be looking to exclude reporting, where it was necessary, on the education of veterans, ex-Service personnel—the Government have made certain commitments on that—the children of widows or injured personnel. We can bring those definitions to bear on the Covenant problem as it presents itself through the feedback we get from stakeholders in the External Reference Group and elsewhere, and what Ministers want to cover.

**Q8 Mark Lancaster:** Finally, given that the broad thrust of the Bill is trying to enshrine that and that there are these three categories, do you not feel that having the catch-all category of "as the Secretary of State deems fit" potentially gives a little too much wriggle room for the Secretary of State if, for example, there is a conflict when an external group wants to see something being reported and there is no obligation to report it?

**Mr Barlow:** Well, no. The way in which we see the Report working can operate effectively only if we are properly and honestly representing the views of stakeholders in so far as we can. It's not going to be in any Government's interest to produce a report on the Covenant that clearly ignores matters of significant concern to, say, the RBL, SSAFA, the War Widows Association or the Families Federations, all of which have many mechanisms for making their voices heard but for which we have a specific mechanism in place in the External Reference Group. We've had discussions about this in the External Reference Group, and I think that it's fair to say that some members of the external bodies shared the sorts of concerns that you've expressed—that there would be a lack of sufficient ability to influence the Report. But I think we've been able to reassure them that in practice that's simply not going to be the case and no Government would want to put themselves in a position where they had simply taken something off the agenda. It wouldn't be possible so to do.

**Q9 Mr Jones:** Can you clarify this? You're saying the Strachan report was one line of work and then you

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3 February 2011 Mr Gavin Barlow, Brigadier Mike Griffiths, Commodore Andrew Jameson, Mr Gary Lewitt, Mr Humphrey Morrison and Air Commodore Ross Paterson

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add this. Can you explain what the process was, for example, post May and the change of Government? What actually happened? Was this you trying to interpret what had been said by the Conservatives or the Coalition in opposition? Who actually initiated this piece of work and said, "Right. Health care etc. should be in here"? What was the process?

**Mr Barlow:** In general terms, civil servants are here to do what the Government of the day want. We operate only under ministerial direction, and that's exactly what happened in this case. The Strachan report—the Strachan Task Force itself—was the response to a specific early request from Ministers to look at what we could do to build on the commitments that Ministers had made at the start of the Coalition Government and that are framed in the Coalition Agreement, where there is a set of specific Covenant-related—

**Q10 Mr Jones:** Was any of the work that was carried out prior to May by the previous Government taken into consideration in that work? An example would be the Green Paper response.

**Mr Barlow:** The work of the previous Government in the form of the Command Paper and the subsequent Green Paper, which was published in 2009, I think, is a matter of record. Before the Election, we published a summary of the responses that we had received in the Green Paper consultation exercise, and all of that was available to Ministers as well as to others.

**Q11 Mr Jones:** Sorry; that wasn't the question. Was the work taken into consideration when you were doing this process?

**Mr Barlow:** Yes, we've taken account, as we've gone through, of the extensive knowledge that we've built up over the years through those processes of what the stakeholders in the Covenant want and how they want to bring it to bear.

**Q12 Mr Jones:** So Ministers took a decision to reject some of the proposals that were put forward in the Green Paper and the response.

**Mr Barlow:** Well, the Green Paper put forward a number of options. If you'll recall, Mr Jones, the responses that we set out to the Green Paper made it clear that there was a wide range of views on what the appropriate responses would be. For example and perhaps not surprisingly, local authorities in general were very much opposed to central Government imposing additional statutory responsibilities on them, but a wide range of other views was expressed.

**Q13 Mr Robathan:** Mr Barlow, just for clarification could I ask you to be quite clear about these three fields of housing, health care and education—first, that they are the fields in which the greatest concerns of serving personnel and their families are expressed in correspondence to us and, indeed, to the chains of command; secondly, that they are not in any way exclusive, and that other matters can arise; and, thirdly, that part of the Bill's contention was not to be too prescriptive, because in that way you get into ticking boxes rather than dealing with issues?

**Mr Barlow:** Yes, absolutely right. As you say, the Armed Forces community regularly raises matters under all of those headings. They represent a significant proportion of our general Covenant business, but other matters can be covered as well.

**Q14 Bob Russell:** Did the Bill Team at any stage consider the appalling consequences of the privatisation of the housing stock and the purchase by Annington Homes in 1995, and the ongoing issues surrounding married housing?

**Mr Barlow:** I think that that is an assessment of the MoD's current housing position, which I don't think we necessarily share; I don't think we specifically addressed that in the way in which we framed the legislation.

**Q15 Bob Russell:** Secondly, on education, did the Bill Team take account of the recommendations made by the Defence Committee's specific inquiry into education during the last Parliament?

**Mr Lewitt:** The driving principle behind the Covenant is about ensuring that Service personnel and their families do not suffer disadvantage as a consequence of their Service; and those who have made sacrifices are treated specially in return for that sacrifice. The answer to your first question is very much as Mr Barlow said.

The answer to your second question is that the issues were raised in the 2005–06 Report; there is a long section towards the end of that report after the SCE discussion on educating Service children in UK maintained schools. Yes, those issues were taken into account. We have been engaged with the Department for Education on the pupil premium, as we discussed in the informal session. In the Government's programme, there is a commitment to scholarships for children of those who have died on Service. We are taking that work forward as well, and announcements have been made. The answer to your second question is yes.

**Q16 Jack Lopresti:** A simple question: should the Bill specify the absolute minimum standards that must be provided in relation to health care, housing and education? Otherwise, aren't things too vague and unaccountable?

**Mr Barlow:** I think this takes us into the area where one can debate the value of targets or specific performance measures. We clearly haven't set that approach out in the Bill. It will be a matter of choice for Ministers when reports are made whether they wish to back up approaches in particular policy areas with specific targets and commitments. There are extant departmental targets in some of the areas that are of concern, and where those are appropriate they will be referred to in the Report. They could be, in future, but they won't necessarily be.

**Q17 Jack Lopresti:** Will any of the rights under a new Tri-Service Covenant be enforceable?

**Mr Barlow:** Enforceable in law? Humphrey, do you want to say something about this?

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**Mr Morrison:** The aim of the clause is to provide a mechanism by which we identify things that ought to be done. Where the best way of achieving that is legislation, it will have legal effect and be enforceable; that will be the approach taken on a case-by-case basis. But the clause itself does no more than provide the mechanism of identifying those matters, so that the right decision can be made as how best to deal with it; and that may not be legislation. There are many areas in which it is likely that improvements can be made without legislation.

**Mr Lewitt:** There are, of course, other means than legal enforceability. For example, on the Department for Education's guidance on Admissions for schools, there is an appeals process. Service personnel use that when they find themselves, in their view, having been discriminated against. We have a success rate that tends to be above the average. What we are looking for is not necessarily always a mechanism enshrined in statute; other mechanisms can be used.

**Q18 Gemma Doyle:** Given the large amount of interest there has been in previous years in respect of benefits paid to former serving personnel, for example, under the Armed Forces Compensation Scheme—there has also been a huge amount of interest in Armed Forces pensions—would you agree that pensions and benefits should be looked at again in terms of their being specified as something that the Secretary of State should include in his Report to Parliament? I cannot envisage a time when that will not be an issue of great interest.

**Mr Barlow:** Certainly, the Armed Forces Compensation Scheme has been an issue of significant interest recently. That has led to a substantial body of work in itself in the form of the Boyce Review of the Scheme and subsequent Government commitments to deal with that. That will be followed up by changes to legislation and implementation of a revised scheme. Similarly, from time to time, pensions arrangements for the Armed Forces may need to be reviewed and almost certainly will be after the Hutton Review Reports. I do not think they are in the same category of continuous regular annual challenge or concern. They have been and, to some extent, still are at the moment, but that is not necessarily an enduring matter.

**Q19 Gemma Doyle:** What is the reason they were not included in the Bill? What is the thinking behind that? I think it has been an issue of concern over the past few years and it is an issue of concern at the moment, certainly in terms of the changes that have been made to pensions. I see that as an ongoing area of concern, even if people felt that the direction was satisfactory.

**Mr Barlow:** If there are specific areas of concern around pensions—clearly, the Forces Pension Society among other organisations does have issues that it wishes to raise—it may well be appropriate to reflect on some of that in the Annual Report. But, it is not the only outlet. Generally, we pursue our responses to policy questions on the Compensation Scheme and on forces pensions through the other measures. It didn't

feel to us that this was a new area that it was necessary to highlight in the Report format itself.

**Mr Lewitt:** I think we are back with the guiding principle again. The guiding principle of the Covenant is about ensuring that there are no disadvantages as a result of the mobility that Service life requires of you. The Pension Scheme is already unique to the Armed Forces anyway. Comparator issues tend to be around access to housing, education, welfare services and health services. As Gavin says, the Armed Forces Pension Scheme is unique to the Armed Services and has other ways of being addressed, improved, amended or whatever. The same goes for the Compensation Scheme. It is not about no disadvantage compared with a civilian population.

**Q20 Gemma Doyle:** It seems strange to me that the Secretary of State would be required to report to and update the House on issues like education, for which he or she would not be directly responsible. But, on an issue like pensions and benefits, where the direct responsibility is with the Government, he or she would not be required to provide an update to the House on that matter.

**Mr Barlow:** There is a requirement on the Secretary of State to report on behalf of the Government as a whole. That is normal. We would simply take a different view. In a sense, precisely because the Secretary of State is not normally directly responsible for those matters, it is important to have a report every year that provides an opportunity to draw them together, and enables the Government to say what they have been doing and gives Parliament an opportunity to scrutinise that and debate it.

**Q21 Gemma Doyle:** How do you envisage the process of drawing up the Report taking shape, and who do you think would be consulted on that?

**Mr Barlow:** We haven't come to a final view on how we're going to do that. We will do that when the legislation is passed. We've had some discussions in the External Reference Group about how we might take the Report forward, and we've agreed that consultation is important. We already do that. In the past we have consulted the External Reference Group when producing reports on the Service Personnel Command Paper, and we see that continuing. We also need to draw in the Devolved Administrations and discuss further with them how we are going to fairly and properly represent devolved issues. A lot of that is about being sure about the administrative process, rather than the principle, which is that we all try and consult widely. We will consult widely.

**Q22 Gemma Doyle:** At the moment, the main group of stakeholders you would be consulting is the External Reference Group. No one else has really been thought of.

**Mr Barlow:** It is largely represented through the External Reference Group, but I don't think that would be exclusive.



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**Q23 Gemma Doyle:** In that case, do you have any concerns about the make-up of the External Reference Group or the independence of that Group?

**Mr Barlow:** Well, the External Reference Group itself is not independent. It is a committee—if you like—chaired by a Cabinet Office official, which includes independent members as well as representatives of the Devolved Administrations and the main Departments that are involved in delivering on Covenant-related issues. The independence comes from the fact that those bodies that are independent and on the External Reference Group get to hear what is being debated by officials, and understand what is going on in terms of policy development within Government. They still have the opportunity to comment on that externally if they wish to do so, and to influence what is going on directly in the work of the Committee itself.

**Q24 Gemma Doyle:** A final point, Chair. Concerns have been raised with me that the majority of Members of the Group are in fact civil service officials. They are not actually from charities or forces organisations. Is that understanding correct?

**Mr Barlow:** I suppose if you were going to count numbers sat round the table, that would be true. But it is not a committee that forms policy by vote, so I don't think that is significant. In practice, the weight of discussion in the committee fairly represents the important interests that the Families Federations and the charities bring to bear. They get plenty of air time.

**Chair:** I'm just about to call Christopher Pincher to ask more about this issue, but before I do, Commodore Jameson, Brigadier Griffiths and Air Commodore Paterson, you are not part of the Military Covenant team that will be giving evidence from 11.30 am onwards. Therefore, when Christopher Pincher has finished asking further questions, I will ask for your military view on the Covenant issues, and whether there is anything you wish to add to what has already been said about those.

**Q25 Christopher Pincher:** Beyond the External Relations Group and the Devolved Assemblies, do you envisage any limitless number of formal stakeholders to the Report?

**Mr Barlow:** Well, in a sense, the overall stakeholder community could be described as the Armed Forces community as a whole.

**Q26 Christopher Pincher:** But will they be formal stakeholders, with a mechanism to formalise their input?

**Mr Barlow:** It's a question of how we represent their views, I think. We do that partly through the External Reference Group, partly through the chain of command and its mechanisms for managing consultation with and gaining the views of Service personnel, and partly through more formal mechanisms such as Continuous Attitude Surveys, in which we deal with both families and Service personnel. If there are other major specific issues that Ministers wish to include in the Report, that may draw in other bodies as well.

**Q27 Christopher Pincher:** One last question, Chair. In the production of the Report, do you envisage that those formal stakeholders will simply provide written evidence, which the Secretary of State will take on board, or will there be a more formalised report committee?

**Mr Barlow:** I would expect the final stages of drafting the Report to involve the External Reference Group. I wouldn't envisage wider public consultation on the development of the Report itself, but that will be a matter for Ministers in the end.

**Q28 Chair:** Right. Before we end the questions on the Military Covenant, Commodore Jameson, is there anything about it you would like to add from a naval or military point of view?

**Commodore Jameson:** Thank you, Chair. Or an Armed Forces perspective. I think my Service's understanding of the Covenant is that not only does it cover all the issues that your questions have hinted at—the relationship with other Government Departments and so on—but it is also concerned with the way that the senior leadership of the Forces interact with their people as well, in terms of ensuring that internal matters such as promotion prospects and fair treatment are equally respected and so on. Our perspective is that the Covenant is an extremely broad, intangible thing and covers a huge range of rights and responsibilities that are not always capable of being reduced to language, but that, instinctively, we feel we understand.

**Q29 Chair:** Thank you. Brigadier Griffiths?

**Brigadier Griffiths:** The Army is very comfortable with the aspect of a Covenant rather than a contract. After all, we have had the Military Covenant for about 20 years now, so we are comfortable with the concept, rather than it being a laid-down legal contract. We also feel we have a very clear mandate to report to the Centre, as we would describe it—the Ministry of Defence—the concerns of the Army. We do that through our various methods of providing that information, and CGS represents those on our behalf. That will be part of the process of putting together the Annual Report.

Again, we're comfortable with the Annual Report, and we will do all we can to influence what is in there, and, if necessary, outwith the three measures that have been talked about today. We feel there is a process to allow us to do that. Underlying the Covenant is a programme of measures, which is routine work that, again, we feel is important. It's the work the Ministry of Defence does normally to improve the Covenant. I think that will be discussed later. I think that that together allows us to be very comfortable with the concept of the Annual Report.

**Q30 Chair:** Thank you. Air Commodore Paterson.

**Air Commodore Paterson:** Chair, thank you. The joy of going last is that everybody steals your lines, of course. I'd echo everything that's been said, but I want to reinforce the point I made on Tuesday on the onus we place on the chain of command to feed that up. It is not as easy to track them down as it might seem

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sometimes, because of the volume of these issues. Some of them, such as housing, accommodation, child care, education and so on, will be standing, but we see that as a key effort by our chain of command. As Mike has said, we put every effort into pushing them up to ensure that they are given every visibility.

**Q31 Alex Cunningham:** I have a specific question for the Armed Services people on the minimum standards for health care, housing and education. There seems to be some fear about laying down standards across those three areas. Shouldn't there be a minimum standard for our people?

**Commodore Jameson:** I entirely understand the question. The concern is that, by imposing minimum standards in some identifiable areas, there is an implication that no minimum standard applies to the areas not so covered. For the reasons I gave earlier, which were about the broad interpretation of what this is concerned with, that would be unwelcome.

**Q32 Mr Jones:** The Bill is being spun, certainly by the Prime Minister, as putting the Covenant on a legal footing, which is exactly what it is not doing. Like many things that the Government do, when you open the tin there is very little in it. On the minimum standards, don't you think—I know this was the view of the civil servants when I was in the Ministry—that they will do as little as possible, so that a report may be produced that, frankly, will just gather dust on people's shelves? There won't be any way of improving lives or holding to account other Government Departments, as well as parts of the MoD, when they are not providing the Services that we should expect for our Service men and Service women, for their families and for veterans.

**Mr Barlow:** If the production of a report was all that was happening, it is possible that you would have a point, Mr Jones, but that doesn't encompass the Government's commitment under the work set in hand on the Covenant.

**Q33 Mr Jones:** But you've got what you wanted.

**Mr Barlow:** I won't quote from "Yes, Minister", as Mr Lewitt did in the informal sessions, because I am not such an avid watcher.

We have a significant programme of work already under way on the Covenant in response to the Coalition Programme. The Government are going to bring forward a response to the Strachan report in the spring, which will set out how they wish to take forward responses to all the Strachan recommendations, of which there is a significant number, and how they wish to do that alongside other work to meet the Coalition commitments and to take forward the commitments made by the previous Government under the Command Paper that hadn't yet been delivered.

**Q34 Mr Jones:** Why weren't the Strachan recommendations implemented in the Bill? Isn't this a bit of a cack-handed way of doing things? You're taking certain things and putting them in the Bill, and somehow in a few months' time you're going to come

back with something else to implement some of the things that have not been included in the Bill. That comes back to my point, and I would be interested to hear your response, because I already know the answer: what was the policy process by which you arrived at was going into the Bill?

**Chair:** I suggest that we take that in the second session, which is specifically dealing with the Military Covenant, because we need to move on to other issues. Independence and powers of Service police—clauses 3 and 5—is the next issue that we want to deal with.

**Q35 Mr Ellwood:** Clause 3 talks about the Provost Marshal's duty in relation to the independence of investigations. The clause introduces that all investigations carried out are free from improper interference. Why do you feel it necessary to introduce that? What has happened in the past number of years that has meant that you need it? Has there been any improper interference in investigations, and what would be classified as improper interference?

**Mr Barlow:** We would see this as appropriate strengthening of the current provisions for independence. Humphrey, can you say a bit more?

**Mr Morrison:** I think that the main fact in the background to this is that everyone recognises that the effective and independent nature of Service police investigations is under far greater scrutiny than ever before, and indeed, it is under scrutiny in the courts at the moment. This is partly because of the development of human rights, but it's also because of broader expectations, and because of the increased recognition of the problems of policing in an operational environment.

Experience has taught the Armed Forces and the Centre—the MoD itself—that where fighting is going on particularly close to a civilian population, all sorts of problems can arise. When you are policing in a chaotic environment, all sorts of problems can arise. Allegations can be made about the conduct of Forces, and there is this growing need to ensure that we can point to an extremely robust and independent system, but which still necessarily depends on the investigations being conducted by Members of the Armed Forces. So, despite the fact that the courts, just before Christmas, delivered in one of the main cases, saying that the provisions we already have in place are sufficient to give the necessary degree of independence for investigating allegations against the Armed Forces abroad, we thought that both highlighting this and, as Mr Barlow has said, giving an extra buttress or strengthening to it is a good thing. It will absolutely flag up the particular authority of the Provost Marshals in maintaining their independence.

**Q36 Mr Ellwood:** Thanks for that reply, but I'm still trying to understand what an example of improper interference might be.

**Mr Morrison:** Oh yes. In broad terms, there are two types. One would be plain—malicious, if you like—wrongdoing: obstructing a Provost Officer or something that would amount to the offence of perverting the course of justice. Those offences are

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already covered by Armed Forces legislation. One type of extreme interference could be of that sort. But there can be other forms of interference, and we want to make it clear that the Provost Marshal has a duty to resist them. They are the well-meaning attempts that might be made by someone in the chain of command, particularly when they're under pressure for operational or other reasons, to try to tell the Service Police how to carry out an investigation—what to do and when. I think that it is that sort of situation that is much more likely to arise. We've had the offences of obstructing Provost Officers and perverting the course of justice in place for many years in Armed Forces legislation.

**Q37 Mr Ellwood:** But that, if I may say so, is the point. If that's been in place, can you cite an example whereby, had this clause been in existence beforehand, it would have helped the Provost Marshal?

**Mr Morrison:** I think that Provost Marshals certainly support this on the basis that, particularly in relation to what I would call the second head, this will help with the difficulty that the main chain of command sometimes has in reconciling the Service police needs with its own. I hope that they will support that when you see them.

**Q38 Bob Russell:** Can I ask for clarification? What is the definition of "Service police"? Does it include the Ministry of Defence Police?

**Mr Morrison:** No, it doesn't include the Ministry of Defence Police. The Service Police Forces are those Forces that are part of the Armed Forces. The RAF, the Royal Navy and the Army each have a force of Service police who are Members of the Armed Forces. The Ministry of Defence Police is a civilian police force.

**Q39 Bob Russell:** Thank you. Although it has strong connections with the Military installations?

**Mr Morrison:** Yes, its function under statute—the Ministry of Defence Police Act 1987—is related to defence, and it forms part of the Ministry of Defence, but its Members are ordinary civilian police officers with constabulary powers.

**Q40 Bob Russell:** I wonder if I could ask a supplementary question. At any stage, has the Bill Team had any briefings relating to the future of the Ministry of Defence Police?

**Mr Lewitt:** We have not been asked to consider there being either no Ministry of Defence Police or a different sized Ministry of Defence Police. The provision in the Bill relates to one specific issue, and of course the Bill is principally about the Armed Forces and the three Service police forces.

**Q41 Bob Russell:** So no communications relating to the future of the Ministry of Defence Police have been brought to the attention of the Bill Team?

**Mr Lewitt:** We've not been given any specific direction to take any view.

**Mr Morrison:** May I add one thing that might help? What we are certainly being asked to do, which may

give you some indication of an answer to your question, is include a provision in the Bill. There is one about the Ministry of Defence Police, which is further developing its systems for dealing with inadequate conduct. That has been the discussion about the Ministry of Defence Police in relation to the Bill.

**Mr Lewitt:** I would not expect, as the owner of the Bill Team, to have been consulted on whether there should or should not be a Ministry of Defence Police. That is a broader question for security policy leads, and for those who count the numbers and work out such things as the force structure and the number of establishments.

**Bob Russell:** Thank you. I just wanted to flag that point up, Chairman.

**Q42 Mark Lancaster:** There seems to be some ambiguity in the Bill as to whether Her Majesty's Inspectorate of Constabulary would be free to commission its own report on its findings, at its own instigation, or whether that could be done only at the request of the Secretary of State.

**Mr Morrison:** HMIC, under the clause, will have the power to decide how many inspections it undertakes, when it undertakes them and what aspects of investigations it looks at. That is all specifically provided for in the Bill. The Secretary of State can ask HMIC to do more, and to look specifically at extra things or at things that it is not proposing to cover in the Report.

**Mr Lewitt:** That, Mr Lancaster, is because previously the position with the Inspectorate of Constabulary and a number of the other inspectorates has been that we have asked them to look at various parts of the Service justice system. This creates a statutory duty—Humphrey will correct me when I go off-piste—on HMIC to inspect the Service police. It is already doing so and it has inspected the RMP and the SIB—I have lost the plot; twice now, Brigadier Mike? It has recently inspected the Royal Navy police under the current regime, which is a consensual one between the Department and the Inspectorate.

**Chair:** Anything else that anybody wants to ask about the policing issue, or that anybody wants to answer, unasked, about the policing issue? Okay, moving on to drug testing schemes, I call Thomas Docherty.

**Q43 Thomas Docherty:** Under clause 11, the issue about the power to test a person who is incapable of providing consent appears to be focused, in proposed new section 93G, on the word "accident". I don't know whether this is for the Air Commodore or for the MoD itself, but hypothetically it would be possible for a pilot of an aircraft to appear to be intoxicated under the influence of drugs or alcohol, and perhaps be incapable of giving consent, but to bring their aircraft down without causing an accident. So we wonder whether it would perhaps be better to replace "accident" with "a safety critical incident".

**Mr Morrison:** The word "accident" is exactly the same as appears in the provisions that this legislation copies almost word for word, the Road Traffic Act 1988. It also applies in the Railways and Transport

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Safety Act 2003, which we have looked at in particular, because the 2003 Act covers aviation matters and navigational matters. It hasn't caused any problems of the sort you mention, so far as we are aware, probably because this is a limited provision. In practice, it has not proved the case under those Acts that people are so intoxicated that, legally, they are simply incapable of giving their consent.

This is really about looking at people whose mental or physical state is of such an extreme kind that they cannot consent at all—they are unable to communicate and so on. Theoretically, it is a point that could be taken on the wording, but we were informed by the relevant Departments that those other pieces of legislation haven't caused a problem over the past 20-odd years, so we have adopted their language.

**Air Commodore Paterson:** Chair, if I could just add to that, I am certainly not in a position to talk about any of the legal points, but a huge benefit is coming in for us with the new Bill. Under the Railways and Transport Safety Act and the old Bill, we have not been able to do any compulsory testing before an incident or an accident happens. The key benefit that is coming in now is the ability to do just that. God forbid we find any such pilots, or anyone in air traffic or the engineers, but now if there is a justifiable reason to test, we will be able to do just that, to prevent an incident from happening.

**Q44 Thomas Docherty:** On the issue of tariffs in clause 10(5), the maximum term of imprisonment is two years, but it is six months under the Road Traffic Act. Is there a particular reason why there is such a discrepancy?

**Mr Morrison:** We looked quite carefully at functions and decided that the right comparators were the punishments available for navigation and aviation offences in the Railways and Transport Safety Act, which is two years in both the main offences sections. We have adopted the penalty from that. It also happens to fit in with our own existing two-year maximum penalty for drunkenness in the Armed Forces, so in the area that we are primarily looking at—safety-critical, difficult tasks done by pilots of planes and so on—we are following exactly the provisions of the civilian legislation.

**Q45 Mr Jones:** Has there ever been a challenge because of the difference between sentences? If you committed the same offence in civilian life, you would get a maximum of only six months. Are they watertight?

**Chair:** I'm not sure that that is what you were saying, Mr Morrison.

**Mr Morrison:** I'm saying that the two-year penalty that we are imposing is the same as the two-year maximum under the Railways and Transport Safety Act 2003—there is no difference. There are different penalties under road traffic legislation.

**Chair:** It is road traffic as opposed to aviation, which is the difference.

**Q46 Mr Jones:** So what is the equivalent piece of civilian legislation?

**Mr Morrison:** The Railways and Transport Safety Act 2003.

**Q47 Chair:** The BMA has raised two issues with us. The first is the question whether a GP involved in the medical care of a patient should be the person who is asked to take a drug or alcohol sample. It asks whether a forensic physician could be asked to do that instead. Is that practical or not?

**Mr Barlow:** There will be circumstances, particularly on operations, where it will not be practical, but that is a long-standing situation for the Military Medical Services. May I suggest, Chair, that you get more direct evidence on that from Air Commodore Wilcock, who will be joining us for the next session on the Covenant? He can give you a proper medical view on how that is dealt with.

**Q48 Thomas Docherty:** In terms of sample taking, I suspect that we now know the answer, but proposed new sections 93E and 93G specify the quantity of blood to be taken. I understand that the Road Traffic Act does not do that. Proposed new section 93F on urine specimens specifies, for example, that the urine sample must be taken within an hour of the previous breath test. Again, that is not in the Road Traffic Act. Will you confirm why there are those rather discreet discrepancies?

**Mr Morrison:** I think I would prefer to come back on those details. I cannot remember whether we decided to look into that further in subordinate legislation or whether there were practical issues about timing, which meant that it was better to take them out. I am happy to put in a note on that.

**Chair:** Could you do that?

**Mr Morrison:** Yes, happy to.

**Q49 Chair:** Under clauses 13 and 19, Commanding Officers get increased discretion to reduce the rank of a person who receives a sentence of imprisonment or when imposing an administrative penalty. Is there any danger of inconsistency in that, or will guidance be issued to ensure consistency?

**Mr Barlow:** We think that there is consistency, but certainly, further guidance will be issued in the "Manual of Service Law" and other administrative instructions.

**Q50 Chair:** There will be guidance issued?

**Mr Barlow:** There will be guidance. Perhaps I might ask Commodore Jameson to add some more detail.

**Commodore Jameson:** In relation to the reduction in rank as a punishment, currently, when a warrant officer or NCO is sentenced by his Commanding Officer to military detention, he is automatically reduced in rank or rate. Interestingly, if he is sentenced by a court martial, there is a discretion, if sentencing him to detention, whether also to reduce him in rank or rate. The aim of the clause is to give the Commanding Officer the same discretion that the court martial has. In other words, the CO can decide, "Yes, I will send him to detention and I will reduce

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him in rank,” or, “I will send him to detention, but he will retain his rank when he comes out.” In most cases, the CO will conclude that if something is so serious that people are going to detention, they should be reduced in rank, but there will now be flexibility under this measure for the CO to decide otherwise.

**Q51 Chair:** Thank you. There is also a potential discrepancy arising from clause 15, relating to the maximum period of detention for certain offences, depending on whether an offender is imprisoned or subject to Service detention. If imprisoned, the maximum period is 51 weeks; for Service detention, the maximum is two years. Does that create a risk of inconsistency?

**Mr Morrison:** We do not consider that to be an inconsistency or to create a discrepancy, because it is important to bear it in mind that detention is not imprisonment. When we looked at this in 2006, the decision was made to set it at the same level, but, on further thought, it was recognised that in the context of this sort of offence, there was actually no reason to take away the power to rule up to two years of detention, which is available for every other offence under the Act. So, for this one offence—the failure to take a random drugs test—all we are doing is giving the same flexibility in applying the sentence of detention as would be available to the court martial in relation to any other military offence.

The root of the answer is that there was a mistake, almost, in making that exact equation between detention, which might go on for longer but with the aim of retraining and bringing the person back in, and imprisonment, which is a fundamentally different notion.

**Chair:** That is a very interesting and helpful answer. The last bit under this first part of the evidence session is on Service complaints procedures.

**Q52 Mr Jones:** This seems like déjà vu, because when we considered the previous Bill we had long discussions on independent members for Service complaints.

Under clause 20, there does not seem to be any requirement for independent members to be appointed. Under the previous Bill, on certain occasions we allowed for independent members on Service Complaints Panels. Are there any proposals under clause 20(7) for the Secretary of State to bring forward regulations to require independent members to be appointed in relation to certain types of offence?

**Mr Lewitt:** Mr Jones, you’re absolutely correct that the Armed Forces Act 2006 allowed for Service Complaints Panels that had an independent member on them. We’ve already had a large number of Service Complaints Panels meeting in all three Services. As the owner of Ministry of Defence policy formulation in this area, I have taken formal feedback from independent members.

**Q53 Mr Jones:** How many panels have you actually sat on?

**Mr Lewitt:** We have four independent members, and they’ve done 30 or 40 panels altogether now.

**Q54 Mr Jones:** Out of how many panels?

**Mr Lewitt:** I’d have to give you a note on how many times a board, rather than a panel, has met. However, the use of panels is increasing. The Air Force and the Navy are leading at the moment; the Army is catching up quickly, however. That is simply a question of the Army having had a larger number of cases.

**Q55 Mr Jones:** They were against it last time.

**Mr Lewitt:** In terms of what is happening this time, we have recognised, largely as a result of the European Court of Human Rights case concerning ex-Sergeant Crompton, which we won, that there might be circumstances—they are very small, because the Court held that the Service Complaints process did comply with Article 6 of the Convention—where the special bond of trust and loyalty between those in the chain of command and Service personnel might not be engaged and where the issue was around a finding of fact. In those circumstances, the Court said to us, “It would be better if you were able to have a panel all three members of which were independents.” This provision allows for that.

**Q56 Mr Jones:** Does this provision still give the Defence Council the responsibility for deciding those cases that need independent members?

**Mr Lewitt:** My legal adviser would advise me in those circumstances anyway.

**Mr Morrison:** The provision has two parts. First, there is provision for the Defence Council to decide of its own volition to have an independent panel—to decide whether there should be a panel and how it should be composed. There is also a power under which the Secretary of State can lay down regulations as to when there must be a panel and when it must have a particular composition, including all independent members. We’ve done it like that because the judgment of the European Court in Crompton was in very general terms. As Mr Lewitt said, it indicated that only in certain circumstances would the existing system—the provisions we already have—not meet the requirements of independence. The Court basically said—indeed, on the facts of the case, it held—that the system worked fine in terms of independence.

**Q57 Mr Jones:** Would it be on a case-by-case basis or would you say, for example, that certain classes of subject would be discussed?

**Mr Morrison:** What we’re planning to do is to consider cases as they develop to work out, to be honest, what the Court meant in relation to such cases. It provided quite a complicated set of tests; they are set out in general terms, but when you read them, as Mr Lewitt indicated, they were quite complicated. You first have to establish whether the case engaged a right for the purpose of Article 6, which is, itself, quite a technical question. Secondly, there was the question of whether the issue does or does not go to what is called the fundamental relationship of trust and confidence. If it does, the existing system again works. Thirdly, even if the issue does not go to that relationship and therefore potentially needs an independent panel, the Court said that will only be the

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case if the key issue is one of fact—in other words, it is one where the system is having to choose between the evidence of two or more, probably, Members of the Armed Forces. It said that in the circumstances where all those requirements are met you will need full independence—an independent panel—and not the exact system we have at the moment. It sounds moderately simple to say that, but applying it to the complicated facts that arise in these cases is quite difficult. We will have to work on a case-by-case basis. We are allowing the Defence Council to decide on a purely case-by-case basis or to lay down more

general rules. When the law really is clearer, those will then be subject to regulations—statutory regulations put before Parliament by the Secretary of State—which will lay down the circumstances in principle. At the moment, we have to admit that the case is not clear enough for us to give hard and fast answers.

**Chair:** That is all for the first part of the evidence session. To those who are leaving us, thank you very much indeed. Could we now have a changeover as orderly and quickly as possible?

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### Examination of Witnesses

*Witnesses:* **Mr Gavin Barlow**, Director Service Personnel Policy, **Mr Jeff Garrett**, Head Service Personnel Policy, Pensions Compensation and Veterans, **Mr Gary Lewitt**, Head Service Personnel Policy, Service Conditions and Welfare, **Mr Simon Lowe**, Head Service Personnel Policy, Armed Forces Covenant team, **Mr Humphrey Morrison**, Head of Legislation, Central Legal Services, and **Air Commodore Charlie Wilcock**, Head of Medical Strategy and Policy for Defence Medical Services, Ministry of Defence, gave evidence.

**Q58 Chair:** Will the newcomers be kind enough to introduce themselves?

**Mr Lowe:** I am Simon Lowe; I work in Mr Barlow's Service Personnel Policy team and head up the work on the Armed Forces Covenant.

**Mr Garrett:** I am Jeff Garrett, and I am Head of Pensions, Compensation and Veterans' Policy.

**Air Commodore Wilcock:** I'm Air Commodore Charlie Wilcock. I work for the Surgeon General as Head of Medical Strategy and Policy, so I am not specifically a part of the Armed Forces Bill team.

**Q59 Chair:** Thank you. The second part of the evidence session relates to something we covered in part this morning about the Covenant. How do the provisions in the Bill fit into the Government's wider plans for rebuilding the Covenant? What will the next steps be? Who would like to begin?

**Mr Barlow:** I will start and perhaps ask Mr Lowe to fill in more details. I think the key point here is that the Bill provides the basic mechanism through which the Government are held to account for their actions on implementing the Armed Forces Covenant. We already have procedures in place for the External Reference Group to produce annual reports, and clause 2 strengthens those procedures by enshrining a requirement in law. Assuming the legislation is passed, as I said in the previous session, we will work through with other stakeholders, particularly those on the ERG, on the detail of how the Report should be drawn together. In due course, we will start work on the first report under statutory provisions, which would come some time next year.

The Strachan report fits into that as well. I mentioned in previous session that the Government intend to respond to that report in the spring. That is the point at which we will be able to set out further details of the Covenant itself, the principles the Government believe should apply to it and a complete description of the programme of measures the Government intend to implement to take forward Covenant work across the board.

**Q60 Chair:** Does "responding in the spring" mean before or after Easter?

**Mr Barlow:** We have not reached a final decision on when that would be.

**Q61 Mr Jones:** When the Strachan report was set up, it was quite limited. When I read it, I was quite disappointed with what came forward. I don't think it really looked at what was already in place. But one of the tasks, as it says in the introduction, was "to develop a series of innovative, low-cost policy ideas to help rebuild the Military Covenant." It is quite clear, as I said earlier, that what is being spun about this Bill—that it is actually enshrining the Military Covenant in law—is not the case. On day one of the Coalition Government coming to office—or the new Minister—what was the process in terms of deciding what the starting point was for the new policy? What was actually included in or extracted from the Report, and what was not?

**Mr Barlow:** There are two different steps there. At the time, when the Government came to power, they set out in the Coalition Agreement what their intentions were regarding the Covenant, which was essentially a commitment to deliver on a series of specific policy initiatives. A requirement for the Strachan Task Force came later as a result of further ministerial direction on how Ministers wished to take forward other measures and seek views on what the other measures should be.

**Mr Lowe:** The reference to low-cost measures was simply the recognition that practical steps to help restore the Covenant would not necessarily have to be about money, and that there were things that could be done in terms of policy changes or the involvement of service providers or local authorities. It was about how they approached the problem and not necessarily about the resources they had. So Professor Strachan, who had the background of membership of the External Reference Group and was familiar with these kinds of issues, was invited to think out of the box, if you like.

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**Q62 Mr Jones:** He did not go very far out of the box.  
**Mr Lowe:** He was invited to look from a different perspective to a policy official and to give his perception of the kind of steps that could be taken to take matters forward on the Covenant without necessarily resorting to large resource bills.

**Q63 Mr Jones:** I accept that there are certain things you can do that do not necessarily need money. It is about getting people talking, which is part of the Command Paper. It is a way of getting people working more effectively. But it is clear that if you are going to make the Covenant legally enforceable in certain ways—it was in the Green Paper about commitments to local government, for example, or standards that you had to put in—that would involve a cost, so cost was clearly an issue in terms of what went into the Bill and what did not.

**Mr Barlow:** Resources must always be an issue for Government. The approach that is being taken on the Covenant quite reasonably recognises that, but it would be wrong to suggest that the Government are not putting resources into this policy area. They are continuing, for example, to resource the change to the Armed Forces Compensation Scheme, which had been brought in. The doubling of the operational allowance was another significant measure with resources attached to it, so there is a combination of things going on.

**Q64 Mr Jones:** The Strachan report was actually commissioned by the Prime Minister. In terms of deciding what went into the Covenant, what was the policy process? How involved was No. 10 in terms of recommending what went in? Or was it a purely MoD thing that was driven forward?

**Mr Barlow:** In terms of framing the legislation?

**Q65 Mr Jones:** Framing the legislation and what went in in terms of the Covenant and what we have before us now.

**Mr Barlow:** In the normal way, there was consultation across Government, managed by the Cabinet Office, in which No. 10 was involved.

**Q66 Jack Lopresti:** What do you consider to be the key purpose of the Armed Forces Covenant Report to Parliament? Is there a fundamental issue in having an annual report, which at the moment remains vague and abstract?

**Mr Barlow:** Well, I'd hope that the Report itself, when it comes in, won't be vague and abstract at all, and that it will give a full account of what has been done to support the Armed Forces community and an assessment of what further needs to be done. That's primarily the benefit that we see in bringing forward the legislation—that the Government have to look at these issues annually and be held to account accordingly. That is a further strengthening of the current position.

**Q67 Gemma Doyle:** From reading the Bill, particularly clause 2, the only measure that is enshrined in law is the responsibility of the Secretary

of State to report to Parliament. As the Bill stands, that duty is to report on education, health care and housing only, and obviously any other matter that he or she sees fit. On the basis that those issues are devolved to the Scottish Parliament, would you agree that if you were a Scottish veteran, you should not look to the Bill for any sort of protection of your rights?

**Mr Barlow:** Perhaps Simon can comment further on how we intend to deal with the Devolved Administrations on devolved matters, but first of all I should say that, as is the case now, the Devolved Administrations will continue to be involved in the work of the External Reference Group, and they are very much part of the process.

**Mr Lowe:** Yes, that's right. Clearly, in terms of the responsibilities of the Devolved Administrations, the Secretary of State or the Government are not answerable to the Westminster Parliament in the way that was the case previously. But essentially, the Report is about putting information into the hands of Parliament. By a process of working with the Devolved Administrations in preparing the Report, as we do already, we aim to give a complete picture of how the situation is across the UK. We are very conscious that from the point of view of the Service person—especially the Service person, given the mobility to which they are subject—they have a close interest in how they are served by the Administrations across the UK, wherever they happen to be posted. Therefore, we would see it as part of that overall picture, to cover matters even if they are not within the responsibilities of the Westminster Government.

**Mr Morrison:** May I add to that? It's not intended to be limited to the UK. It has been drafted so as to enable these sorts of issues to be addressed in relation to the Forces worldwide. I just want to make that clear in case there was any doubt that there might be some intention to limit the scrutiny, as it were, that is included in these reports to the United Kingdom. It is meant to cover Members of the Armed Forces, the Service community and former Members. As far as the existing Members of the Armed Forces are concerned, it is not limited to the UK at all; it is looking at the problems wherever they are, be it Germany or Cyprus.

**Q68 Gemma Doyle:** I understand what your hopes are for what the Secretary of State will report on, but my question is quite straightforward. As the Bill stands, there is nothing in clause 2 that applies to Scots serving in the Armed Forces or Scottish veterans, in terms of legal definitions.

**Mr Morrison:** The point that I am making is that it applies to all Members of the Armed Forces—Scottish, Irish and so on. It doesn't matter at all. The Report is intended to cover Members of the Armed Forces wherever they live or operate. There is no territorial limit on this at all. We discussed that with the Devolved Administrations, and they said that that doesn't matter to them in that it doesn't infringe on their devolved responsibilities. Devolution comes in if the Report identifies, say, a problem in housing that applies in both Scotland and England, and then,

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should it require legislation, a decision would be made about whether it would need, for example, Scottish legislation.

One of the complications about trying to define the Covenant and rights and standards in the Bill is that that would have meant that we were treading on devolved areas. If we had started saying that Members of the Armed Forces living in Scotland or based in Scotland must have certain rights, that would have taken us straight into the devolution problem. So we have put in place a worldwide provision for Members of the Armed Forces in terms of what we look at. Whether the legislation is needed and, if so, whether it is to be Scottish or Northern Irish or Welsh or Westminster legislation are the sorts of questions that can only be addressed when we have identified the problems and decided that legislation is a way that will deal with them.

**Bob Russell:** Chairman, I hope that I'm not coming in too early. This is on housing and what will actually be enshrined in the Bill.

**Chair:** All right, come in later then.

**Q69 Mr Jones:** In terms of the Report, what is the situation if the Secretary of State puts something in the Report that either the Scottish Government or the Welsh Assembly fundamentally disagree with? Is there any appeal mechanism or way for them to change that? Having dealt with both, there is one Minister in Wales—if she's still there—who is particularly difficult.

**Chair:** Mr Barlow, you do not have to answer that particular question.

**Mr Barlow:** Thank you. We need to work through further with the Devolved Administrations exactly how we are going to handle the annual reporting process and how it is going to represent their positions fairly and constitutionally. I think it is fair to acknowledge that that remains a work in progress. So far, what we have committed to with them is that we will address that and that we will ensure that we have a proper dialogue with them about how their views can be represented and in precisely what format. So I think there is a potential or theoretical problem that we would hope not to bring into practice.

**Q70 Gemma Doyle:** To build on that a bit, I can foresee a problem here not only in terms of Scottish public services, but with what happens in England. I am interested in what process you think will develop if the Secretary of State comes to Parliament and says, "Our Armed Forces and veterans are being disadvantaged in the area of housing, and local authorities"—I understand that, in some cases, it will be local authorities that deal with this—"are not meeting our responsibilities on housing to our Armed Forces, to their families and to veterans." The local authority then says, "But we've had our budget slashed." Where is the redress then? How do you resolve that problem? Where does the responsibility lie?

**Mr Barlow:** Are you talking about redress between central Government and the Devolved

Administrations or between individuals and the Government that they happen to be under?

**Q71 Gemma Doyle:** The redress should be for the individual. If there is, however, no legal basis or requirement at all, and the Secretary of State is reporting on matters that the Government are not directly responsible for delivering—that was my comparison with pensions and benefits that I brought up earlier, and it would make a lot of sense to have the Secretary of State Report on how pensions and benefits were delivered—what is the process if the local authority says, "We can't do this. We don't have the money?"

**Mr Barlow:** In part, it depends on what their specific legal obligations are.

**Q72 Gemma Doyle:** Which is nothing under the Bill.

**Mr Barlow:** No, that is not true. There won't be legal obligations under the Bill, but there will be other legal obligations in that there are either general legal obligations that local authorities or others have to meet to any client or customer, or, in some cases, there will be specific ones that are relevant to Members of the Armed Forces, which we are either pursuing through Government administrative action and commitments or through legislation itself. As at present, there will be examples of such areas.

Generally speaking, in working with the Devolved Administrations on the implementation of the first Command Paper and Covenant Commitments, the Devolved Administrations have been prepared to work very closely with us on matters that are properly devolved. In practice, the aspirations that have been set for England and Wales have been more than matched in the other Administrations. We would plan on the basis that that pattern will continue. What we propose is not creating a worse position by any means. Humphrey, do you want to add anything more on the legal issues?

**Mr Morrison:** I don't think so, unless it would be helpful. Is there anything specific I can add? I agree entirely with what Mr Barlow says.

**Mr Lewitt:** Can I briefly add something? There are other ways of reaching the same end. For example, the current position on establishing a local connection is set out in guidance. When Key Worker status is abolished, we are looking, with the CLG, to reach a similar position as well. Many of the rights of veterans in the health service are set out in the NHS Operating Framework, which is the guidance that the Department of Health gives to strategic local health authorities and PCTs. Whatever the mandate to the Commissioning Board is, we would want to ensure that it adequately reflected our concerns about the care of ex-Service personnel by their local commissioning consortium, however that might work. Legislation is not always the answer to everything. Policy guidance, provided you can get points properly represented in it, is just as effective.

**Q73 Mr Jones:** It is, but we are going through a radical shake-up of the Health Service where Strategic Health Authorities and Primary Care Trusts will be



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got rid of. Consortia of GPs will have different priorities. How will you ensure that some of the things that we did in the guidance to PCTs and others for severely disabled and wounded soldiers is actually going to be carried through? Will there not be differences in different areas, depending on whether or not a GP is sympathetic or, coming back to Gemma's point, that the budget is available in all areas? If a GP gets one of our most severely disabled veterans on their list, it will be bloody expensive to deal with.

**Mr Lewitt:** Just as it can be for smaller PCTs. The other month, I spent more than an hour on the Bill Team for the Department of Health—I think Air Commodore Wilcock was with me—when it was discussing the restructuring of the NHS. I know through the DH/MoD Partnership Board that this is a key issue. If I understand the proposals correctly, there is likely to be what is called a mandate to the Commissioning Board. In that document, we will have an opportunity to set out precisely the same sort of concerns, direction and Government policy that the current operating framework sets out to SHAs and PCTs.

**Mr Garrett:** May I just add one thing? Armed Forces networks are being established in each of the 10 Strategic Health Authority areas, which bring together the NHS, the Service charities, clinicians, veterans and the Armed Forces. Although the Strategic Health Authorities won't survive the change, the Armed Forces networks are definitely going to, and will bring in as well the GP consortia as and when they are established. So, mechanisms are being put in place to ensure that there can be a consistent delivery of veterans' health services.

**Q74 Chair:** Getting back to the Devolved Administrations point, would you expect them to see the Secretary of State's draft Report before it is finalised?

**Mr Barlow:** I think that we probably would.

**Q75 Chair:** If so, why would you stop? Would you expect the commissioning GPs to see it before it is finalised?

**Mr Barlow:** No, we wouldn't. We would expect Government Departments and the Devolved Administrations to be involved in the preparation of the Report itself, but that does not rule out the possibility of others being involved in evidence gathering or consultation exercises as might be required.

**Bob Russell:** Do you want me to go on to the housing one now?

**Chair:** Yes.

**Q76 Bob Russell:** Thank you. It is an important question, Chairman, but having served on Committees in the past I know that there is nothing worse than somebody coming in on somebody else's question too early.

Following on from some of the other points that have been made, when the Minister gives his Military Covenant report to the House, will it, for example,

give specific information about the number of MoD married quarters that have been modernised in the previous 12 months to bring them up to the required standard, how many are left that require modernisation and the time frame for every MoD married quarters to be brought up to standard? Would that sort of detail be in the Report?

**Mr Barlow:** I think that sort of detail probably would be covered, yes. Gary, do you have any further thoughts about that?

**Mr Lewitt:** The absolute answer to your question is, "Do I know for certain here and now? No. Is it an issue that is hugely topical? You don't need me to tell you that it is." You've got a very large base, or set of bases, in your constituency and I get poked in the chest by the heads of the Families Federations personally on the floor plate and anybody who thinks that they are not independent is welcome to come and stand in my boots when I am being poked in the chest. I am pretty confident that information on that sort of issue could well be in the Report. What is being done this year? Are we moving forwards? What is the plan? That information could well feature.

**Q77 Bob Russell:** So, with a bit of luck there will be a fair amount of meat on the bones of this Bill?

**Mr Lewitt:** Not everything in the Covenant is the problem, or issue to resolve, of someone other than the MoD. There are issues that lie within the MoD to resolve. There is no argument about that. Equally, the point of the Report is to report on the actions that the whole of Government are taking. There is no benefit if the Report is simply about what the MoD is doing, because then everything becomes, "The MoD's problem is not my problem—signed local PCT, local authority, whatever Department".

**Q78 Bob Russell:** I hope that you agree that for Members it is important that we can track progress, or indeed lack of progress, so that the Government of the day can be held to account for any failings, perceived or otherwise.

**Mr Lewitt:** Yes.

**Mr Lowe:** May I add that my conception of this Report would be that, in comparison with some others, it would probably be more people-focused, if you like? So, in the context of housing, this Report would not itself be a report on management of the estate. It would not be about disposals or levels of void properties, or the like. It would focus more on the experience of families and it would include, for example, that input from the families themselves about how they perceive the process, for instance, of being allocated a house, or their experience of living in it, and the maintenance required for the houses that they lived in. So the Report would look different from the other kinds of material that might be produced on the management of the estate, because it would have that focus.

**Q79 Mark Lancaster:** Will you run through the three reporting streams—housing, health care and education—and explain how they relate to the Reserve Forces?

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**Mr Barlow:** Simon, would you like to cover that?

**Mr Lowe:** As I think you have mentioned at an earlier session, Mr Lancaster, some areas have less relevance to the Reserve Forces than other areas.

**Q80 Mark Lancaster:** Specifically, is there any relevance in housing to the Reserve Forces? I am not asking if there is less relevance, but any relevance.

**Mr Lowe:** I don't see any major issue at the moment that, if I was looking and working on the Report today, I would expect to include. But part of the consultation process that we would be engaging in would allow us to flag up any issues that were current on the day, so that we could. I cannot see what they would be, but I don't rule it out.

**Q81 Mark Lancaster:** So no for housing. What about education?

**Mr Lowe:** The same, I think, is true of education, with the possible exception of certain forms of training that would be provided to Members of the Reserves, but I am very much speculating as to what issues might arise.

**Q82 Mark Lancaster:** And health care?

**Mr Lowe:** I think there is an issue about how we deal with the potential effects of service, in particular deployment, on the health care of Members of the Reserve Forces—tracking their health after they deploy; what we do to ensure that when they return from theatre they are adequately cared for. There might be a very good case for that being included in the Report.

**Q83 Mark Lancaster:** The point I am gently making, and it is probably clear, is that I think—and I do have an interest—that Members of the reserve sometimes feel that they are only valued when they are mobilised, when they, of course, enjoy almost all the benefits of being in the Regular Forces. The Report offers a tremendous opportunity for us to demonstrate to the Reserve Forces that they are valued, too. Personally, I would like to see a specific category for mentioning Reserve Forces, because there are some unique challenges facing them, not least the dislocation of families. Did you consider having a fourth category specifically for Reserve Forces, because they cut across those three categories in so many unusual ways? If you did, why did you dismiss it?

**Mr Barlow:** Perhaps I could just say that the Reserves are mentioned on the face of the Bill. It is clear that the scope of the Report is intended to cover Reserve Forces. I think health care is a major element of that, and is where many of our current issues with Reserve Forces do come up in practice. Actually, I think there is rather more on the education side as well that is relevant to Reserve Forces. Gary.

**Mr Lewitt:** It is worth saying—and there is no argument, Mr Lancaster—that although they are not specifically mentioned in the clause, the intent is that we would cover them. A large number of the individual measures that have been under consideration of course do: the R and R measure; the

scholarship measure for the children of those killed in action; and things such as the Transition Protocol, where an individual has been under DMS care and will then move across to NHS. So I can see that, within the individual areas, there are issues that are common to the Reserves and to everybody else, and then, as you say, there are some specific issues where Reservists attract specific concern and specific measures. From my perspective, certainly as a person who owns a chunk of the welfare policy area, my understanding is that the intent in the drafting is very clear that omission does not mean exclusion.

**Q84 Mark Lancaster:** I accept that. I am not for one second suggesting that there has been any intent to slight the Reserve Forces. I am concerned, though, that there are very specific needs of the Reserves that do not fall comfortably into those three categories. At the moment, on the face of the Bill, we are relying effectively on the second category where there may be other areas that the Secretary of State decides to include. That implies that in some years they may appear and in some years they may not. Personally, I would be more comfortable, and I am sure other Members of the Reserve Forces would be, if that were simply enshrined in the Bill along with those other three categories. In the past, there has always been the impression—we haven't mentioned Reserves at all this morning, for example—that they are sometimes forgotten, or are second-class citizens. This is an ideal opportunity for a very simple, minor change to the Bill to demonstrate to the Reserve Forces that, actually, they are being considered.

**Mr Barlow:** As I said, the definition in the Bill at the moment does say, in this section "Service People" means members of the Regular Forces and the Reserve Forces. So it is very clear that the Reserve Forces are covered, and have to be covered, in the Report. That is certainly the intention.

**Q85 Mark Lancaster:** I will shut up now, Chairman; but the choosing of those three categories exclusively almost undermines what you've just said.

**Mr Barlow:** Yes, but it's not exclusively, and that's the point we've made already. They're certainly not intended to be exclusive.

**Q86 Mr Francois:** Chairman, can I just follow up on that? I declare an interest as an ex-Reservist, although that was back in the last century, for the avoidance of doubt. Is it a fair interpretation that there's going to be a narrative that runs through the Report, that makes clear how these particular issues will impact on the Reserve Forces? You said it's not exclusive, so they're going to be in there, but is it fair to say that that will be a theme that will be reflected in the Report, even if it's not under a firm heading of its own?

**Mr Barlow:** Yes. We will have to deal with matters affecting the Reserve Forces in the Report.

**Mr Morrison:** I think I should make it clear that the enormous width of the Covenant, as Commodore Jameson rightly emphasised, means that not every aspect of the Covenant in respect of every group within that very wide category of Regulars, Reserves,

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former Regulars, former Reserves and the broader Service community—Service families and so on—will be covered in every report. The clause does not require that. The aim is to provide a mechanism by which important issues can be identified and then addressed in detail and put to Parliament, rather than to provide what would inevitably be something of a gallop through every single aspect of the Covenant as it affects all the different groups. I just want to make that clear in case what we have said might give rise to an expectation that every report will attempt to cover everything.

**Q87 Mr Ellwood:** On that very point, you have deliberately chosen three subjects because you didn't want to be too prescriptive—health care, education and housing—but Mark raises an important aspect of the Reserves. You are saying that you are going to select those pieces that are relevant for the 12-month period and then report back on them. For completion's sake and for the benefit of us, who will end up debating these things—and also for the Nation as well, to be aware of how the Covenant is doing—would it not make sense to have a more comprehensive report? You are describing a document that sounds like it's going to be pretty pithy, and I think that, guessing the mood of the Committee, we want something a little substantial that really does summarise where things actually are. So you could, in fact, without introducing more headings, certainly have the main disciplines—the Navy, Army and RAF, as well as the reserves—as titles that need to be fed in. I'd hate to think that the Secretary of State would come forward with a very short proposal or report one year simply because there was not much to report from the previous year. I think there needs to be quite a comprehensive document, and that's what we would be looking for.

**Mr Morrison:** Certainly a balance needs to be struck so that you get continuity from year to year, you get an overview, and you get an identification of specific problems, and perhaps proposals for specific ways of dealing with those problems. So there are at least three functions that each report will be expected, by Parliament at least, to fulfil.

**Q88 Mr Ellwood:** Would it not then make sense to have a chapter, or whatever you are going to call it, on the Reserves, which I think is quite important? Looking at the Bill itself, there isn't much information about what the structure of the Report will actually be, other than the three headings.

**Mr Barlow:** I think that we would certainly want to take account of the Committee's views on what matters we should address in the Report, but we also have to give the External Reference Group the chance to bring to the table the things that are important to it and to help guide the content. What I'd certainly say is that the idea that as we are currently planning to take this forward it could be in some way a cursory report that was limited to what little we could get away with under three headings is not the way we see it at all. It's not the way Ministers see it and it's certainly not the way our stakeholders see it either. If that's some form of reassurance then I offer it.

**Q89 Mr Francois:** Just to follow up, one of the advantages is that the Report will be annual and people can be examined on it. It is not for me to dictate the programme of the House of Commons Defence Committee, but I am pretty sure that it will end up having an evidence session on the Report, which would be logical.

What thought has been given to communicating the Report's conclusions internally within the Forces, because clearly it will be important for them, as well as for those looking in from the outside? For instance, have you considered having road shows, presentations to units, or anything along those lines to communicate the conclusions internally as well as externally?

**Mr Barlow:** I take the point that internal communication is important. The Services have repeatedly made that point to us in work over the past couple of years on the Command Paper and, subsequently, on the Covenant. Simon, do you want to say something about how we managed that, in terms of reports that we have had so far, and what further areas of improvement there might be?

**Mr Lowe:** Yes, I think that when a report of this kind is published we will look to the chain of command to pass that message down to all units. We would expect some of the Members of the External Reference Group, such as Families Federations, to be putting this on their websites and including it in their material. We can expect to be invited to their conferences to present to their Members—the charities, likewise.

We will also be engaged in trying to ensure that Members of the Armed Forces, and families and veterans, also become aware of what this means for them. One of the lessons of the work on the Service Personnel Command Paper has been that Members of the Armed Forces, understandably, are often most interested in, "What is in this for me today?" and not in some theoretical assessment of percentages or whatever. So, we will be looking, as specific things become available that Service personnel would be interested in, to get that message across straightforwardly, simply, and widely, through leaflets and, again, through the chain of command. That will be the best way of making contact with people throughout the Forces.

**Chair:** It is 12.17. I remind the Committee that we are meeting again this afternoon, so I want to pick up a bit of speed. We need short questions and short answers.

**Q90 Jack Lopresti:** A short question—I don't know whether the answer will be short—what kind of parliamentary scrutiny do the Government envisage?

**Mr Barlow:** I don't think we have reached a view on that. Simon, have you got advice in your mind about what that might involve?

**Mr Lowe:** No. We had obviously thought of, as Mr Francois mentioned, the possibility of the Select Committee taking an interest in the Report, and there could be scope for a debate. But beyond that, no, we did not feel that it was our place to develop those ideas.

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**Q91 Alex Cunningham:** The previous panel made it abundantly clear that they were opposed to minimum standards being enshrined in the law for education, housing and health. I would have thought that serving people and their families would find that very helpful. Do you agree that there should be minimum standards? Perhaps we could hear the view of some of those who have not already commented.

**Chair:** Mr Barlow, to whom would you like to allocate that question?

**Mr Barlow:** Obviously, they will have to represent the Departmental position, just as I have. May I say one thing before I pass the question over to Simon? One of the principles that have guided us through working on this is the view that comes back from the Services, which includes the Families Federations. They do not want to be put on a pedestal and subjected to special treatment across the board. That comes back to a point that Mr Lewitt made about the fundamental being no disadvantages as a result of Service. That is one of the fundamentals that we look to, and, to some extent, picking on minimum standards for Service personnel or the Service community themselves could, in certain circumstances, run counter to that.

**Q92 Alex Cunningham:** A good example is housing. If we look at the Task Force Report, it acknowledges the poor condition of accommodation, but then talks about exploring ideas for long-term improvements “within the constraints of low or no cost measures.” Isn’t this just a way of not spending money, and of hiding behind the fact that you don’t have a minimum standard?

**Mr Barlow:** No, not at all. There are a number of different issues on housing, and they are not all about the standard of Service housing, although some of them are. Indeed, the standard of Service housing has been subject to considerable investment and improvement over the years, and it continues to be so. The issues are also about access to affordable housing, and about things that we can do as a Department on our policies of moving people, and on the opportunities that we give them to own their own homes and to be more stable. Those are all issues that we need to address under the category of housing; there is not just one set of standards. That is the way in which we would want to approach this subject.

**Mr Lowe:** Just very quickly, to confirm that just because there are not minimum standards in the Bill, it does not mean that there are not minimum standards either in other legislation, as Mr Lewitt pointed out, or through policy areas. I believe that it is now MoD policy that a family should not have to occupy a house at one of the lowest standards for condition. That is now established as a policy that families can draw on, but it does not need legislation to create that standard. I’ll leave it there, unless Members wish to follow that up.

**Q93 Gemma Doyle:** This is probably a question for Mr Morrison. Is it true or false to say that the Bill enshrines the Military Covenant in law?

**Mr Morrison:** “Enshrined” is really a rather grand word, but the Bill is certainly the first statutory

recognition of the existence of the Covenant—that’s the first element. The second, obviously, is that it provides for the first time a statutory mechanism for dealing with problems that arise under the Covenant. I think that I would probably call that “enshrining”, but it is quite grand, as I say.

**Q94 Gemma Doyle:** So you think that the statement is true? I am just a little confused, because earlier in the week you argued that the Covenant should not be enshrined in law.

**Mr Morrison:** There is an issue about whether the Covenant should be defined in law or whether it should be given some sort of legal effect, which raises all sorts of very difficult questions. If I use lawyers’ terms rather than emotive terms, such as “enshrine”, the question of defining is difficult, as is the question of what legal rights, if any, should be created, as we have discussed already. Whether what has been done so far would count, to a member of the public, as “enshrining”, I don’t know to be honest, because I’m not really sure what “enshrining” means.

**Q95 Gemma Doyle:** Okay. It is just that it is used in an MoD press release on the website.

**Mr Morrison:** It seems to me quite a bold and positive word to describe what we are doing, which is recognising the existence of it in statute, and putting in place a mechanism to give it effect.

**Q96 Gemma Doyle:** Okay. I may have to pore over the transcript of that one. May I just ask one further question? Does the Bill guarantee prioritised NHS treatment for our Armed Forces?

**Mr Morrison:** No.

**Q97 Mr Jones:** What redress is there in the Bill? There is no redress whatsoever. You said that there was a statutory redress to things in the Covenant, but there is none in the Bill. To come on to my question—if you don’t mind—what is the difference between the Report to Parliament every year and the External Reference Group’s Annual Report?

**Mr Barlow:** The fundamental difference is that there is a statutory obligation—

**Q98 Mr Jones:** Yes, but what about the actual content?

**Mr Morrison:** We have to go back to this notion that the purpose of the statutory requirement to put in a report to Parliament is a means to an end. It is a means of recognising and engaging with Parliament on what the problems are and recommending the right way to deal with those problems.

**Q99 Mr Jones:** I accept that, but we have an External Reference Group Report that is produced and published annually anyway. What is the difference between that and what we are going to get here?

**Mr Lewitt:** On one level, the answer to your question is that we don’t know, because we haven’t produced a report yet.

**Q100 Mr Jones:** Can I suggest—very little?

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**Mr Lewitt:** On another level, the point is that it will provide an opportunity that doesn't exist at the moment for Parliament to hold Ministers, whoever they may be, to account.

**Mr Jones:** So, you basically—

**Q101 Chair:** Hold on. Mr Lowe, did you want to answer?

**Mr Lowe:** I suppose I would simply observe that although the last two Annual Reports of the External Reference Group have been published and, I'm sure, been taken into account by Members of Parliament in formulating their views, they have not been at the centre of parliamentary debate or consideration. This is an exercise in raising the profile of that material. As we've discussed, I hope it will do other things as well, but it puts the Report very firmly into a spotlight that, to some extent, it has not yet captured.

**Q102 Mr Jones:** So therefore do you see the External Reference Group's report withering on the vine, and this replacing it?

**Mr Barlow:** This will replace it, yes.

**Q103 Mr Jones:** Right. If that's the case, then, the one thing the External Reference Group has got is independent members. What guarantees can you give the Armed Forces charities that they will have input to the new Report and can have some independent oversight of what actually goes into it?

**Mr Barlow:** The commitment's already been made that the External Reference Group will be fully engaged in drawing up the Report. That commitment has been made to them directly. Ultimately, the guarantee that that input will be there rests in their own independence.

**Q104 Mr Jones:** No, but there's nothing in this legislation. I'm not questioning the current Secretary of State's intentions at all, but what's to stop a future Secretary of State saying, "Well, actually, I can ignore the External Reference Group altogether."? There's nothing in this legislation that guarantees their role in providing that report, is there?

**Mr Barlow:** I think that's correct as far as the legislation's concerned.

**Mr Lewitt:** I think the answer to your question, Mr Jones, is that it would be a very brave Secretary of State who tried to get away with that.

**Q105 Mr Jones:** Can I just say, Mr Lewitt, that that is a great civil service answer?

**Mr Lewitt:** There are many brave Ministers, Mr Jones.

**Chair:** I think we're back to "Yes Minister", aren't we?

**Q106 Mr Jones:** So what we're seeing here, basically, is the existing Report of the Reference Group being put on a report to Parliament. This is not a great, radical move forward, is it?

**Mr Barlow:** Obviously, you will make your own judgments about that, Mr Jones, but I think there's a

very significant difference between statutory and non-statutory means, and it's not the only thing that the Government intend to take forward under the—

**Q107 Mr Jones:** You keep saying that; I'm intrigued by it. That's why I asked my earlier questions. I can't quite understand why, if other things are going to be brought in about the new Covenant, they are not in this Bill. If you're going to bring them back later on, why and how are you going to make them legally enforceable? I don't know, but I am intrigued to know what areas have not been excluded from this Bill and the reasons why.

**Mr Barlow:** As I've said already, the Government will be publishing their response to the Strachan report in the spring, which will set out a wide range of measures, which the Government intend to take forward under the Covenant heading, and they will also set out the Covenant itself, as the Government see it, but the Government have decided that those are not matters that need to be legislated for in this Bill, though there may be—

**Chair:** I still want to keep the speed going.

**Mr Barlow:** Sorry, Chair.

**Q108 Mr Jones:** So will the Covenant actually be produced as a document? Is that the idea?

**Mr Barlow:** There will be one, yes.

**Q109 Mr Robathan:** Briefly, for clarification, Mr Barlow, on how many occasions has there been a debate or other parliamentary occasion in the Chamber of the House of Commons when the External Reference Group has produced its report?

**Mr Barlow:** I think there haven't been any specific debates.

**Q110 Mr Robathan:** Exactly. And, indeed, very little reference in the press. Is it a step forward, do we think, that the Secretary of State will—

**Mr Jones:** Very little reference in the press—Christ Almighty!

**Chair:** Andrew Robathan.

**Mr Robathan:** For instance, if the Secretary of State were to make a statement in person, or whatever mechanism may take its place, do we think that would give Members of Parliament more of an opportunity to hold the Ministry of Defence to account in Parliament?

**Mr Jones:** You should be answering these questions.

**Mr Robathan:** To hold the Ministry of Defence to account in Parliament.

**Mr Jones:** Why don't you answer? It's your civil servant, but these are questions we should be asking you, there.

**Mr Robathan:** Well, you'll have lots of opportunity later.

**Mr Jones:** No, we shouldn't. You should be sat there, answering the bloody questions.

**Chair:** Mr Barlow, would you like to answer the question?

**Mr Barlow:** Clearly, I would agree with the Minister's remarks. They very much build upon the points that the panel has already made about the significance of

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the Report and the opportunity it provides for Parliament to hold the Government properly to account.

**Chair:** We have one or two more questions, but before calling on Christopher Pincher, may I commend Air Commodore Wilcock for sitting so brilliantly silent? We haven't actually been covering your areas of responsibility, but I nevertheless thank you for not adding to the length of our sitting.

**Q111 Christopher Pincher:** We've stepped around the question of stakeholders to the Report to Parliament, which I understand supervenes the ERG Report but doesn't actually replace it. I understand that the ERG Report will still be made to the Ministry of Defence. To what extent can we expect stakeholders providing input to the Report to have their input explicitly included in the Report, so that we can see who said what about the key issues around housing, education, health care—and any other issues that the Secretary of State thinks should be included?

**Mr Barlow:** I'll just ask Simon to talk through the actual process and what's replacing what, but the straight answer to that is that it will depend on the particular issue in question and whether it is necessary for the sake of clarity to separate out the views of individual stakeholders. It may well be so.

Simon, do you want to say something about the process—what more we can say at the moment, given that we have not fully finalised it?

**Mr Lowe:** Yes. I would expect us to identify the origins of points made in the Report simply in the interests of clarity. The importance of the points made will obviously depend on their origin. If we are making a comment about the situation as it applies to veterans, the fact that it comes from an authoritative organisation such as the Royal British Legion will be significant. Similarly, if we are reporting on the experience of Service personnel, we will want to make clear that it is the Army or the Navy that has a particular problem, and give as much detail as we can. I would see it as integral to the nature of the Report that we would be able to indicate the origin of that information.

**Q112 Christopher Pincher:** So having identified the origin of the information, how do you go about catching that information in the first place? What mechanism do you use to go out to consultation?

**Mr Lowe:** We have experience now of working closely with the Members of the External Reference Group and with the chain of command itself, and harnessing the other sources of information that are available to us. Perhaps during the course of an annual cycle in the summer, we would be inviting those organisations to highlight the points that they felt were suitable for inclusion in the Report, and we would then start to put it together.

**Q113 Christopher Pincher:** But you appear to recognise that the ERG is integral to the production of the Report; you will all probably nod your heads—no nodding, but I'll put the point anyway. Isn't it worthwhile including the ERG in the Bill and simply

saying that the Secretary of State should be required to consult it, plus any other stakeholders that he may from time to time require?

**Mr Lowe:** I think there is an issue concerning whether it is a statutory body.

**Mr Morrison:** The ERG is an ad hoc wide-ranging group. I would have thought that one of the benefits of not defining it in legislation is that we would want to keep flexible and to potentially widen the range of people who are co-opted into that group. A definition in the Bill would be no more than to list, in effect, a number of people—presumably the current Members of the ERG—who had to be involved. But there is no way in which this Report can be written without obtaining information, ideas and so on from the ERG Members and no doubt other people as well, so I see no benefit from saying the Secretary of State must consult the list of the current members as a matter of law.

**Q114 Christopher Pincher:** The reason why I make the point is this. You're accepting that there will be specific areas that are reported on, so they can be in some way baselined, and you will at some later point define what specific targets you're going to be measuring those areas against. If you are potentially increasing the number of your inputs to those areas of reporting and that set of inputs could be infinite, you will essentially have a shifting sands baseline, so you can't measure year on year how you're progressing against those targets.

**Mr Barlow:** I don't think that's a necessary conclusion to draw about how the process will work out. It has already been mentioned that the Report will include a combination of things. Some things will prove to be enduring elements in the Report, including some particular measures that have acquired either a political significance or a significance for particularly important parts of the stakeholder group. Some things will recur and others will not. It's the role of those managing the process to try to produce a report that is sensible in length and content and that fairly reflects the principal stakeholder views, as well as those of the Government.

**Q115 Christopher Pincher:** You might have a report that has both quantitative measures, which are based on targets and inputs that don't change over-much, and qualitative reporting, which might be dynamic because of specific issues that have arisen over time and that you choose to include.

**Mr Barlow:** Yes.

**Q116 Gemma Doyle:** On a point of clarification, Mr Barlow, you have said that the Report from the Secretary of State will replace the Report of the External Reference Group, but the Minister, who I appreciate is not giving evidence today, stated in the House that the ERG would continue to be asked to produce its report, which would be published in full and unedited. What is the correct position?

**Mr Barlow:** We're replacing the previous report on the Service Personnel Command Paper. Simon, do you want to say something about what the process will

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actually look like and what documentation will be produced?

**Mr Lowe:** To the extent that this has been finalised, I think there are various ways in which we could produce that kind of report. Ministers were clear in the debate that the voice of the ERG would come through. I think it's in that sense that we would maintain its report, rather than necessarily as a separate publication. I think the priority is to make sure that the views of the ERG as a whole and Members of the ERG can be clearly recognised in the Report that is produced.

**Q117 Gemma Doyle:** To be clear, as I said, the Minister did state—this is on the record in *Hansard*—that the Report would continue to be published in full and put in the public domain. That's the Report of the ERG. But that's not the case now; that position has changed.

**Mr Barlow:** No, I don't think the position has changed. I think Mr Lowe has very fairly represented it. I think it depends in large part on the degree to which, in the preparation of the Secretary of State's Report, the ERG as a body is prepared to say, "Yes, in full, this fairly represents the views of us all, including the independent members," in which case the requirement for two reports doesn't arise. We have left it on the table with the ERG that if we come to the point when, in producing the Annual Report, we need to separate out in some way the views of the independent members and have a separate statement recording their views prepared in some way, either embodied within the Report or set out alongside it, we will do that. But we're very much doing that on the basis that what's important is that the views of the ERG are fairly represented.

**Q118 Chair:** Mr Barlow, can you help me with this? The Minister said, "We believe that it is of vital importance that the External Reference Group is retained and continues to produce its own Annual Report." Is that the case?

**Mr Barlow:** Yes.

**Q119 Chair:** The issue is, then, whether it would be published. Is that the issue?

**Mr Barlow:** I think the issue that you're asking me about is whether that report is the same as the—

**Q120 Chair:** No, that is not really the issue I am asking you about. Would the report of the External Reference Group be published?

**Mr Barlow:** Simon, I think our proposition is that there is one report. Is that correct?

**Mr Lowe:** I think the issue is how far it would be integrated into the single report.

**Q121 Chair:** Yes, but that was not the question I asked. Would the Report of the External Reference Group be published?

**Mr Lowe:** I don't think it would appear as an entirely separate publication.

**Q122 Chair:** Well, let's take that as a no, then. So there would be a report, which would not be published?

**Mr Barlow:** No. That is not the case. We will produce, with the External Reference Group, the Annual Report on the Covenant as set out in the Bill. That, therefore, is a report presented by the Secretary of State, which has been prepared with the External Reference Group. It therefore represents their Annual Report. We have recognised, in discussing this with the external Members of the ERG, that it is important that that process genuinely presents their independent views within that Annual Report so that they can say it is effectively their Report. If, in doing that, they wish to raise matters separately and we cannot find a way of fairly representing their views within a report that the Secretary of State has presented to the House, we may see a separate document being produced. We have not crossed that bridge yet.

**Q123 Chair:** So you would accept that further thinking, further discussion and further consideration are needed on this issue?

**Mr Barlow:** Yes. I have to present it to you that way because that is the progress we have made within the External Reference Group itself. I can't misrepresent the views of the independent members.

**Q124 Mr Jones:** Are you suggesting that the Secretary of State's Report will basically be the old Reference Group's Report?

**Mr Barlow:** That is the basis on which we have been proceeding, yes.

**Q125 Mr Jones:** So when the Minister said that the Reference Group Report would still be approved, technically it would be. So this great radical change, apart from reporting this to Parliament, is not exactly a great radical move forward, is it?

**Chair:** I think that this is an issue that may come up in amendments during the Formal Consideration of the Bill.

**Mr Jones:** I also want to be able to question the Minister on this.

**Chair:** The Committee hears that. Now, final questions.

**Q126 Bob Russell:** One thing I am confident of is that serving and former Members of Her Majesty's Armed Forces will not be overly impressed with the party political posturing and point scoring that has been going on from one direction. I want to put on record the fact that the previous Government did a lot of good work and this Bill is a continuation of that. We should look on it as a seamless transition rather than anything else. That is how I am trying to address it.

One aspect not in the Bill, which I seek some thoughts on, is an issue that I put directly to the Prime Minister a few weeks ago. To my utter amazement, a war widow's pension is taxed. Indeed, a young war widow in my constituency tells me that the payment does not even appear as a war widow's payment. There are two aspects there. First, can we have a mechanism to

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acknowledge that the payment she is receiving is a war widow's pension? Secondly, it should be tax free.

**Mr Garrett:** Under the War Pensions Scheme neither war pensions nor war widow's pensions are considered taxable by HMRC, so I don't understand the point you are making. The issue of what that payment was in relation to, and whether it was a war widows' pension, was raised yesterday in the statutory body that looks at issues of compensation and pensions—the Central Advisory Commission on Pensions and Compensation. The matter was raised by the War Widows Association at that meeting.

On the Service pensions, the Veterans Agency went away from that meeting to ensure that all payment information provided for widows made it clear to them what payments they were getting.

**Q127 Bob Russell:** I am most grateful for that. Perhaps I can revisit the matter, because the young lady in my constituency is not of that view.

**Mr Garrett:** If there is some confusion, and if you can provide information on the individual case, we can look at it.

**Q128 Bob Russell:** I will, and I appreciate that. Finally, in what ways are the Bill Team and others in the Ministry of Defence and the Government engaged with the charity and voluntary sector to improve the Bill? I am not just talking about the main charities that we know about, such as the Royal British Legion; ABE, which I wish would still call itself the Army Benevolent Fund; Help for Heroes; and SSAFA, but some of the specialist charities, if I may use that term. One has been mentioned already—the War Widows Association—and there is Veterans Aid and Combat Stress. There are also various regimental and Service organisations. How are those organisations being brought in?

**Mr Lewitt:** The organisation with which Mr Garrett's division, and mine, do a lot of business is the Confederation of British Service and Ex-Service Organisations—COBSEO. It pulls together all those charities, large and small. Indeed, it has recently proposed an arrangement that it calls clustering, whereby it will provide in each of the main charity areas a group of charities that have an interest in that area, and one of the larger charities will act as a lead partner for the cluster. That has proved useful to us in the area in which I am working at the moment—trying to increase financial awareness among Service personnel, and providing better financial guidance and advice to those most vulnerable, such as early leavers and the injured. We have used the COBSEO arrangements to start to move forward in agreement with a number of charities and, if we can make that work, it will probably be led by the RBL. It should also include a number of other charities, such as the White Ensign Association, if possible.

That is an example of how the new thinking—I hesitate to use the word “reform”; it is the wrong word—that COBSEO is bringing to the area enables us to match, almost, the wants of Service and ex-Service personnel with the benevolence of charities

that exist to support those groups of people. Jeff, should I have said something different, or else?

**Chair:** What a wonderful person, to ask that.

**Mr Garrett:** Sounds very accurate, though.

**Mr Lowe:** If I may add one quick thought. To spare Mr Lewitt's blushes, because he runs it, we also have an annual welfare conference. That is an opportunity for, perhaps, some of the regimental associations and some of the smaller charities that may not otherwise be involved in these discussions to come to the Ministry of Defence to hear what is happening in the welfare domain and feed their concerns back to us. That is an extra way we can consult directly with some of the smaller organisations.

**Q129 Chair:** Okay. Thank you to all of you, not least to you, Air Commodore Wilcock, for your contribution this morning. Mr Barlow, is there anything you would like to add?

**Mr Barlow:** We covered one question very briefly in the first session, where I noted that Air Commodore Wilcock might be able to give the Committee further advice.

**Chair:** I know you did, but I've forgotten what it was.

**Mr Barlow:** It was about drug testing and the doctor-patient relationship, where a Service doctor was taking a sample.

**Q130 Chair:** Yes. Air Commodore Wilcock, is there a problem with a doctor who is involved in giving normal treatment to a patient also being required to do drug tests on that person? The BMA has raised with us the possibility that it should be a forensic physician, and we asked whether that was, in fact, practical. Would you care to help us through this?

**Air Commodore Wilcock:** Thank you. There is a tension, and the MoD recognises the tension that the BMA has raised. Our response would be that in the normal circumstance in the UK, if I can take that as an example, where a forensic medicine service exists to support police investigation, we would naturally prefer to defer to that service. In that circumstance, we would not normally ask the MoD's uniformed doctors to take samples for forensic purposes. However, as was alluded to earlier this morning, there are circumstances where that won't apply, such as on operations, where the only available medical practitioners are the uniformed doctors. That gives rise to the dual loyalty problem that the BMA has identified.

We are able to say that that is not a new issue in military medicine; we recognise it routinely, and it is part of our normal practice, in that we deal with both general practice and occupational health care in our primary care delivery system. So, our practitioners understand the need to be able to wear two hats at any one time. If there were a circumstance where a doctor was the primary care deliverer, and was then asked to take forensic samples, they would have to make it very clear to their patient that they were acting in a different capacity—and of course, the normal consent processes would apply.

So, although we recognise the tension and respect the BMA's view that there should be separation of the



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roles wherever possible, we would have to reserve the right to say that it is not always possible, and therefore, we could not enshrine that particular principle in law.

**Q131 Chair:** Except in some circumstances, of course, the patient might not be in a condition to give consent.

**Air Commodore Wilcock:** Yes, in which case, again, we would acknowledge the point that is made, which

is that if samples are taken, they should be taken only for storage purposes, with the expectation that if the patient recovers to the point that they have the capacity to consent, that discussion can be had at a later date.

**Chair:** I see.

**Air Commodore Wilcock:** So again, we would apply the normal recognised principles and practice.

**Chair:** Thank you very much, and you have contributed now.

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## Thursday 3 February 2011

Members present:

Mr James Arbuthnot (Chair)

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois

Mr Kevan Jones  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell

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### Examination of Witnesses

*Witnesses:* **Dr Susan Atkins**, Service Complaints Commissioner for the Armed Forces, and **Mr Darren Beck**, Head of Office, Office of the Service Complaints Commissioner for the Armed Forces, gave evidence.

**Q132 Chair:** Welcome to the Committee. I am afraid we are starting early, in the extraordinary hope that, therefore, we might finish early.

Turning to our witnesses, you are well known to the Select Committee on Defence—certainly to the previous one—but would you like to introduce yourselves to the Armed Forces Bill Committee?

**Dr Atkins:** Thank you very much. I am Susan Atkins, the Service Complaints Commissioner, and I have with me Darren Beck, who since the summer has been my head of office.

I thought that, because some Committee Members might not be quite as familiar as others with my work, it might be helpful to set the scene about my role.

**Q133 Chair:** That would be very helpful. Please do.

**Dr Atkins:** The post of Service Complaints Commissioner was set up in the wake of the Deepcut report and the House of Commons Defence Select Committee Report on the Duty of Care. My role was to oversee and to make an annual report to Ministers and Parliament on the Service complaints system. My remit is limited to Service complaints.

The definition of a Service complaint is a complaint by a serving or, in some circumstances, former serving man or woman who feels wronged in their Service life. In essence, it is a workplace grievance system, but the grievances differ from those brought by employees in other walks of life in three respects. First, there is limited right of access to the courts and employment tribunals to protect employment rights. Secondly, Service life, as you are aware, is different from a nine-to-five working life. Working in a service affects where you live, where your children go to school, what medical care you get and, sometimes, the welfare services you have access to. If you are mistreated at work, you cannot simply go home and fail to turn up. You may ask for premature voluntary retirement, but normally you have to give 12 months' notice, and if you just decide to pack your bag and leave, you will be declared AWOL.

That leads to a third difference. What in civilian employment might simply be disciplinary, in military parlance, administrative action, which means in the Services that you are liable to criminal action. You might have committed a criminal offence. For those reasons, civilian oversight is very important.

As SCC, I cannot independently investigate complaints. I can receive them, and I have power to

refer them to the chain of command. If I do so when the complaint is about any sort of improper behaviour, the chain of command has to keep me informed regularly. If the complaints are about other matters, I can ask them to do so. My office has received more than 900 complaints over the past three years, and I have referred more than 500.

The Service Complaints Commissioner's role and the new Service complaints system came into effect on 1 January 2008. I have made two Annual Reports, which have been laid before Parliament, and I am preparing my third Annual Report, which I hope to present to the Secretary of State for Defence in March. I will try to answer your questions as fully as I can. I understand that you are particularly interested in clause 2, on the Armed Forces Covenant. I want to stress that I am independent of the Ministry of Defence and have not been consulted on that aspect of the Bill, or on any other clause. I am not part of the External Reference Group. My work, however, forms an integral part of the Military Covenant and I am very happy to explain why that is so.

I am happy to answer questions on the clause on that basis, and beg your understanding, if the answer to any question is, "It's still work in progress,". I hope you will understand. If I do not have an immediate answer at my fingertips, I will be happy to provide information in writing as soon as possible.

**Q134 Chair:** Thank you very much. Although this question is not directly relevant to the Bill, it forms the background of the questions we will ask. How well do you think that the Act that set you up worked? What was its success rate? Could it have done more? Should it have done less? How do you feel it went?

**Dr Atkins:** If I may, I will talk about the Service Complaints Commissioner role, then the system in general, because I think that the working of the system and how the Act is doing are integral to the SCC role. I have three functions. The first is to be a point of access for vulnerable Service men and women. I'm there to provide annual assurance on the system: I have to give a report to Ministers as to the efficiency, effectiveness and fairness of the system, and I can make recommendations for improvement. I also oversee individual cases.

On the first, the SCC role and the system have worked well. I mentioned that we have been contacted by more than 900 people—that is, Service personnel,

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former Service personnel and their families. In particular for senior officers, private soldiers and soldiers in training, it tends to be the families who contact us, which works very well. We have all—the Services and I—seen a significant increase in complaints in the third year, and my referrals accounted for around half of those Service complaints in 2010. So, in terms of us playing a role to give people confidence to make Service complaints where they would not have had confidence before, I think you can say that we are working well.

I took a look, as an outsider and someone with expertise in the area, at the system when I came in. I have made recommendations, nearly all of which have been accepted. They have been acted on or are in the course of being implemented. The Services have changed, making significant changes and improvements to how they do business. They have set up central units, which now provide expertise to the chain of command. They require the chain of command to contact the centre, so they have seen a significant increase in complaints this past year.

I think that one of the main reasons that people come to me is that they fear the chain of command will sweep a complaint under the carpet. If the increase that the Services are seeing in complaints at level 1—unit level—is because they are being required to contact the centre, the system has actually acted on that fear that complaints were being swept under the carpet and would be ignored.

I asked how many complaints a year, and the Services did not know. I asked how quickly they were being dealt with, and the Services obviously could not tell me, because they did not know how many there were. We have worked together to do two things. First, a new recording module has been introduced, which went live on 1 January this year, so that there will be reliable and accurate statistics available to the Services and to me to do the analysis so we can spot where things are going wrong. Secondly, at my recommendation, they have also set time targets. Although the targets are, initially, a lot longer than I would like them to be, the Services are now monitoring how well—and how timely—they are dealing with complaints.

However, as the Ministers and former Ministers know, delay is the issue. Cases are taking far too long. That has a number of effects. First, the cases get more complex—positions harden, and distrust and lack of confidence grow. Cases stay in the system for a lot longer than they could have done. Some are very difficult to resolve. Delay is the key aspect that needs to be tackled. Other things appear to be working well—maybe you would like to hear a little more about this in the session—such as the Service Complaints Panels with independent members. The range of decisions made by Service Complaints Panels with independent members is much greater than the range of decisions made by Service Complaints Panels on their own, and is much more akin to the range at Service board level. We need to find out why. In summary, it is a good start. The system is working quite well, but it is over-engineered, takes too long and needs to be simplified. We need to take another look.

**Q135 Chair:** We will come on to Service Complaints Panels. The issue of delay—is that something that should have been dealt with in the Act?

**Dr Atkins:** The Act, if you recall, simplified the previous system. People who have been involved in this longer than I have will correct me if I am wrong, but I think there were at least five levels. There were different rules and practices in each of the three Services. Moving to three levels was seen as a significant improvement. In my first year and my first Report, I said that the system complied with the principles of best practice. Last year, I recommended that the Services review the benefits of three levels. This year, I am likely to recommend that they move to two levels, because the time has come to do that. That will require a redesign of where the protections go. I discussed why it was not only a workplace grievance system. If you are designing out some of the levels that are designed to give protections, you have to put your protections in somewhere else.

**Q136 Mr Jones:** When your post was introduced, I know that there was a feeling in the chain of command that this would be the end of the world. I know that it was opposed at the time by at least the Conservative part of the Opposition, if not the Liberal Democrats. What is the attitude now in the chain of command? Are you getting the co-operation that you need? Are some of the delays that you have referred to down to the fact that some are not taking the process seriously, or are trying to frustrate the system?

**Dr Atkins:** I was very pleased to have had a conversation with the new Chief of the Defence Staff the other day. He mentioned to me that he thought that I was an integral part of modern defence. He has given me permission to say that publicly. I do think that that is the way that the top levels of the Service treat me. I talk with the heads of the Services and those I work with, even down to the intermediate levels, where I am felt to have made a valuable contribution. I now present to every Commanding Officer-designate course, to the senior command course and to the Army's intermediate course.

On the issue of powers, there has been some insistence that decisions are still to be made by the chain of command. I can ask questions or raise concerns on an individual case, but I cannot make any binding recommendations or directions, or require a matter to be put right and correct at the lowest level. I have had cases where I have spotted something going very badly wrong at the beginning, and have not been able to do anything about it, and my concerns have been upheld at the end of the process. That could be two or three years later.

**Q137 Christopher Pincher:** Dr Atkins, you mentioned some of the issues that you face with your work, particularly delays of complaints. What are the implications of the Bill for your work?

**Dr Atkins:** I am not sure that much in the Bill will affect my work. It will certainly not affect delay. I welcome the proposals for enabling there to be more independent members on Service Complaints Panels, but, quite clearly, adding an extra degree of independence, where appropriate, at the end of a

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process, and given the design of the system, even if everything went through in the minimum time limits, it would be 50 weeks. That is a year from start to conclusion. At the appeal level, which is where a Service Complaints Panel comes in, nothing in there will tackle delay.

**Q138 Christopher Pincher:** Do you think that the Covenant Report being produced and laid before Parliament—elements of it concerning education, health and housing—might generate more complaints than you have seen previously?

**Dr Atkins:** It may do. I work very closely with the Families Federations and the other welfare charities and agencies. Sometimes they pass individuals to me and vice versa. The difficulty is that I exist for Service personnel, and although families can contact me, they cannot make a Service complaint. On medical treatment, for instance, we have had a number of complaints where we have been approached by a wife in relation to IVF treatment. They have been getting IVF treatment when they have been serving with the Services abroad, but it is a different PCT by the time they get back. We have been able to sort that out. Some family issues are of concern to the serving member, but a lot of family issues we cannot deal with.

Even when a welfare issue is raised by the serving member, there are separate complaints systems for housing, education and medical treatment. Some matters such as pensions are excluded from the Service complaints system entirely, but issues of pay, education, housing and medical treatment can come into the Service complaints system, but only after they have been through the specialist system. It is very tortuous, and I think that the relationship with the Armed Forces Covenant is the other way round.

I understand that this morning you heard from Service officers about how they viewed the duty on the chain of command to give care as being an integral part of the Armed Forces Covenant, and that, of course, was in the Report of the Task Force on the Military Covenant. I think that I have a very rich oversight of and insight into some of those welfare issues, and I can provide information that informs the Minister's Report on the Covenant, not the other way round. There is, of course, in the Act the ability for the Secretary of State to ask me to make a special report on any matter that is to do with the exercise of my functions. That might be something that could be explored. Indeed, my counterparts in other jurisdictions very often have a responsibility for welfare issues as well as complaints.

**Q139 Thomas Docherty:** Just to take you back to the point that you made about IVF, I have certainly had some information that there is an inconsistency across the country. Some PCTs apparently have a two-year requirement for residency. Just out of interest, have you had many representations on that issue as a complaint from Service personnel?

**Dr Atkins:** We've had a few. We've always been able to get them sorted out, because I have been involved. I should say I am working very closely with Defence Medical Services, and I have been to its Board. If

there is a complaint about medical treatment, and if it is urgent, I ring up a contact there and we get it sorted out.

**Q140 Gemma Doyle:** We've already covered quite a bit about the way the Panels work, but would you like to see a measure to guarantee at least one independent member on every Complaints Panel?

**Dr Atkins:** I'm not sure that I would go that far, but I'll think about it. At present, as you know, there are certain categories that need an independent member. As I understand it, the clauses in this Bill give some discretion outside categories. I think that would be a potential improvement, because there could be issues that are quite complicated. Having an independent member, even though it is not in that category—or, indeed, two independent members—would be a step forward. For instance, there is a requirement for there to be an independent member when a complaint is about the exercise of Service police powers. It seems there may be a really good case to be made that there should be two independents there, and somebody should have expertise in policing and police professional standards.

**Q141 Gemma Doyle:** You mentioned that the system is still quite slow. Is that simply because of the way the system is designed or is there a resourcing issue?

**Dr Atkins:** It's both, but it's certainly design. As part of the work I've been doing for this year's Annual Report, I have compared the Service workplace grievance system—the Service complaints system—with the MoD civilian workplace system. I mentioned that even if everything went through the three levels in the minimum times—the current targets are twice and four times that—it takes 50 weeks. It takes between 14 and 20 weeks at a minimum for the MoD's system, which it has for its civilian employees. There are other complaints systems in the military to do with families—for instance, in Germany, where the minimum is 20 to 22 weeks, so there's a design issue here.

I understand why the protections have been put in, but if I look at the sorts of case that come about, not all those cases need those protections. My view now, after three years, is that the very protections that were put in place are actually causing detriment. They are not working and they're causing detriment to all cases.

**Q142 Mr Jones:** Clause 20(7) says that the Secretary of State will have powers to bring forward regulations requiring the Defence Council to delegate its functions to an SCP, which will obviously require an independent element. Do you think it is right that the Defence Council should retain its function of being able to determine when an independent element is in a Service Complaints Panel?

**Dr Atkins:** There are two aspects, as I understand the clause. They probably need to be separated. Just bear with me, because they go to answering your question. The first is that, case by case, the Defence Council can make a decision about whether there is a need for a fully independent panel. The questions that need to be asked are not easy, and they are complex. First, you have to find out whether it falls within Article 6

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of the European Convention on Human Rights. That is not clear yet. Then you have to ask whether the issue is one of military judgment. Even if it is, you have to ask whether the case depends on facts. It seems to me that it may be right for the Defence Council to make that decision, but I have concerns that that decision on individual cases can be delegated to a civil servant or an officer. That wording follows the current Act, but there are categories in the current Act, so it is just an administrative matter: "Is this bullying? Yes, we need an SCP within an independent member."

These are real questions of detail, and I do not think that the Service—certainly not at officer level—should be the gatekeeper to that. It needs an amendment. It should be that a SCP sits with an independent member, or that some independent element looks at that, in the same way that a court may have a pre-trial hearing.

**Q143 Mr Jones:** The reason I ask is that this morning we were told that the three Services implement this in their different ways in terms of numbers. Is there a bias perhaps towards certain Services not having independent panels? Have you come across that?

**Dr Atkins:** The Navy and the RAF have used SCPs with independent members more than the Army. That is not necessarily bias; I think it is an issue of backlog. The Army still has 29 cases that are pre-2008 at level 3. I think there are 66 cases at level 3 under the new system. It is a matter of capacity, and it goes to Ms Doyle's question on whether this is design or resources.

**Q144 Mr Jones:** But is there a resistance within the Army to having independent members?

**Dr Atkins:** I have not picked up a resistance, no. Can I go back to the second question? As I understand it, as and when the case law is clear that there can be categories—I have been briefed on this aspect by the MoD—it seems to me that it will be a much easier question. You could leave that to the Defence Council. I would anticipate that I would oversee those. Alternatively, you could make it a requirement, which probably does not need legislation, just a gentleman's understanding as it were, with the Services and the MoD, that I am informed of those cases.

**Q145 Christopher Pincher:** Just following on from your responses to Kevan Jones's questions. The Bill provides for the removal of the requirement for one of the SCP members to be a Senior Officer, so not a Commodore, an Air Commodore or a Brigadier. Do you think that that has any implications for the seniority of the SCP and the way people view its decisions?

**Dr Atkins:** Yes, that is the second area of concern that I have. I understand that provision is there, because it needs to be there to enable there to be totally independent panels. The risk, of course, as you rightly point out, is that it opens up any Service Complaint Panel to be at a level lower than a one star. My experience of the past three years is that there is a correlation between seniority and wisdom. Once you

get to the senior levels, you do find panels, boards and individuals who can see the wood for the trees and who are very willing to hold up their hands and say, "We've made a mistake." I have seen cases under my oversight where it has been obvious to me that what is being decided is unreasonable—it has been resisted, and there is a sort of service blindness throughout its travel up, and then it goes to a Service Board or to a Service Complaints Panel of Senior Officers, and they say, "This is ridiculous; there is injustice being done here," and they change it immediately.

I have written to the MoD and flagged this up, but I would want it really understood that this is not an opening up for Service Complaints Panels to be staffed by people of lower rank. Membership of a Service Complaints Panel ought to be based on the quality of the person making a decision and not the rank of the person bringing the complaint.

**Q146 Christopher Pincher:** Then can I ask whether, in your letter to the Secretary of State, you made a recommendation, or did you simply raise a concern?

**Dr Atkins:** At present, I have raised a concern with officials. If the Committee would find it helpful, I can write to the Minister and put it in the Annual Report.

**Q147 Chair:** It would be helpful if we could at least see a copy. Have you written to officials?

**Dr Atkins:** I had a conversation. I raised the concern when I was being briefed on this aspect, and I dropped a line to the Official who briefed me. But I can certainly—

**Q148 Chair:** If you could let us have a copy of that, it would be helpful.

**Dr Atkins:** Yes.

**Q149 Jack Lopresti:** Having now been in your post for three years, do you believe that your powers and resources as Commissioner are sufficient?

**Dr Atkins:** The short answer is no, but it is a work in progress. I am considering some options and some different models, and I have been talking with the Services about them. I think it would be only courteous to give my thoughts, because it is a detailed argument, on that to the Minister first.

**Thomas Docherty:** He's here.

**Dr Atkins:** But not the Secretary of State. I am appointed by the Secretary of State, and I report to the Secretary of State.

**Q150 Jack Lopresti:** I appreciate that but, without being specific, would the Bill provide the appropriate vehicle for making those changes?

**Dr Atkins:** It depends what sort of changes. I am very happy to talk about them. It seems to me that there are broadly four different models. There is increasing my current oversight powers to enable me, if I do spot something at the beginning, to be able to write and to have that acted on. That might be useful to have in legislation, but it can probably be done by an agreement with the Services. I am pleased to see that the Minister is nodding at that.

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**Q151 Mr Jones:** Can I just ask you about the resources? You are still doing a lot of legacy cases. What percentage of the cases you are dealing with would be considered legacy cases—ones from before—because they do take a long time to get through? In terms of resource allocation, one of the key things will be once they are done. Have you any indication what the average tempo is going to be once you have the legacy cases out of the way?

**Dr Atkins:** For my cases?

**Mr Jones:** Yes.

**Dr Atkins:** No. We had 434 new cases last year, and 200 cases in the system. I have had three casework staff since last July, so currently the ratio is 1:200. The average in oversight bodies is about 1:60 or 1:70.

**Q152 Mr Jones:** But how many legacy cases are you dealing with?

**Dr Atkins:** I don't know how many legacy cases are in the system. We have some legacy cases. For me, legacy means 2008 and 2009—the 200 that we have.

**Q153 Jack Lopresti:** Do you believe that the provisions regarding the Annual Report on the Armed Forces Covenant will be a positive step towards improving the welfare of Service personnel generally?

**Dr Atkins:** Yes, that must be the case. The work on the Command Paper started when I was first appointed. Just getting people to talk about that, and raising those things, is good. The issue will be what actually gets done. One of my concerns, and not just on welfare issues, is that there are occasions when I have the same problem coming in over and over again. One of the key messages that I gave to the Services was that the complaints are a valuable resource. They are about continuous improvement, operational effectiveness and welfare, and the Military Covenant is actually designed for operational effectiveness, as well as for fairness and justice.

**Q154 Bob Russell:** Mr Jones and I are the sole survivors from the 2006 Act. I concur with his observation that the job that you now hold was not exactly universally welcomed, and I am pleased that you said that there does not appear to be any opposition now that you are in post. How is the private soldier, or indeed the wife of a private soldier, made aware of your existence and the process of drawing matters to your attention?

**Dr Atkins:** In the Army, every trainee gets a briefing about the Service Complaints Commissioner as an integral part of the information, and cards are handed out. I distribute posters and leaflets across all three Services, and I also have a website. I have mentioned that I work closely with the charities and the welfare agencies. Some of those are informal, such as Daniel's Trust. So people hear about us through word of mouth and through the chain of command. Overseas, at the beginning of 2009, I did a public broadcast advert for BFBS. Interestingly, we have seen an increased number of complaints from soldiers in Germany.

**Q155 Bob Russell:** The follow-up question is that every Member of Parliament here would confirm that we are contacted by constituents when, in reality, they

would be better off going to their local council, or whatever. Are people bypassing everything and going straight to you?

**Dr Atkins:** Well, people can come straight to me—that is the whole point—and sometimes about matters that are not within our remit, but we pass them on. If it is about families, we signpost and send them to the appropriate agency.

**Q156 Bob Russell:** Would you be happy to receive people from the Colchester Garrison that come my way? I've just passed on my casework here.

**Dr Atkins:** We do get people from Colchester, actually. And please do send them.

**Bob Russell:** Thank you.

**Dr Atkins:** But don't flood me.

**Q157 Alex Cunningham:** As the Government move towards a more prescribed understanding of the Military Covenant, do you think it is likely that complaints will arise about the MoD failing to meet its obligations toward particular individuals? Assuming that you say yes, will the existing complaints system be able to handle complaints of that nature?

**Dr Atkins:** I am not sure that the Bill's provisions in relation to the Military Covenant will make a big difference in that regard. First, there is a very big barrier to making a complaint. The word "complaint" probably needs looking at, because it is still perceived to be trouble. In my first Annual Report—I still use this as part of my talks—there is a quote saying that the military don't like failure. If you make a complaint, you are a troublemaker; if a complaint is made on your watch, you are a failure as an officer. Basically, it was trouble all round.

People in the military are loyal and are expected to put up with a hell of a lot, and they do. So making a complaint is a very big issue, and it is an issue for the families, because they know what they are letting themselves in for. Many of the people who write to me feel that it used to be a two-way deal, and now it's a one-way street.

I flagged up with the Services and the MoD last July that, whatever came out of the Strategic Defence and Security Review, there were going to be complaints and that they needed to put in place proposals and provisions to deal with them. That is why I believe that, although it may not be the sexy end of Service expenditure, the resources for dealing with complaints must be protected.

**Q158 Alex Cunningham:** So you personally are not expecting a requirement for additional resources to deal with complaints in this area?

**Dr Atkins:** What I am saying is that the resources that the Services have got should not be cut. There is an increase, and it is likely to go up a lot. I agree with you, but I don't think it is necessarily because of the focus on the Military Covenant.

**Q159 Alex Cunningham:** We were talking this morning about what should be reported to the Minister. It was suggested that perhaps minimum standards should be laid down. Does the absence of

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minimum standards mean that there isn't anything to complain about in the Military Covenant?

*Dr Atkins:* Well, people can still complain if they have a new baby at home and their boiler hasn't been mended for six weeks in the coldest winter.

**Q160 Alex Cunningham:** But they do that without the Military Covenant.

*Dr Atkins:* Yes, and they will have minimum standards. It is not something I have given thought to. I think there are pros and cons. I will say—and we find this in my area—that because the guidance talks about certain time frames, and it is 30 working days for a complaint to be dealt with rather than 60 or 120 at the current time, you raise expectations. There may be very good reasons why you can't meet such minimum standards and people will complain, when it is not actually reasonable to do so. I haven't given much thought to it, but I will.

**Alex Cunningham:** Thank you.

**Q161 Gemma Doyle:** My question is somewhat similar to Alex's, so apologies if you feel you have already answered it. We heard an opinion from the Bill Team earlier today that the Bill enshrines the Military Covenant in law, but it does not define it—I have to say, there has been debate over whether it does actually enshrine the Covenant in law. How would you deal with a complaint about something that is enshrined in law, but not defined anywhere at the moment?

*Dr Atkins:* My working definition is a Service complaint, to bring it within my remit. That means that somebody has been wronged in their Service life. So, if they have been wronged in any aspect—and I have talked about Service life not being 9 to 5 and it encompassing all those issues that are included in the Military Covenant—it can fall into my remit.

There is a gap relating to veterans, and the Military Covenant is supposed to cover veterans. The gap is this: although, as a veteran—a former Service person—you can use the Service complaints system, you can only do so if it concerns a wrong in your Service life and you bring the complaint within three months of the wrong happening, unless there were just and explicable reasons not to do so. So, it's very difficult for veterans to use the Service complaints system to deal with any wrong. If a complaint is not accepted, the mechanism for asking for that to be appealed is through another Service complaint. Veterans cannot do that because the refusal to accept takes place after they have stopped serving. So, there is a gap, and my concern is not in relation to serving persons and their families; the issue is in relation to veterans.

**Q162 Gemma Doyle:** And, as the Bill stands, it does not address that issue.

*Dr Atkins:* No, because the gap is in the Armed Forces Act, and it is not addressed.

**Q163 Thomas Docherty:** Clauses 13 and 20, relating to the reduction in ranks for disciplinary offences, give greatest flexibility to Commanding Officers to

make decisions. Do you have any concerns about the COs having greater discretion at a local level?

*Dr Atkins:* Interestingly, we have had cases, including one fairly recently, on precisely this issue, with a Warrant Officer—a senior NCO. He had been informed that—it went before the Captain's table, and the CO dealt with it—he would get a period of detention, and he would be reduced in rank for that period of detention. In fact, it is an automatic reduction in rank, permanently. He can't make a Service complaint about the finding, the decision and the sentence, because that is excluded from the Service complaints system. What he made a complaint about was the process, but there was nothing that could be done because it is in law.

In those terms, the Bill corrects a potential wrong and it is to be welcomed. Giving Commanding Officers discretion always runs the risk of inconsistency, of malice—and of bias. Interestingly, that is not only in our cases, but in the Armed Forces' Continuous Assessment Survey. Bias—just being picked on, or being treated differently just because of who you are—is the largest category of discrimination in that survey. It is not unlawful discrimination. Currently, unless you are able to show that the Commanding Officer acted in an improper way by reducing you in rank, you cannot bring a Service complaint.

I think that the Bill is a good thing. Does it run the risk? Yes, but it runs no greater risk than commanding officers giving sentences in normal disciplinary matters anyway.

**Q164 Mr Jones:** The old Bill introduced what I think the Army calls AGAI 67, which I do not think the other two Services had. It is very sensible in my opinion, and it allows instant justice for minor offences. Has that worked in practice? Have you ever seen people complain that it is being used by, as you say, certain officers at a low level as a way of punishing people? Have you had any complaints along that front, or has it been a good thing? I thought that it was.

*Dr Atkins:* One of the reasons for doing it was to stop the beating, or reeving, in the Marines—whereby NCOs and Warrant Officers were alleged to have taken matters into their own hands—and to put it through a formal process. We still get complaints that individuals have been given a series of AGAI 67s for a variety of things because the Warrant Officer or Sergeant does not like them and is picking on them. We refer them and oversee them. Sometimes there is a case, and sometimes the person does not want to be in the Army and is getting into all sorts of trouble. Does it work? I cannot tell you. I can only explain what we see and the variety of things that we see.

**Q165 Mr Jones:** Has it worked in the other two Services? The RAF and Navy did not have it, did they?

*Dr Atkins:* We don't tend to get cases from them. I can't think of very many. We get cases like that from the Marines, but they are very few and I flagged up last year that Marines do not appear to know about the Service complaints system, and certainly not about the SCC. That is something that they may have been

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working on to try to increase that awareness. Those sorts of complaints happen in the Marines and in the Army.

**Q166 Thomas Docherty:** I am also a member of the Defence Committee. You wrote to us a couple of months ago seeking input—I will paraphrase, if I may—to help validate or assess your operations. Do you think there is any scope or mechanism that could be included in the Bill that would provide a mechanism for greater validation of your work that you would find helpful?

**Dr Atkins:** I certainly think that it is useful that my role is a statutory office and now has to be subject to the approval of the Committee. I would very much welcome accounting to the Defence Committee on my work, because—

**Q167 Thomas Docherty:** Sorry, so you see it as being about the Defence Committee rather than any other mechanism?

**Dr Atkins:** I think that accounting to Parliament through the Defence Committee is helpful. After my first Annual Report, there was a debate in the House of Commons, and I think that that was very helpful, not least because it spreads knowledge and understanding. As an independent member, and as an independent member with responsibilities to Service men and women, I think that anything that increases the accountability of the role is to be welcomed.

**Q168 Thomas Docherty:** At the risk of putting words in your mouth, you would like some sort of formal requirement?

**Dr Atkins:** I don't know whether that needs to be in the Bill. I think that that is for you and your fellow Members and the House of Commons to consider. But I think that the accountability mechanism is a good one.

**Q169 Thomas Docherty:** Finally, do you feel, having had a chance to reflect upon and digest the Bill, that there are any other measures or provisions that will affect either your office and your work or, indeed, the wider welfare provision, that would be helpful for this Committee or the House in general to consider including?

**Dr Atkins:** No. I will watch the impact of the provisions on the Service police with interest. That was an area that I flagged up last year in the Annual Report, because I think that the effectiveness of the Service police and confidence in the Service police has an impact that is much broader than one might immediately consider. A lot of cases about bullying and harassment start as Service complaints, many of them through me. If there is an issue that it could be a criminal offence, it goes to the service police. What happens very often is that because it is Service police asking questions, everybody suddenly forgets, was not there, cannot remember, and nothing happens.

Those who were Members of the Defence Committee when my role was set up will remember that Sir Nicholas Blake's original recommendations for the Commissioner role was that the Commissioner would have the right, if a Commanding Officer failed to take

action or to put a case to court martial, to ask for a prosecution. That role went to the Director of Service Prosecutions under the Act. When I asked the question of someone briefing me on the Bill, I was assured that the provisions of the Bill are sufficiently wide for HMIC to look at that as part of its inspections. That would be the area: just so that we could make absolutely sure what is happening there. It is outside my remit; I cannot ask the Service for those things. If something starts as a Service complaint and it goes into the criminal justice system, it moves out of my ken. That is an area that needs to be looked at. I did ask the question yesterday, and was told that would be within the inspectorate.

**Q170 Bob Russell:** Does your remit include taking up issues on behalf of war widows or other bereaved family members, who have concerns about what is ongoing? Do you think that is something that the Military Covenant ought to be addressing as well?

**Dr Atkins:** The short answer is no, it does not. I have had a few individuals in those circumstances write to me. I then get in touch with the top of the Service and pass them through. You may recall in my Annual Report, I drew attention to the fact of families of soldiers, sailors and airmen and women who came from Scotland and the coroners, and the gap there, which legislation closed. I also invited views on whether my remit should be extended. Families who feel, after their loved one has died, that issues were going wrong to which they wanted an answer, do find it very difficult. I am sure Members of Parliament hear about a lot of these. One reason Sir Nicholas Blake wanted the Commissioner there was so that they cannot be fobbed off. There may be a role for that. Where people come to us, we try to help.

**Bob Russell:** I really appreciate that. Thank you.

**Q171 Mr Jones:** But on that point, is there not a danger if you do not define it? There is a case for bereaved families—certainly in the cases I have dealt with, as a Minister and on the Defence Select Committee—where children die in Service. There is a remit there. Is there not a danger if you do not define it, that you push your remit way over to veterans going a long way back? That would dilute the purpose and key role that you were created to do, which was to deal with complaints in Service.

**Dr Atkins:** There is. I can give two examples of that. I was approached by a few families who felt that the person who died—and it was not an operational death—had been treated badly and was in the process of, and wanted to make, a Service complaint. They died of illness before being able to get an answer to that. I pushed those through and overcame the resistance of, "We are not going to answer to that, because they cannot make a Service complaint." A very bureaucratic answer. That is a circumstance so akin to my role that that is not extending the remit too much.

The numbers of complaints that I do not refer are reducing; in the early years, they were about 40%. A fair proportion of the complaints that I do not put into the system—not a lot—are from people who want to raise something that happened to them in the Services



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a very long time ago. Just in the last few weeks, I received one that was about something that went wrong in 1979. Interestingly, someone from the Service referred that person to me, so that he could be assured that it was not pushed under the carpet.

I have not put those cases into the system for precisely the reason that you suggest: the focus is the here and now. I understand that if something has gone badly wrong and, towards the end of your life, it is preying on your mind, you want to get it settled. But there are lots of reasons why the Service complaints system cannot deal with that.

**Q172 Mr Jones:** The difficulty is not just your remit. We are familiar with the Deepcut deaths, for example. Some of the difficulties there relate to the time it would take to investigate complaints. With evidence being so way off, it would be time-consuming—you would not get answers even if you threw a lot of resources at it.

**Dr Atkins:** Yes. This is an issue that other oversight bodies find. When I was at the Independent Police Complaints Commission as Chief Executive, the Secretary of State asked the IPCC to look at a particular case that was causing concern, which was outside its remit. There are occasions when it might be appropriate. It is a workplace grievance system.

**Q173 Thomas Docherty:** Dr Atkins, it sounds as if we have a situation where there is potentially a problem; but, for want of a better phrase, because of your good sense, that hasn't occurred on your watch. Would it be fair to say, however, that there is the potential for one of your successors in the future to take a broader interpretation of their powers? I wonder whether having something that is written down and more clearly defined might be helpful.

**Dr Atkins:** Well, what would you mean by a broader interpretation?

**Thomas Docherty:** To cite the examples that you've used, you use your judgment. Technically—or, perhaps, potentially—a different holder of your post might have decided to reopen those cases. I am suggesting that that was your judgment, rather than it being clearly defined that you couldn't reopen those cases.

**Dr Atkins:** What I could change is making a decision. When people come to me, do I think this is likely to be accepted as out of time? The test is not mine; the test is the chain of command. Is it just inequitable? I should say that I have referred cases that were 12 or 15 years old. Just because they happened a long time ago doesn't mean that I haven't referred them. I have referred them in cases where the allegations were of a Deepcut nature. It seemed to me these were so

serious—I think we referred one just the other day that went back to the 1980s. So I will do that, but I have to give an assurance that the system is working efficiently, effectively and fairly. It does not seem consistent for me to put in what could be hundreds or thousands of complaints to the Service, who would simply say, "This is too long ago. It was important to you, but in the scheme of things, it was minor. We haven't got access to the material, so there is nothing we can do." That could really impact on the fairness of the system to sort out the problems of today.

**Q174 Mr Jones:** In terms of Reservists—seeing as Mark Lancaster is not here—and the number of complaints you get, are there any special challenges that Reservists face, which regular members of the Armed Forces don't face?

**Dr Atkins:** Yes. We haven't had many, if any, complaints from Reservists in relation to operations. The complaints we get are threefold. On complaints about policy, the terms and conditions are different. In the Army particularly, there were different terms of engagement and different categories, so that was very complicated. At least one of the cases that we put through was helpful to bringing about the review in a speedy way. There are cases at the other end, particularly in the TA, that concern the combination of civilian life and Reserve Service. They are rubbing points, where the chain of command doesn't appear to be understanding, and they can get sorted out quickly. Then there are the ones in between, which are put through and the Commanding Officer needs to sort out. We get quite a lot, and a lot of them have been on the policy end and relate to the terms and conditions of service.

**Q175 Chair:** Does it worry you at all that you haven't had many, if any, complaints from Reservists on operations? Does that suggest they might be less aware of your availability to them than Regular Forces?

**Dr Atkins:** It could be.

**Q176 Chair:** Is that something you should consider?

**Dr Atkins:** I think it is something we should consider.

**Chair:** Right. Thank you very much. Are there any further questions about this? Thank you both very much indeed. Mr Beck, Dr Atkins has done such a fantastic job that you didn't even need to open your mouth.

**Dr Atkins:** He can buy me a drink later.

**Chair:** Thank you both very much indeed for coming to give evidence.

**Tuesday 8 February 2011**

Members present:

Mr James Arbuthnot (Chair)

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones  
Mark Lancaster

Jack Lopresti  
Sandra Osborne  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

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### Examination of Witnesses

*Witnesses:* **Lieutenant General Mark Mans**, Adjutant-General, **Vice-Admiral Charles Montgomery**, Second Sea Lord, **Air Marshal Andy Pulford**, Air Member for Personnel, and **Lieutenant General Sir William Rollo**, Deputy Chief of the Defence Staff, gave evidence.

**Q177 Chair:** Welcome to this morning's evidence session of the Armed Forces Bill Committee. Would you be good enough to introduce yourselves? Shall we start at your end, Air Marshal Pulford?

**Air Marshal Pulford:** I'm Air Marshal Andy Pulford. I am the Deputy Commander-in-Chief Personnel at Air Command at High Wycombe, and I am the Air Member for Personnel on the Air Force Board.

**General Sir William Rollo:** My name is Bill Rollo. I'm the Deputy Chief of the Defence Staff for Personnel and Training and therefore the central staff officer responsible for policy in these areas.

**Admiral Montgomery:** I'm Charles Montgomery, the Second Sea Lord and the Commander-in-Chief of the Naval Home Command.

**General Mans:** I'm Lieutenant General Mark Mans, the Adjutant General, and I also command the Personnel and Support Command within Land Forces.

**Q178 Chair:** Thank you and welcome to the Committee. The main purpose of the Armed Forces Bill is to allow our Armed Forces to continue in existence for the next five-year period. Could you tell us whether the five yearly renewal of primary legislation allows the Government to deal promptly and effectively with any practical or legal problems that may arise?

**General Sir William Rollo:** From my perspective, it provides a framework and a target, so if there is routine business to be done that isn't compellingly urgent and we know when it's going to come up, we know that there is a vehicle that is guaranteed to be there in time, bearing in mind all the other pressures on the parliamentary schedule. If we do need to do something more quickly—if it's sufficiently urgent—clearly that can be done. It has to fight its corner in the overall schedule.

**Admiral Montgomery:** I wouldn't have anything to add.

**Q179 Mark Lancaster:** How do you feel that the Secretary of State's Annual Report as proposed in the Bill will help to rebuild the Covenant? Do you in fact feel that the Covenant needs rebuilding?

**General Sir William Rollo:** The Covenant has existed in one form or another, in a fairly intangible fashion,

for a long time. I guess your question begs the question: what is it? I would answer that question by saying that it's a moral bond between those who serve and the Government and, I guess, the nation and the chain of command. It tries to answer a question that by its nature is pretty intangible, which is what value you put on military service. How do you have a contract with someone when you're asking him to put his life on the line? It's quite hard to say whether something is at a particular stage at a particular moment. Is the present measure a good thing? From my perspective, to have the Secretary of State under a statutory duty to produce a report to Parliament on an annual basis must be a good thing. I'll therefore support it. It's a development of what we've been doing before. The External Reference Group and its Report was a good thing, and this will be a good thing.

**Admiral Montgomery:** Did the Covenant require rebuilding? I think it did require rebuilding. That process of rebuilding has been under way for probably two or three years already, and we're already in a better place than we were at that stage. I'm in no doubt at all that the Annual Report is a significant step forward for openness, transparency and the ability of our people to know and be confident that the Nation is respecting their Service.

**General Mans:** It is a process of evolution, which started more formally, obviously, two or three years ago. That's how we see it in the Army. Of course, we've articulated how we interpret the Military Covenant for some time, but in terms of supporting that Covenant and supporting our own people, their families, the Reserves and the veterans, it is a process of evolution. Therefore, we are very positive about the direction in which this is all going.

**Q180 Mark Lancaster:** You say it is a process of evolution. Perhaps, then, you could outline what you envisage the next steps to be. You articulate clearly that the Army has a concept of what the Covenant is. Would it be sensible perhaps to move to a Tri-Service Covenant? Are the other two services as clear in their minds about what the Covenant enshrines?

**General Mans:** I'll kick off. There is the Armed Forces Covenant, which of course is still being discussed and so on and will come to fruition in the

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very near future. Clearly, as far as the Army is concerned, we've had our own Military Covenant, and that now will dovetail, I feel, very nicely into what is proposed or what is being discussed by ourselves and officials.

**Admiral Montgomery:** The Armed Forces Covenant has been developed thus far on a Tri-Service basis. I'm entirely comfortable with its overall sense of direction. You've asked what might be the next steps; is it a process of evolution? To my mind, the next steps are clear and already under way—that is, the closer definition of just what is going to be within that Covenant and what we will expect to get out of it, and then both the objective assessments of performance and the means by which we subjectively judge the performance.

**Air Marshal Pulford:** It comes back to the point you made. The Army had the Army Covenant; the other two Services—the Navy and ourselves—didn't. This is a sweeper, which will capture that. The Adjutant General can speak better on this than I can, but I think it will maintain its own Army Covenant for its own single-Service purpose. But in terms of this being a step forward, it is moving forward, in terms of the Armed Forces Covenant, and capturing those things that perhaps in the past we've taken for granted and didn't quantify in a meaningful way. We now have a vehicle to do that, and it comes back to your first question about the Report. I'm talking about the accuracy and the breadth of that report and the three points of the triangle—it being exposed to Government and, through that, to the British people, but, importantly, the Armed Forces and the Service people, as defined by the Bill and therefore the Act, then buying into the fact that this is an accurate representation of where the Government stand on that annual basis. So I think the Armed Forces Covenant is a step forward. The purpose and the value of the Report will stand on the quality of it, the accuracy of it and that buy-in that you get from the people involved.

**Q181 Gemma Doyle:** General Rollo, you noted that the Bill includes a statutory duty on the Secretary of State to place a report before Parliament. As such, do you think that the Bill enshrines the Military Covenant in law, or does it enshrine a report on the Military Covenant in law?

**General Sir William Rollo:** Well, it establishes that there is such a thing and it lays a duty on the Secretary of State to report on the state of that Covenant. It looks at three areas in particular—health, education and housing—and such other areas as are required at the time. That seems to me to be reasonable. Those are the core subjects. I can't imagine that we wouldn't want to report on them. Other subjects will arise from time to time that he can and, I hope, will report on.

**Q182 Gemma Doyle:** Just to clarify, it enshrines the Report in law and it notes that the Military Covenant exists?

**General Sir William Rollo:** That would be my understanding, yes.

**Q183 Bob Russell:** Gentlemen, the Royal British Legion, which of course is Tri-Service, is being very active in promoting the Military Covenant. We're making reference here to the Armed Forces Covenant. Do you share my view that the general public have a grasp—an understanding of sorts—of what the Military Covenant may be about and that the term "Armed Forces Covenant" could cause confusion rather than clarification?

**General Sir William Rollo:** Well, I certainly think that we all need to be clear about what we mean by different terms. As I understand it, in the language in this and other Bills, when we use "military", it normally means the Army, in the same way that "naval" means the Navy; "Air Force" is self-explanatory. So I guess for consistency we ought to try to preserve that and therefore to talk about the Armed Forces Covenant that sits above them makes sense to me. Andy mentioned the Army Covenant. Within the Army—to resume my single-Service status for a moment—we've always called it the Military Covenant.

**Q184 Chair:** That is an interesting answer, General Rollo. Do you think that the Royal Air Force and the Royal Navy are not military?

**General Sir William Rollo:** We are all Military Services with a small m. The Military Covenant had a capital on it. The sense in which you use "military" as opposed to "naval"—in the sense that I used it, I think—is one that I'm accustomed to, but that may not be general usage.

**Air Marshal Pulford:** I don't think this is an issue about the Navy and the Air Force being non-military. Of course it's not. It's the traditional use of the term "military" in the past to represent the Army. There is a more significant issue here, and that's the term "military" somehow implying an all-uniformed force. Certainly today, in the way we deliver operations, this is not about just the Military. This is about the Armed Forces in the round and all those parts that come together to deliver military effect. That will be just as, if not more, important in future, as this Covenant grows and matures and we take on the whole-force concept of not just the traditional, regular and Reserves, but contractors, civil servants within the Ministry of Defence and all of the places that they reach, such that this is not just about civilians representing the Armed Forces in the MoD and Whitehall, but as far forward as the front line as well. To use "military" in that sense would have been the wrong term; "Armed Forces" is not a bad compromise.

**Admiral Montgomery:** I would just say that from a naval service perspective, I would much prefer "Armed Forces" to "military", not least because of the way that it will be perceived in the public's mind's eye, where "military" is so closely associated with the Army.

**Q185 Mr Jones:** It has been spun that the Bill will enshrine the Covenant in law, which clearly it does not. It does not define what the Covenant is. We were told last week that Hew Strachan's report is ongoing

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and that work is being done to define what the Covenant is. Is this not just enshrining a super External Reference Group Report, which has already been produced, and dressing it up as the Secretary of State's Report, which will then report to Parliament?

**General Sir William Rollo:** Is it a super External Reference Group Report? It will cover many of the same topics that the External Reference Group already covers. The External Reference Group's Report in the past has focused very much on the specific measures in the Service Personnel Command Paper. I would see this Report as being broader than that. The key distinction though is that it is a report that will be laid before Parliament. I may be wrong, but that seems to have an extra significance which is thoroughly helpful. It will give it a profile that perhaps it has not had in the past.

**Q186 Mr Jones:** I possibly accept that, but it does not define what the Covenant is, does it?

**General Sir William Rollo:** The Bill itself does not, no. That is a matter of fact.

**Q187 Mr Jones:** Are you aware of what is happening with the Strachan report? We were told last week that work is still going on to define what the Covenant is. Is it not putting the cart before the horse to put a Bill before Parliament which says it will report on the Covenant, when you have not defined what the Covenant is?

**General Sir William Rollo:** Well, I think there is a general sense of what the Covenant will be. Ministers have not finally agreed the language. If you define it as a sense of moral obligation, that is fairly broad and all encompassing. That is the way that it should be seen.

**Air Marshal Pulford:** There is a programme of measures that has yet to be decided and agreed, which will capture both the Command Paper, the Strachan report, the Green Paper, in the sense of what is in it and what will be reported on. In terms of what the Covenant is, there will be measures which have been captured within that programme which will be reported on, on an annual basis.

**Q188 Mr Jones:** That is very interesting. Are you telling the Committee that the Green Paper that was produced two years ago is part of this policy-making process?

**General Sir William Rollo:** I guess that everything that has gone before is part of the policy-making process. There is very much a sense of evolution here from the work that was done before. There is nothing about this that is starting completely afresh. In the opening debate, the Service Personnel Command Paper was acknowledged and the starting point that it represented was set out. Certainly, that is the way that we see it. This is evolution.

**Q189 Chair:** Admiral Montgomery, you said that the Covenant had been being rebuilt for two or three years now. So what would your answer to Kevan Jones's question be?

**Admiral Montgomery:** That period of two or three years has been a process of evolution, which I think General Rollo has been referring to. Perhaps the single greatest step up from that was the formulation and publication of the Service Personnel Command Paper by the previous Administration. I would also add that the National Recognition Study that was led by Quentin Davies was a component of that, which in itself was another leg up in terms of the Armed Forces' status and visibility within society. I think that the process of evolution over three years has at least been building blocks along the way. This is the next particular stage of that evolution.

**Q190 Mr Jones:** One of the things in the Green Paper was how you actually make the things in the Covenant, or the Service Command Paper as it was then, legally enforceable. There is nothing in the Bill, even though it has been pitched or spun to say that it puts the Covenant into law, that gives any form of redress in terms of whatever has come forward in the Report.

**Chair:** We will be coming back to that in a few minutes.

**Q191 Bob Russell:** Looking back over the last two to three years, you made reference to looking at lots of reports and so on. Did that include consideration of Defence Select Committee reports? In particular, I would like to home in on the one about the education in state schools of children from all three branches of the Military.

**General Sir William Rollo:** Mark, would you like to pick up on that? Otherwise, I can.

**Chair:** He missed out the words, "the Defence Committee's excellent report."

**General Mans:** Yes, indeed. I am aware of the reports, as far as the actual process of reviewing those is concerned and making sure that they have been picked up in the work that is ongoing. But I will have to defer to that, as obviously it is being driven by—

**Q192 Bob Russell:** Could I ask, gentlemen, that you take that away and look at the question I put there? Events have moved on and the evolution has moved on. The pupil premium, in my understanding, is not necessarily about to fit in with the requirements of the children of Military personnel because of the criteria that the Government may be using to define which pupils are entitled to a Pupil Premium. That is an important part of the education aspect of the Armed Forces Covenant.

**General Sir William Rollo:** Thank you is the answer to that. When I was AG, we recruited a new chief executive to the Service children's education authority with a background in education in this country, specifically to develop the relationship with local authorities and the Department for Education in order to improve our understanding of the education experience of Service children in this country, so I am focused on that. I thought that the Pupil Premium was a good move—that is a debate we have been having for some time. If there are criteria that affect it that we need to look at, we will certainly do so.

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**Bob Russell:** Thank you.

**Q193 Alex Cunningham:** What do you consider to be the key purpose of the Armed Forces Covenant Report to Parliament?

**General Sir William Rollo:** To set out, as a statement of fact, where we are with those three subjects in particular, with the treatment of Armed Service personnel on housing, education and welfare; to provide an opportunity for other stakeholders, such as the charitable sector and the Service Families Federation, to give their views, so you get both a qualitative and a quantitative statement of the welfare of the Services; and to allow a debate in Parliament as to whether that situation is adequate, and for the Secretary of State to say what he is doing about it.

**Q194 Alex Cunningham:** How will that provision directly improve the welfare of Service personnel and their families? Is there enough there to convince Service people that your side of the deal, or the Nation's side of the deal, has been upheld?

**General Sir William Rollo:** Well, it will also contain a report on the programme of measures, which will build on those of the previous Administration, and what the Government are doing about it.

**Q195 Alex Cunningham:** But there are no measures, minimum requirements or anything?

**General Sir William Rollo:** That's so, and there wasn't before, but the Government undertook to carry out a series of commitments, whether in statute or in the other direction within the Administration. If it isn't adequate, I'm sure that the Families Federation and other people will say so. Indeed, Parliament will have the opportunity to do so too.

**Q196 Alex Cunningham:** There seems to be a tremendous reluctance to put down minimum standards. Would you like to see minimum standards enshrined?

**General Sir William Rollo:** Minimum standards are often quite difficult to enshrine in legislation. In practice, for instance, on housing, we have said clearly that we want people to be in the upper grades of housing. Where you can define it, I think we should. Our experience over the past three years is that defining standards is often quite tricky, and we will have to go on devilling away at that until we get it right.

**General Mans:** I don't think there is a requirement to set down standards, but remember that the Secretary of State's Report will be annual. Parliament will be able to track progress year on year, therefore, which is a very important aspect of the Report and the underpinning rationale. Time will tell, in one sense, but the importance is laying something before Parliament so there can be a debate, year on year.

**Q197 Alex Cunningham:** Yesterday we paid a visit to the Reserves Training and Mobilisation Centre at Chilwell in Nottingham. A couple of people I spoke to there hadn't even heard of the Covenant, and another suggested it wasn't worth the paper it was written on,

because there were no guarantees in there at all. Can you tell me about how much discussion there has actually been with personnel and their families about the kind of Covenant that should exist?

**General Mans:** Again, as I said before, the Army has had its own Covenant and articulated it for at least 10 years, and it is embedded in our doctrine. The training that our officers and soldiers have is very much part of that. Of course, I wouldn't expect every soldier, or indeed every officer, to remember some of the fine words that are in our doctrine, but it underpins a lot of what we do in terms of how we define what we call the moral component.

You mentioned the families, and the Army Families Federation, with whom I engage on a very frequent basis, understand this and we have involved them in some of the discussions about how this issue is progressed. If I am honest, if you were to go to Chilwell in a year's or two years' time, I think you would see a momentum building on the issue of the Armed Forces Covenant.

**Admiral Montgomery:** And I'm not surprised that there wasn't open recognition among those you met at Chilwell of the Covenant. After all, while the three Services and the Families Federations have been involved in the Strachan work—we have all been involved in the way in which that work was taken forward—we have been more formally engaged in the way in which the Covenant itself has evolved thus far. Down on the ground, of course, what will make the difference to the sailors, soldiers and airmen is when they see results, and that's when it's going to become more relevant. The excellent work of the Service Personnel Command Paper, for example, took considerable time to achieve even the minimum traction among our people. In my view, it will only be when our people start to see a mechanism that can produce beneficial results that they will start really to get a grasp of what the Covenant is doing for them.

**Air Marshal Pulford:** I reinforce that entirely. An awful lot of change is going on out there, and there is a lot of chatting in crew rooms and on the hangar floor. Most of them know it's coming, and they will wait to see what it is. They are by their very nature a pretty cynical bunch, hence the "There will be nothing in it for us" view. That comes back to the point of the Report and its quality and value, because our people—those who are the subject of the Report—have got to believe in it as well. That's when that, "What's in it for us?"—when they see that there is tangible effect from that Report each year.

**Q198 Alex Cunningham:** Just a quick tangent; some of the people yesterday were talking about the American system. It's one small factor, but they mentioned the benefits card that the Americans have during and after service. They were thinking that that card would be a great idea in Britain, but they can't access it because they don't have those ID cards. Is that something you would like to see?

**General Sir William Rollo:** There is a Services discount website and scheme which gives discounts for all kinds of things.

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**Q199 Alex Cunningham:** If you produce an ID card, post-Service.

**General Sir William Rollo:** No, I think you can use it at any stage. An old chestnut about the veterans ID card that has been going the rounds is that the key is whether it would actually give a physical advantage to anyone, and whether it would therefore be something that people actually wanted. To date, I think we and the charitable sector have been unable to pin that down satisfactorily.

**Q200 Alex Cunningham:** One soldier suggested yesterday that free entry to Alton Towers would be nice for his family, but that is another matter.

My final question is about the Devolved Administrations, and how much discussion has been had with them as to how they can live up to their Covenant obligations.

**General Sir William Rollo:** They are represented on the External Reference Group—they have been involved. Clearly, if we are discussing an obligation on their Administrations to do something, that is their decision, and we respect that. The short answer to your question is that they are fully engaged.

**Q201 Sandra Osborne:** What obligations do they actually have? Do they have any legal obligations relating to the Covenant, or are they just moral?

**General Sir William Rollo:** Gosh; my first answer to your question is that there is a moral obligation, in the same way that there is here. The legal duty imposed by this legislation is on the Secretary of State to produce a report—that is the context of our conversation. The obligation is on him. If we want to achieve a particular outcome, we will decide whether that is best done by statute or not. If it is by statute, clearly the Devolved Administrations will have to enact their own statute where that is the right thing to do. If it is a moral obligation, it is exactly that. The evidence so far and all the work on the Service Personnel Command Paper show that they have been very forward-leaning.

**Q202 Sandra Osborne:** As you rightly point out, it is up to them whether they do something about health care, education and housing, but those are all things that could cost considerable resources. The three main headings that you have chosen to highlight because they are very important potentially all require resources but not from the MoD. What things would you highlight that could require resources from the MoD?

**General Sir William Rollo:** In the first instance, housing for Service people is an MoD responsibility—that sits with us. What is on the shortlist otherwise? I will give an example of something I am really interested in: the Armed Forces Compensation Scheme and its relationship with other benefits. That is an area where there is clearly a crossover, because the Government is giving people significant sums of money in compensation, quite rightly, and therefore their financial status changes and there is a significant interaction with benefits elsewhere. That works, often on a voluntary basis, very satisfactorily, but it is an

area where I am really keen that we should achieve consistency in practice in the future. That is one area.

**Q203 Chair:** Does anyone want to add to that?

**Air Marshal Pulford:** I come back to the resources thing. You are absolutely right that some of this will cost money, but remember that it is about our people not feeling disadvantaged because of the nature of the life they are asked to lead because they are in the Armed Forces. A lot of that is about prioritisation and access, not necessarily something that will require resources. They are not asking for special treatment—to go to the very top of a list—but they are asking that if they move around on a regular basis, they are put at the appropriate place on the list when they move. It comes down to fairness. I do not think that it is all necessarily about resource, although I do acknowledge that some areas will cost money.

**Admiral Montgomery:** The most obvious and emotive area would be the continuing care that Service men and ex-Service men need when they have suffered injuries, whether in operations or not, and what place and what preferential treatment they might be afforded in the NHS. There are areas that undoubtedly will bring resource costs to other Government Departments and Devolved Administrations.

**Q204 David Wright:** This follows on, really, from what Admiral Montgomery just said. Clearly, it is easier to monitor the Covenant among serving personnel; and clearly, we will keep track on the progress of people who are, sadly, badly injured, as they leave the Service. How will we gather data on veterans who perhaps leave the Service without injury—hopefully most do; we would like them all to—and monitor them in terms of the commitments in the Covenant? How long do we keep data on veterans, for example? How will we assess whether we are meeting our ongoing commitment to them as veterans over time? We heard in a briefing about a week ago that we do keep some records, but they are pretty sketchy. How are we going to deal with that?

**General Sir William Rollo:** One of the key ones is medical records. I do not know whether you are calling the Surgeon General but he has done a huge amount of work in the past two or three years to improve the interaction of the Services medical system and the Department of Health, so that effectively, records will be transferred in a much smoother fashion than they could be in the past, and there will be a way of identifying former Service men within the Department of Health records. That is my understanding, anyway.

**Q205 David Wright:** Take, for example, housing. Someone may leave the Service, say, after 10 years, as a veteran with housing requirements. How, and how long, will we monitor those individuals with respect to their housing needs—say, over five or 10 years?

**General Sir William Rollo:** I am not sure we will. We will provide resettlement advice as they go out, and we are doing a lot of additional work on how we improve that service, but once they are launched,

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unless they have a specific problem related to their service, they become a normal citizen and carry on.

**Q206 David Wright:** One would assume that we have a commitment to people who leave the Service—that they will not, for example, become street homeless.

**General Sir William Rollo:** Surely.

**Q207 David Wright:** How do we monitor that? How do we keep a record of whether they are street homeless, where they have gone, and whether we are meeting our obligations as a society to someone who has served in the Forces?

**General Sir William Rollo:** We have an interaction with the charitable sector, which deals with this on a daily basis and in my view has the right people to deal with it. I do not think that people actually necessarily want to be tracked too much after they leave, although I understand the helpful sense of what you are saying. Once they have left they are very proud of their former Service, but they are equally proud of being able to look after themselves and carry on their lives.

**Q208 David Wright:** Of course they are, but if we are going to adjust policy on housing, for example, and give people particular levels of priority for accessing social housing, we need some record of whether they are able to do that. Clearly, people want to be independent and go off and live their lives; we all accept that. I am trying to be helpful and find out how we can track what happens through the Covenant Report, for example. Presumably the Report would have to say, “X number of people have left the Services and we reckon that most have gone into these sectors of housing” in relation to our fulfilling our obligation to them as a nation.

**General Mans:** Absolutely, and that is something that requires more work. There is a mechanism that we need to make more use of, which is that when a regular soldier or officer leaves regular Service they have a reserve liability and therefore there is a data capture process. It needs to be improved, but there is a facility to keep track. Clearly, that reserve liability does not go on for ever, so there would be a time in terms of where, after five years or whatever, the liability is, and it does change. The individual would then perhaps, shall we say, become less connected to the Military. I would say that it is a very good point, and it is something that we will clearly want to follow through on.

**David Wright:** Thanks. That’s helpful.

**Q209 Mr Jones:** Can I just ask, General Rollo, about what you just said about the tracking of medical records? You are correct that, in January 2009, there was an agreement between the MoD and the NHS to ensure a smoother transfer of medical records. There was, however, also an agreement that, when people left the Armed Forces, they would be flagged up on GPs’ records, so that even 20 or 30 years down the line you could say that people had seen service. When we were at Chilwell yesterday, the GP told us that,

because of cost, that is not being implemented. Is that the case?

**General Sir William Rollo:** I don’t know. I am going to have to come back to you.

**Q210 Thomas Docherty:** Going back to the point, General, that you made to Mr Wright about homelessness, I am not sure that I would agree with an assessment that somebody who has ended up homeless is in a position to be proud. I think that you were roughly saying that—I will paraphrase slightly—we don’t track these people, because they are proud of their service, and they wouldn’t want to co-operate. Well, I’m sorry, but if someone has ended up living homeless on the street, that mission has failed. I struggle to understand why nobody takes responsibility for tracking veterans when they leave their primary Forces.

**General Sir William Rollo:** I don’t think that I said that they would be proud of their Military service if they ended up homeless. They might be, or they might not be. I cannot put myself in somebody’s brain. Do I want to see ex-Service people homeless? Clearly, I don’t. I think that the best way that we can prevent that is by providing a better transition service and a better lifelong education and personal development system while they’re in the Service. We take people from all sorts of backgrounds, and I hope that we give them every opportunity to develop themselves and to come out as useful members of society when they leave the Service.

The issue is more about how one tracks somebody in that position, and that has proven difficult. Is there a case for a specific military charity—I have been involved in one—to look after the Military homeless? We did a survey last year, which said that the problem was more diffuse. It isn’t just London-based. Also, the way that the charitable sector is going in terms of mass and specialisation suggests that the best way of looking after people in that position is to lift everybody who is there, rather than focusing specifically on those who are Military. I would hope that a rising tide will lift all ships on this one. That is my perspective.

**Air Marshal Pulford:** Homelessness is just one side of it. There is the medical side as well. We were talking about resource earlier—some sort of agency that tracks the many thousands of veterans over the years. There is some sophisticated network of charities out there to assist. A lot of this comes down to the mutual pride of not wanting to fall on to the charity sector in the first instance, and, of course, all too often, by the time that they are picked up, it’s very late in their decline. We will, however, continue to refine our understanding of how best to place the various assets, both of the formal Government, as opposed to the MoD, and the charity sector, to ensure that you are there to capture those that are falling as early as possible.

**General Sir William Rollo:** Another angle where Services are improving is on the mental health side. Very often, people in that position have had a mental health problem at some stage, and the continued development of the improvements that began two to

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three years ago is an area that would be helpful to people in that position. I think that everything becomes a rather holistic problem, and deciding whether somebody is homeless because they have a mental health problem, they develop a health problem because they are homeless, or they are homeless because their relationships have got into problems or they have lost a job—all those factors tend to come together and you have to treat all of them at the same time. Again, that is a positive aspect of the developments that we have had during the last few years, which will continue.

**Chair:** We will be taking evidence on Thursday from many of the Service charities, so this issue may well come up again then.

**Q211 Gemma Doyle:** As we have discussed, the three issues in the Bill that the Secretary of State will be required to report on are health care, housing and education. General Rollo, you mentioned welfare, housing and education, and my definition of “welfare” would include pensions and benefits. I wonder whether you or anyone on the panel could give a view on whether the definitions should be expanded, at least to include pensions and benefits.

**General Sir William Rollo:** We are laying out a Bill for the future. I think that the core subjects are—I had better make sure I get it right this time, hadn't I?—education, health and medical care. Would we always want to talk about pensions and pay? We might. There will be other occasions when it is clearly more pertinent to do so. I guess that this might be one of them; I don't know. That is an issue for the drafting of the Report in due course. There are big changes to pensions going on at the moment and those are very pertinent to us. Whether the Report is the right place to raise them—“to be discussed”.

**Q212 Gemma Doyle:** On the basis that health care, housing and education are all devolved issues, certainly in Scotland, the inclusion of pensions and benefits would ensure that there was a UK focus to the Covenant Report. Could you respond to that point? If pensions and benefits are not included, Scottish veterans, for example, will be looking at this system and wondering where they fit into it, because at the moment there is no issue on which the Secretary of State would be required to report on that would affect them.

**General Sir William Rollo:** You raise a really interesting issue, in particular the way in which the Report covers work carried out by the Devolved Administrations. I would be slightly surprised if the Report did not mention the work of the Devolved Administrations. Otherwise, I do not see how we could give a picture of what is happening across the board. The issue of what the Secretary of State is accountable for is clearly one that we will have to look at as we go through the process.

**Q213 Gemma Doyle:** I don't mind if someone else answers this question. How will it be decided which issues are included in the Report? Will the Secretary of State himself or herself decide those issues, or who

do you think will be involved in that decision-making process?

**General Sir William Rollo:** I guess that I have to start, because I am the only one of the three of us who is a Member of the External Reference Group. Clearly the External Reference Group will play a key part in that process, but they won't be the only people involved. The chain of command will also be involved. At that point, I will look sideways.

**Admiral Montgomery:** I was going to come back to exactly the same point. Of course the chain of command will have a very fundamental internal input into the Secretary of State's Report and there will be other inputs too, such as the Continuous Attitude Survey, whether it be the Armed Forces' Continuous Attitude Survey or the surveys for the families or the Reserve Forces. All those surveys will have an input into the Secretary of State's Report, as indeed might the Leavers Survey, for example. So I am sure that all those internally generated triggers will feed up to General Rollo's area in the Department, for him to be able to put together the sorts of issues that eventually might be put to the Secretary of State to decide what goes into the Report.

**General Mans:** I think that we referred earlier to the programme of measures, which will sweep up the previous Service Personnel Command measures and some of the issues that Professor Hew Strachan has examined. So there will be measures that will be reported against in some way, and clearly in doing that the views of the Services will be articulated. That programme of measures will be important, because it really is the start point.

**Q214 Gemma Doyle:** Air Marshal Pulford, you raised the issue of access to health care. Do you think that the Bill guarantees priority access to NHS treatment for Service people?

**Air Marshal Pulford:** Guarantees? We are looking for the Covenant and the programme of measures to deliver the means by which our people are not disadvantaged due to their lifestyle. So, within the programme of measures, we are looking at the mechanisms by which those disadvantages as they presently sit are removed.

**Gemma Doyle:** I understand, but there is no measure in the Bill that guarantees priority in the NHS.

**Air Marshal Pulford:** As we discussed much earlier, the Bill is about the reporting. The programme of measures will be the specific effects themselves. The Report, which is outlined by the Bill, will be about how we are doing: it will be about measuring ourselves each year on the progress we are making in removing those disadvantages if they presently exist. As we have just discussed, if new issues come in during a year and we detect that this contract—this Covenant—is beginning to break down, it will be about how we readjust and ensure that it sits on a level playing field.

**General Sir William Rollo:** The short answer to your question is, no, there isn't a guarantee.

**Q215 Alex Cunningham:** Should there be?



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**General Sir William Rollo:** I think there is an existing measure that gives people with wounds related to their Service a degree of priority treatment measured against clinical need.

**Q216 Alex Cunningham:** Is it good enough?

**General Sir William Rollo:** I don't know. We are particularly concerned at the moment about the supply of prosthetics to people after they have left the Service, and it is an area on which we are focusing a lot of attention. The Department of Health has said it will provide a service for people after they've left. Precisely how that works is being looked at by Dr Murrison among other people. We will have to ensure that that is right, because it is an area of particular need in which a degree of specialist commitment is clearly required. It raises a number of interesting issues such as whether active people who have the misfortune to have such an injury at a young age should also have better NHS provision. So there are some complicated things to tease out.

**Q217 Chair:** Is it also an issue of Devolved Administrations? The Government of the United Kingdom would not be in a position to issue a guarantee on the part of the Devolved Administrations, would it?

**General Sir William Rollo:** I guess that is the case. The Scottish Executive are already looking at prosthetics, and they have a working group. They do it, and we are engaged with them.

**Q218 Chair:** Sticking with the Devolved Administrations, last week I asked whether the devolved Administrations would see in advance a copy of the Secretary of State's draft Report. I may be unfair, but I had the impression that the answer we received, which was yes, had not been fully worked through the chain of command—I suppose that would be the best way of putting it. Do you have a view on that?

**General Sir William Rollo:** If they said yes, I am sure they meant it.

**Q219 Chair:** What if they had given it a huge amount of thought?

**General Sir William Rollo:** It would be fair to say that the question of how reports are to be produced is still being worked through. It was discussed at the most recent External Reference Group, which I attended last month, and I am sure it will be discussed again next time as we put together precisely how we are going to do it.

**Chair:** I see. Thank you.

**Q220 Mark Lancaster:** The Bill specifically mentions the Reserve Forces in its definition of the Armed Forces. But of the three reporting streams—health, education and accommodation—education and accommodation are certainly not particularly relevant to the Reserve Forces. Health care is to a degree, although, as we saw yesterday, effectively only during the mobilisation period and slightly after, depending on the problems. My point is that the three reporting

streams do not have the same relevance as they do for the Regular Forces. The Reserve Forces represent a large proportion of our Armed Forces and, occasionally, have felt as if they are second-class citizens. Would you have any objections if there were to be a fourth category entitled "Reserve Forces", specifically designed to mop up some of the other areas that are specific to the Reserve Forces? Perhaps I could invite the Inspector General of the Territorial Army to comment.

**General Mans:** Inspector General of the Reserve Army is the correct title. I am not scoring points. It is an important point—the Reserves. It is important because, interestingly, it links to the discussion that we had on veterans. Where is that dividing line? Is there a dividing line? There can't be in terms of what we seek to get out of the Covenant or of what the Reserve Force is. From an Army perspective, that is both the Territorial Army and the Regular Reserves. We are talking about slightly different beasts, hence my raising earlier the linkage to the veterans issue with regard to the regular reserves.

If I am honest, we need to do more work to identify those areas, perhaps for someone in the Territorial Army who was mobilised, then demobilised, then served in the Territorial Army and later left it and became a veteran. There is a spectrum of issues that we need to look at to see how we can support people in terms of their well-being, education, health and housing.

Health care is one area that, as you will be aware, we have put a lot of effort into. That is where the most vulnerable people are, and it does not always link to a mobilised service. That is an important dynamic, and I would like to see it developed. I referred earlier to the notion of the Covenant and the annual reporting. It is an evolution and we will learn ways to do things better. Mr Wright's earlier point about tracking and so on goes to the heart of the issue. We must ensure that we help the most vulnerable in terms of delivering on the Covenant. I accept that more work needs to be done concerning the Reserve Forces.

**Admiral Montgomery:** It is an interesting dichotomy. I for one do not immediately get attracted to anything that starts to draw a dividing line between Regular Forces and Reserves. If we were to have a separate block that sits in the reporting framework which is about reserves, we are, de facto, starting to treat reserves rather separately. For my money—I speak intuitively here—those three areas will catch many of the issues that are of most interest to our reserves, predominantly health care. I return to the point that I find very reassuring, which is that the utilisation of our various Attitude Surveys will be a fundamental component of reporting performance against the Covenant. There is a separate reporting mechanism through the Reserve Forces where their views can be expressed. If there are areas beyond those three key areas, they can be fed through that way.

**Q221 Mark Lancaster:** How will accommodation affect the Reserve Forces?

**Admiral Montgomery:** How would accommodation affect them?

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**Q222 Mark Lancaster:** How will the reporting affect the accommodation? Can you give me some examples?

**Admiral Montgomery:** In my judgment now, very little, if at all.

**Q223 Mark Lancaster:** Precisely.

**Admiral Montgomery:** No, that is not my point. My point is that in those instances where there is an issue, there is a reporting mechanism so that things can get factored in if necessary.

**Air Marshal Pulford:** We need to be very careful. I don't want to repeat what I said earlier, but this rather binary regular reserve boundary is being eroded all the time. There is a full-time Reserve Service, and we have FSTA, the new air tanker, coming in. That will have sponsored Reserves on board—accompanying people who will at times be expected to put on uniform and go into harm's way. We have contractors in harm's way now who are not part of the Covenant. How does the future look? As we continue to mature our understanding of the model and move away from the traditional regular reserve civilian, any suggestion that we somehow break out little parts of that Service personnel within the Bill would be counter-productive. More work is required to understand the model as it matures in terms of the different categories of Service people in the Bill.

**General Sir William Rollo:** Mr Lancaster, what would you like to see if you had that category? What would go into it?

**Q224 Mark Lancaster:** There are specific issues—great, I am being questioned; it is marvellous—such as the welfare of families of Reserve Forces who do not enjoy the same level of support that Members of the regulars do. The spouse of a member of the Reserve Forces could be 100 miles away from the TA centre in which their husband or wife is based. They do not get that same support. There are a number of areas where those three principal categories simply would not allow those issues to be raised. We are then reliant on the secondary category whereby there is a catch-all for the Secretary of State each year potentially to include a category. The point that I am attempting to make is that in choosing those three categories, they are not particularly relevant to the Reserve Forces. They are in part, but they do not capture all of the issues that are relevant to the Reserve Forces. It also sends a very clear message to the Reserve Forces that they are of equal status, which proves the point that all four of you have given in your evidence that they are of equal status. Perhaps we are coming at this from different ends.

**General Sir William Rollo:** My only comment on that is the problem of how we do welfare for families who are away from the base of the organisation concerned. It is not unique to the reserves. We will see how we can sweep up the right issues.

**Chair:** That is the first experience that I have had of the witnesses questioning the Committee.

**Q225 Mr Jones:** The only legal obligation in this Bill is for the Secretary of State to produce the Annual

Report to Parliament. The areas covered are exactly the same as the External Reference Group already covers at the moment, although I accept that there is no legal obligation for that Report to be presented to Parliament. Last week, we were told that the External Reference Group would no longer produce its own report.

**Chair:** Well, it would but it would not be published.

**Mr Jones:** Well, yes. It is a bit confusing. In terms of the Secretary of State presenting it to Parliament, is that not therefore going to reduce the independent oversight of the actual Report?

**General Sir William Rollo:** I don't think that we have yet decided, with the External Reference Group, quite how this is going to be done. I can say that with confidence because I was there at the discussion. I am clear that there is no point in the Secretary of State producing a report that does not include the Group's views. What I would like to get out of the Report, or Reports, will be both a factual sense of where we are—I accept that there are some difficult areas of metrics that we will have to work at—and a qualitative sense of what people feel about it, which will need to reflect the views of the independent members of the External Reference Group.

**Q226 Mr Jones:** I accept that, but if you are not going to produce publicly the External Reference Group's Report, how could you say whether it agrees with the Secretary of State? What is to stop a future Secretary of State disagreeing and saying, "No, I'm not going to put that in. I will not look at those areas"? Isn't the quickest way to make the External Reference Group Report to Parliament? Would that not be an easier way of doing it?

**General Sir William Rollo:** I'm not sure. The key point is that we have not yet decided how we are going to do it.

**Q227 Mr Jones:** That's remarkable. We have a Bill before us. You deal with the various interlocutors on the External Reference Group and know that they have strong views about their independence and about the MoD on occasions.

**General Sir William Rollo:** They do.

**Q228 Mr Jones:** So isn't it a bit remarkable that we are going to produce a report, and yet no thought has gone into how you are going to involve those individuals?

**General Sir William Rollo:** Thought has gone into it, but it has not reached a conclusion, not least because—I think that it is fair to say this—they have not reached a common position among themselves as to how they would like to do it. We will have to tease this out. For the Secretary of State to make a report that is flatly disagreed with on a factual basis by the other organisations there would be a curious place to be.

**Q229 Mr Jones:** Yes, but it is not fact. As you know, a lot of it is nuance or interpretation.

**General Sir William Rollo:** Some of it will be fact.

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**Q230 Mr Jones:** Dentistry, for example, is always a good one, isn't it?

**General Sir William Rollo:** Gosh. That's almost a private grief between us, isn't it?

**Chair:** I think we'd better move on.

**Q231 Jack Lopresti:** Given that there seems to be a general concern in this Committee about the lack of minimum standards in the Covenant and legally enforceable obligations from the Government, it all seems rather vague. Has any consultation been done to find out whether serving personnel would like an enforceable, legally enshrined Covenant with minimum standards of care and obligations?

**General Sir William Rollo:** In any formal sense, the short answer to that question is no, it hasn't. Let me pass the question down the line.

**General Mans:** Informally, I repeat myself about the Army having had a Covenant for some time. In terms of officers and soldiers, certainly, there hasn't been a desire in the past to have that enshrined in law in terms of standards and what have you; It's not that there's a groundswell of opinion in that respect. I think that that is important. Therefore, it has perhaps informed the debate as far as the Armed Forces Covenant in that respect. I personally don't feel that standards would be appropriate. You could end up in quite a legal minefield, perhaps, in terms of obeying standards, what they meant and what have you. We might possibly lose sight of the original intent. In other words, you would have so much legal process tied up with what you're trying to do.

I'm a great believer, though, in collective engagement and so on. A good example, if I can refer back to the Scottish Government, is that we have a very healthy dialogue through my regional chain with the Scottish Government. A lot is being done at that level, without recourse to specific standards.

**Admiral Montgomery:** I have detected no appetite for legally enforceable measures within this Covenant, none whatsoever. Where we have been before with personal functional standards in our own Service, which are in many ways not so dissimilar in principle, our people are much more content with something that is simple, straightforward and easy to understand.

I think the point really is that until our people see how the Covenant works in practice, they are content with the current arrangements. They will want to see it working in practice. If it doesn't feel as though it's working under the current arrangements, although I see no reason why it shouldn't, those attitudes may change, but I detect no appetite for it at the moment at all.

**Air Marshal Pulford:** Just to complete, I concur with both. There is no great push for the legal side of it. I think, given all the various aspects of this, it would be a very complicated thing to try to deliver anyway. In terms of minimum standards, "minimum" is probably the wrong word.

What is acceptable to our people? It comes back to the idea that they're being disadvantaged in some way. All they expect is fairness. There will be very good reasons why, in some places, people at the moment are probably living in accommodation that is

unacceptable in normal terms. Why? Because that base has probably got another six months to go, and we're handing it over. Is it acceptable under those circumstances to ask them to live there? Yes. Do they buy into that and agree with us that it is acceptable? Yes. I think the danger is that if you start laying down the law, as it were, in terms of minimums, it all gets very complicated.

The bottom line is that our people will make their own judgment of what is acceptable to them and what is fair in their eyes. Are they being disadvantaged? If they are, they will want to understand why and what we intend doing about it.

**Q232 Gemma Doyle:** The Prime Minister has said that the Bill enshrines the Military Covenant in law. Do you disagree with the Prime Minister that it is necessary to enshrine it in law or that the Bill does so?

**Chair:** General Rollo, this is one for you.

**General Sir William Rollo:** I'm putting my mind back to my last year of law at university, because I feel that this is becoming a rather more legal issue than I personally think it is. I would prefer to say, is it appropriately enshrined in law? I think you asked me a previous question on this point. As I understand it from the rather more expert lawyers who provide us with advice, if you put a definition into statute, the legal system will assume that, in doing so, you meant to provide for specific rights that you will then apply with the whole machinery of the law to provide them. That takes us straight into the areas that we have discussed over the past hour or so: is that actually what we want to do? I think our collective view is that no, it is not. Military Service is not a contract and that is not an area where we want to go. I think that the solution we have come up with, which is to provide for a statutory duty on the Secretary of State to report on the working of the Covenant and the Welfare of the Armed Services, is a sensible compromise. It is a tricky area.

**Q233 Mr Francois:** Sorry, General, but I am trying to keep my word on something. When we were at Chilwell yesterday, we spoke to reservists being mobilised, and I spent quite a while speaking to one group. No one made a plea for minimum standards at the point—it did not pop up—but one thing that they raised, and that they all agreed upon as a group of a dozen or so Territorial Army soldiers, was that they wanted more effort made to explain to employers the importance of what they were doing. They were being deployed on operations and serving their country. Some of them were finding that, in this difficult economic climate, their employers were resistant to letting them go. We as politicians have a duty to address that better, but while you are here—to be honest to them, as it were—may I put that point to you and say that I think that senior ranks within the Military also need to do more to get that message across so that, when these people are required to serve, their employers support them, rather than doing the opposite, as has unfortunately been the case in a couple of cases? Can you say anything about that?

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**General Mans:** Yes, it's an excellent point, if I may say so, and it is uppermost in our mind. There are ways of doing this. I am not making an excuse—far from it—because we need to do more in terms of using SABRE NEAB and what have you to engage with employers and so on. It works very well—Mr Lancaster will understand this—in terms of the larger employers. They can cope with individuals who are in the TA being mobilised and being away for up to 12 months, which is what the legislation provides. We need to do more in relation to the smaller employers and those who, frankly, lack the clout to have their voice heard. Whether or not we need to go down the legislative route and look again at the Reserve Forces Act 1996 remains to be seen.

All I would say is that this is being addressed as part of the Future Reserves 2020 review, which is ongoing at the moment. The whole question of legislation and how the Reserves are used and so on is certainly being looked at, and we will have to see how that work progresses. In the meantime, I spend a lot of my effort focusing on the chambers of commerce in some of our larger cities and so on to try to get in amongst some of the detail on how employers react. As you have articulated, it is a well-known problem in that respect, particularly for smaller companies.

**Mr Francois:** General, I am grateful. I feel that I have kept my word now. If you can be mindful of that future reserves 2020 review, I think these people going out there to serve would be grateful to you.

**Mark Lancaster:** You can, of course, add that to my list.

**Chair:** We have a few quick final questions for you. The first is on Service complaints procedures from Thomas Docherty.

**Q234 Thomas Docherty:** Are you satisfied that clause 20 goes far enough in meeting the issues of the Service Complaints Panel? Do you believe that all Service Complaint Panels should have at least one independent member?

**General Mans:** As I understand it—again, I have not read it and will have to refer to the detail later—an independent member is already part of the Service Complaints Panel for certain complaints, such as bullying, harassment and so on. That is already laid down. Again, without referring to the detail—I will do so in a second—I was wondering if you could perhaps clarify your question.

**Q235 Thomas Docherty:** You rightly pointed out that for some there is an independent member, but not all. The Bill makes no change to that. The question is: should there be a member on all the panels?

**General Mans:** I am very happy with the way the Service Complaints Panel is working in its current guise. As I think you heard from Dr Atkins earlier, we are creating more of a momentum in terms of that. I do not detect a need to have an independent member to cover all complaints. If I am frank, I am not sure it would be a huge value added in that respect.

**Chair:** You don't all have to answer these questions, but you can do so if you would like to.

**General Sir William Rollo:** In other circumstances, where a complaint concerns an issue of policy, it would go to a Service Board. There are normally two members of that board, which would not include an independent member. I do not think any of us are uncomfortable with that system. I have sat on one on many occasions. The short answer to that question is yes.

**Q236 Thomas Docherty:** How closely do you work with the Commissioner to try to address some of the emerging trends or patterns? One example we talked about with her last week was if you offer IVF treatment, it varies from PCT to PCT, depending on where there is the requirement. She feels able to address that individually, but are you, as Services, working with her to address those issues as they develop?

**General Sir William Rollo:** Let me take that one. Again, the short answer is yes—very. I have been in Service in one place to another since she was appointed. The relationship has developed. At the moment, we interact regularly with her office on an official level. I probably see her once a month. She comes to the Service Personnel Board at least twice a year and we have the common aim of improving the speed and efficiency of the complaints system.

**Chair:** By the way, as a Committee, we were most impressed with her evidence last week.

**Q237 Thomas Docherty:** I shall ask my final question, Chair. She talked to us about the issue of validation of her work and there was a discussion about whether Parliament should, perhaps through the Defence Committee, have her in for a session and take evidence and validate her work. How do you, as Services, feel about that as a suggested process?

**General Sir William Rollo:** She makes a report to Parliament every year. I do not know how the process works beyond that. The aim of that report is to satisfy Parliament that the complaints system is working properly and, where it is not, that there are measures introduced to improve it. The fact that that happens on a yearly basis will show whether we are making progress or not. We are making progress and there are plenty of areas where we need to go on doing that.

**Chair:** We have received representations from certain groups, including some from the Coalition to Stop the Use of Child Soldiers. I call Kevan Jones.

**Q238 Mr Jones:** We have had a number of representations, including from the Quakers and others, on the Bill—it is a regular thing. Could you clarify something because I think that some of the things here are wrong and it would be worth while getting your take on it? There is obviously a policy to recruit under-16-year-olds. I think that things like Harrogate and other things are very good, but could you just explain for the record the issue around the ability of people who joined at 16 to leave the Armed Forces? There seems to be the impression that once you join at 16, you're locked in for a longer period, or for the rest of your life. Could you say how we compare internationally and do you actually think that

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UK Armed Forces should seek to recruit under-18-year-olds?

**General Sir William Rollo:** The answer to your question would be no. Under the current educational system, where many people still leave at 16 or where there is a period between 16 and 18 of vocational employment, that should be seamless. You should give the opportunity to somebody to leave the educational system and go into full-time employment. We should be part of that. We provide career opportunities, training and education and a structured environment, all of which are good things to a varying degree for the people concerned. I shall ask the Adjutant General to talk to the first point on whether you are locked in for life, because that point particularly applies with regard to the Army.

**General Mans:** Every soldier serves for a minimum commitment of four years, as you know, Mr Jones. For those who are under 18, that commitment does not start until their 18th birthday. If you join after your 18th birthday, then obviously it starts on whatever date you join, or are attested. Again, as you will be aware, in terms of deployed Service—soldiers serving on operations—they do not deploy until their 18th birthday or after, so we do not deploy anybody under 18.

**Q239 Mr Jones:** So what is the mechanism for somebody leaving at, say, 16 and three months?

**General Mans:** They can apply for a discharge as of right and, depending on the length of time that they have been in training, they can be given that opportunity to leave.

**General Sir William Rollo:** But there is also a window at 18, for a further three months, where they can apply to leave. You asked how we compared with other people. My information is that France allows voluntary service from the age of 17; Austria, I think, from 16; Spain 20; Germany 18; and the USA 17, with parental consent. So I do not think we are completely out of kilter with everybody else.

**Q240 Alex Cunningham:** Just to clarify this, because I met this group, the young person gets from 16 through to 18. They are then compelled to serve a minimum of four years—in effect, six years in total—so they do not have the same benefit as others. How do they get out? How does somebody get out at 18?

**General Mans:** After 18?

**Alex Cunningham:** Yes.

**General Mans:** There is a window. There is a three-month period when you can actually apply.

**Alex Cunningham:** The 16-year-old who gets to 18 has a three-month window to leave at the age of 18.

**General Mans:** Yes. So there is an opportunity.

**Alex Cunningham:** Otherwise they've got four years that they have to serve.

**General Mans:** Absolutely. And that is one reason why that clause was put into our regulations some time ago, in reply to and cognisant of these very issues that have been raised about child soldiers.

**Chair:** Moving on to disability legislation, Sandra Osborne.

**Q241 Sandra Osborne:** Has any reconsideration been given to the exemption that the Armed Forces have on the statutory provisions of the disability discrimination legislation, following the recommendation of the Joint Committee on Human Rights?

**General Mans:** Again, perhaps if I can pick that one up. I am no expert on the finer workings of that legislation, but clearly we need able-bodied individuals to join the Army for obvious reasons. We do have exemptions in terms of the legislation, I think, where we exercise a degree of judgment with, for example, individuals who suffer from dyslexia. I think there is a clause on that particular disability—I cannot remember. There are one or two other areas where we say, “Yes, we will accept that disability in the Armed Forces”, but I cannot be more specific than that without referring directly to the fine detail of the legislation. Not having exemptions in the legislation, though, is not an area where we would want to go.

**Q242 Sandra Osborne:** How does the exemption affect those who are disabled while they are on active Service?

**General Mans:** In answer to that, it does not affect them at all once they are serving. Some of you will be well aware of the capability that we are implementing and developing at speed called the Army Recovery Capability, which is designed to do just that—to look after our sick, injured and wounded soldiers not only while they are serving, but to give those who are badly injured or wounded an appropriate transition into civilian life over a period time, because each person is different. The fact that we are exempt from the legislation has not impacted on that area at all.

**Q243 Sandra Osborne:** During recruitment, is there any opportunity for people with various disabilities to join the Armed Forces in a role that would be appropriate to their disability, or is it just not acceptable at all?

**General Mans:** I would have to check but as far as I'm aware, it is not acceptable.

**General Sir William Rollo:** Aside from the various, relatively small exceptions that the Adjutant General has mentioned, the short answer to your question is that the Armed Forces need to be full of fit people. When we recruit, as a matter of policy, we clearly want to accept only people who are fit. If people are injured in Service, we have a duty to look after them but even then, we can't keep them forever, because we would silt up and become not operationally effective.

**Q244 Sandra Osborne:** What about civilians who are employed by the Armed Forces?

**General Sir William Rollo:** They are not subject to this legislation.

**Q245 Mr Ellwood:** The thoroughfare of the injured coming back from Afghanistan is a reflection of the different world we now live in, compared with the '80s and early '90s, when either injuries, or certainly deaths, were a rarity. What has been done to

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invigorate the role of the Regimental Associations while soldiers are serving, to encourage that communication and sense of bonding that will hopefully continue for the rest of the lives of the injured personnel, so that these people can be kept track of?

**General Mans:** Shall I pick that one up? It relates directly to what I have just talked about, which is the Army Recovery Capability. We have created not only a capability to look after our injured, wounded and sick, but we have created a focus, which sits within my headquarters, to which the Regimental Associations—through the Regimental Headquarters to which they align—are in almost daily contact, in terms of ensuring that individual soldiers who are wounded, injured and need care are looked after. However, it is also about the transition into civilian life and civilian employment where the Regimental Associations are so powerful. It is about ensuring that the transition from serving to veterans is absolutely seamless, and therefore, ensuring that Regimental Associations are part of that process is important. That is exactly where a lot of our energies are being directed.

**Admiral Montgomery:** May I just amplify that? I'm sure that you will understand that this is not only an Army issue; it is across all three Services. The Naval Service Recovery Centre—Hasler company, which many Members will be familiar with—is already up and running. It, too, has very strong links with the Royal Marines Association in particular; most of their casualties are from the Royal Marines. They, too, are sweeping these individuals up and providing them with through-life support.

**Q246 Mr Ellwood:** I asked the question because, when I served, the role of Regimental Associations

was seen as an organisation for elderly characters—the vets, who we saw on Poppy Day—and not really for the younger generation. Are any efforts being made for the serving soldiers to be made aware that there is a facility that will look after them, so they are educated not as they are signing their papers and being demobbed, but during their process?

**Admiral Montgomery:** Actually, from my Service perspective, the issue is the other way round. We just have to make sure that these Associations don't lose sight of the older veterans, rather than the younger ones. That is the greater challenge, because there are so many more older veterans who need looking after.

**Q247 Mr Jones:** It is not just the Regular Associations, because in my experience some are very good, and others are not, depending on the secretary. At the end of that pipeline, there is a whole list of other organisations and charities that have been involved in that process.

**General Mans:** Which is the power of this new capability. Again, the full colonel who runs it is, as I say, in daily contact with the charitable sector and all these other organisations. In answer to your question, every soldier is now briefed while they go through their initial training, in terms of the regimental bit—about Regimental Associations, in particular—in time for the point at which they eventually leave.

**Chair:** Okay. That was the final question. We are about to move on to policing issues, with a different group of witnesses, so may I say thank you very much indeed for some very helpful, clarifying answers? I would be grateful if we could now move quickly to a new set of witnesses.

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#### Examination of Witnesses

**Witnesses:** **Brigadier Eddie Forster-Knight**, Provost Marshal (Army), **Chief Constable Stephen Love**, Chief Executive, Ministry of Defence Police and Guarding Agency, **Mr Humphrey Morrison**, Head of Legislation, Central Legal Services, MoD, **Commander Tony West**, Provost Marshal (Navy), and **Group Captain John Whitmell**, Provost Marshal (RAF), gave evidence.

**Chair:** We now move to the session of questions about policing. I am most grateful to our new panel of witnesses. Could you please introduce yourselves?

**Group Captain Whitmell:** Good morning all. I am Group Captain John Whitmell and the Provost Marshal for the Royal Air Force, which means that I am the head of the Royal Air Force Police and am also responsible for certain elements of counter-intelligence and security.

**Chief Constable Love:** I am Stephen Love, chief executive of the Ministry of Defence Police and Guarding Agency, which means that I am simultaneously chief constable of the Ministry of Defence Police and also in charge of the Ministry of Defence Guard Service, which is the unarmed security guards.

**Chair:** So that is three jobs.

**Commander West:** Morning, sir. My name is Commander Tony West and I am Head of the Royal Navy Police. I am the RN's adviser on all Royal Navy police matters, and am responsible for professional standards within the RN Police, and for RNP investigations, recruiting and policy making.

**Brigadier Forster-Knight:** I am Brigadier Eddie Forster-Knight. I am the Provost Marshal (Army) and in that guise I am the chief officer of the Royal Military Police. I am also the head of the Military Provost Staff, who are the defence detention experts who run the Military Corrective Training Centre and operational detention facilities, and the Tri-Service head for the Military Provost Guard Service, which is the armed guard service for the MoD.

**Chair:** Thank you. Mr Morrison, we saw you last week, but remind us of your responsibilities.

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**Mr Morrison:** I am Humphrey Morrison. I am Head of Legislation, and so am Head of the legal team for the Bill.

**Q248 Mark Lancaster:** Thank you very much, gentlemen, for your introductions. Your many roles almost highlight my first question. In evidence last week, we were struck by how many different organisations were potentially involved in providing security at some MoD bases, and I think that you have just run through the complete list. Is there a problem with having so many different organisations providing security? We did not, of course, include private security firms, which are also involved, with their own separate chains of command. Does that present a problem and, perhaps more importantly, is there any scope for reducing the number of organisations involved in providing security? Perhaps we can give the Chief Constable an extra couple of roles in addition to the three he already has.

**Brigadier Forster-Knight:** If I may, I will lead on that subject. From an Army perspective, the Military Police are focused on policing, not security. We are there to police the Military wherever it exists, and, primarily, that is in the 10 principle garrisons in the UK and Germany, and also in some of the far-off posts abroad, of course. The Military Provost Guard Service—this was introduced some years ago—to provide armed guarding, assessed against risk and necessity, to reduce the pressure on our soldiers, who are constantly facing operational tours, so that they could have some relief. As you know, they are essentially ex-soldiers employed on home service only Terms of Service.

Clearly, there are other aspects of security and policing. All this is being looked at as part of the SDSR process. There is also a security review to examine all the sites across the Military and assess them into the level of security that is required, such as armed or unarmed guarding, and to re-look at how the various organisations might be best matched. From my perspective, the reality is that the Royal Military Police is focused on policing and the MPPS is focused on armed guarding. The chief constable of the MDP will give his view about where he fits in the mosaic.

**Chief Constable Love:** The sites at which more than one or two of these different Forces are present are few and far between. They tend to be the larger and most complex sites, with the most complex requirements. On my side of the house, the two organisations I run—the Police Service and the Unarmed Guards Service—are completely different in role and function. The Ministry of Defence Police is a specialist Police Force that provides bespoke services to the Ministry of Defence, principally on nuclear weapons security and so on. It has specialised roles beyond the remit of other police forces and it is, for the most part, armed.

The unarmed security guards do exactly that—unarmed security. There is no overlap between the two functions; one is top-end specialist policing and the other is industrial-type security guarding. We achieve economies by combining the two at headquarters

level. There is a single headquarters and each of the support functions are shared. I think three people here have visited it.

**Q249 Mark Lancaster:** Is there not then, potentially, an overlap, apart from the obvious, between the Unarmed Guards Service and the Military Provost Guard Service? Anybody used to a military estate is used to alert states changing and it going between Unarmed Guards and Armed Guards. Is there not scope for those two organisations?

**Chief Constable Love:** The framework in which the armed and unarmed guarding side of the business is delivered is under review and recommendations on that—

**Q250 Mark Lancaster:** So, yes, there is scope.

**Chief Constable Love:** There is scope. It's under review. I think that recommendations from the review will be with the Defence Board and Ministers in the first part of this year.

**Q251 Mark Lancaster:** May I perhaps be slightly more controversial then? Given that the Armed Forces Act harmonised military law across the three Services and most, if not all, training is common, why do we continue in a world with so many joint things that the Armed Forces need three individual Service Police Forces?

**Brigadier Forster-Knight:** It is probably best that I lead on that point. The outputs of the three service police are very different. The Royal Military Police is a police force and a combat police force, with soldiers living in and among troops of the Army out to the frontline. I will let PMRAF talk about his bit in a minute, but it is a very different concept. What I would say is that the three service police forces have been tailored to meet the outputs required of them.

Over the past seven years, we have looked at all the areas where we can work together. We now have a single training establishment, a single Service police crime bureau, a single close protection unit and a single military corrective training centre, and we all operate off the same police IT system. We have looked at our training, our investigative training and the areas that are common—there is a great deal that is not common—and brought them together. That is certainly true in policing and investigations. That includes everything from forensics through to investigative training.

Fundamentally, however, the outputs of the three service police are still very different in a number of areas. The common brick is policing and investigations, where we've worked over the past seven years to ensure that all of the efficiencies that can be achieved are achieved. In essence, it is I as PM Army who takes the lead in that area. The only locations where we are in the same place are Gibraltar, Falklands and Cyprus, which are known as the Permanent Joint Operating Bases, and I have the technical lead for that. I have the technical lead for doctrine and policy development in the policing arena; I run the Close Protection Unit, the Service police Crime Bureau and the Military Corrective Training

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Centre; and indeed I have the lead in the operational theatre for investigations. There still need to be experts in the Navy and Air environments to deal with their particular requirements, and they can best explain those.

**Q252 Mark Lancaster:** It is certainly a very robust answer, but if anything I can't wait now to see what the other Service Chiefs are saying, because you seem to be arguing the case for further amalgamation.

**Brigadier Forster-Knight:** The point is we understand that we must work together in certain areas. Where there are common themes, we must do that, and that is fundamentally understood among certainly our forebears and us now in post. We are making sure that we make best use of defence resources to achieve those efficiencies.

**Q253 Mark Lancaster:** But why can't you now have a single provost marshal of staff to accommodate those functions?

**Brigadier Forster-Knight:** In reality, you could, but the reality is that that would just increase the costing of creating a single joint provost marshal and staff, because ultimately you would still have to have the Single Service provost marshals embedded in the front-line commands. I come under the command directly of CGS, but my headquarters is based at the land headquarters in Andover. I police the Army, and I need to be based with the Army command headquarters to do so. I would argue that my compatriots need to do the same. You could create a joint Service Provost Marshal in the Centre, but I would argue that is an additional overhead and will require additional resources, which perhaps at this time we don't need to spend.

**Group Captain Whitmell:** If I may take the discussion a little bit further, within the Royal Air Force, as I said in my introduction, I also deliver a large amount of security and counter-intelligence aspects on behalf of the Royal Air Force. Although our title is that of the Royal Air Force Police, only about 30% of our function is a policing function. The other 70% delivers a very definite security requirement, whether that is via military working dogs, our counter-intelligence support or, on a simpler level, security patrolling at military bases.

Where we have economies of scale, as the Brigadier has already said, we work together. We do joint training, and the function for the Royal Air Force of the Royal Air Force Police would impinge on wider areas of the Army than just the Royal Military Police, because other elements such as the Intelligence Corps deliver the security function. My computer security function is delivered by the Royal Signals, by way of example. We are, in some ways, a complicating element in terms of that break-out of personalities.

**Q254 Mark Lancaster:** But why can't your intelligence function co-locate at Chicksands with the Intelligence Corps?

**Group Captain Whitmell:** In similar things there are fronts where we have a shared function—we do have that shared function—but we are also in disparate

locations. Where the Royal Air Force is located, generally the Army and the Royal Navy aren't, and vice versa. Royal Air Force stations in Lossiemouth, Valley and Boulmer—there are very few Army locations close by, so the economies of scale would only be in terms of uniform change rather than in delivery of task.

**Q255 Mark Lancaster:** Other than the physical location of your Service men and women, what functions do you carry out in the intelligence world that cannot be delivered by Chicksands?

**Group Captain Whitmell:** Probably nil, but it's the duality of personality—in one person I have a policeman and a security person. Take that one Royal Air Force person away, and you will then need an Intelligence Corps person and a policing function. So, actually, I would argue that I provide a greater economy of scale than your proposal.

**Commander West:** I would just like to give you an example from where the Royal Navy stands with this. I would just like you to imagine, if you would, a ship full of 200 people, one of which is the senior of two police officers who are on board. Some people would imagine that he would sit around and wait for something to happen. It does not work like that. The guy on board is effectively the flight deck officer, which is, for those of you who may not know, the guy who stands on the back of the vessel and directs helicopter operations, on a one-in-two or one-in-three shift system when the ship is operationally active. He is also the assistant security officer on board the ship; he has physically security responsibilities for the gangway, and oversight of all the gangway staff, etc. When the ship is on counter-piracy operations, he is the custody subject matter expert and also a member of the boarding party. He deals with the mail on board, the customs and revenue, and is also an assistant to one of the more senior middle management guys called the Warrant Officer, which includes manpower and co-ordination duties, replenishment at sea duties, planning, storing, ship planning, patrols planning—lots and lots of minor admin roles. If you took away those roles and just let him be the policeman on board, he would very soon have very little to do. So what we are saying is, yes, he is a sailor first and he carries out all of these roles, but he also has the capability to be a policeman.

**Q256 Bob Russell:** Chief Constable, we are a Select Committee on the Armed Forces Bill, looking at improving the lot of Military personnel and their families, the Military Covenant and so on. We have been given written evidence from the Defence Police Federation, which in paragraph 8 says, "Evidence suggests that the mere presence of the Ministry of Defence Police in married quarters and other locations serves to increase the confidence of Service personnel as to the safety of their families." Is that a statement that you would endorse?

**Chief Constable Love:** Yes.

**Q257 Bob Russell:** The reason behind that—and Mr Morrison will recall this from five years ago when we



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last debated the Armed Forces Bill—at that time the Ministry of Defence Police was being run down on various Army, Navy and Air Force housing estates around the country, and in response to a written question it has been confirmed that the number of Ministry of Defence Police based on Colchester Garrison has gone from 30 to three. Under those circumstances, has the mere presence of the MoD Police in married quarters gone up or gone down?

**Chief Constable Love:** It has gone down in Colchester, for obvious reasons—30 down to three. As chief constable, I do not set the number of officers I have providing security and support on married quarters, or Service quarters. I am the supplier not the customer; the Ministry of Defence decides how many and where. What the Ministry of Defence did over the last three years or so was take about 90 police officers who were in that role in relatively large clusters in a few places—of which Colchester was one—and redistributed about 60 of them in ones and twos to garrisons and Service families all over the country. This was prioritised according to need and operational tempo, and they made a saving at the same time. I have to say that I think that is a logical thing to do—given a scarce asset, you spread it thinly across the places where it is most needed—but I am in absolutely no doubt as to the importance of providing that service, whether by ones or twos or by 30. It is quite clear to me that when a military unit deploys overseas—particularly to combat—it is, by definition, leaving behind an entire estate of relatively low-income single parent families, with all of the stresses and pressures of combat and those fears, as well as things that would accompany normal life. So I view it as a very important thing that we do, but it is a thing we have had to reduce in some areas so as to spread it to other areas where the Army in particular most requires it.

**Bob Russell:** The Committee will be visiting the Colchester Garrison next Monday—I hope there will be an opportunity for us to pursue that localised point because I think it has a national impact as well. We have also been given a memorandum by the Ministry of Defence, which supports the views I have expressed in a question here and which I posed five years ago. The memorandum tells a good story but the reality is that there is far less police presence, in whatever uniform, in our married quarters. At a time when 3,000 soldiers are deployed to Afghanistan and at a time when a garrison estate is increasingly being occupied by civilian families, I have to say to both Brigadier Forster-Knight and Chief Constable Love that the reality on the ground does not tally with that memorandum. As a last observation, you have not mentioned the civilian police—by that I mean the Essex Constabulary.

**Chair:** Those points have been noted but let us remember that we are questioning the witnesses, rather than making comments.

**Bob Russell:** My point is that we are being given memorandums that are telling us things which in reality are not happening.

**Chair:** Yes, but that is a point that you will be able to make at a later stage during the course of the Bill.

**Q258 Thomas Docherty:** Chief Constable, if I understood you correctly, one of your core functions relates to the escorting of nuclear materials. It strikes me that these days there is a significant overlap between the work of the MoD Police and the Civil Nuclear Constabulary, whose prime function seems to be the escorting of nuclear materials. Are there not some significant savings that could be made by merging MoD Police and the CNC into one Service?

**Chief Constable Love:** Yes, if I could crave your indulgence and stay with the last point. I have not seen the memorandum you refer to and I hope there is no implication that I have provided you with a false one. I do not recall that at all.

On the CNC, as Chief Constable of the Ministry of Defence Police, I am quite clear that I can see no operational benefit whatever in having two different police forces providing an ostensibly similar function in terms of the security of nuclear weapons. The MoD Police provide a number of other specialist functions which are nothing to do with nuclear weapons and we need to remember that. I can see no operational justification for it. Such justifications as there may be will inevitably be political, historical, financial and so on, but there is no operational case for that situation.

**Q259 Thomas Docherty:** Secondly, Group Captain, you talked about how—I paraphrase slightly—there are few examples of inter-Service personnel on the same side. Going forward, subject to the SDSR's outcomes, the aircraft carriers and their groups will clearly have RAF personnel serving on them. I imagine that there will be a whole extension down the line. As the basing decisions are made about RAF bases and the Army returns from Germany, it is quite reasonable, from what the other Minister of State has said, that there will be sharing of sites. Surely, going forward, that will no longer be the case?

**Group Captain Whitmell:** On board ship is a prime example of a shared site and I would fully anticipate the Royal Navy Police to have the lead on that area, for obvious reasons. By the same token, if a large Army unit was moved to an RAF base, the RAF Police would take the lead. Similarly, if an RAF unit was moved on to a large Army garrison, the Royal Military Police would take primacy, and I would see no difficulties in that whatever.

**Q260 Thomas Docherty:** But my central point is that your earlier statement, while it may be true today, is unlikely to be the case in 2015 or certainly in 2020 by the time the Army comes back from the Rhine.

**Group Captain Whitmell:** I don't know, obviously, whether decisions have been made, but I would anticipate that the majority of Royal Air Force stations, such as RAF Marham, will remain RAF stations. There is little scope to put additional resources in there. If we left a base perhaps on the closure of a unit, somewhere like RAF Cottesmore, which has been announced, and the Army went there, we would have no presence there anyway.

**Chair:** Moving on to the independence of Service police, Chris Pincher.

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**Q261 Christopher Pincher:** Clauses 3 and 5 aim to ensure the independence of Service police investigations. Do you feel confident that those provisions go far enough to alleviate any concerns about your operational independence?

**Brigadier Forster-Knight:** It is probably best if I lead on that, given my lead in this area. For me, the provisions do go far enough. The constitutional position and the make-up of the various police forces in this country are interesting. The Home Office Police Forces are formulated under their own bespoke legislation of the Police Act. The MDP has its own MDP Act, whereas the service police are formulated under the Armed Forces Act, as units and part of the Armed Forces. It is important, given the need to be absolutely clear about the independence of the investigative process, that there are clear measures in the Act that buttress and underpin the whole business of the independence of the investigative process. There is potential for confusion, given that we are formulated as part of the Armed Forces. That is something that we need to separate out and have a clear articulation that it is conducted independently. For me, the measures do go far enough. They are coupled with other non-statutory measures we have introduced: command and control arrangements. I now answer to CGS personally and to the Army Board of the Defence Council. I have taken operational command of the whole of the Military Police. These are not just three principal statutory measures; there are other non-statutory measures that have been introduced to provide an overall framework to support.

**Q262 Christopher Pincher:** Can I just move on from that? One of these statutory, or potentially statutory measures, is a provision upon you to ensure that investigations are free from improper interference. Could you give us a definition of what you believe improper interference might be?

**Mr Morrison:** As it is a definition in the Bill, would you prefer me to answer that?

**Q263 Christopher Pincher:** Let's start with you Mr Morrison, then we can confirm that your view is everyone else's.

**Mr Morrison:** Improper interference is specifically defined in the Bill, so as to have a very wide meaning. It covers two areas. One is interference which would actually be an offence—for example, an offence of obstructing a Provost Officer or perverting the course of justice. It covers that sort of wrongdoing. However, it also covers the mistaken but honest attempts by anyone in the chain of command, but outside the Service police, to tell the Service police how to carry out an investigation. The duty of the Provost Marshals under the clause is not merely to ensure that the people are dealt with where they are committing offences, but also to protect their independence from even honest but mistaken attempts by the Military chain of command to say how they think an investigation should be carried out.

**Q264 Christopher Pincher:** So it is the case that improper interference is defined, rather than proper interference is defined and everything else which is not proper is thereby improper interference. Is that correct?

**Mr Morrison:** Yes, I think so. Yes, it is defined.

**Brigadier Forster-Knight:** For me, there is also the bit that you have touched on of proper interference. There are clearly times when it is wholly appropriate for a commanding officer and the Military chain of command to engage with the Service police on investigations. The Commanding Officer is de facto the magistrate. They are busy people and in reality we are conducting investigations often in a very difficult environment. There has to be engagement with the CO or the Military chain of command. There are times when it is wholly proper that that engagement occurs. What must not happen is any undue influence to curtail, stop or prevent an investigation. That is my business as a Provost Marshal.

**Q265 Christopher Pincher:** Clause 3—to go back to the terminology again—says, “a person who is not a service policeman must not direct an investigation”. Is there a properly understood definition of what direction might or might not be?

**Mr Morrison:** There's not a definition. “Direct” is given its common-sense meaning. You define the basic concept, but you don't try to define every single word in a long statute. As Brigadier Forster-Knight rightly said—and here the experience of the Provost Marshals is vital in understanding what is appropriate and what isn't—there is inevitably, particularly on operations, an area in which, if you like, a friction occurs or a rubbing up occurs between the responsibilities of the chain of command to carry out operations and the responsibility of the Provost Marshals to ensure that investigations are carried out independently.

It is at that stage, which is well recognised, that the sort of situations that can arise in which the CO—the chain of command—has got its focus entirely on getting from A to B, carrying out the operation; and the Provost Marshal is focusing perhaps on going to a particular place to have an investigation undertaken. There is legitimate scope for discussion, for liaison and for agreement on how to handle the situation.

This clause, if you like, gives the Provost Marshals that extra or clearer authority to say, “Remember, it is quite clear what our job is. I have a specific statutory duty to safeguard the independence of my investigation. You may not be able to do everything I want, and it may be legitimate for you to refuse to do that because you have proper priorities of your own, but I have to safeguard the independence of my investigation so far as I possibly can.” Trying to define every single word in the clause wouldn't help experienced officers, who are used to dealing with these sorts of situations.

**Q266 Christopher Pincher:** What I am trying to get is that there could be a situation where the CO might say, “You will do this,” and that would be taken as a direction.

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**Mr Morrison:** It would, indeed.

**Q267 Christopher Pincher:** He might otherwise say, “Would you consider doing this?” Potentially, that would be considered as advice rather than direction.

**Mr Morrison:** Yes. It depends how he says it, but yes.

**Brigadier Forster-Knight:** Certainly, Mr Morrison has highlighted the most acute area, which is on operations. We have devised our investigative doctrine for operations accordingly, to take account of that. If there is a friction between the needs of the operation and the needs of the investigation, we will simply account for that by taking statements from relevant commanders as to why certain action could not be taken at that point. This presents us with a different environment from our civil police colleagues, who would normally just pursue their investigation. There are very legitimate reasons, but because we’re Military investigators and because we’re deployed with the Force and part of the Force, we understand the operational context and the operational tempo; we understand those limitations. What I’ve got to do is to make sure that they are accounted for in evidence, so that come judgment day, we’re in a position to explain why there may have been a delay in a particular investigative strand.

**Q268 Christopher Pincher:** You mentioned the civil police. How do you think that these new provisions will affect your relationship and your co-operation with them, and also with the Ministry of Defence Police?

**Brigadier Forster-Knight:** I think, very well. Most of the civil police are completely unaware that we don’t have some of these powers. That’s the truth of it, but the reality is that we work very closely with the civil police. Again, part of our development agenda has seen all three Service Provost Marshals becoming members of ACPO. We have adopted ACPO core investigative doctrine, and the various ACPO training manuals. We are aligning much more of our training with the National Policing Improvement Agency doctrine and training. We are under all the relevant national inspectorates. We’ve done this over the last five or six years to improve our liaison with the civil police, and our interfaces at every level. We are part of the Police National Database in the sharing of our data, post-Bichard. If you come into our organisation, you’ll find the look and feel of the civil police in terms of our policing and investigative model, but within a Service context, and that’s the bit that we have to remember.

**Q269 Christopher Pincher:** My next question is to the Chief Constable. How do you ensure that the MDP are not unduly influenced?

**Chief Constable Love:** It is a question that has never been asked—but it has never been necessary. Everybody is absolutely clear that we are a constabulary police force, with the same degree of independence and integrity as any other police force—hopefully including your own. So my status as a chief constable and the independence of my command are quite clear. In terms of the exercise of our judicial

authority, we’re answerable to the courts alone, but our independence as a police force is reinforced by an independently chaired police committee with independently appointed members, whose remit is quite specifically to maintain oversight of the exercise of our constabulary authority, with arrangements which I would argue are more robust than those for Home Office Forces. If I felt there was the slightest inkling—or, indeed, if he did—that there was any interference, we would take immediate steps to deal with it and report it.

**Q270 Christopher Pincher:** But because there are so many agencies involved, as we’ve already heard, do you think that a leading, if not overlapping, of responsibilities means that there could be any form of interference between agencies?

**Chief Constable Love:** I have encountered absolutely none. I’ve been Chief Constable for nearly six years, and it’s something I’m very much alert to. I even include in my annual Report to the Secretary of State a line at the end confirming that there has been no interference.

**Q271 Gemma Doyle:** What powers do the Provost Marshals have to deal with improper interference if it is detected?

**Brigadier Forster-Knight:** There are a number of escalatory measures that we can use—from a simple phone call directly to the individual through to section 27 of the Armed Forces Act 2006 on obstruction and interference to, ultimately, perverting the course of public justice. I think the measures there are sufficient. I would echo Mr Love’s comments. I have been a Provost Marshal now for almost two years, and I’ve not encountered interference in my time as Provost Marshal. It’s something that is very much taught in the Army—certainly on all the COs-designate and adjutants’ courses that deal with G1 affairs—about the independence of the Service police to conduct those investigations. We are very conscious of it, but the Army, from my perspective, is also very conscious of it and takes appropriate measures in terms of educating commanding officers and adjutants who are involved in the disciplinary process.

**Commander West:** From a naval perspective, all our commanding officers and executive officers go through a course prior to taking up their appointments, in which they’re briefed by legal colleagues from within the Service. Part of that is telling them exactly where their powers start and stop. I also go along and brief the COs as well, so that everybody’s absolutely clear where their lines of demarcation finish. From my perspective—I’ve been in the post for three years now—I’ve never heard of any interference from COs or anybody else within an investigation.

**Group Captain Whitmell:** I can confirm exactly the same from a Royal Air Force perspective. Again, we brief throughout the chain of command, there is an extensive process, and in the absolute worst case—again, that has not happened in my nearly two years as Provost Marshal—we can go as far as a secondary investigation if we need to. But I stress that that has not happened.

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**Commander West:** We have all got professional standards units as well. One of the questions that my guys will ask is, "Have you had any interference at all?" once they go on board the ships. I am sure that colleagues also have the same provision.

**Brigadier Forster-Knight:** There have been a few historic cases, and some of them are well documented, but it is now fundamentally understood. The other thing about the Act is that it only came into force on 31 October 2009, so that's when the sea change happened in terms of discipline. Although the Act is dated 2006, from the point of view of disciplinary processes it's only been in force since 31 October 2009.

**Mr Morrison:** It may give some reference if I add an explanation there. It's worth looking at this new provision as the other side of the coin that was addressed in great detail in the 2006 Act, which is the duty of the CO to make sure that the Service police are aware of matters. It was the 2006 Act, which the Brigadier was referring to, that introduced, first, an express duty on the COs to ensure that matters were always investigated properly; but, on top of that, it ensured that in a wide category of either more serious offences or offences that occurred in what we call prescribed or sensitive circumstances, such as people in custody, the matter was referred to the Service police, so that they could investigate it. Then, when they were investigating those serious offences, they would refer to the Director of Service Prosecutions for both advice and a decision. The provision in the Bill is an extra buttressing to what was already a very comprehensive set of provisions in the 2006 Act for the position of the CO and the prosecutor.

**Q272 Gemma Doyle:** Finally, could you say then what measures you would actually take in practice on an investigation to be able to tick the box and say, "Yes, I have fulfilled this duty"?

**Commander West:** Would it not be by exception? Are you saying that we need to tick a box to say, "I have not been interfered with"?

**Q273 Gemma Doyle:** Sorry, I wasn't suggesting that there is a form, but if the duty is to ensure that every investigation is free from improper interference, what measures will you actually take in practice to ensure that you have met that duty?

**Brigadier Forster-Knight:** I can easily answer that. From my perspective, I have given very clear instructions to my command team that any form of interference is to be reported to my Deputy Provost Marshal (investigations), who is a full colonel, within 24 hours of it occurring. That is reinforced at my face-to-face command groups with all my commanding officers, which I hold roughly three times a year, and my monthly VTCs, because I effectively have a global police force with people all around the globe, dealing with that on a—

**Q274 Chair:** VTC being?

**Brigadier Forster-Knight:** Video teleconference. So we would do that, and that is also part of the agenda for those monthly meetings.

**Group Captain Whitmell:** I would echo that it is by exception. It's the case that it is briefed when it happens—which it hasn't—rather than as a routine.

**Q275 Mr Jones:** Clause 4 makes the Police subject to HMIC inspection, although it has limited powers. Does that go far enough in trying to ensure that the Military Police Service is both independent and effective?

**Group Captain Whitmell:** The powers of HMIC are very well respected and received from our perspective. Anything that tests our efficiency and effectiveness and measures our ability as a police force is to be hugely welcomed. It is also a measure of the testing of our independence. We, the Royal Air Force Police, have been subject to one inspection only so far, which was a voluntary inspection in 2009, but the value that we achieved from it was huge. Putting that on a statutory footing can only benefit and further develop us as a police service and can only enhance our abilities properly to police the community.

**Commander West:** I would second that.

**Brigadier Forster-Knight:** The civilian police are looked at for efficiency and effectiveness; we're being looked at for independence and effectiveness. I think that is wholly appropriate, given the way we are constituted under the Armed Forces Act 2006. We've been inspected twice by HMIC, and the inspections have been, as the Group Captain has said, rigorous and very informative, and we have taken forward, in principle, nearly all its recommendations. So I am perfectly content that the measures in place are appropriate. I also believe that the measures give, shall we say, sufficient wriggle room for HMIC to look at slightly wider aspects of our work when it relates to the overall policing and investigation piece.

**Q276 Mr Jones:** How do the HMIC powers in relation to the single-service police compare with the MDP's inspection?

**Mr Morrison:** The powers under the Police Act—I think it's section 54—for the Home Office Police Forces don't cover independence. They cover efficiency and effectiveness. So, although the provision in the Bill focuses on investigations, the HMIC, in effect, have a wider remit than in the case of either the MDP or the Home Office Police Forces, because they are looking the effectiveness of the investigations and their independence. We regard it as particularly important to include this specifically because of the issue that has been referred to of highlighting, as brightly as we can, the fact that the arrangements that we have in place guarantee that, while the Service police aren't part of the Armed Forces, their investigations will be independent.

**Q277 Chair:** In 2009, regulations were issued about the conduct of the Ministry of Defence Police. I am not entirely clear whether those were the conduct regulations or the misconduct regulations. Have any issues arisen out of those regulations that we need to be aware of? What will the Secretary of State do next in relation to those regulations?

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**Chief Constable Love:** The conduct regulations have been in for two years. They are the same as the rest of the United Kingdom civilian police force and they are running smoothly. What is missing is the regulation that sits under that, which is the regulation for unsatisfactory performance—where somebody is not working well enough but is not misbehaving. All other police forces have unsatisfactory performance regulations that dovetail with the conduct regulations. When I say dovetail, it means that someone can move between the two scales. They can start off underperforming and move into misconduct or back down again. We have the conduct regulations but not the performance regulations for the simple reason that our founding legislation did not contain any provision to introduce performance regulations; it only allowed conduct regulations. This Armed Forces Bill is, therefore, the first opportunity to introduce in clause 6 the enabling clause for us to introduce the performance regulations that sit under the conduct regulations. As soon as we have done that, we will then have exactly the same regulations as all other police forces.

**Q278 Chair:** That is very interesting. When do you expect to introduce those regulations?

**Chief Constable Love:** As quickly as we can get them past Mr Morrison.

**Q279 Alex Cunningham:** How significant are the new powers of search and entry for Service police contained in clause 7?

**Brigadier Forster-Knight:** The clause 7 provisions for search and entry are very significant to us. A changing dynamic is going on in terms of the way in which Service men live their lives. Some 20 years ago, they either lived in barracks or in the married quarter. Now Service men are very much more mobile and they are often living out in the local community. They may have girlfriends and they may still retain a room at their home address. They are moving around very frequently these days because of the nature of military operations. Therefore, the ability to gain their multiple entry warrant is an important development for us, particularly in fast-moving investigations, relating to things such as weapon loss, fraud and so on.

**Q280 Alex Cunningham:** So you are suggesting that investigations in the past have been hampered as a direct result of the fact that you have not had these powers?

**Brigadier Forster-Knight:** I would agree with that assertion.

**Q281 Alex Cunningham:** You have explained why it is necessary now, but what protections were in place as well because there are differences between your role and the role of the civilian police?

**Brigadier Forster-Knight:** Yes, and I think that is where we have had long and hard discussions with my lawyer to my left over the provisions. Of course we will have to go to a Judge Advocate to obtain the warrant in the first place, though his warrants will be limited to relevant residential premises—premises

linked to the suspect. In that regard, the appropriate safeguards are in place to ensure that we are not riding roughshod.

**Q282 Alex Cunningham:** It appears that the Ministry of Defence Police don't particularly agree with that. Some of the representatives were telling me that they think that there are risks associated with that.

**Brigadier Forster-Knight:** There are risks associated with everything, but the safeguards that are in place, such as having a Judge Advocate authorising that in the first place and limiting warrants to relevant residential premises, are wholly appropriate.

**Q283 Alex Cunningham:** Chief Constable Love, the MDP already has these powers. Do you think that they are required by the Service police, or do you foresee any problems?

**Chief Constable Love:** You have referred to objections from the Ministry of Defence Police. You are probably referring to correspondence from the Ministry of Defence Police Federation.

**Alex Cunningham:** Indeed I am, yes.

**Chief Constable Love:** It is quite a significant extension of the powers somewhere on the police-civilian interface. They are powers that Home Department Forces and the MoD Police already have and are available to the service police on request, by application or in the course of a joint operation.

The MDP are very rarely asked, because very few of our investigations overlap with service police investigations. We operate in different worlds dealing with different things. I am sure that Home Department forces are asked more often. Clearly the powers would work as described, so I don't have a professional view on whether they would cause any difficulty. The extent to which it is appropriate to extend or constrain the ability of the Service justice authorities to pursue their investigations on the public-military interface is very much a political matter.

**Q284 Alex Cunningham:** So would you agree with the Federation that there are no grounds for concern?

**Chief Constable Love:** It is not my job to interpret or comment on the Federation's views. The Federation has presented its views to you, and I have presented mine.

**Mr Morrison:** It might be helpful if I comment on the discussions that led to these powers being included. The provision for multiple search warrants and warrants to search unspecified premises was only introduced in 2005 for the civilian police forces—in fact it was at the end of 2005, when we were in Parliament with what became the 2006 Act. We recognised then that this was a potentially controversial notion, so we decided to wait and see how it worked.

The traditional idea of going to a magistrate in the civilian world and getting a warrant to search a particular identified premises was an ingrained part of criminal law. So this was recognised as a change, and we have waited to see how it developed and whether it caused problems. It is still an area in which some form of judicial oversight is important, and, as the

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brigadier has mentioned, there will be judicial-level supervision of any application for one of these warrants. They should not be used widely enough to allow numerous searches of one property or the investigation of unidentified properties to give too much control to the police.

So this did lead to some heart-searching. We looked at how it was working in the civilian world and put in place limitations that will ensure that in practice there is little or no scope for excessive use of the provision.

**Chair:** It is now 12.47 pm, and, if it is possible, I would like to finish before 1 o'clock.

**Q285 Alex Cunningham:** There is no provision to give the Service police the power to enter premises to search for excluded material. Any failure to comply with a production order would instead be treated as a contempt of court. Are you satisfied that will be a sufficient deterrent against non-compliance?

**Brigadier Forster-Knight:** Yes.

**Q286 Alex Cunningham:** Good. Would you prefer to have the same powers of entry as Home Office Police?

**Brigadier Forster-Knight:** The powers we seek are relevant to the Service context. In some ways our jurisdiction is far greater than that of the civilian police. We have universal jurisdiction over soldiers, wherever in the world they are serving. That is, of course, wholly appropriate given that we want to protect our soldiers and to ensure that they are subject to the laws of England and Wales wherever they are serving. The key is the Service context, and we seek powers that are relevant to the Service context and nothing more.

**Q287 Alex Cunningham:** Finally, will the powers under clause 8 that require the production of excluded material by persons who might have no direct contact with the Armed Forces, such as a banker or social

services department, be monitored or subject to any kind of reporting procedures?

**Brigadier Forster-Knight:** Yes. Once the Bill is enacted, we intend to introduce some internal policy detailing how these provisions and the multiple entry warrants—the clause 7 and clause 8 provisions—are used.

**Chair:** Thank you very much. I must say that sort of thing more often.

**Q288 Jack Lopresti:** Will there be any external scrutiny by the Judge Advocates of the decisions to issue all premises and multiple entry warrants? What systems are in place to deal with complaints both from Service personnel and from civilians on the use of these powers related to warrants?

**Mr Morrison:** The answer to the first question is yes. A Judge Advocate will be applied to to grant the warrants. Like any search warrant, they will usually be acted on fairly quickly. In the civilian and military worlds, there is not time for people even to be told about them—they may not be there, or there may be other good reasons not to tell them. But if the power to give a search warrant or the way that it is used is improper, it can be challenged at the trial. If somebody is tried on the basis of evidence obtained improperly, the evidence so obtained can be challenged and excluded, if that is the decision of the court. That is the remedy that is available in the civilian world, and it will be available in the Military world.

**Q289 Chair:** Okay. Final question: is there anything not in the Bill that you would like to see in it?

**Brigadier Forster-Knight:** Not at this stage.

**Chair:** So it is perfect—that is wonderful.

Thank you very much indeed for your evidence on an important issue. This is a part of the Bill that has not yet received as much scrutiny and attention as the Military Covenant, but nevertheless is very important. I am most grateful.

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**Thursday 10 February 2011**

Members present:

Mr James Arbuthnot (Chair)

Alex Cunningham  
Thomas Docherty  
Gemma Doyle  
Mr Tobias Ellwood  
Mr Mark Francois  
Mr Kevan Jones

Mark Lancaster  
Jack Lopresti  
Christopher Pincher  
Mr Andrew Robathan  
Bob Russell  
David Wright

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**Examination of Witnesses**

*Witnesses:* **Bryn Parry**, Chief Executive Officer, Help for Heroes, **Chris Simpkins**, Director General, Royal British Legion, and **Air Vice-Marshal (Retired) Tony Stables**, Chairman, COBSEO, Confederation of Service Charities, gave evidence.

**Q290 Chair:** Good morning. Welcome to the evidence stage of the Select Committee on the Armed Forces Bill. We are very grateful to you for coming to give evidence. There are two sessions this morning involving different groups of charities. Could you begin by introducing yourselves for the record?

**Chris Simpkins:** Good morning, ladies and gentlemen. I am Chris Simpkins, Director General of the Royal British Legion.

**Bryn Parry:** Bryn Parry, Chief Executive of Help for Heroes.

**Tony Stables:** I am Tony Stables. I am the Chairman of COBSEO, which is the Confederation of Service Charities. I am also the Chairman of the Trustees of Headley Court and a member of the War Pensions Appeal Tribunal, so I have a fairly broad veteran perspective.

**Q291 Chair:** COBSEO comprises which charities?

**Tony Stables:** In total, it comprises some 180 charities and associations, including all the major Service funds and charities. Its board of 13 directors comprises the chief executives of the major funds and charities in the Service charitable sector. For example, my colleagues from the Royal British Legion and from Help for Heroes are both members of the executive board.

**Q292 Chair:** So the Royal British Legion is doubly represented here this morning.

**Tony Stables:** As indeed is Help for Heroes.

**Q293 Chair:** I have a fairly general opening question. Please do not feel obliged to answer all of the questions, particularly if you think the thing you were going to say has already been said. That will help us make progress.

In what ways do you think the Bill will have an impact on the well-being of Service personnel and their families? Were you consulted when the Bill was drafted in the first place?

**Chris Simpkins:** I am happy to begin, Chairman. In response to your latter question, no, the Royal British Legion did not participate in the drafting of the Bill. We have two major issues, which are fairly well known. The first is in relation to the status—indeed, if it has any status at the moment—of the often-referred-to Military Covenant. I refer back to the

commitment that the Prime Minister gave last June, of which I am sure members of the Committee are aware, to enshrine the Military Covenant in law in some way. I am sure I don't need to quote, but it is very clear from what the Prime Minister said what his intention—and, I assume, the Government's intention—was at that time. Clearly, things have moved on somewhat.

Indeed, from the comments that the Royal British Legion has received over the past few days from serving Members of the Armed Forces, and from young and old veterans, is that the Prime Minister's statement had a positive impact at the time. It was therefore a surprise on publication of the Bill that an enshrined form of the Covenant—or at least, as I would put it, principles that such a Covenant should satisfy—is absent from the provisions of clause 2.

The second issue is how any Covenant might be examined and reported. The provision in the Bill is for such a report to be produced annually by the Secretary of State, and placed before Parliament and subject to parliamentary scrutiny. While we don't doubt the intentions and good faith of Parliament to respect the needs of the Armed Forces and support them—particularly now during a period of intense operational activity with all its familiar results—it is rather odd that the Secretary of State can determine what he includes and excludes from that Report. While that will be subject to Parliamentary scrutiny, there is no provision in the Bill for any independent input as stated in the Bill. I understand that behind the scenes there is the intention to do that, but we believe that it is something that should be recorded statutorily. Together with other things that are happening in relation to the Armed Forces, this is having a harmful impact.

Although, of course, we understand the constraints on public sector expenditure, this is ultimately a matter of priorities. This group is the only group of people in the country who contract with the State to lay down their lives on behalf of the State. We believe that the other side of the contract, and what the State contracts towards those individuals, represented by Parliamentarians, should equally be given some status—better status—in law. There is no better opportunity than that currently presented by the Bill.

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**Q294 Chair:** Thank you. The comments you have made are things that we will be exploring during the course of the morning.

**Tony Stables:** We will later determine the Covenant and the position of independent reporting, and perhaps even the definition of a veteran—not by the one day. The debate recently in both Houses has looked at the question of whether the veteran is more than a citizen, a citizen-plus, or whether we take the position that they should not be disadvantaged. If we come back to these later, the answer to your first questions is no, we were not consulted.

**Q295 Chair:** Okay. That was really the second question. The first question was: how do you think this Bill will impact on Service families?

**Tony Stables:** I think that the Families Federations, which will give evidence later, will be better placed than I to answer that. In looking at the Service community—this is where we have some difficulty with the Covenant—in my view, it comes down to four components: Members of serving Armed Forces, their families—and defining a family is difficult in itself—the bereaved and the veteran. They are four very distinct groupings within what we regard as the Armed Forces community. It is very difficult to address all those individually. You can do that in some kind of generic sense, but often if you do it in a generic sense as a whole, you tend to water down the effect.

It is very easy in the Armed Forces Bill to refer to the relationship between the State and Members of the Armed Forces—it seems very clear to me. Actually, the relationship between the State and the bereaved is relatively clear, while that between the State and the family is less clear because of the definition of the family. The relationship between the State and the veteran is a debate that we haven't had—again, I refer to recent debates in both Houses, and the debate about whether the veteran comes under, “Not disadvantaged by Service”, or under, “More than a citizen,” we may come back to a bit later.

**Q296 Chair:** Thank you. Bryn Parry.

**Bryn Parry:** Just to make it clear from the Help for Heroes perspective, when we set up, we were—were still are—a fundraising organisation motivated by a simple desire to help the Members of the Armed Forces who were injured in conflict. Therefore, we set out to not have any political or critical angle, and I am therefore ill-equipped to comment. I am happy to talk personally about the people I meet and the services and support I see they get. That would be where I would come from.

I believe that, rather as Chris said, the Covenant talks about the relationship that we have with our Armed Forces, and whether or not it is enshrined in law, the most important thing is the unique nature of military service. I think it was Theodore Roosevelt who said, “A man who is good enough to shed his blood for his country is good enough to be given a square deal afterwards. More than that no man is entitled to, and less than that no man shall have.” In order for the man to have the best support, he needs to get it from both Government and, I believe, the people of this country.

Therefore, we need to facilitate and make it easy for us all to work in partnership.

Speaking as someone from a non-charitable background, I had no idea I would be sitting here three years later. I have been part of an extraordinary thing, where people have donated up to £86 million, and all of that has been spent or allocated. The most difficult part of that has been seeing the swift delivery of that money in support of Members of our Armed Forces. From my point of view, if there were a way to cut through bureaucracy and ensure that people in the charitable sector, in different Departments in the Government and the Armed Forces can all work together cohesively and positively, that would be tremendous.

**Q297 Chair:** So would you say that the greatest constraint in the way of Help for Heroes is Government bureaucracy?

**Bryn Parry:** I am afraid to say, yes.

**Chris Simpkins:** May I add a point of clarification in relation to the Covenant, though I do not think this was the intention of your question? We have been consulted on a draft form of a non-statutory Covenant. Perhaps we will come to that, as we do have observations on it.

**Chair:** We will come to that during the morning, yes.

**Q298 Mr Robathan:** To follow that up with Mr Simpkins, the External Reference Group and charities—certainly two of you—have been consulted on the Covenant and the guidance to the Covenant. Mr Simpkins, you said that you thought the Covenant was not being incorporated in the law, but isn't this the first occasion ever that the Covenant has been mentioned in a statutory sense? Don't you think that Parliament, which, after all, represents the people of this country, holding the Government to account, is quite a major step?

**Chris Simpkins:** I suspect—indeed, I know—that one of the responsibilities of Parliament is to hold the Government of the day to account on every single matter in the management and governance of the country. The fact is, I believe, that a specific Covenant clearly is not referred to in statute. It is referred to in relation to the Army, but again not in law. There is a reference in clause 2 of the Bill to a Covenant, but it does not say what is the purpose of the Covenant. The only reference is in relation to a requirement on the Secretary of State to report on the Covenant. As I mentioned earlier, as currently drafted, it is for the Secretary of State to decide what is and is not included in such a report. That is clearly a situation where we would have in most circumstances the Ministry of Defence reporting on itself.

It is a common and increasing convention of governance and Government these days—and an expectation of the people of the country—that transparency is a principle to which we all aspire and commit to. That suggests to me that there should be an open and independent element to any such report, particularly in this case in relation to the Armed Forces, which are so important and held in such high regard by the Nation.



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**Q299 Mr Robathan:** I agree, but aren't you an independent member of the External Reference Group?

*Chris Simpkins:* I am.

**Q300 Mr Robathan:** So you will feel constrained and unable to make any comments on the report to Government.

*Chris Simpkins:* No, I would not feel constrained at all. The point is that the Secretary of State is not required in the Bill to take account of them or publish them.

**Chair:** We will come back to all of these issues during the morning.

**Q301 Bob Russell:** Mr Simpkins, Mr Jones and I served on the last Armed Forces Bill Committee, and I think the last Government can be congratulated on making many things better for Members of Her Majesty's Armed Forces. I take the Bill to be a continuation of an understanding in the 21st century that we have to regard our military personnel, past and present, and their families in a more enlightened way than in the past. Would you accept that perhaps, like the British constitution, if you don't have a rigid wording of the Military Covenant, it may be stronger for Members of Parliament then to take things forward item by item, rather than having a rigid legal framework?

*Chris Simpkins:* Yes, I would accept that; but in so doing, I would also apply a condition. The condition is that the principles of a Covenant should be enshrined; otherwise, what are we talking about? Who knows what it is we are measuring against? As the Minister said, we have been consulted on the draft Covenant that has been produced so far. I would make it clear that we have made representations on that draft, and I certainly have views on its contents that I am happy to express, because it is not fit for purpose, in our view.

**Q302 Bob Russell:** But there is work in progress, and you have heard the Minister's question and you are hearing mine—this is all on the record. We can build on your comments and, hopefully, incorporate the thrust in the Bill, without it being rigidly written down. My concern is that if things are too rigid, they will be more harmful than helpful.

*Chris Simpkins:* I understand the point about rigidity, specific definition and a detailed Covenant being included in law. I am not making that point at all. What I am saying is that the principles of which a Covenant should take account should be clearly stated and understood.

**Q303 Chair:** And from what you are saying, that is possible to do, and you are being consulted in the External Reference Group as to what the outcome of at least a Military Covenant should include.

*Chris Simpkins:* We are being consulted on both a Military Covenant and proposed guidance; we are not being consulted on principles that should be included in statute. Our point is that it should be possible to identify a short set of principles—forgive me for repeating myself—that could and should be enshrined in law.

**Q304 Chair:** I see. Right.

*Chris Simpkins:* Principles—not three pages of text.

**Chair:** That is perfectly clear. Thank you.

**Q305 Mr Jones:** This has been spun in the last few weeks as enshrining the Military Covenant, which clearly it does not. Do you think it is a bit odd that we have the Armed Forces Bill before us now, when we have been told this week that the Government are still working on the Covenant? Do you think the opportunity has been missed to put the Covenant and the principles that you referred to, Mr Simpkins, in the Bill?

*Chris Simpkins:* The answer to that is very straightforward, given my earlier answers: yes, that opportunity is being lost. Clearly, to take up the point Mr Russell made, society does develop and progress. We have to have a dynamic process that respects that progression. Another point, which I failed to mention earlier, is that we would like to see, in recording the principles in statute, a commitment for the Secretary of State to undertake a quinquennial review of the application of that Covenant and of whether it remains valid in a developing society and to engage in a process of public consultation in conducting that review.

**Q306 Mr Jones:** The Green Paper that I produced set out some of the principles and issues that could become legally enforceable, but we are getting conflicting evidence. The Minister said the other day that the election more or less binned that, but we also had evidence the other day from Bill Rollo, who suggested that it had somehow been taken into account. In terms of formulating this Bill, could you explain exactly what involvement you and other Service charities and stakeholders have had in deciding what is in the Bill?

*Chris Simpkins:* I can only speak personally. The Royal British Legion has had no involvement that I am aware of.

**Q307 Mr Jones:** Can I ask how many times the Minister has met you since May?

*Chris Simpkins:* The Royal British Legion or the External Reference Group?

**Q308 Mr Jones:** Well, you, and the Royal British Legion.

*Chris Simpkins:* Three or four times formally.

**Q309 Mr Jones:** So on none of those occasions were the contents of the Bill discussed with the Royal British Legion?

*Chris Simpkins:* Not of the Bill, although we had brief discussions at a very early stage about the concept and review of the Covenant.

**Q310 Mr Jones:** What about COBSEO?

*Tony Stables:* We have not had detailed discussions. We should be clear about the External Reference Group, which, after all, was established in its present form to guide through the delivery of the recommendations of the Service Command Paper. That is what it is there for. It is a cross-Government

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group, populated by and large by two-star advocates from all Government Departments. I judge it to have been a great success. Not only has it actually delivered on the recommendations of the Service Command Paper but it has promoted bilateral and trilateral relationships—both with the Service charitable sector and other Government Departments—which did not exist before. I particularly pay tribute to the Department of Health, which I think has really grasped this initiative, and I look forward to the further measures that it will be developing during 2011. So it has been a remarkably successful Group to deliver that. The Group was charged, as you are well aware, to report annually to the Prime Minister, and that it has done. There is a question mark over whether the External Reference Group is truly independent. Clearly, with a majority of its members being civil servants, it is difficult to argue that it was independent. Nevertheless, there is an independent element of it. We will come back to reporting, if we may.

May I just answer the question on the Covenant? I spent some 42 years in the Royal Air Force, retiring in 2006. I do not think that the “Covenant” was a word that I had ever come across. It is a relatively recent word that seems to be kicked around the football field and nodded around the sky without any meaning whatever, or any understanding of what it is. To enshrine it in a Bill before we have a clear understanding of what the word is and what it means to people, particularly when the overuse of the word, to my mind, raises expectations in people, seems wholly irresponsible. We have to go back to the start point and determine what it actually is.

If I may refer again to the External Reference Group, I regard the paper that was put before the Group for discussion of the Covenant as an early first draft and nothing more than that. We debated and discussed it. Frankly, I have not even seen yet the minutes of the meeting where we discussed the paper. It is in its very early and embryonic stages, but it would benefit, in my view, from someone standing back and perhaps some academic discipline being brought to say, “What exactly is this Covenant? What do we want to achieve by it?” and “How are we going to deliver it?” In a general sense, I agree with my colleague, Mr Simpkins from the Royal British Legion, that if you look at the diverse nature of the Armed Forces community, I cannot see that it can be anything other than a generic document. Unless you have an enormous document that covers every eventuality in legislation, I frankly cannot see how you can address the Serviceman or woman who leaves one day into Service to the person at the end of the spectrum. It is too wide a spectrum, frankly.

**Q311 Mr Jones:** But we are not starting from fresh. We had the Green Paper and the published responses to it, so there is groundwork to take into consideration. It seems that’s been parked to one side after the Election.

**Tony Stables:** I wouldn’t disagree.

**Q312 Mr Jones:** I do not think that we are starting with a blank sheet of paper. Can I ask about the

External Reference Group? I know it will be covered later. We moved a good way with the reference group in the way it was involved in Lord Boyce’s review of the Armed Forces Compensation Scheme. It had an independent chair and independent members. Do you think that in drawing up this Report, and making Government be held to account, a more independent element of that Reference Group in drawing up the Report would be helpful?

**Tony Stables:** Interestingly enough, at the last meeting of the External Reference Group, we came to the view, largely driven by Mr Simpkins’ suggestion, that perhaps those around the table were not those who were actually delivering the service. And it is true; in many cases, particularly in the veteran arena, it is local authorities who are delivering the service. It is Primary Care Trusts, or GP fundholder groupings, or whatever they may be called in the future, that are delivering the service, not the Department of Health. Certainly, one of the difficulties we have in the veteran arena is ensuring consistency of delivery across the piece. While you may have a clear undertaking for the Department of Health and other Departments, they do not control the delivery points. If you move the External Reference Group forward as a—I hesitate to use the word “independent”—cross-Government grouping, which in my view has been fantastically successful, you probably have to move away from Government Departments in London and engage more with the organisations that are delivering the service. We have done the protocols and we have done the agreements at the national level; we now need to deliver at the local level.

**Chris Simpkins:** Chairman, may I give a point of clarification on Mr Jones’s reference to the AFCS review? That review was conducted by Lord Boyce and supported by an independent group of people; it was not actually the External Reference Group. There happened to be some commonality of personalities, but just for the sake of accuracy, it wasn’t the External Reference Group. But the group that was constructed and appointed to assist Lord Boyce—I can speak only from personal experience—achieved fantastic success. While the purpose of the Group was to assist and advise Lord Boyce, and quite clearly, it was Lord Boyce’s report on the review of the AFCS, I think he would accept that there was not a single point of disagreement between all those around the table. It was a remarkable success for a group of people made up of charities, academics and specialists in their clinical fields.

**Q313 Gemma Doyle:** Mr Stables, you flagged up the issue that in many cases, it will be a local authority delivering some of the services, for example, in housing or education. Of course, in Scotland, Wales and Northern Ireland, we have another level of administration.

The Bill Team advised us that they thought the Secretary of State would be coming to Parliament to report on how these matters were working in the Devolved Administrations. That seems very strange to me, because I would not be able to ask the Secretary of State a question about health care in Scotland, nor

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should he or she be expected to respond. Do you have any sense of how that would work in practice?

**Tony Stables:** I could not possibly comment on how it might work in practice; frankly, I cannot see how it can work in practice. If we are proposing that the Secretary of State for Defence now reports on all matters Armed Forces community, embracing the work of the Department of Health, the Department for Work and Pensions and the Devolved Administrations, that seems to me quite a comprehensive report. I am not wholly convinced that those responsible in Scotland and the Devolved Administrations will easily allow the Secretary of State to put his name to their work, nor indeed would the Service charitable sector. We have not really determined what an independent report, or what the Secretary of State, can report on. The Secretary of State reports on, as is proposed in the draft Bill, I think, the Armed Forces community's health care, education and housing. Are we talking about health care, education and housing of Members of the Armed Forces, or are we talking about Members of the Armed Forces community? It is not clear to me.

I think the Secretary of State for Defence can quite rightly and properly report on all matters affecting Members of the Armed Forces, but if you widen that to the Armed Forces community, I fail to see how he can do it.

**Q314 Christopher Pincher:** The one component of the Bill that will be legally enforceable is the requirement on the Secretary of State to produce his report on the three great pillars—health care, housing and education. Do you think that they are the right core pillars that the Secretary of State should report on?

**Chris Simpkins:** Certainly, it would be perverse if those were not included, but I also think there are potentially other areas. I think that is catered for in a clause of the Bill, in that the Secretary of State can include or exclude other matters. Those three fields are included, but also

“such other fields as the Secretary of State may determine.”

We are talking principally about health care, education and housing, but there may be other issues. For example, around the ERG table sit representatives—Armed Forces advocates—of other Departments of State, such as the Treasury, the Home Office, and immigration. There is a wide panoply, because all those things can and do affect the Armed Forces community. I foresee that at any given point in time a wide range of other issues could and should properly be included.

As currently stated, the Secretary of State can dismiss the views of people such as ourselves, COBSEO, and others in the Service charity sector. If those independents do not have a right to some sort of input that is published, it seems to us an opportunity lost, to use a phrase that has been used elsewhere. Service life can affect every facet of one's life, not just the principal ones of health, education and housing, which we all recognise and hold dear. Housing and health issues can have effects on other elements and departmental responsibilities.

Forgive me for a rather cumbersome answer. Yes, those three should be included, but there must be provision to ensure that other relevant matters are included. Either the Secretary of State should do that of his own volition or there should be an opportunity for others to ensure that those things are embraced.

**Q315 Christopher Pincher:** That said, do you think that other specific pillars should be included or do you think the catch-all clause allows for those more dynamic items that you mentioned?

**Chris Simpkins:** It clearly allows for them to be captured, but equally, the Bill states—understandably perhaps—that the Secretary of State “may determine.” All I am saying is that we must think about the years ahead, and not necessarily just now. We must anticipate that whatever reaches the statute book will certainly be there for the next four or five years, and possibly a great deal longer in some form or other. We have to anticipate future circumstances to some extent. Equally, there must be some way for the Secretary of State to choose—for whatever reason—to exclude a particular issue. If—shall we say, for the sake of debate?—there are issues that the independent representatives on the External Reference Group think important, those independent members must have an opportunity to raise them to give them some public and Parliamentary exposure.

**Q316 Christopher Pincher:** Gavin Barlow of the Ministry of Defence was before us at a previous session. The point was made to him that the input of all groups that are included as stakeholders should be referenced in the Report. From what he said, I inferred that that would be so. I hope that gives you some reassurance.

**Chris Simpkins:** Indeed. I would just add a technical point, if I may. The role of the External Reference Group, as currently published, is to review the implementation of the Service Personnel Command Paper. Its terms of reference do not embrace a review of the Armed Forces Covenant or anything that might come into it. Theoretically, you could reach a point when all those commitments have been satisfied and, thank heavens, another ad hoc group can be forgotten about and dismantled.

If there is to be a role for the External Reference Group, particularly its independent members, in the review of whatever Covenant provisions eventually see the light of day, their terms of reference must be extended, otherwise it has no locus.

**Q317 Christopher Pincher:** Again, the feedback we had was that although the ERG will provide the core input as a set of stakeholders, there is no cap on the number of stakeholders who can be asked to give input, or who can volunteer to provide input, and have it accepted.

You seem to accept, therefore, that having a prescriptive set of pillars—areas that need to be focused on—in the Report would make it too exclusive and that it is better to have three or four areas that are clearly set out, as required by law, and a catch-all clause to incorporate anything else that is necessary at a point in time.

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*Chris Simpkins:* I would indeed.

**Q318 Gemma Doyle:** Do you think it is strange that the issues in the Bill that the Secretary of State will be required to report on do not in fact reflect the responsibilities of the Secretary of State as best they could? I am thinking, for example, about issues such as pensions, benefits and the Armed Forces Compensation Scheme. As Mr Stables has identified, the issues that are set out—health care, education and housing—are quite often delivered by local authorities or other bodies. Would you like to see the issues set out in the Bill changed to more accurately reflect the Secretary of State’s responsibilities?

*Tony Stables:* It seems quite right and proper that the Secretary of State should be reporting on his responsibilities. I agree entirely. What we must do is find a mechanism to report on all the other aspects. It seems to me that the approach in respect of the External Reference Group has been a tidying-up exercise. It would be a very good idea to move the subject matter into the Covenant and move the External Reference Group into a report by the Secretary of State. Frankly, that is as simple as it is, but I do not think that it is easy to do it. It is quite right and proper that the Secretary of State must report on everything that he is responsible for delivering in respect of the Armed Forces, and former Members of the Armed Forces, as you quite correctly point out, in terms of pensions and compensation.

I cannot speak about issues that are outwith the Secretary of State. It is a matter for other Ministers to say whether they are content for the Secretary of State to write on their behalf and report to Parliament. It is not a matter for me. Actually, I can say from the Services charitable sector that we would have some concern about the Secretary of State reporting to Parliament on our work. In fact, I think it would be inconceivable, frankly.

**Q319 Gemma Doyle:** Mr Simpkins, would you like to see pensions and benefits included in the Bill?

*Chris Simpkins:* There are two approaches to this, and I think that they have both been identified. Either the Bill should be more specific and include other specific areas of activity, or there must be a provision by which some other body—not just the Secretary of State—can raise those issues, if it feels that it is appropriate.

**Q320 Gemma Doyle:** Perhaps it would be appropriate to state in the Bill that the ERG should have an input in the issues on which the Secretary of State would report to Parliament.

*Chris Simpkins:* We have spoken a lot about the ERG. It is not a creature of statute at the moment. Clearly it is for Parliament to consider whether that is what it wants. All I am saying is that the ERG seems to me to be a mechanism that, as Mr Stables has said, has proved its worth in a number of areas, not only in implementing or ensuring the implementation of what is in the Command Paper, but also in providing opportunities for bilateral discussions across various parties within that process. It has been extremely helpful.

That body’s role and its terms of reference can be extended very simply, as Tony has described. If that happens, it seems to me that there would either need to be some reference to the body in the Bill or that there should be some provision whereby the Secretary of State “shall” appoint, not “may” appoint”, a body to perform that function. That seems to me entirely appropriate and a way of achieving the same outcome.

**Q321 Gemma Doyle:** I have a final question. I have a specific concern that Scottish veterans are simply not being recognised at all at the moment in clause 2 of the Bill, because the three issues that are identified are all devolved to the Scottish Parliament. Do you share concerns that at the moment Scottish veterans could not really look to the Bill as it stands for any sort of update on their welfare?

*Tony Stables:* It will depend on the reporting mechanism. The Chairman of Veterans Scotland sits on the executive committee of COBSEO, so we are fully inclusive and engage with all aspects of veteran affairs in Scotland.

The fundamental difficulty goes back to the Covenant. Who owns it? If the Covenant engages all aspects of the four dimensions of the Armed Forces community that I spoke about, and if the Government are agreed that the Ministry of Defence owns it, there is probably a strong case for the Secretary of State to report annually to Parliament. However, I do not think we have yet got to the position of determining who actually owns the Covenant, because we have not yet got to the position of determining what it is.

**Q322 Chair:** On that point, Mr Stables, I was not entirely clear about precisely what you meant in an answer you gave earlier. I think you said that enshrining in law a Military Covenant that has not been defined would be wholly irresponsible. Does that mean you are wholly in favour of clause 2 or wholly against?

*Tony Stables:* Forgive me.

**Chair:** I think you said that to enshrine in law a Military Covenant, when we were not yet clear as to what it meant or contained, would be wholly irresponsible.

*Tony Stables:* I am not sure that I used “irresponsible”, but it probably would be, yes.

**Q323 Chair:** Okay. Are you broadly in favour of clause 2 or broadly against clause 2?

*Tony Stables:* I am broadly in favour of a report, most certainly.

**Q324 Chair:** Okay. That clears up for me, at any rate, the direction in which your previous answer was going.

*Tony Stables:* I think it is actually right and proper. Once we have determined the constituent parts of this, and who does what to who, then I think it is right and proper for it to be brought before Parliament. And the state of the Armed Forces and the Armed Forces community should be laid before Parliament annually. That is absolutely right and proper.

**Chair:** So long as I am clear—that is what I was trying to get to.

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**Q325 Mark Lancaster:** From a practical point of view, this afternoon the Committee will be running through the Bill line by line, and we will have to make some decisions. Many of the questions you have been asked boil down to an amendment tabled for discussion this afternoon. To be precise, and so you know why some of these questions are being asked, the Committee will consider an amendment adding to the list of “education”, “accommodation” and “healthcare”,

“mental healthcare...pensions and benefits...employment and training...support for reservists and their employers...the running of the Armed Forces Compensation Scheme...progress on Armed Forces rehabilitation services...and...other such fields as the External Reference Group may determine.”

What we, as a Committee, have to do this afternoon is to decide which we choose, given a binary choice between keeping the Bill as written or accepting the amendment, which would make some prescriptive lists of things that will be reported on. That is the context in which our questions are being asked. Given that decision, if you were on the Committee this afternoon, which choice would you make?

**Chair:** As legislators for a day.

**Mark Lancaster:** That is the choice.

**Tony Stables:** As Boyle said, quite clearly those for which the Secretary of State has a legislative responsibility must be spelt out, it would seem to me.

**Q326 Mark Lancaster:** But those for which he hasn't?

**Tony Stables:** Where he has a legislative responsibility, in terms of the provision of pensions, war pensions, compensation, etc., that must be spelt out, quite rightly. On the question of the health care and housing of Members of the Armed Forces, there is clearly responsibility. The difficulty I have is with mention of “former membership”. How can you hold the Secretary of State for Defence responsible for the housing of a person who has spent one day in the Armed Forces and is classified as a veteran? It does not compute.

**Chris Simpkins:** One of the problems with the amendment, as you have described it, comes right at the end, and that comes back to an observation I made earlier. There is a reference to the “External Reference Group”, which has no status in law. The amendment would have to be combined with some other provision recording what the External Reference Group is, and what its role should be.

**Q327 Chair:** Again, Mr Stables, I am sorry to do this. You have said that those areas for which the Secretary of State is responsible must be spelt out, but I think in a previous answer you said that it would be a great mistake to be over-prescriptive. I am a little confused now as to where we are going.

**Tony Stables:** Forgive me; my reference before was to the Covenant in terms of over-prescription.

**Chair:** Right. I am with you.

**Tony Stables:** I am talking about a generic document in terms of the Covenant. It would be very difficult to be over-prescriptive in terms of the Covenant—impossible. No, not in terms of the Bill. I made the distinction I think. Perhaps I am too simplistic; I have always been a rather simple person.

**Chair:** I think that is most unlikely.

**Tony Stables:** It is true—a simple helicopter pilot.

Forgive me if I am repeating myself, but I think that if the Secretary of State clearly is charged to report, the mechanism for him to report on issues for which he has no direct responsibility or influence is not clear to me. I do not think it has ever been made clear to me or to any of us. We have slightly fudged the issue by saying, “Well, we've got this External Reference Group, which is sort of independent”, but it is not independent actually—not independent of Government. There are independent members who sit on it, but it is not independent of Government, and the Report was not independent of Government either. We kind of fudge the issue slightly with that.

**Chair:** Okay. Thank you.

**Q328 Mr Ellwood:** Mr Stables, you eloquently summed up the dilemma—the challenge—Government face in trying to define the Military Covenant. Is it over-prescriptive to go through every detail of the responsibility, duty and requirement of Government to look after veterans when we have put them in harm's way or should it be a more loose agreement saying that there is a moral responsibility, without having a tick-box process out of which things could be left? That is the challenge we face. What has been made clear is that there are three aspects that will be defined—health care, housing and education. Notwithstanding Mark Lancaster's comment that the amendment will be put through, can I ask you to comment on this? Because they are already in the Bill, are those three areas understood by the Service community as priorities?

**Tony Stables:** It depends on where you sit in the Service community. Clearly, those in the Armed Forces living in substandard accommodation might regard housing as an important aspect of their lives. Those who can't access GP care as a family might regard that as important. We are talking about differing aspects and parts of people's lives. It is clear that at the point of transition, as you move out of the Armed Forces into civilian life, people are faced with issues, not least finding a job. There is employment, housing, education, health care, well-being and a whole raft of issues. If you are going to report on three things—excluding what we talked about before on statutory responsibilities—those are reasonable things on which to report. I entirely agree.

**Q329 Mr Ellwood:** Could I ask Mr Parry something? You have been allocated £86 million. As a crude yardstick, where is that money going?

**Bryn Parry:** To facilities such as the rehabilitation complex at Headley Court, to supporting other charities—Combat Stress gets £6.5 million—and to working closely with my friends in the Legion to support what I call the defence recovery capability. The three Services have a recovery capability for their wounded and that is where we start to become interested in transition. In Help for Heroes's case, we are helping to build or are funding recovery centres in Edinburgh, Colchester, Catterick and Tidworth in Hampshire, and with the Navy in Plymouth. We are in discussions with the Royal Air Force about how we

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might support it as well. The Royal British Legion is coming in as partners to provide the running costs for those centres and an additional centre for Battle Back physical recovery. We are seeing the people who are preparing to move on into their lives having a portfolio of problems, including housing, welfare and compensation. I am not qualified to discuss them, but they clearly exist. I ask that, whatever is enshrined in law, works in practice. It is all very well to say that a man must be insured to have competent support for his prosthetic limb for life, but if he then goes to his local health authority with a limb that it does not have the budget for or the expertise to equip, it is not working in practice. For me, a simple chap, an infantryman—even more simple than a person who flies a helicopter—I ask that, whatever you do, ladies and gentlemen, it works in practice.

**Q330 Mr Ellwood:** Where is that money going, Mr Simpkins? Does it fit into the categories that have been clearly defined as priorities as part of the job?

**Chris Simpkins:** Again, if I may give some scale to our activity, we are spending £1.2 million a week directly in support of the welfare needs of the Armed Forces community. Veterans are included, of course, as well as serving personnel. Last year, our direct case load was in excess of 100,000 people. I can easily produce for you, Chairman, the distribution figures of the issues that those cases involve.

**Q331 Chair:** If that would be simple for you to produce, it would be most helpful.

**Chris Simpkins:** Certainly, Chairman. I can provide that detail. They certainly include without doubt health and housing issues and a wide range of other issues affecting delivery by the local authority services as we referred to earlier, and a multitude of other activities. Less applies to education issues, although people approach us periodically and ask us to help make representations on education issues. I am sure that that is an issue that the Families Federations will be more competent to discuss.

**Tony Stables:** We could provide you with overall charitable figures.

**Chair:** That would be helpful, too.

**Tony Stables:** The Confederation, COBSEO, has secured preferred bidder status from the Big Lottery Fund for the Forces in Mind programme which, hopefully, we will be authorised to deliver towards the end of this year. It is £35 million from the Big Lottery Fund to look at the problem of transition from the Armed Forces into civilian life. The difficulty with transition at the moment is that a number of organisations and bodies are involved but there is no coherence or leadership in the transition that might start at day two and, in some cases, is actually not achieved by death. The three things that have been said make the charitable sector a reasonably big player in the delivery of some aspects that the Secretary of State for Defence is reporting on.

**Q332 Chair:** That is one of the main reasons why you are being kind enough to give evidence to us this morning. Mr Parry, Help for Heroes focuses almost entirely on health issues. Why?

**Bryn Parry:** Because it was a simple desire for a bunch of people who were moved when we saw reports on television of the casualties being taken in Afghanistan and Iraq. We have wide objects but, frankly at the moment, with more than 450 Service charities and £1.9 billion in those Service charities, we are lucky enough to have organisations such as SSAFA, the Legion and Combat Stress, which do it very well. They are engaged in areas that we want supported. We are able to support those charities. I gave the example of Combat Stress, but equally we have been able to help fund SSAFA and St Dunstan's. It was a simple emotional desire to do our bit to support, nothing more than that.

**Chair:** Thank you.

**Q333 Alex Cunningham:** Mr Parry, you said that, whatever goes into the Bill, you want to see it working in practice. Do you have an idea of what you mean by that? Should there be something in law that we provide to our Service people, which would achieve that?

**Bryn Parry:** Again, this is not my world. I continually see words that look good and sound right, but when I talk to the guys—the blokes on the ground or the blokes who have lost their legs—it is not always working for them.

**Q334 Alex Cunningham:** So some sort of veterans card like they have in the United States might actually assist. That might just help the person you were talking about earlier who goes along to the PCT and can't get support.

**Bryn Parry:** I think we need better co-ordination. Coming back to where I started earlier this morning, there is a responsibility within the Ministry of Defence, I believe, to our Armed Forces; then there is responsibility, clearly, in the Government as a whole and the various different Government Departments, including education, welfare, housing and so on. Then there is the responsibility of the third sector, which wishes to help. But how do we link those two together? Does that responsibility remain within the MoD, or is it something that sits outside that is, therefore, better able to co-ordinate? If I was in your place, I would go for an organisation or person or whatever that was able to better co-ordinate all three sectors and ensure that we get smooth passage. At the moment, I don't see that, and that is my frustration.

**Q335 Christopher Pincher:** To follow Mr Cunningham's point, I do not want to give the impression that I have spent a very long time re-reading Gavin Barlow's transcript from the previous sitting, but he said that the objective within the three pillars mentioned in the Bill would be to develop some quantitative and qualitative targets—key performance indicators, if you like—that would be reported on in the Secretary of State's Report. Clearly, that would then focus Parliament's scrutiny, as well as that of outside organisations. Do you think that setting those sorts of quantitative and qualitative targets is the right approach?

**Bryn Parry:** Forgive me again—this is personal, rather than my organisation—but people who serve in

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the Armed Forces who volunteer to put their lives at risk are special. They don't need to be looked upon as yet another member of the public sector. They need something special. Therefore, we need leadership from the very top of Government and within the rest of the country to ensure that those people who serve and are affected by the conditions of Service—whether they are injured or whether their housing is an issue later in life—get the very best. I think that putting it in law and making sure that the right clause and reporting system are there are all very well, but I doubt that that will make it work. We need to see that leadership, that determination and that drive throughout the whole country and throughout every sector to make it work in a very special way—a unique way—for our men and women.

**Q336 Christopher Pincher:** So the challenge is to set a target that will apply to a serving soldier, a newly ex-soldier, a veteran and bereaved Members of the Armed Forces community. That is the challenge of setting those sorts of targets.

**Bryn Parry:** In my humble experience, I have never seen something written down or the principles of something discussed or made into law work as well as somebody who gets up and says, “Right, this is what I want to happen. Let's make it go.”

**Chris Simpkins:** Chairman, if I may just make an observation on the reported remark from Gavin Barlow. I have a rhetorical question and would be very interested to learn—I think Tony referred to this earlier—how it is that outside organisations would be scrutinised by the Secretary of State.

**Q337 Jack Lopresti:** Have any of your organisations done any specific research into the kind of Military Covenant that the serving Service personnel would actually want?

**Chris Simpkins:** Not in relation to specifically the Military Covenant, but we have done extensive research in the Royal British Legion—and have engaged a great many other organisations in it—into the, to put it simply, welfare needs of the whole panoply of the Armed Forces community. Of course, the Ministry of Defence carries out its own Continuous Attitude Survey of Serving personnel, and these are questions that could be included in that Attitude Survey.

**Bryn Parry:** My experience is practical. The Serviceman just serves because he wants to join the Army, the Navy or the Air Force, but he is resentful when he feels that somebody is being mean, whether that relates to playing around with his compensation, making it difficult to get a medical discharge with honour, or flying him into Lyneham and driving him in an ambulance up to Selly Oak or the Queen Elizabeth as it is now, rather than flying him to Birmingham, in order to save money. He finds that very difficult to cope with. He expects to be treated with respect. Whatever we do today, that is what we must try to achieve.

**Tony Stables:** Can you just remind me of your question? I was listening to what Bryn was saying.

**Q338 Jack Lopresti:** Have you done any specific research with serving men and women about what sort of Military Covenant they would like to see?

**Tony Stables:** I am not aware of any.

**Q339 Jack Lopresti:** Do you detect a desire for a legally enforceable Covenant or is that not what is coming through?

**Tony Stables:** Can I go back almost to where I started and the word “Covenant”? It is ill understood, frankly. It is understood as a relationship between the state—the Government—and Members of the Armed Forces; less so, I suspect, by former Members of the Armed Forces who I don't think have latched on to this idea yet. But the meaning of that Covenant is not understood. Is it a binding agreement? Does it mean that something is enshrined in law that I have a right to? I don't think there is an understanding of it. It is a relatively new term.

**Bryn Parry:** Could I ask whether putting it into law would put the onus on to the individual to fight for what is legally right?

**Q340 Jack Lopresti:** I was just about to say: should the Bill go further and provide for minimum standards in the key areas that are agreed?

**Bryn Parry:** I return to my point. A Service man joins and expects to be treated properly. When that fails, something needs to be in place to ensure that that is corrected. Whether it is put in law or not, we have to go back to the question, will it work? If our Service man feels that he has to go to litigation to get what is his due, that would be wrong.

**Tony Stables:** The principle of the Service Command Paper was that you should not be disadvantaged by Service. There is an argument to suggest that the Service man and the veteran should be more than a citizen and therefore you take a rather more positive approach. It is interesting when you look at the principle enshrined in the Command Paper that said you should not be disadvantaged and then look at some of the measures taken by the Department of Health now, which positively discriminate in favour of the veteran in terms of priority health care and various other things. So we already have a sort of mismatch. It adds to the confusion about what we mean. As I said before, we need to go back to basics in determining what we mean. The answer to your question is that I do not think it is widely discussed. It is more widely used by the media and others, but not discussed by them.

**Chris Simpkins:** Chairman, on behalf of the Royal British Legion, perhaps I should accept some responsibility for that. In September 2009, the Royal British Legion launched its “Honour the Covenant” campaign, drawing attention to a wide range of issues affecting the welfare needs of the Armed Forces community. I venture to suggest that were it not for that campaign, that Command Paper would not have been published and we might not even be having this discussion today. That campaign enjoyed wide support, both within and without the Armed Forces community, because it also captured the imagination of the million-plus supporters that the Royal British Legion has and of the media and the country at large

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at a time when, as now, the Nation clearly wanted to demonstrate its support for the Armed Forces community, veterans and serving people alike.

You only have to see the numbers of people who participate at Wootton Bassett, for example, and around Remembrance time in all sorts of things in support of the Armed Forces community, return parades etcetera, to see evidence of that support. The Covenant therefore became, and is, a concept. I return to what I said earlier. I do not suggest that the concept should be refined in pages and pages of documentation but we can, without too much difficulty, describe what that concept means as a set of principles. I certainly have anecdotal evidence to suggest that when the Prime Minister made his statement in June last year, the Armed Forces were very grateful for that recognition. Equally, in the last few days I have had the odd remark, "Well, actually this is pretty depressing, that this seems to be some sort of change of mind."

**Bob Russell:** Mr Simpkins, could I just take you back—

**Chair:** Bob, hold on. There is a queue here.

**Q341 Mr Jones:** Part of the Green Paper produced in 2008 was to try and define some of those things, that would form the basis of the contract you describe. I accept that in the Command Paper we have gone further, which I fully support—that ex-Service men and women should get better treatment and better privileges than we do. You raise the example of the health service. The Green Paper clearly set out for discussion areas that could be codified—and were going to be codified if the Election result had been different—into a contract, if you want to call it that, or Covenant between the Armed Forces and broader society.

**Chris Simpkins:** I am certainly not disputing that at all.

**Q342 Bob Russell:** Will you confirm that the "Honour the Covenant" campaign secured massive political support across all the political parties at that time?

**Chris Simpkins:** Indeed it did, sir.

**Q343 Chair:** So your fellow witnesses can blame you for their being here.

**Chris Simpkins:** I get blamed for many things. My skin is thick.

**Q344 Jack Lopresti:** Looking forward, what do you consider to be the most important considerations when you are putting together a document outlining the new Tri-Service Covenant, and what form would you like it to take?

**Chris Simpkins:** I can really only repeat the reference to it being a set of principles. As society evolves, while principles may not change, I suspect that the detail that sits underneath them will change. None of us would have imagined 10 years ago—I am making a silly comparison, perhaps—the pace of change and the impact of technology on everyday life. I can remember the days when I used to carry a mobile

phone that was a brick with a ruddy great battery hanging off my shoulder, and now I can ring anywhere in the world, at any time, with something the size of a credit card. So I do not think we can anticipate with such definition how society will evolve, and that is why—forgive me for repeating myself—there is a set of principles beneath which we all work individually and collectively to improve the lot of the Armed Forces family.

**Q345 Jack Lopresti:** So it should not be too rigid, in your opinion—which seems to be the key message.

**Bryn Parry:** I support that.

**Q346 Chair:** Mr Simpkins, the implication of what Mr Parry said was that the Covenant would be of more use to Service people if it were not legally enforceable but had a certain sort of automaticity about it and did not require them to go to court to enforce it. Would you agree with that?

**Chris Simpkins:** I would as a principle. Quite how that is achieved I am not so sure. If something is enshrined in law there is always the spectre of some sort of legal challenge. I do not know, though I suspect—and that is why we are having this debate—there isn't the detail on the face of the Bill as we see it, following up from the commitments made last year. But I don't think that is a reason for not doing it, frankly.

**Q347 Mr Jones:** Wasn't one way of tackling it to keep the lawyers out, which I think must be a benefit? In the Green Paper we set out some alternatives; for example, either having an independent Armed Forces ombudsman, or even using the Parliamentary Ombudsman, as a way of allowing people some redress if they thought things weren't being delivered in terms of what was laid down in the charter or Covenant.

**Chris Simpkins:** Yes, even with access to ombudsmen it does not of course entirely rule out access to the courts through judicial review, although judicial review of itself doesn't achieve anything very much. Most of the people we are talking about would not have the resources to pursue that approach, in any case.

**Q348 Gemma Doyle:** You may be aware that the Minister gave an assurance in a debate on the Bill in Parliament on 10 January that the ERG would continue to produce a report which would be put into the public domain. We had evidence from the Bill Team last week, and we were told that in fact the Report from the Secretary of State would replace the Report of the External Reference Group. We then had some frankly quite confusing testimony—you can read the transcript. The one thing that was clear was that only one report is envisaged. Unfortunately, we have not been able to clear up this matter because the Minister has declined to give evidence to the Committee. Are you any clearer than we are about how the External Reference Group will fit into this process?

**Tony Stables:** When we discussed this at the last meeting of the External Reference Group—the



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proposed single, Secretary of State-signed-off Report laid before Parliament—we all registered concerns as to how to include the independence of the third sector in such a report. I have to say that that lies with the Cabinet Office now, who chair that meeting. As I said, we have not seen the minutes of this last ERG, nor have we had any answers yet to the questions we left with them. So we know nothing.

**Chris Simpkins:** I can only echo that point. I don't know whether there is now the intention for one or two reports, based on what I have heard from you this morning. We recognised at the last meeting, as Tony says, that there was some difficulty around an ERG Report, and the independence of the ERG Report, given the dilemma of many officials, who outnumber the independent representatives of the ERG, sitting around the table. Of course, this is a Group on which votes are never taken—that is not the way it works. In my view—forgive me if I repeat myself—there has to be a mechanism by which at least the independent members of the ERG are included in the process, or some form of independent scrutiny is applied. Quite how the Secretary of State—because it is his Report on the Bill—deals with that, technically, as the Bill is currently drafted, I don't know.

**Tony Stables:** There is an ever-increasing degree of co-operation between the public, private and charitable sectors in the delivery of services in the Armed Forces community. If that is, indeed, what we are reporting on—which seems to me, in a nutshell, what it is—then the question is, is it right and proper for the Secretary of State for Defence to be laying that Report before Parliament? Is he able to lay that Report before Parliament? These were the concerns we raised in the ERG. It is not necessarily the independence of the third sector; the third sector stands alone in delivering some aspects, but it is joined up with public and private partners in delivering a lot of other aspects. I refer to the Forces in Mind project: if you look at the way we will deliver that in 2012 and beyond, a 20-year programme, it will be a combination of all these aspects, but it is inconceivable that we could ask the Secretary of State for Defence to sign off a report on our activities.

**Q349 Gemma Doyle:** If there is only to be one report, which is the evidence we have had, do you think it is worth consideration that the Secretary of State should place the Report of the ERG before Parliament, for that to be debated, rather than his own report?

**Chris Simpkins:** My immediate reaction is that I can see no reason why not, because the ERG Report is submitted to the Prime Minister at the moment, if my memory serves me correctly. I can't see any reason why the Prime Minister, or whoever it is determined that we might report to in future, should not lay that Report before Parliament as well. I am not a constitutional lawyer, but there may be a difficulty, it was the point I made reference to earlier, in Parliament undertaking scrutiny of organisations which are not part of government, namely—I would say, wouldn't I?—the charities.

**Tony Stables:** In theory, of course, the work of the External Reference Group should be lifed, as has been

referred to earlier. Once the recommendation Command Papers are seen, you could argue that that is the end of the External Reference Group, which, after all, was put in place in its current format merely to drive those recommendations through. Those who sit on the External Reference Group have seen the value of that and, as I have mentioned before, of expanding that to the point of delivery. They can see that this is a very good mechanism—in fact, the only mechanism that exists at the moment—to embrace the public, charitable and private sectors and deliver these things. Well, not the private sector at the moment, although it could do.

Many of the services that we are providing, both in the Armed Forces community and the veteran community, are a combination of those three parts working together. That is the only part at the moment. I am not sure. Say you said to me, “We can enshrine all of that in a report that we can lay before Parliament, signed off by the Secretary of State,”—although if it is signed off by the Secretary of State for Defence, it implies he has a responsibility for it; I cannot compute that—if you are saying that that can all be done within the Bill, well done.

**Q350 Gemma Doyle:** You expressed some concerns about the independence of the External Reference Group. What can be done to improve that independence?

**Tony Stables:** I go back to what I said before. It is a lifed group. Its only responsibility, enshrined in the terms of reference, is to deliver the recommendations of the Service Command Paper. We have regular meetings, but as we have mentioned and alluded to here, before this Group was set up, we—the charity sector—did not talk or engage with the Department of Health, and we certainly did not engage with the Department for Transport. We did not know who was in the Department for Transport. We had some engagement with the Devolved Administrations, but not very much. We now meet on a regular basis and there are outcomes. It is not just a question of sitting around a table and talking. It is a most successful mechanism, so why would we want to stop now? Even if we had met all of the recommendations of the Service Command Paper, I would suggest that there was a strong argument to continue such a cross-body and to develop it, to take the point of delivery and maybe the private sector. It is a very good mechanism, but how that fits into the Armed Forces Bill, I do not know.

**Chris Simpkins:** But I think the point that you are addressing is the independent element of that. We have referred to the fact that technically the External Reference Group is not wholly independent. There is an independent element of it. Whether that independent element achieves some different status as a result of the current debate, I do not know. That is one way, but I am sure there are others. I have not thought that through.

**Q351 Mark Lancaster:** From what I am picking up from what you are saying, you are making it very clear that the External Reference Group was for a certain life, to do with the Service Command Paper.

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Should we be looking at this from another direction? Rather than amending the Bill to meet the requirements of the External Reference Group, we could look at the External Reference Group and perhaps change its terms of reference to make it fit in better with the Bill. Would that not be the more straightforward way of doing this? Perhaps the External Reference Group could be made to report to the Secretary of State, rather than the Prime Minister. That is not a downgrading step, but it would be more appropriate for this Bill. Can we not look at it from the other side?

**Chris Simpkins:** I think I made reference to that earlier. In fact, I know I did. As for reporting to the Secretary of State, I think that may create some difficulties, because the locus of the External Reference Group extends far beyond the role of the Secretary of State for Defence; it is cross-government. That is why it is now a creature of the Cabinet Office and reports to the Prime Minister.

**Q352 Mark Lancaster:** To build on Gemma's point though, given that it looks as if the External Reference Group could well evolve, how would you like to see those terms of reference change to fit in with the broad thrust of the Bill?

**Tony Stables:** The difficulty that we have here is that one rather assumes that the work of the External Reference Group is entirely the Military Covenant. A simple transfer will be made. ERG is yesterday, and we are now moving to the Covenant, and the Secretary of State will report on the Covenant. If you look at the recommendations of the Service Command Paper, many elements could be construed to be part of the Covenant—you are quite right. In the External Reference Group, we are seeing that this is a mechanism for taking forward things that may be associated with it, but outside it.

My personal view is that the success of the External Reference Group is worth preserving; it is not worth throwing out with the bathwater. It may have changing requirements. It may have changing terms of reference as it moves forward, which may be outwith whatever is defined within a Covenant, so I would leave it there. I wouldn't confuse the work of taking forward the recommendations of the Command Paper with a Covenant, which is what people are seeking to do.

Why don't we subsume it within it? There may come a point in time where that is right and appropriate. At the moment, we seem to have had a lot of debate—I've seen it in debates in both Houses—about the work of the ERG and its relationship with the Covenant. I frankly cannot see why they can't work in parallel. Why can't the ERG work in parallel with the work of the Covenant? If the work of the ERG is Covenant-dominated, it should move to the Covenant. If it is outside that, it should be outside of it. I can't see the need, other than for a tidying-up exercise, to combine all this.

**Q353 Mr Francois:** Following up on that point, you've given us a steer in that you said that one of the reasons why the External Reference Group adds value is because it is not wholly independent of the Government. It has created a mechanism whereby you

can overcome, to follow Mr Parry's point, bureaucratic stove-piping. You finally get different Government Departments to communicate with each other in the same room, with some independent help, in order actually to cut through red tape and provide practical help to the people who need it. In that sense, it has perhaps helped to knock heads together a bit, and it has been a valuable thing. You have given us a pretty strong hint in your three ways there. Following on from that in terms of practical help and making a difference, how do you think the ERG, as a mechanism, could evolve further to assist the Covenant? If you were three joint kings for a day, what would you have it do?

**Tony Stables:** It would depend very much on who had ownership of the Covenant. The ERG was put under the chair of the Cabinet Office, because it was seen as a kind of neutral referee in all this. It was cross-government, and therefore it would be chaired at the Cabinet Office. You could argue, actually, that if the components of the Covenant are outwith the Ministry of Defence, you might see how much is outwith the MoD and actually place the Report before Parliament by somebody else. There are arguments to say that the Secretary of State for Defence could be a minor shareholder in all this. I think that that is unlikely, but it is a possibility.

**Q354 Mr Francois:** Just assuming for a moment that someone has to lead—I was an infantryman, too, Sir, but back in the last century—and assuming, for the sake of debate, that you put the MoD in the lead, and it is the Secretary of State who is reporting in order to try and co-ordinate, how then would you see the ERG evolving in order to tie in?

**Tony Stables:** I would see it in support of that. I think it is quite conceivable that the chairmanship of the ERG, in where we have got today, could equally have well been provided by the MoD or it could be the Cabinet Office. To a large extent, it has been dominated by personality in the way that we have taken it forward. We could have had a less than enthusiastic chairman from the Cabinet Office and got nowhere; we could have had a very enthusiastic chairman from the MoD. I am not actually sure. If the commitment is to cross-government development, involving the private, the charitable and the public sectors, then I am not quite sure that it matters where. The answer is that if we move forward, it has to be in support of the Covenant and, at some time, it has to merge into it.

**Q355 Alex Cunningham:** In support of rather than independent of? If it is in support of or becomes part of, where do we get the independence element built into this?

**Tony Stables:** I think we are confusing it by saying that the ERG is independent. As we said before, I don't think that it is independent in terms of the constitution.

**Q356 Alex Cunningham:** Should it be?

**Tony Stables:** What we are saying is that, in laying before Government, some of the aspects and topics that are enshrined in the Bill fall within the purview

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of independent organisations, and how do we ensure the independence of that reporting when it is placed before Parliament? That is the nub of what we're talking about.

**Q357 Alex Cunningham:** So it needs to be separate but not part of.

**Tony Stables:** I think the ERG merely confuses it slightly. That was a specific group for a specific role. It has developed. It may have a new role in the future, but it is associated with the Covenant and, therefore, in support of it.

**Q358 Bob Russell:** Gentlemen, when it comes to national charities and voluntary organisations briefing Parliamentarians at national level, Royal British Legion is exemplary and is the yardstick that I would suggest others follow. I'm just going to ask you about grass-roots level, and whether the various charities represented here feel sufficient is done to brief Members of Parliament so that we can be better Parliamentarians in representing the interests of the Service charities. Is sufficient being done at grass-roots level?

**Chris Simpkins:** Clearly, I can only answer that from the Legion's perspective. We have the advantage of having a national network—excluding Scotland, where there are, if you like, sister charities, but I know they operate a similar process, particularly Poppyscotland—so we have head office lead at the centre, but we also encourage our county organisations to engage with their Parliamentarians. That is something we have invested quite a bit of time and effort in, certainly in the last two to three years. I would be the first to accept that there is always more that can be done, but we have been pretty active and you can expect us to continue to be so.

**Chair:** To very good effect, if I may say so.

**Q359 Bob Russell:** Chairman, the reason behind that—as I represent a garrison town I am somewhat spoilt—is that I was thinking the footprint of the military presence across the country is diminishing. All I am suggesting to the three gentlemen and the various charities is that we could address that at grass-roots level to involve Members of Parliament in those places where the military footprint does not exist. That was the reason behind it.

**Bryn Parry:** I know you and I have talked about your desire to produce a port at Colchester, and we are opening the Colchester Recovery Centre together tomorrow. I know you are having a pop at me slightly in that I haven't been to brief you. The reason I haven't been to brief you is that we don't have members of our organisation out at the grass roots like the Legion does. The person you need to be briefed by is me, and I'm in a tin hat in an industrial estate in Downton. I'm really happy to see you over a sandwich at any stage you like, but if I get in a car and drive all the way to Colchester every time, I've wasted a day's worth of fund-raising.

**Q360 Bob Russell:** The point I was making was the point I've made, and I hope it will be taken on board. I was somewhat struck earlier, Chris Simpkins, when

you said that the Legion is helping serving personnel. That came as a shock. What areas of serving personnel is the Royal British Legion helping?

**Chris Simpkins:** Let's be clear. A beneficiary of the Royal British Legion under our royal charter is anybody who is currently serving, or who has served for a minimum of seven days, or their dependants. This is a population of something like 9 million people. Again, I can't give you specific figures, but increasingly at the moment we are getting serving people approaching us for help and advice in terms of the benefits and money advice service that we operate, particularly in conjunction with the Royal Air Force Benevolent Fund, which is contributing to it. In many parts of the country we deliver that through the Citizens Advice Bureaux. It is a collaborative approach. Increasingly, we are supporting serving people, including, especially at the moment, in representing them in their cases for compensation appeals and pensions, where we achieve a remarkable degree of success. Mr Stables sees our people appearing on their behalf on many occasions when he is wearing another hat.

**Q361 Bob Russell:** Is there sufficient engagement by organisations such as yours in working to improve the welfare of Service personnel? Is there an open door, or are you kept away?

**Chris Simpkins:** I don't see any evidence that we're kept away. We need to put more effort into it at the local level because the Military personnel are very busy and they change on a frequent basis. Just as you have developed those relationships you have to start again, because after six or 12 months the Commanding Officers have moved on. It's not just at Commanding Officer level; it's also much lower down.

**Chair:** We ought to be moving on, but there are a couple of questions about the Service complaints procedures that Alex Cunningham will put to you.

**Q362 Alex Cunningham:** How well do you think the complaints system that was introduced in the previous Armed Forces Act has been functioning? Has the introduction of the Service Complaints Panels in particular improved the perception of the fairness and independence of the system?

**Tony Stables:** Others may be able to speak to this better than I. I can't speak to it other than to refer you to the serving population. What I would say, though, if I may, is that there is a very strong case to extend responsibilities into the veterans sector, particularly where the public sector is responsible for delivering service. I think there are many cases at the moment—I certainly see it at the tribunal—where a veteran comes before the tribunal on a case which, frankly, we don't have any jurisdiction over and which would most certainly benefit from some kind of complaints commissioner or ombudsman to represent that extension of our Armed Forces community. I'm certainly a fan of the principle, and I think it should be extended into the veteran community.

**Chris Simpkins:** Specifically in relation to the Service Complaints Commissioner, her role is actually very limited. She oversees and reviews the processes, not

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individual complaints. There is a marked difference in those activities, and the resources which the Commissioner has at her disposal to do that are pretty limited. If that role were extended to engage in the examination of individual complaints, clearly there are resource implications that would attach to that and whether the power would be a power of compulsion or recommendation.

**Q363 Alex Cunningham:** Are you actually saying it's not good enough?

**Chris Simpkins:** I don't know that I'm in a position to pass an authoritative view on it. I'm really not. I can only refer you to the Service Complaints Commissioner's report, but of course that report is predicated within the terms of reference that she has, and they are quite constrained.

**Q364 Alex Cunningham:** But you would like to see it changed?

**Chris Simpkins:** There's always room for improvement.

**Q365 Alex Cunningham:** A very diplomatic answer. This Bill makes a number of changes to the membership of the Service Complaints Panel and the powers of the Defence Council. Do you have any concerns or views about these changes?

**Chris Simpkins:** I'm not in a position to comment.

**Q366 Chair:** We have kept you for long enough, but just at the end, we would like to ask you: are there any issues which you feel we ought to have covered or which you'd like to get across to us before we allow you to go and move on to the next panel? Mr Parry, you have been comparatively quiet during the course of this session.

**Bryn Parry:** Unusually. I think there's been great progress, but I come back to my point that we need this to be a simple process for the average-bloke Member of the Armed Forces who has a complaint, has been wounded or needs a better house. They are in the chain of command, and find it very difficult to take that any further. I was given a most amazing bollocking and nearly lost my job when I was a young platoon commander for writing to the Prime Minister about conditions of Service and a few things that were going wrong at the time. I was very nearly offered resignation, but luckily I kept my job, because it was treated as evidence from the coal face by the Chief of the Defence Staff at the time.

It is not for a soldier, sailor or airman to complain, whether it's about his prosthetic leg or his house. We have to make it easier or look after him better; I'm not sure which one. I'm certainly not going to tell you how to do your job and how to make that happen, but it does seem to me, from an outsider's point of view, that as a civilian, when I look into this thing, I'd like to see a process where the three Armed Services can decide on a single policy, I'd like that to be co-ordinated within the MoD and I'd like to see that come out into the wider sector. Then I'd like somebody to decide how we're going to make it happen in all its various aspects. I leave it to you to decide how that happens, but I think there is a real need.

**Chris Simpkins:** There are two things I'd refer to, Chairman, but not in detail. We made reference earlier on to the first draft of the non-statutory Covenant. We have made representations on that, as Tony has said. We believe it is pretty weak at the moment and requires a lot more work. I won't go into detail, as it's not appropriate for your time today.

The other area—it is not the subject of this Bill, but never lose an opportunity—is that we are extremely concerned by the loss of the office of chief coroner and the impact that has on Service families, particularly bereaved families, obviously. That is a serious concern of ours on which we are campaigning at the moment.

**Tony Stables:** I am personally greatly encouraged by the collaboration and co-operation that exist now within the Service charitable sector. I am encouraged by the co-operation and co-ordination that happen now with that sector and the public sector across Government. It is time now to move that to the point of delivery and to encourage those relationships.

As for the Covenant itself, I believe that we have to go back to basics and bring in some intellectual brain power to determine exactly what this Covenant is and what it is supposed to be. We have just kicked the word around for so long now without any understanding of what it is. Everybody deserves to stand back from it and have some intellectual debate. The reporting process—whatever that may be and whoever it is who may report to Parliament, and it is important that it does happen—will come out of whatever work is done in defining what the Covenant really is. Please don't confuse it with ERG; these are separate issues.

**Chair:** Thank you to all of you.

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#### Examination of Witnesses

**Witnesses:** **Kim Richardson OBE**, Chair, Naval Families Federation, **Dawn McCafferty**, Chairman, RAF Families Federation, **Julie McCarthy**, Chief Executive, Army Families Federation and **John Moore-Bick CBE DL**, General Secretary, Forces Pension Society, gave evidence.

**Q367 Chair:** Let us begin. Thank you very much for giving evidence. You may all have been listening to at least most of that. It will not be necessary for you all to comment on everything, but if you have things that you would like to add to the evidence that we have already heard, that would be helpful. We are

most grateful to you for coming to give evidence. Please introduce yourselves.

**Dawn McCafferty:** I am Dawn McCafferty. I am Chairman of the RAF Families Federation, which is an independent organisation parented by the RAF Association. I have been in this job since 2007.

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**Julie McCarthy:** My name is Julie McCarthy, and I am Chief Executive of the Army Families Federation.

**Kim Richardson:** I am Kim Richardson, Chair of the Naval Families Federation.

**John Moore-Bick:** John Moore-Bick. I am General Secretary of the Forces Pension Society, which is not a charity. It is a not-for-profit company constituted as a membership society. Our members are serving, retired, associated, related and sympathetic. We carry the interests of the Armed Forces pension community, which numbers up to 1 million people. I am delighted to be here with the Families Federations today, because I want to underline the point that pensions are husband and wife affairs—they are whole family affairs—and we must consider that in this context.

**Q368 Chair:** Many of the questions will be repeats of the earlier ones. How do you expect this Bill to impact on the Service personnel and their families. Who would like to begin?

**Kim Richardson:** I would say that, if you asked the standard family in the street, they probably wouldn't say that they have a lot of knowledge about the Armed Forces Bill. It is something that happens every five years. Things change. By nature, we accept change and we move forward. In the seven years that I have been doing this job, no one has ever mentioned the Armed Forces Bill to me.

**Q369 Chair:** I think we all accept that most people will be unaware that this Bill exists—throughout the country and the Armed Forces. Nevertheless, the contents of this Bill may affect the lives of Service personnel. How do you feel about that?

**Dawn McCafferty:** What we would like to see is that the Covenant, in whatever way it is enshrined in law and with whatever words you want to use, does actually make a difference at a grass-roots level. We are looking to go below the legislation and the Covenant and focus on the measures, because that's what will make the difference. If you ask personnel in the RAF what they know about the Service Personnel Command Paper and the Military or Armed Forces Covenant, like Kim, I think they would say that they have very little awareness, but there is a feeling that there is a need for fair treatment.

At the moment, there is a real feeling within the Armed Forces that they are being battered from all sides. Whilst it is not the best time to launch a Covenant that says, "Your Government values you and wants to look after you," when they are in the middle of a redundancy programme and base closures, etc., the very fact that this is being taken forward to underpin future work and to take forward what has already been done is very important. It is for us—the Families Federations—in liaison with the chain of command to get the message across to our families that this is important and it could, if properly resourced, deliver some significant change.

**Julie McCarthy:** I completely support what Dawn said. This is much more about what the deliverables are. In the Army, we have talked about the Military Covenant a lot. It is something that has very much come from the Army, and expanding it to the Armed Forces is a very good idea. But I would also say that

fine words will not deliver the housing, the education and the health care that we discussed earlier. It is very much about those actions. If we are going to report on it, it is very much about what the Report comes out with and what the actions are, rather than just putting words within the Bill.

**Kim Richardson:** Can I caveat that and just say that, until something actually impacts on you as a family, you don't tend to go and look for this sort of stuff? We found that with the Command Paper. Until people need one particular aspect of it and to get their head around it and make it work for them, they don't tend to go looking for it.

**John Moore-Bick:** The progression of this Armed Forces Bill, including debate on the Covenant, will help us all come to a common understanding of what the Covenant is. I was part of the Chief of General Staff's original team working on the Covenant in 1997, and it was a very academic concept. The leader of that was Professor Richard Holmes and it was drawn out of history. It is a philosophical concept; it can never be a shopping list. What will come from this is an understanding that the Covenant extends in its reach from the newest child of a Service family to the 105-year-old pensioner who I am looking after in hospital at the moment. It is a very wide, embracing concept with two sides. The side that is assuming responsibility may also have the right to say to those for whom it's responsible, "Look, we think you're not meeting your side of the concept." So it is a two way thing. It is a philosophical concept and we need to get to a common understanding of it, especially if we want to enshrine any regime in law.

**Q370 Mr Jones:** It has been spun that this Bill will enshrine the Covenant in law, which clearly it doesn't. In terms of practical things that you want to see out of the Report—obviously, three areas are covered here—what else is there, or what do you see as being the benefits of the Report itself?

**Julie McCarthy:** One of the things that concerns me about the report is if we take the three headings, "healthcare," "housing" and "education," the Report will comment on the commitments—the Coalition's commitments—to the Military at the moment. It doesn't necessarily look inwards. We may talk about local connections and helping with house purchase, but will we talk about the Defence Estate and look internally? To me, that is a fundamental pillar of the Armed Forces Covenant. We should be providing our people with good, decent accommodation, which we are not doing at the moment, but that will probably not come into the Report. The same could be said for education and housing. I will pick up the points from the previous panel about it being very difficult. The Devolved Administrations are very good and ping some extra things in that don't necessarily reflect what is going on in England itself. What any report would have to do is not only look at the commitments that have been made, but consider what is and is not being done internally on those areas.

**Dawn McCafferty:** I'd like to see any report sweep up all the various strands of work that have led us to where we are today. We've got the commitments from the Service Personnel Command Paper, some of

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which are still to be implemented. The Service Families Employment Skills and Task Force Report made recommendations that we are committed to monitor. There are obviously the Coalition's commitments, some of which have been introduced and others that need to be monitored to ensure that they are implemented.

Then, of course, there is an awful lot of work within Professor Strachan's report, which we have yet to see the response to. In some ways, it is a shame that we haven't seen the response to the report, because there is a lot in there. We helped influence that report, and there is a lot that we want to see taken forward. I for one want to see that reflected in the Annual Report, whatever form it takes. We can have arguments about its independence, but as long as the content is there, we can start to really have an influence over measuring progress.

So there is an awful lot of work going on, but we need to ensure that it is captured. We need to be sure that we can influence the content of that report, to make sure that certain things that are, perhaps, little too difficult or require too many resources, or where there is a lack of appetite to go into certain areas, that we are able to ensure that it goes on to the agenda.

**Kim Richardson:** I would just add that whatever we do, it has to be meaningful and achievable, and we cannot exceed expectations. Our families are a bit worn out with raised expectations, and we need to be realistic in whatever we do. That is very important.

**John Moore-Bick:** I see no mention of pensions anywhere. Pay and pensions are the two sides of the same coin. You can never talk about one without talking about the other. They are both the bedrock of trust. Reports of any sort—either Service Personnel Command Paper, the work of the ERG or this work—if it does not mention pay and pensions, it does not hit the key notes that people want to see.

**Q371 Chair:** Expectations. Do you think there is a risk that this Bill, or this clause, will create expectations that might not be met?

**Kim Richardson:** I think so. We have to be careful. I have been doing this job for seven years now. On the upside, I would never have said seven years ago that I would be sitting here today. We have progressed and we have moved forward. We have achieved a lot for our families. But I would also say that during those seven years expectations have been raised in certain areas. Housing and Service families accommodation is one. We have not met those expectations. In fact, we have taken a backward step. I think that families are feeling very bruised at the moment, particularly Royal Navy and Royal Marines families. They have had a bit of a double whammy. Whatever you do today, whatever you decide, my plea would be not to promise anything that you cannot deliver.

**Julie McCarthy:** I come at that from a slightly different angle from Kim. I would say that we should raise those expectations, and we should be holding the Government of the day to account no matter what colour they are, saying, "This is what we expect." There may be reasons why, at the moment, they are not delivering it, but that should be the aspiration and we should keep pushing. My concern is that if we

do not raise expectations on housing, the budget will disappear. We need to keep pushing, and questions need to keep being asked. At the moment, it is only the Families Federations asking those questions.

**Q372 Christopher Pincher:** At the risk of repeating myself, the one element of the Bill that is to be enshrined in law is the requirement on the Secretary of State to report to Parliament on those three areas—housing, health care and education. There seems to be an acceptance from the Deputy Chief of the Defence Staff, who appeared before us the other day, and from the Royal British Legion that those three core pillars should be included. I suspect, Mr Moore-Bick, that you are going to say that pensions should also be included as a pillar.

**John Moore-Bick:** May I make a comment on that? We used to tell people that we dealt with 400 cases a month. That has shot up to 600 cases a month. That gives you a good barometer of the concern and worry that there is about pensions. For years and years, it was the bedrock of trust. Now we have had a go at it and rattled it, and people are worried. I think that they should be included.

**Q373 Christopher Pincher:** You also heard that when Gavin Barlow gave evidence at the meeting before last, he made it clear that he anticipates that within the three pillars, plus the dynamic fourth pillar, plus any other pillars that might be created, both qualitative and quantitative targets would be set, which could be measured over a set of reports to demonstrate whether progress is being made. Do you think that is a sensible and sufficiently flexible approach?

**Dawn McCafferty:** One of the challenges is where you start measuring. I think that was the challenge with a lot of the Service Personnel Command Paper stuff. We did not have a particularly great database of evidence on which to say, "Where are we measuring our progress from?" So I think that will be the challenge, when you actually identify areas of work you want to take forward—for instance, to support Service families, whether in transition, housing or welfare—and to define the start point and then set a reasonable, realistic, achievable target that, as we say, does not raise expectations too far, but does push the fact that we need to make progress and recognise the unique nature of family life.

I would like to see measures in the Report, and I would like to be able to provide evidence. I would say that the Families Federations can provide meaningful evidence to inform that Report, but we need to be consulted. When the Bill was put to us, I do not think the fact that those three areas were highlighted came as a surprise to the three of us, but we were not asked whether we thought they were the right ones. I heard you earlier going through another list of potential areas that might go through in an amendment, and I for one would say I would like a little time to look at that, because I could probably identify some others.

I particularly welcome the catch-all of having that flexible pillar that says, "And anything else that members of the Reference Group"—be they independent members or administration members—

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“feel is important to include.” I think that is what we are asking for—an opportunity to influence that, so that it is not just what the Secretary of State says: “I am going to report on this and I am not interested in what your particular agendas might be.”

**Julie McCarthy:** I think it is also about practical application. We can have the policies—we have had fantastic news recently about pupil premium for Service children, which will go a long way to help schools. There are some schools—I know that in Tidworth, with 96% Service children—that will spend that money wisely. Other schools have few Service children and there are no guidelines or rules about what the money will be spent on. It could go on a new staff-room table—I hope it does not—but there are no guidelines for that money. So the policy has been very good, but we need to measure the practical application.

**Q374 Christopher Pincher:** Just in terms of the Report—perhaps you will like to comment on this—can I put it to you that having a sensible base line set, from which you can then demonstrate progress and focus minds, within the MoD, Parliament and outside, is a more sensible approach than the extremely prescriptive one about what rules and regulations should apply. Would that be right?

**Dawn McCafferty:** Yes.

**Julie McCarthy:** Yes.

**Kim Richardson:** One size doesn’t fit all. Each of our families are absolutely individual in the way they choose to live their lives, so I would see as positive anything that can make that as flexible as possible.

**Q375 Bob Russell:** This is to Julie McCarthy, but it also applies to the other two ladies as well. You mentioned the pupil premium. I wonder if you could submit a paper to the Committee, because my understanding is that it is just possible that the criteria under which children benefit from the pupil premium may not include children of Military families unless certain criteria are met. I would like to know how we may have to square that circle. In my mind, the turbulence factors and so on for children of Military families are such that they are exactly the sort of people who should receive pupil premium, but as things stand that may not happen.

**Chair:** Now as regards submitting papers, we don’t want to add to the burden on the charitable sector; so do that only if it were something you could do without being disproportionate.

**Q376 Bob Russell:** If you can provide the answer now, brilliant; but I suspect it needs a wee bit of research.

**Julie McCarthy:** My understanding is that as long as a child is registered as a Service child on the school census the school receives the pupil premium. My concern is that the standard admissions forms for schools do not include a tick box that says, “Are you a Service family?” Is it for the school to ask or the family to volunteer that information? That’s the bigger concern for me.

**Dawn McCafferty:** The other concern as well is that there was quite a short of period of time in which to

get parents to register. Julie has raised the fact that maybe families haven’t initially registered themselves as a Service family for whatever reason, and we have had a major campaign to try and ensure that our families were aware that if they wished to they should register because then they could get additional funds into the school. There was quite a short window in which to register, so we may find that actually the take-up is bigger next year when they’ve got more time to go through the registration process. But, as Julie says, I think the key thing for us is perhaps to go and gather that evidence in the schools as to what they are doing with that money. For example, there is a school near us where my child goes—Cranwell Primary School—where there is a very high percentage of RAF children. We are confident that the headmaster has got projects in place that he will want funding for to support the children of deployed RAF families. But in other schools with smaller populations, that money could just get lost in the noise, and that is not what it is intended for. Perhaps those children who are in a minority in a large school need even more support, because they do not have lots of mates around them who are going through that same experience. So we need to also follow through with our schools to say, “Exactly what are you doing with the money that has been given to you?”

**Q377 Gemma Doyle:** To follow on from Christopher’s questions—if you were here for the session before, you would have heard me ask this then as well—if we are going to specify in the Bill the issues which the Secretary of State should report on, do you think that that list should be more reflective of the Secretary of State’s own responsibilities within the MoD, and as such extended to cover, for example, pay and pensions, issues about the compensation scheme, employment and training—those kinds of things?

**Julie McCarthy:** I would say most definitely; it is a bit disingenuous to comment about people leaving being able to buy houses again when the housing estate is deteriorating, so I think absolutely the Secretary of State should be looking internally as well, because that is a complete side of the triangle if you are looking at the Covenant. He should comment on this.

**Dawn McCafferty:** To take an example of that from the Service Personnel Command Paper: all the references to housing were to do with housing provision externally in terms of housing associations’ access, etc. There was nothing in there about Defence Estates and provision of the MoD Housing Estate, which is obviously a huge concern to us. So I would agree that if it is not in the list in the Bill, it is something that we would want to bring to the table in respect of Terms and Conditions of Service, welfare and MoD responsibility for housing, because that is our core business.

**Q378 Chair:** Mr Moore-Bick, you said you said you thought pensions should be in the Bill.

**John Moore-Bick:** I think so, because there is so much concern at the moment that there ought to be some responsibility laid on the Secretary of State to tell Parliament about the whole pay and pensions area.

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The Armed Forces Pay Review Body is a very fair medium on the pay side, but there is nobody prepared to talk—in a climate of almost frenetic pensions debate—about the Armed Forces and pensions. That ought to be remedied.

**Q379 Chair:** What about allowances?

**John Moore-Bick:** I am not competent to speak on allowances, but I think the Federations are.

**Dawn McCafferty:** There are elements of the allowances package that are the responsibility of the Armed Forces Pay Review Body, and we inform them of our views, but there are other aspects that are not.

**Julie McCarthy:** I would like to see the Secretary of State commenting on those; I feel at the moment, with the allowance cuts in January and the review of the continuity of education allowance going on at the moment, many families feel that there is a consistent erosion of their terms and conditions of Service. If the Secretary of State had to comment on that in the Report, and there was a proper cross-party debate on it, that would be useful and would make Service personnel and their families feel that it was being widely discussed and fair decisions were being made.

**Dawn McCafferty:** If I can come back to the pensions issue: I have only been doing this for three and a half years, but pensions did not feature at all in any of our issues database casework until the last six to eight months. When we have been out doing workshops at unit level, we have started to hear people expressing concern about what is happening on the pensions front. We tend to signpost to our experts at the end of the table, but it has been quite a noticeable change of emphasis that people are beginning to look at the wider package. As Julie says, they see it as part and parcel of this erosion of their terms and conditions.

**Q380 Gemma Doyle:** As UK-wide organisations, would you share my concern that it would be regrettable if the Bill did not include any issues on which the Secretary of State had to report which applied to Scottish or Welsh veterans, which is the case at the moment?

**Kim Richardson:** What the External Reference Group has allowed us to do is develop relationships not only with other Government Departments, but also with Wales and Scotland. It is fair to say that the Welsh Assembly has really grabbed that and moved forward with it. We have families living in Scotland and, coming back to the pupil premium, within a day of that being announced, the first e-mail I got was from Faslane in Scotland saying, “What about us?” They sometimes feel slightly marginalised when they see the way things are being delivered in England, so anything we can do to take that north of the border, and west, we should be doing.

**Dawn McCafferty:** Our earlier colleagues spoke of the strengths of the External Reference Group in terms of sitting at the table with Devolved Administrations and Government Administration officials, and we as a Federation have really welcomed the opportunity to engage at that level. I for one feel we are a respected and welcome member of that group. As Kim says, we have been invited to go to the expert group in Wales and give evidence there. There is sometimes a lack of

awareness of what the military lifestyle is from a family or veteran perspective, and it is great to have the opportunity to take our evidence to a much broader audience than Kim might have been able to seven years ago. We are in a completely different ballpark, and that engagement must continue.

**Kim Richardson:** I would add the words, “receptive audience”. For the first time, people are asking what Service families are all about—they really want to get us—and while that door is open, we need to be knocking on it.

**Q381 Gemma Doyle:** A final question if I may: would you welcome the External Reference Group having an input into what issues would be in the Report, rather than simply the Secretary of State deciding what issues he or she would report to Parliament on?

**Dawn McCafferty:** I think that is critical. If we felt that the Secretary of State was dictating what those issues were and we weren’t being listened to then I think each of us would find our own way of making our voice heard.

**John Moore-Bick:** I think the External Reference Group is quite exclusive. I am reliant on the chairman of COBSEO to put anything from my area into it, so we might need to look at the External Reference Group again.

**Q382 Mr Francois:** The previous witnesses were all quite positive about the work of the External Reference Group in terms of co-ordinating the work of different Government Departments and delivering at ground level—which I think is partly what you were talking about. I take it you all very much support what it does. While we have you here, if it were to evolve beyond its original statutory purpose, which was not directly related to the Covenant, and you had your own way, how would you see the ERG evolve further, and how do you think it could add more value than it appears to be doing now?

**Dawn McCafferty:** This answer should be attributed to Julie McCarthy—my answer is below. We have made representations to the Local Government Association and I would very much like to see it getting down into those sorts of levels as well, whether it is through a single representative or whether we go out separately. I think the advocates from the other Government Departments find it very difficult—they represent their own Departments very well, very strongly, and do engage with us. I am not sure if it was Tony Stables or Chris Simpkins who mentioned the independent nature, but I’m not sure we are an independent External Reference Group. We are independent panel members, and for the Report going forward I would like to see those independent members deciding what should be reported on, rather than the External Reference Group as a whole. But we would need to change the terms of reference if we were to include the Armed Forces Bill work going on.

**Kim Richardson:** We also ought to ask the other Government Departments who else they feel they would benefit from having on that Group, because they have opened that door and engaged, but there must be other areas that they feel are not



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represented—they're almost sitting at the table because they have to be there—so I think we need to be asking the question of them as well.

**Dawn McCafferty:** One thing to develop is the visits to the Armed Forces community that the ERG undertake, which have happened throughout the development of that group—I think it is the RAF's turn next. It is great to have the opportunity to take people, very often from completely non-military backgrounds, to an RAF, Army or Navy base and let them engage with family members, see what people are actually doing, and talk to them. That aspect of what we do—it is not in the terms of reference—is very healthy. It is a good exchange of views and I really feel that empathy and understanding is the way forward to make sure people understand what we are asking for. We are not asking for special treatment; we are just asking for understanding and a fair playing field most of the time.

**John Moore-Bick:** We in the COBSEO executive committee must see how the views of the various organisations of the committee are brought into the work of the ERG, and that is internal work for us to do.

**Q383 Gemma Doyle:** How would you respond to the evidence from the Bill Team that the Report of the Secretary of State is going to replace the Report of the ERG, and that that will now be lost?

**Dawn McCafferty:** That is a work in progress. We have discussed that only very recently in the ERG and we all gave our views and expressed some concerns that we had about our lack of independence and ability to influence it. I thought that we had agreed—I may be wrong—that we would take it forward to try to draft the first Annual Report, bearing in mind that it is an annual report on something that does not exist at the moment. We are breaking new territory with this Report.

We have done two other annual reports, and I have to say that I think the way they were drafted and staffed, and the way we were consulted and our views were taken into account was very good, bearing in mind that it is a compromise—Tony Stables made it clear that there are many constituents of the Armed Forces community, and that there has to be a compromise. You cannot fit everything into a report. It cannot be hugely family-biased or veteran-biased. There has to be balance in the report, and I think they managed to achieve that, certainly with the first Annual Report. The second one was less in-depth because of the change in Administration.

We just have to see how the drafting goes forward, and have a little bit of faith in the Cabinet Office and the MoD, but we are all bright enough and strong enough personalities to step back if we do not like what is coming out in draft. We can draw a line and say that we need another opportunity, either to have our own chapter, to have a covering letter or to have a separate report. I would not want to define right now what we will do or what the Report should look like. I really think we have to have a bit of time to work it through as a group, because you can already see that there are differences between the independent

members in our views on the Report. We have to work out between us how we want to shape it.

**Q384 Mr Ellwood:** You mentioned the size of the Report, which provides a useful opportunity for asking what is currently expected to be in the Report itself. You mentioned pensions as being something new that has been coming across your desk recently and which you are passing on. Looking at the three headings—health care, housing and education—that already exist, in your experience are they the correct main headings? Is that where you are spending your time? Are Service personnel aware that those are the main concerns that you can provide help with?

**Kim Richardson:** We are in a strange place at the moment because there are lots of things on the way, and we do not know how they will impact on families. While I would say that those three things are reflected in the sorts of things we see, I would agree with Dawn that for the first time families are talking about pensions. I have never heard that before, and I think that it is because they are seen as another thing on top of everything else that they have experienced to date. I do not think that we can stovepipe or put our markers in the sand, because the next few months will be very interesting for our families and we might find that something develops on transitioning out of the Service that we had not considered before. We have to keep our eye on the ball, as we always do, sit in mess decks, talk to sailors and families and determine over the next few months where we are going.

**Q385 Mr Ellwood:** I do not know whether I am a reflection of the attitude, but when I served in the Armed Forces, I did not think about what I was going to do on the other side of leaving the Armed Forces until the last point. I think that many soldiers, sailors and airmen do exactly the same—I am as disorganised as the next person. Are personnel more conscious now of the parameters in which they are working and what they should be expecting in the future, considering the higher profile that our Armed Forces are taking because of their duties and the consequences of wars in Iraq and Afghanistan, in particular?

**Kim Richardson:** I think there is a sense of nervousness at the moment. There are people out there who do not know what the future holds for them, and that is not a good place to be. I can identify with your view about building up to leaving the Service, seeing civvy street as something that perhaps it is not, and not necessarily doing the planning. The people who often end up doing the planning are the family behind the serving person, and at the moment we really need to consider them more than we ever have before. All of you need to consider them more than you ever have before, because they are really special people making that difference on a day-to-day basis.

**Q386 Mr Ellwood:** So to break the transition down, before they actually turn into a veteran, which is when you traditionally think support should come in, the family needs to start planning. The individual, perhaps, tries to dismiss that, but it should be done while they are still serving. You would suggest that that is not in place to the level that it should be, that

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the focus of attention while people are serving is not on that.

**Dawn McCafferty:** There is a very good system in place. The serving person can take good advantage of a resettlement process that can start as early as two years before a known exit date. The problem is that they may not yet know that they are exiting. They're sitting there at the moment, hoping to get further Service and avoid redundancy, but they don't know yet. They don't whether their base is going to close. They don't whether their partner is going to lose their civil service job etc. This horrible climate of uncertainty is really corrosive to morale. Clarity is required and, as you say, then we need to look at what we are doing to support those people who now find themselves, at quite short notice, potentially having to find a new career.

I talk with journalists and they say, "Well, why are you any different? Lots of other, civilian organisations are facing redundancies and pay freezes etc." They don't realise the link very often between the Service person and the home and family, in that if you lose your job, you lose your home as well. You're going to be evicted from Defence Estates property. You'll have to go and find a job. You may need to relocate back to where you joined the Armed Forces from, or try to establish a new career in a new part of the country. People just need to get their head around that. It's what makes it so difficult to transition. As I said, there is a very good process in place for the serving person. We need perhaps to consider how we can enhance support for the partners and children behind that.

**Julie McCarthy:** Spouses may have chequered CVs, and it may be two people going out and finding a new job. When somebody leaves the Service, it is not just the Service man finding a new job; it is both people going out there. That adds to the difficulty.

**John Moore-Bick:** That last bit is the core of "The Unique Nature of Military Service", which I know Tony Stables has told you about this morning. That is a COBSEO document that lies at the root of the Covenant and covers all the things that Dawn McCafferty was just talking about.

If I can go back to your Service, my Service, we never, ever considered the pension until the time came to go. That was because we could take it for granted. Now, people can't take it for granted. Our message to Service men is that at any stage in their career, not just when they are resettling, if they fail to consider their pension entitlement and conditions, they cannot make the decision whether to go for the next stage of promotion, to move or to stop where they are because of a spouse's job or anything of that sort. Pension considerations, which used to be left until the last minute, now have to come into play at other critical stages of life, and there is a greater awareness of that.

**Q387 Mr Ellwood:** On pensions, I just note, Chairman, that I was asked about my pension when I left and I was given the opportunity to continue it as a pension or to be given it as a lump sum there and then. I just took the money—it's the only time in my life I've not been in debt. But there is a balance you need to look at. I just took the money and ran.

**Kim Richardson:** Perhaps your wife should have had some say.

**John Moore-Bick:** Perhaps I can make that point. Our message to the Federations is that spouses need to take a greater interest in this than their husbands. Their husbands are too busy to worry about it. The spouses are the ones who will take it for longer; they will suffer if it's not right; and five sixths of them, I'm afraid, will end up as widows.

**Dawn McCafferty:** There is also an awareness issue about what happens to a pension after divorce and some serving personnel getting caught out, not realising that their partner will have a claim on an element of their pension when they leave. Again, there is now a growing awareness within the serving community that pensions are important and need to be considered earlier than perhaps they were in your time, Mr Ellwood.

**Chair:** That of itself is a welcome awareness.

**Q388 Jack Lopresti:** Have any of your organisations done any specific research into what sort of Military Covenant serving personnel would like to see?

**Kim Richardson:** The Royal Navy has never, in my view, got its head round the Military Covenant. It has been seen as an Army concept. One of the things I would really like to say today is that we need to decide what this will be called and to stick to it. We've already had the Service Personnel Command Paper. We're now talking about the Military Covenant. But some of the paperwork refers to an Armed Forces Covenant. I believe this should be an Armed Forces Covenant, and if the Army wants to stick with its military one, that's fine and dandy, but let's decide what it is and then we can actually ask people what they think of it. At the moment, if you sat down with a group of sailors in a mess deck and asked them about the Military Covenant, they would say, "Nothing to do with me. That's an Army concept." Actually, what we're talking about today is very much to do with them. That's my first plea: let's decide what we're going to call it and stick with it.

**Dawn McCafferty:** We haven't done any specific research, but there is a general awareness among the serving population and families that there is this relationship between the Nation, the communities and the Armed Forces that they would wish to see in some way recognised. They are probably not interested in whether that's done through an Armed Forces Bill, but recognition of what they do is something that most Service personnel would like to see. We have done no specific research yet but, as Kim said, it would be great to actually define it. Perhaps we can get the principles that the RBL representative was talking about distilled, then we can go and ask people what they think of them and find out whether those are the right principles.

**Kim Richardson:** When the Service Command Paper was introduced, it was fascinating, because you would go out and say to a group of families or serving personnel, "What does the Service Command Paper mean to you?" The answer was, "Nothing." If you started to pick out the strands of the Command Paper and talk about them as individual things, they got it. They had heard about it and they knew what it was.

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Did they ever associate the two? No. We have to get that right this time, or we are in danger of really losing something here.

**John Moore-Bick:** Can I go back to the origins of the Covenant? The reason that we did so much work on it in the Army, in the late '90s, was to form the framework in which we could define a code of conduct for the Army. The origins of the Covenant were the opposite way round to the way that we are now interpreting it. It wasn't, "The Government must give this"; it was saying, "You, in your code of conduct, must meet your part of the Covenant to do this". It was, and is, infused in Army doctrine in order to persuade soldiers of their duties and why their duty to society is such. It is opposite to the way that we are talking about the Covenant now. That's the other part of it.

**Q389 Jack Lopresti:** I picked up from the last panel that they weren't in favour of the Covenant being too specifically defined and prescriptive of minimum standards. Would that be your view: that you would prefer it to be broader and more adaptive?

**John Moore-Bick:** I liked what I heard about a set of principles. I think that is good—a set of principles with very wide boundaries, from the youngest newborn child of a Service family, as I said earlier, to the 105-year-old widow that I'm looking after at the moment.

**Dawn McCafferty:** It is about the generic style of a Covenant that allows us flexibility, so that you can work within the spirit of the Covenant, but not necessarily to the letter of the law that has been written down—I think that would be too prescriptive. We found that with the Command Paper. We had an opportunity—there were specific measures that we were monitoring, and we would report and give evidence against them, but if there was something that was allied to that area, we could bring that to the table and ask if that could also be considered. If you make it too prescriptive, the answer would be "Oh no, that is not what the Covenant is about." So, I would prefer to see something generic as the framework document, but then, the devil is in the detail of the measures. This comes back to that table of measures, and to working out exactly what it is we're measuring. Where do we start, and what evidence is required in order to inform a report?

**Q390 Chair:** John Moore-Bick, were you in at the birth of the Covenant?

**John Moore-Bick:** Yes, I was, Mr Chairman.

**Q391 Chair:** What was the date of that birth, would you say?

**John Moore-Bick:** It was around 1997. The reason for it was that there had been a lot of examples of bad behaviour by all sorts of armies in the Balkans. We wanted to get a code of conduct in place for the Army. We looked for academic help and there was this idea of a Covenant, which meant giving your Service and accepting, unquestioningly, the loyalty and support of the State in various things. As I say, it was started as a foundation for the code of conduct.

**Q392 Chair:** Isn't it generally attributed to Field Marshal Inge, in the genesis of this?

**John Moore-Bick:** I think he was the Chief of the Defence Staff at the time. I think Roger Wheeler was the Chief of the General Staff.

**Chair:** Yes, I see.

**Q393 Bob Russell:** Very briefly, although there are clearly differences between the Services, there are many similarities, particularly when it comes to the families of Service personnel. Although you are three separate groups, do you actually work with unity, strength and all that? Each of you individually do a grand job, but do you come together and put pressure on the MoD and whatever?

**Kim Richardson:** We do. When we need to, we do, but I would say that our main objective is to represent our own constituents, and our constituents are, as you say, very different. We respect that, so the relationship between the three of us—I think—is better than it has ever been, because we talk and exchange ideas. We don't always agree, but that's fine.

**Q394 Bob Russell:** But you are sharing experiences and best practice, which is really the point. Thank you for that. My last question is, do you individually and collectively feel that there is sufficient engagement with the line of command and the Ministry of Defence?

**Julie McCarthy:** I do, personally. I have very good engagement at all levels and have co-ordinators across the world. The chain of command within the Army generally liaise very well, because they see that the welfare of families is key to the welfare and operational effectiveness of their soldiers. So I would say yes, up to and including into the MoD as well, and that is very important.

**Dawn McCafferty:** I think that our engagement is where I would want it to be, and the ERG is a very important part for us. To be able to look our families in the eye and say, "When you give us evidence we take it, undiluted, to the top," is really important to us.

**Kim Richardson:** We have direct and open access, and for me that is from the First Sea Lord down, so I can't complain. If I go somewhere and the door is not quite as open as I would like it to be, I can always keep going up, but on the whole we don't have to. I see us very much as being a conduit for our families, and I don't think that they've ever been in such a good place in terms of access.

**John Moore-Bick:** We advise all the Chiefs of Staff on their pensions, so we get very close co-operation from the chain of command.

**Q395 Chair:** Do you feel that you have that direct and open access?

**John Moore-Bick:** To the chain of command, and with the Ministry of Defence it ebbs and flows.

**Chair:** We will move away from the issue of the Covenant to the issue of the Service complaints procedure. Alex Cunningham.

**Q396 Alex Cunningham:** How well do you think the complaints system that was recently introduced in the previous Armed Forces Bill has been functioning? Is

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it fit for purpose? In particular, has the introduction of Service Complaints Panels improved the perception of the fairness and independence of the system?

**Julie McCarthy:** It is difficult for us to comment on the Service Complaints Panel, but having a Service Complaints Commissioner in place has been a great improvement. It is still very difficult for families to complain about things within Service that they are concerned about, because it is very allied to the chain of command. For them to take anything forward, it needs to go through the serving soldier. It is good that Service personnel, and families if they feel that the Service person needs to make a complaint, can go to someone independent, but I would just like to see a lot more resources for Dr Atkins to do the job that she needs to do.

**Q397 Alex Cunningham:** So, more resources, but what else needs to happen?

**Dawn McCafferty:** There needs to be more authority to her role, because at the moment there is a perception, I think, from some who wish to make a complaint, that it is just going to be referred back to the chain of command and you are basically asking them to judge their own decisions.

The independent Panels have been a good step forward, and Dr Atkins has brought a much-needed focus on the Tri-Service complaints arena. One thing that she has really been able to focus on is delay. One of the big things about making a complaint is that in the past there were very significant delays, which caused enormous stress and difficulty. She has really kept a focus on the Services, making sure that they look at a complaint and deal with it as speedily as they can.

That is an improvement, but I have had requests from family members saying, "I want Dr Atkins and her team to do the investigation. I don't want it to go back to the RAF or MoD staffs; why can't she do it?" She does not, of course, have that authority, and she certainly doesn't have the resources. We meet with her reasonably frequently, just for an exchange of views, ideas and experiences. I know that she has a huge backlog of casework that she just can't keep up with, and that is of concern because that backlog is individual people and families who have an issue that they want to see resolved. Perhaps the answer isn't what they want to hear at the end of the day, but they need to go through that process. If she has a backlog, then by implication the Services have as well.

**Q398 Alex Cunningham:** So what sort of delay are people seeing?

**Dawn McCafferty:** I am not sure. I would have to go back and ask her what stats she has. Certainly, she told me that she had several hundred cases outstanding.

**Alex Cunningham:** Yes, she said that in her evidence.

**Q399 Chair:** On that point, was the delay, when she spoke to you about it, caused by a lack of resources for her, or by a delay within the Armed Services in dealing with her issues?

**Dawn McCafferty:** I don't know for sure, but I would suggest that it is probably a combination of the two. The Armed Forces are incredibly busy and very

stretched, and a complaints process stretches them even further because you have to go through such a detailed process of disclosure and finding evidence, and of then putting it through an administrative process. So I suspect that it is a combination of the two: she perhaps lacks the resources to get the complaint into the system in the first place, and the Armed Forces need the resources to turn the complaints around, do a proper, thorough investigation and come up with a result.

**Q400 Chair:** The point she made to us was that if there was one improvement she would like to see in the Armed Forces, it was that they would deal with her cases more quickly.

**Dawn McCafferty:** You would have to ask her, but that is certainly the sort of information she has given to us.

**John Moore-Bick:** She tells me that a lot of people talk to her to let off steam on pay and pensions, but they never actually launch a complaint through her, because there is another system for doing that.

**Kim Richardson:** All I would add is that we have a pretty good reciprocal arrangement. She directs people to us, and we direct people to her. I go back to what I said earlier about managing expectation. Certain serving members expected her to deliver something that she was not put in place to deliver.

**Q401 Alex Cunningham:** So there is a lack of understanding?

**Kim Richardson:** I think so.

**Q402 Alex Cunningham:** So what needs to happen?

**Kim Richardson:** It is early days, and, again, it is one of those things that people only look for when they feel that they need it. When they reach that point, they are often past it—they need to look five minutes before. So when they do go to look for it, they see it as a panacea, and perhaps it is not. There may also have been something that they could have done beforehand, perhaps through the chain of command, that they had not necessarily considered. So I think it is back to communication, making sure that they are given the right information and managing expectations.

**Alex Cunningham:** It may well be the case that you cannot answer that question, which we put to the other panels, so we shall let it rest.

**Q403 Chair:** Thank you all very much indeed. Is there anything we have not covered that you would like to raise with us or emphasise?

**Kim Richardson:** I have one thing. Towards the end, somebody asked about charities. I work in a building with Royal Naval charities that are doing a sterling job. They are not the big Gucci boys that you have had here today, but they are doing a really good job. Although the well known names are in the public eye and being seen, and money is heading in their direction from the public, there are charities that have been in place for a long time and are struggling in some areas. So, although COBSEO speaks for charities, you are perhaps not getting a complete picture.

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**Bob Russell:** The point I was trying to make is that we need to reflect and praise the charities at grass-roots level. I would identify two specific charities—the War Widows Association and Veterans Aid—both of which do valuable work. They are very small, but they often do not get the credit they deserve.

**Q404 Chair:** Any other points?

**Julie McCarthy:** Mr Russell asked about engagement with MPs, and I would suggest that it needs to go even lower than that. Local councillors need to be engaged with much more, because they deliver the local services. Having recently moved from Berkshire down to Hampshire, I know that our local council does not engage very much because it perceives families and serving personnel to be very well looked after by the MoD, so we are not its responsibility; whereas, actually, we are—we are citizens first. For me, as the spouse of a serving person, that is where the responsibility lies, and I would like to see engagement with councils enhanced as much as engagement with MPs.

**Dawn McCafferty:** I would raise the issue of the sensitivity of timing and communication. This is not a good time to launch a Covenant. I know that we have to go through the process, and I am delighted to see that work is going on to legislate for it and allow us a mechanism to carry on some very good work, but the average airman at grass-roots level is not going to be particularly receptive to a big fanfare for what we are doing to support a Covenant at this stage.

We have to be sensitive to communicating this very carefully to a very bruised community, who, if they are worried about whether they have a job or a home for the next year or so, are not going to be interested, quite frankly, in the Covenant. It is a building block for the future, and it is not going to deliver immediate results. It is not necessarily going to stop people from being made redundant or losing their home. So we have to be really sensitive.

I spoke with the Chief of the Air Staff yesterday and said that we need to have a robust communication channel. We will contribute to that to make sure that we don't raise expectations and, frankly, do not piss them all off, because this is not a good time for the Armed Forces. A Covenant at this stage is not necessarily what they want to hear.

**John Moore-Bick:** The pension scheme has been in effect for nearly a century. With Lord Hutton working on pensions now for the next 40 or 50 years, we need to take this opportunity to sort out some of the rough edges. We have not talked about indexation, or anything like that, today, but there are going to be some savings. That gives us some margin to make some minor adjustments to get it right for the next 20, 30 or 40 years.

**Chair:** Thank you very much indeed for a fantastic session. I think that has been one of the most valuable evidence sessions I have been to. We are most grateful.

# Written evidence

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## Written evidence from the Forces Pension Society

There are three issues which the Forces Pension Society brings to the Committee's notice. They are not the only occupational pension issues which deserve attention, there are others which are by-products of current policy, such as pension troughs, which will develop from current policies and cause unfairness in years to come. But their resolution can wait. There may be cost questions behind some of these but we remind the Committee that the change in indexation will save the Ministry of Defence over £60 million on its pensions' bill this year and we maintain that, at a time when Service families are having to digest an unprecedented and wholly unexpected number of changes to, and generally diminution of, their terms and conditions of service, something has to be given back.

The three issues are:

- Inequality in the treatment of widows.
- Income tax relief on pension contributions.
- Inflation indices and vulnerable members of the Service community.

### 1. WIDOWS PENSIONS FOR LIFE: JUSTICE FOR WIDOWS

This refers to the rules whereby a Service widow who cohabits or remarries loses her pension. There are five distinctions of widows in the Armed Forces community. We have made the case convincingly over the last few years as to why they should all be treated equally. We are not talking about relicts of the past. We are not necessarily talking about older ladies. We are also talking about 30 year olds, some of whom aren't even married yet. And, according to the Government Actuary we are talking about the vast majority, I stress, the vast majority, for the next 40 years; future; to 2050. We remain of the view, and Kevan Jones has the opportunity to confirm this or lay it to rest, that we had, *in most carefully chosen words*, "a level of agreement" with the last government. Only the MoD has so many classes of widows. We have made the case as to why the Services deserve this change through the demands of their different lifestyles, which often prevent Service spouses from building either a state or occupational pension portfolio. We have agreed the cost at £88 million over 40 years. This is very small to right a wrong once and for all. And I remind you this is an issue going forwards with not just older women, but also those as young as 30, or even younger, affected.

### 2. INCOME TAX RELIEF ON PENSION CONTRIBUTIONS

The change in allowances means that any rank above OF3, lieutenant commander, major or squadron leader, especially those who are promoted fairly quickly, will incur an immediate income tax liability. At the OF 5–6, colonel to brigadier level, this will be of the order of £20,000. Discussions continue, but with little prospect of changing the rules, more to see how to mitigate them in application. It looks as if it may be acceptable for the liability to be carried forward and paid later in life by reducing the pension, both of the scheme member and his or her remaining spouse. This debt may grow and accumulate at ever increasing levels from rank to rank. At the moment we believe that the Treasury is demanding an immediate contribution of between £2,000 and £6,000. Our calculations show that a fast promoting officer may face, under current conditions and rules, a total bill of £70,000 as he moves from OF3 (major) to OF 7 (major general). The COS are most alarmed as to how they can explain this to their officers. All have to digest significant impairments of their accepted terms and conditions of service, often also affecting their families. The most able, who will be hit hardest by these new rules, can easily find alternative employment when their promotion prospects are so tarnished. We are also advising one officer who is grappling with an immediate bill for over £150,000. There has been a suggestion that the debt could be paid off by the gratuity. We are adamantly opposed to this since officers give great thought and set great store by the gratuity, often for housing needs.

### 3. INDEXATION RPI/CPI

We do not aim for wholesale reversal of government policy, even though the Government has back tracked with the private sector and been attacked by Lord Hutton and others. What we ask for, again, is dialogue and not the pretence that this is all fine. The figures we have given for pension receipts lost are well known. It would not be difficult to relate some compensation pensions to another index but we must also not lose sight of those whose service ceases honourably, through premature death or injury, or predictably, for manning reasons, in their late 30s and early 40s. They are indeed a unique case. Their pension is in large part compensation for forced early cessation of a career. It should not be devalued.

3.1 Turning to the construction of CPI, we are asking for a rapid recasting of it to take in housing costs of all sorts, vehicle excise duty and TV licences so that it is a fair representation of inflation. This work is indeed underway in the ONS, on behalf of the OECD, we believe. But it needs to be acknowledged by the Government

and at the same time agreed that the use of CPI is a deficit reduction measure, no more, no less. The Armed Forces can see through it. It is viewed as a mean and underhand trick, a clear breach of trust, and let us also be aware of what one of the principal financial and pension firms have said about private schemes:

*“permitting schemes to renege on their explicit promises would amount to a retrospective reduction in the pensions that had been promised”.*

3.2 For 40 years, all of the information available to those serving in the Armed Forces has promised RPI. Above all, we ask the government to stop trying to explaining the “logic” and “science” of CPI. The Royal Statistical Society says that CPI is not fit for purpose, as does the ONS.

#### 4. IN CONCLUSION

The Forces Pension Society would like to remind you that the Armed Forces pension community encompasses of the order of a million people, serving and formerly serving. The Society has over 250 engagements with that community in a year and is as conversant with their views as any. We also meet nearly all the most senior officers, personally, to brief them on their complicated pension affairs and bring them up to speed on what they need for their Services and commands. We are genuinely concerned that there are, suddenly, so many points of erosion of morale of individual and family in our area that irreversible damage cannot be ruled out.

4.1 We note the commonly aired reference to the Covenant but we do not see a coherent and comprehensive set of actions which would make the Covenant come alive; it avoids any mention of pensions. All we are asking for (indeed, all that the Covenant demands) is that those who serve their country in the Armed Forces (and their partners and families) are not disadvantaged. At present they are, and if the Government actually believes in what it says about the Covenant it must ensure this is corrected—and certainly not exacerbated. These do not seem to us to be good times for those serving so we need to stress that in all of this something has to be given back on the terms and conditions of service front. Equality in the treatment of widows and indexation both offer that, at modest cost and we are sure, with cross-party political approval.

28 January 2011

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### Written evidence from The Coalition to Stop the Use of Child Soldiers

#### SUMMARY

1. The Coalition to Stop the Use of Child Soldiers (“the Coalition”) welcomes the call for evidence issued by the Select Committee in relation to its consideration of the Armed Forces Bill. The Coalition is concerned that the current text of the Bill has failed to address recommendations repeatedly made to the government in the past by expert national and international committees to raise the minimum recruitment age to at least 18 years, and to take other measures in the interim to enhance the protection in place for the youngest recruits. The Coalition therefore requests that the Select Committee explicitly address the issue of the welfare of young recruits and the desirability of raising the minimum recruitment age in its consideration of the Armed Forces Bill.

2. The evidence presented in this submission contends that recruitment of under-18s:

- Is contrary to global best practice
- Undermines the international effective prohibition on deployment of children in hostilities.
- Is inconsistent with the best interests of the child.
- Exposes young recruits to greater risks than those faced by older recruits.
- Is not necessary to meet the trained strength requirement.
- Results in high levels of “wastage” and is a financially unsound policy.

3. The Coalition recommends that the Ministry of Defence phase out recruitment of under-18s and introduce additional safeguards for the welfare of young recruits in the interim. As an immediate measure, the discretionary “unhappy minors” provision should be replaced with an extension of discharge as of right for all under-18s up until the date of their 18th birthday.

4. The Coalition would welcome the opportunity to provide further oral evidence to the Committee on this issue.

#### CONCERNS

*1. Recruitment of under-18s is contrary to global best practice and undermines the effective prohibition on deployment of children in hostilities*

5. Until ten years ago the UK was still deploying under-18s into hostilities. They were deployed in the former Yugoslavia, the Persian Gulf, and the Falklands. Since the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict came into force in 2002 (ratified by the UK in 2003), the routine deployment of under-18s into hostilities has been prohibited in international law.

Such a practice now appears abhorrent to the public and policy makers alike and the UK now takes measures to prevent deployment of under-18s.

6. Recruits enlisting in the Army at 16 or 17 years of age have a right of discharge at the end of the first month of training and before six months have elapsed since enlistment. After this “cooling off” period has expired, they have no legal right to leave until age 22 (four years after age 18). The arrangements for minors joining the RAF and Navy/Marines differ but involve similarly long periods during which recruits have no legal right to leave. The lack of an ongoing right of discharge for under-18s means that young adults in the armed forces (those aged 18 to 22) continue to be legally bound by contracts they signed when still considered in law to be children. The 1991 Select Committee for the Armed Forces Bill recommended that these terms of service be changed and suggested extending the “window of opportunity” for discharge or giving young service personnel, upon reaching the age of 18, the opportunity to decide whether to continue in the armed forces or leave.<sup>1</sup>

7. There is a clear contradiction in recognising that under-18s should not be deployed into hostilities while continuing to recruit them under complex legally binding obligations which will allow them to be deployed as soon as they come of age. Although deployment is postponed by two years, the obligation to participate in hostilities becomes a reality when the recruit enlists at 16. Furthermore, the terms of enlistment are such that they remove the recruit’s right to reconsider or reconfirm their decision upon reaching the legal age of majority. In no other area of national law can an adult be similarly bound by a decision they made while legally a child.

8. As the Select Committee on the Armed Forces Bill highlighted in 1991, in the civilian world a person cannot sign a legal contract until the age of 18. There is therefore a particular illogicality in making an exception to allow a child to sign a contract of the severity and potentially life-endangering nature that is involved in joining the armed forces. Whilst a parent’s or guardian’s consent is required for enlistment, research has shown that many parents are under-informed about the full details of the commitment their child is entering into and have very minimal participation in the recruitment process.<sup>2</sup> Furthermore, if a child enters the armed forces technically as the result of their parent’s consent rather than their own, there is all the more reason to require that individual to provide consent in their own right once they reach legal majority at 18.

9. The Ministry of Defence has claimed that the “unhappy juniors” provision adequately redresses this problem. This provision grants commanding officers the discretionary power to discharge young recruits who express “clear unhappiness” at continuing in the armed forces before their 18th birthday. The Ministry has stated that it is “exceedingly rare” for such an individual to be refused permission to leave<sup>3</sup> and even that they are “aware of no cases where those under 18 who had expressed a wish to leave the services were unable to do so”<sup>4</sup> Yet the Ministry has also admitted that records are not kept on refused discharge requests so these statements cannot be verified.<sup>5</sup> If, however, these assertions are accurate and the Ministry does recognise the desirability of allowing all under-18 service personnel to leave the armed forces on request at any time before their 18th birthday, there is no reason not to make this provision a clear right.

10. The necessity for clarifying discharge as a right, rather than a discretionary privilege, for all under-18s is demonstrated by those instances in which young people continue to be denied requests for discharge. Independent organizations providing advice services for armed forces personnel such as At Ease and Daniel’s Trust have reported that they continue to receive calls from young recruits who have had serious difficulties in getting a discharge, or have had their discharge request refused. This indicates that the policy on “unhappy juniors” is not applied automatically or consistently, resulting in great distress for some young people. The fact that young recruits continue to go AWOL also indicates that not all those who wish to leave are able to do so through lawful means.<sup>6</sup> Making discharge an explicit right until the age of 18 would ensure that all young recruits have a clear understanding of the options open to them and that discharges are granted in a fair and consistent manner.

11. Requiring commanding officers to quantify a young recruit’s “unhappiness” puts them in a very difficult position. It is natural for them to want recruits to succeed and stay the course. They may also be under pressure to ensure that “wastage” is minimised by reducing the number of recruits who drop out of training. At the same time, if they try to encourage an unhappy young recruit to stay on they become personally and morally responsible for any ongoing distress. Most commanding officers do not have the psychiatric training required to make informed judgements regarding the depth and persistence of a recruit’s “unhappiness”. Furthermore, attempts to support and encourage a young recruit to “soldier on” a while longer may result in the recruit

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<sup>1</sup> Special Report from the Select Committee on the Armed Forces Bill Session 1990–91, para.27.

<sup>2</sup> See David Gee, *Informed Choice: Armed forces recruitment practice in the United Kingdom*, November 2007.

<sup>3</sup> Initial report submitted by the United Kingdom of Great Britain and Northern Ireland under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (UN Doc: CRC/C/OPAC/GBR/1) 2007.

<sup>4</sup> HC Deb, 10 January 2011, c3W.

<sup>5</sup> HC Deb, 10 January 2011, c3W.

<sup>6</sup> Again, the Ministry of Defence has been unable to provide figures on the number of under-18s who have gone AWOL or deserted, HC Deb, 19 January 2011, c823W. A request for this information made under the Freedom of Information Act 2000 in October 2010 had not received a response at the time that this submission was finalised in January 2011. Evidence that young recruits continue to go AWOL is recorded by independent organizations providing advice services and support to armed forces personnel, as well as in court martial cases. See for example, “Soldier injured himself to avoid return to Afghanistan”, *Manchester Evening News*, 22 December 2010, [www.menmedia.co.uk](http://www.menmedia.co.uk).



passing the age of 18 years and three months and finding the grace period for discretionary discharge has expired. The soldier is then committed to a further four years in the armed forces.

12. An unintended but serious consequence of the “unhappy juniors” provision is that young recruits may feel under pressure to “prove” their unhappiness in order for their discharge request to be taken seriously, including through self-harming behaviour. A 2009 study published in the *Journal of the Royal Army Medical Corps* repeatedly made reference to the link between young soldiers wishing to leave the Army and suicidal behaviour. The study found that “some incidents of suicidal behaviour were a “last resort” used to influence the chain of command to allow them to leave the Army.”<sup>7</sup> One Community Psychiatric Nurse interviewed cited the example, apparently typical, of “a young, probably male, soldier who realized soon after enlisting that he had made a mistake, was unhappy, expressed that unhappiness but was frustrated in his attempts to leave. Continued to be unhappy, continued to be reassured that he would settle into it, that things would improve and then eventually became so desperate that [suicidal behaviour] was the only thing he could think of to express his unhappiness further.”<sup>8</sup> This example was supported by an interview with a soldier who had exhibited suicidal behaviour. He stated that “he had thought self-harming could speed his leaving the Army”.<sup>9</sup> Notably, of the ten soldiers interviewed in the study, six had enlisted while below the age of 18. The mental health service providers, who were predominantly serving Army personnel, repeatedly focused on making it easier for soldiers and trainees to leave the Army as their priority recommendation for reducing suicidal behaviour in Army personnel.

13. The number of states which have prohibited the recruitment of under-18s has grown steadily over the past decade, reaching 134 as of January 2011.<sup>10</sup> The UK is now one of fewer than 20 countries which enlist children into the armed forces from the lowest age permitted under the Optional Protocol—16 years. No other country in the European Union, the Council of Europe or amongst the UN Security Council permanent member states recruits 16-year-olds.<sup>11</sup>

14. The UN Committee on the Rights of the Child first expressed deep concern at the high levels of recruitment of under-18s in the UK (including the deliberate targeting of young people for recruitment) in 2002.<sup>12</sup> It called on the UK to increase its efforts to recruit persons aged over 18 years and to prioritize the recruitment of the oldest candidates amongst those who had not yet reached 18.<sup>13</sup> In 2008, the Committee repeated these recommendations and called on the UK to raise its recruitment age to 18.<sup>14</sup> Despite these explicit recommendations, in 2009/2010 just over 21% of new armed forces recruits were aged below 18 years.

15. In 2005 the Defence Select Committee recommended that the Ministry of Defence look into raising the minimum recruitment age. In 2009, the Joint Committee on Human Rights unequivocally backed recommendations for the minimum recruitment age be raised to 18 years.<sup>15</sup>

16. The Expert of the Secretary-General of the United Nations on the impact of armed conflict on children, the Special Representative of the Secretary-General for children and armed conflict, the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees and UNICEF have all called for the minimum recruitment age to be raised to 18 years globally.

17. The Coalition submits that, in the same manner in which the UK moved to a position of not deploying under-18s in conflict, it is now time for it to join the growing international consensus against the recruitment of under-18s. As a matter of consistency and principle, the UK should take steps to phase out recruitment of under-18s.

<sup>7</sup> M J Crawford et al.; “Prevention of suicidal behaviour among Army personnel: a qualitative study” *JR Army Med Corps* 155(3): 203–207 (2009).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> The compulsory recruitment (conscription) of under-18s is prohibited in international law. This figure also includes 12 states which have no functioning armed forces.

<sup>11</sup> In addition to the UK, the other countries which continue to recruit 16-year-olds are Bangladesh, Bolivia, Brazil, the Dominican Republic, Egypt, El Salvador, Guinea-Bissau, Guyana, Iran, North Korea, Mauritania, Mexico, Oman, Papua New Guinea, Tonga, Trinidad and Tobago, Zambia, and Zimbabwe. In some of these states the legislation is ambiguous and the minimum recruitment age may in fact be higher than 16. Canada recruits 16-year-olds into a military academy for pre-degree and degree level study followed by armed forces service on completion. Students have the right to discharge themselves from the armed forces and the academy at any time.

<sup>12</sup> UN Committee on the Rights of the Child, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland (UN Doc: CRC/C/15/Add.188) 2002, para.53.

<sup>13</sup> UN Committee on the Rights of the Child, Concluding Observations on the United Kingdom of Great Britain and Northern Ireland (UN Doc: CRC/C/15/Add.188) 2002, para.54.

<sup>14</sup> UN Committee on the Rights of the Child, Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland under the Optional Protocol on the involvement of children in armed conflict (UN Doc: CRC/C/OPAC/GBR/CO/1) 2008, para.13.

<sup>15</sup> (see House of Commons and House of Lords Joint Committee on Human Rights (2009) *Children’s Rights* (25th Report of Session 2008–09); House of Commons Defence Committee (2005) *Duty of Care* (Third Report of Session 2004–05); Committee on the Rights of the Child (2008) *Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland under the Optional Protocol on the involvement of children in armed conflict* (UN Doc: CRC/C/OPAC/GBR/CO/1))

## II. Recruitment of under-18s is inconsistent with “the best interests of the child”

18. It is a fundamental principle of children’s rights (applicable to all those under the age of 18 years) that in all actions concerning children, the best interests of the child must be a primary consideration.<sup>16</sup> In assessing the child’s best interests a balance is struck between the wishes of the young person concerned, their evolving capacity to assess risk and make informed decisions with far reaching consequences, and society’s responsibility to protect young people from possible harm, including taking on responsibilities for which they may not yet be fully prepared.

19. As a consequence, in the UK under-18s cannot *inter alia*: vote in local or general elections; serve on a jury; see their original birth certificate if they were adopted; get married without parental permission; buy, rent or view an 18-rated film or pornographic material; place a bet in a betting shop; buy fireworks, cigarettes, alcoholic drinks or liqueur chocolates; ride a motorbike above 125cc; drive a minibus or a lorry; get a tattoo; be an ambulance worker; join the police; or work behind a bar. These activities are restricted to under-18s due to the recognition that people below this age could be adversely psychologically affected by adult material for which they are not yet mature enough to deal with, or because they are unlikely to fully comprehend the nature of the commitment or risk they are undertaking. The Coalition submits that joining the armed forces should be restricted to those aged 18 and above for the same reasons.

20. Raising the minimum recruitment age to 18 would not deprive any young person of the opportunity to join the armed forces but would simply postpone it until the candidate reaches a more appropriate age. Delaying recruitment is likely to improve retention rates of recruits in training by screening out in advance those whose interest in the armed forces is merely a passing phase. Candidates who are genuinely committed to a career in the armed forces are unlikely to be deterred by a delay of two years.

21. In this regard it is also worth noting the findings of the most recent Ministry of Defence Recruit Trainee Survey, which demonstrates that recruits who enlist after age 18 enjoy and benefit from training more than the youngest recruits:

- Recruits aged 16–19 were more likely than older recruits to say they did not feel a sense of achievement at the end of Phase One training.
- Recruits aged 16–17 were more likely than other age groups to say that life in the Services was “worse” or “much worse” than expected.
- Recruits aged 16–17 were more likely than older recruits to say they would probably not recommend the Service.
- Phase Two trainees aged 16–17 were less likely to agree that they benefited from their course compared to trainees over 20 years old.<sup>17</sup>

22. Advocates of recruitment of under-18s have cited the opportunities for training and education which it may provide. While such opportunities may exist, they do not eliminate the risks involved. While the risks faced by any person enlisting into the armed forces are substantial, evidence indicates that young recruits face more, not fewer, dangers than older recruits. This constitutes a further argument in favour of raising the recruitment age to a level which would cut out the most at-risk categories.

### Young recruits are at greater risk of death and serious injury upon deployment

23. Recruits who join the armed forces at the age of 16 can only enter a limited number of roles. These roles are primarily concentrated in the Infantry, the Royal Logistics Corps, the Royal Artillery, the Household Cavalry, the Royal Armoured Corps and other frontline roles.

24. In 2009–10, 28% of new Infantry recruits were aged under 18.<sup>18</sup> The Infantry has suffered the highest number of fatalities of any UK forces corps in Afghanistan in five of the seven years for which information was available, and the highest number of serious injuries in all three of the three years for which information was available.<sup>19</sup> In 2009 Infantry soldiers in Afghanistan were 13 times more likely to be killed than other armed forces personnel.<sup>20</sup> For the seven years in which information was available on Iraq, the Infantry suffered the highest number of fatalities on five occasions and was joint highest on the sixth. The Infantry suffered the highest number of serious injuries in Iraq in both of the years for which information was available.<sup>21</sup>

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<sup>16</sup> Convention on the Rights of the Child, Article 3.

<sup>17</sup> Ministry of Defence *Recruit Trainee Survey Annual Report: January 2009 to December 2009*, July 2010. Paras. 258, 263, 279, 288, 513

<sup>18</sup> Hansard: HC Deb, 30 November 2010, c744W.

<sup>19</sup> Hansard: HC Deb, 6 December 2010, c2W.

<sup>20</sup> Extrapolated from MoD (2010) “Defence Factsheet: Operations in Afghanistan: British Fatalities” 5 December 2010, online at [www.mod.uk](http://www.mod.uk/DefenceInternet/FactSheets/OperationsFactsheets/OperationsInAfghanistanBritishFatalities.htm), <http://www.mod.uk/DefenceInternet/FactSheets/OperationsFactsheets/OperationsInAfghanistanBritishFatalities.htm> accessed 9 December 2010.

<sup>21</sup> Hansard: HC Deb, 6 December 2010, c2W.

25. Bearing in mind that recruits who enlist aged 18 or younger must serve until age 22, it is also significant to note that since the beginning of hostilities in Afghanistan, 24% of British fatalities have been aged under 22 years.<sup>22</sup> It is not known how many of them enlisted below the age of 18.

26. It is also significant that several of the roles open to the youngest male recruits, including those in the Household Cavalry/Royal Armoured Corps and Infantry, are prohibited to women.<sup>23</sup> This prohibition is based on the perception that male soldiers would be at risk of neglecting their mission if female soldiers were present as in the extreme physical, psychological and emotional situations they face, their “instinctive” concern for the women’s welfare would override all training and discipline.

27. The Coalition considers that if certain armed forces roles are prohibited to adult female recruits on the grounds that they entail the most extreme combat situations, for which special restrictions are justified, it is inconsistent for these roles to be open to recruits who have not yet reached the age of legal majority.

#### Young recruits are at particular risk of bullying and harassment

28. The inherent strains of armed forces life are further aggravated by the bullying and harassment which investigations and surveys—including those conducted by the Ministry of Defence and the former Defence Committee—have shown to be a widespread and continuing problem in the armed forces.<sup>24</sup> Statistics have shown that bullying in training establishments—where under-18s are most highly concentrated—is higher than among the Forces trained strength.<sup>25</sup>

29. In 2007 the Adult Learning Inspectorate found higher levels of bullying at the Army Foundation College in Harrogate (which is exclusively for under-18s) than any of the other Phase One training schools assessed.<sup>26</sup> In 2005, the Adult Learning Inspectorate found that rates of bullying at AFC Harrogate and Army Training Regiment Bassingbourn (also at the time under-18s only) were almost twice as high as at training centres containing older recruits.

30. According to a 2006 report on sexual harassment in the armed forces (commissioned by the Ministry of Defence) the youngest female recruits were significantly more at risk of experiencing “particularly upsetting” sexual harassment, including sexual assault, than older recruits. Across all Services and ages, 15% of female personnel reported being the victim of such incidents. This figure rose to 23% among women aged 16 to 18—almost one in four.<sup>27</sup>

31. The most recent Recruit Trainee Survey found that Phase One recruits aged 16–17 were less likely than older recruits to know the procedure for making a complaint about bullying, leaving them particularly vulnerable.<sup>28</sup>

#### Young recruits are at increased risk of suicide and self harm

32. Between 1984 and 2009 male armed forces personnel aged under 20 years had a suicide rate 50% higher than males of the same age in the general population.<sup>29</sup> That the victims’ age was a risk factor in these deaths is evidenced by the fact that suicide rates for older armed forces personnel are significantly lower than rates amongst the equivalent general population. The 2009 study on suicidal behaviour among Army personnel (see above) repeatedly highlighted “concerns about recruitment and retention of *young* soldiers” (emphasis added).<sup>30</sup> The mental health service providers interviewed for the study “gave a consistent account of the context in which suicidal behaviour arose: young male recruits who experienced stress or crisis in the context of feeling unhappy about being in the Army.”<sup>31</sup> The Deepcut Review also noted that “being young, under or

<sup>22</sup> Extrapolated from MoD (2010) “Defence Factsheet: Operations in Afghanistan: British Fatalities” 5 December 2010, online at [www.mod.uk](http://www.mod.uk), <http://www.mod.uk/DefenceInternet/FactSheets/OperationsFactsheets/OperationsInAfghanistanBritishFatalities.htm> accessed 9 December 2010.

<sup>23</sup> As of 1 April 2010, the Household Cavalry/Royal Armoured Corps and the Infantry contained more under-18s (as a percentage of personnel) in their trained strength than any other Navy, Army or RAF regiment except the Royal Electrical and Mechanical Engineers. The Royal Artillery had the same percentage of under-18s as the Household Cavalry / Royal Armoured Corps. (Hansard: HC Deb, 19 January 2011, c824W).

<sup>24</sup> See for example: House of Commons Defence Committee: *Duty of Care*, Third Report of Session 2004–05; Blake, Nicholas QC, *The Deepcut Review*, 2006; Ministry of Defence (Directorate Army Personnel Strategy), *Armed Forces Continuous Attitude Surveys: Army Sep 2006–Jan 2007*, (nd), Q43; Royal Air Force, *Armed Forces Continuous Attitude Surveys: Royal Air Force 2006*, QG12; Royal Navy, *Armed Forces Continuous Attitude Surveys: Royal Navy 2006*, Q34; Adult Learning Inspectorate: *Better Training: Managing risks to the welfare of recruits in the British armed services: two years of progress* (Coventry, 2007), 33; Adult Learning Inspectorate: *Safer Training: Managing risks to the welfare of recruits in the British armed services* (Coventry, 2005), 27.

<sup>25</sup> For example, Adult Learning Inspectorate *Safer Training* (2005) p.43; Ministry of Defence *Armed Forces Continuous Attitude Surveys: Army 2005*.

<sup>26</sup> Adult Learning Inspectorate *Better Training* (2007) p.33.

<sup>27</sup> Ministry of Defence/Equal Opportunities Commission, *Quantitative & Qualitative Research into Sexual Harassment in the Armed Forces*, March 2006, p.22.

<sup>28</sup> Ministry of Defence *Recruit Trainee Survey Annual Report: January 2009–December 2009*, July 2010, para. 127.

<sup>29</sup> Defence Analytical Services and Advice (DASA), “Suicide and open verdict deaths in the UK regular armed forces 1984–2009”, 31 March 2010.

<sup>30</sup> M J Crawford et al., “Prevention of suicidal behaviour among Army personnel: a qualitative study” *JR Army Med Corps* 155(3): 203–207 (2009).

<sup>31</sup> *Ibid.*

about 18, and living 24/7 within the disciplined regime of an institution such as the Army is, itself, a significant factor indicative of risk [of self harm].”<sup>32</sup>

Young recruits are at greater risk of developing PTSD

33. In 2007 the British Journal of Psychiatry published a study into childhood adversity and its effect on the health of male British military personnel. The study examined why relatively few military personnel develop combat-related psychiatric injuries, despite the traumatic experiences they endure. The study concluded that pre-enlistment vulnerability resulting from childhood adversity was an important risk factor for subsequent ill health including PTSD and self-harming behaviour. Pre-enlistment vulnerability was identified as more common among “young single men from lower ranks in the Army with low educational attainment” including those who “join up to “escape” from adversity at home”.<sup>33</sup> This is the predominant profile of the youngest recruits.

Minimum service periods for young Army recruits are unfair

34. Recruits who join the Army aged under 18 have the right to leave after the first 28 days in training and before the end of the first six months. After the first six months, they have no right to leave until aged 22, regardless of how old they were when they joined. This means that recruits who sign up aged 16 must serve for two years longer than those who sign up aged 18 or older. There does not appear to be any principled or practical justification for this disparity.

35. Twenty years ago, the 1991 Select Committee on the Armed Forces Bill criticised this policy and, on the understanding that the Ministry of Defence “accepts that change is due”, recommended that the Ministry examine the terms of enlistment for under-18s and present proposals for change within 12 months.<sup>34</sup> No such proposals were presented. The 1996 Select Committee expressed concern that the terms of enlistment for under-18s were (still) inequitable and that the justifications given for this practice were unconvincing.<sup>35</sup> To date the Ministry of Defence has still not taken action to remedy this problem.

III. *Recruitment of under-18s is not necessary to meet the trained strength and results in high levels of “wastage”*

36. The Ministry of Defence has claimed that it is necessary to recruit under-18s in order to secure the necessary manpower and maintain current capabilities.<sup>36</sup> This argument does not address the requirement to ensure that the best interests of the child are a primary consideration in any policy concerning young people. Furthermore, there are many countries which do not practise conscription or recruit under-18s that have armed forces equivalent in size, or larger than, those of the UK (measured by ratio of military personnel to general population).<sup>37</sup> This demonstrates that recruitment of under-18s in the UK is a policy choice rather than a military necessity.

37. Although figures for under-18 recruitment have decreased in the past ten years, under-18s are still deliberately targeted for recruitment. In 2006, the Ministry of Defence stated that, despite the decreasing ratio of 16–18 year olds in the UK population, it would continue to focus recruitment strategies on them “to secure similar levels of recruitment from a smaller target population”.<sup>38</sup>

38. In contrast, the Ministry of Defence does not appear to have fully explored strategies to increase recruitment from other sectors of the population. For example, the percentage of female intake (of all ages) into the armed forces has fallen from 12% 10 years ago to just under 9% in 2009–10—less than half the number of under-18s.

39. Despite this dramatic and worsening gender imbalance the Ministry of Defence has stated that it “does not have any specific targets for recruiting women”.<sup>39</sup> This is inconsistent with the requirements of Section 149(3)(c) of the 2010 Equality Act, which requires public bodies, which include the armed forces, to “encourage persons who share a relevant protected characteristic [eg sex] to participate in public life or in any other activity in which participation by such persons is disproportionately low.”

40. Recruitment of under-18s results in high levels of “wastage” as they have a poor retention rate in training. In 2009, 4,675 16- and 17-year olds joined the armed forces but 1,485 left in the same year—equivalent to

<sup>32</sup> Blake, Nicholas QC, *The Deepcut Review*, 2006, p284.

<sup>33</sup> Amry C. Iversen et al, *Influence of childhood adversity on health among male UK military personnel*, The British Journal of Psychiatry 2007 191:506–511.

<sup>34</sup> Special Report from the Select Committee on the armed Forces Bill Session 1990–91, para 27.

<sup>35</sup> Special Report from the Select Committee on the armed Forces Bill Session 1995–96, paras 39, 41.

<sup>36</sup> Initial report submitted by the United Kingdom of Great Britain and Northern Ireland under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (UN Doc: CRC/C/OPAC/GBR/1) 2007; Special Report of the Select Committee on the Armed Forces Bill 2001, para 63.

<sup>37</sup> Within the European Union these include Hungary, Italy, Malta, Portugal, Romania, Slovenia and Spain.

<sup>38</sup> Ministry of Defence, *Recruitment and Retention in the Armed Forces*, Report by the Comptroller and Auditor General, HC 1633-I Session 2005–06, 3 November 2006, pp. 52–53.

<sup>39</sup> Ministry of Defence, *Recruitment and Retention in the Armed Forces*, Report by the Comptroller and Auditor General, HC 1633-I Session 2005–06, 3 November 2006, pp. 52–53.

32% of those joining.<sup>40</sup> Combined, more 16- and 17-year olds left the armed forces in 2009–10 than individuals from any other age group. The 2010 Recruit Trainee Survey found that at the end of both Phase One and Phase Two training recruits aged 16–17 were significantly more likely than recruits from other age groups to say they were leaving the Service and that training was not “what they expected”.<sup>41</sup> Resources are therefore wasted on recruiting and training candidates who quickly drop out due to immature and unrealistic expectations of, or unsuitability for, a career in the armed forces.

41. Discharge rates of young service personnel are consistently and significantly higher than discharge rates of older staff. Within this pattern, there is a spike of discharges for personnel aged 22, which is the earliest age at which a recruit aged 18 or below at enlistment can request a discharge. Discharges of personnel aged 22 accounted for 7.4% of all discharges in 2009. The only age group with a higher discharge rate was age 40 (7.7%), which is the age at which a full service contract on the Open Engagement (now-discontinued) ends. The average discharge rate across all other ages from 23 to 39 is 2.2%.

42. The disproportionately high percentage of armed forces personnel leaving the services at the age of 22 indicates one of two things. Either many unhappy young recruits are serving out their minimum term of service waiting to leave at the earliest opportunity, or many young recruits sign up with no intention of making a long term career in the armed forces. In the first case, the compulsory retention for up to six years of individuals who wish to leave is not in their best interests or beneficial to the general morale of their regiment. In the second case, expenditure on recruitment and training of large numbers of personnel who do not intend to make a long term commitment to the armed forces is a poor investment. In this regard it is worth considering that young people, who are still developing their interests and life plans, are generally more likely than adults to wish to change career.

43. In addition, whilst personnel who enlist at 16 and leave the Services at age 22 will have provided six years’ service, they will have been barred from deployment into hostilities for the first two years of their career. This makes them of less military value than an adult recruit who could have been deployed as soon as training ended. In this regard, recruiting only candidates aged 18 and above would increase current Infantry deployable strength alone by 3.6% with no financial cost to the Ministry of Defence.

44. The 2006 National Audit Office report into recruitment and retention in the armed forces similarly found that “retention measures represent better value for money than the steps taken to recruit and train replacement personnel ... [W]e calculated that the Department spent £74 million to retain 2,500 trained people compared to an estimated cost of £189 million to recruit and train the equivalent number of replacement personnel to the end of Phase 1 training. In reality, the true costs of achieving equivalent replacement personnel will be significantly greater since individuals that have left the trained strength will have received higher levels of training and investment in their careers than those that have been recruited to the basic standard of capability on which we have based our calculations. In addition, the level of experience possessed by departing personnel cannot be replaced easily or quickly.”<sup>42</sup>

45. The initial recruitment and training cost for a non-officer infantryman is £31,000.<sup>43</sup> Calculated at this minimum level, the expenditure on recruiting and training the 1,485 under-18 recruits who left the armed forces in 2010 is around £46 million. The minimum cost of basic training to replace the 1,370 armed forces personnel discharged in 2010 aged 22 would have been over £42 million. Note that these costs account for initial recruitment and training only and further training would be required to bring the new recruits up to the standard of those they were replacing.

46. When considering discharge rates of young recruits and personnel, it is also important to recall that the Report of the Task Force on the Military Covenant (September 2010) reported that the Early Service Leavers most likely to face difficulties (including homelessness or criminal activity) on returning to civilian life are those “who enter service with pre-existing problems, such as those from disadvantaged backgrounds, with a record of family unemployment and limited educational attainment”.<sup>44</sup> The Task Force highlighted that the present coincidence of “buoyant recruiting” and possible reductions in overall Service Personnel strength in the coming year(s) presented an opportunity to raise the minimum entry requirements for recruitment. Doing so, it stated, could result in “a shift in the profile of recruits [which could] help mitigate the problems sometimes encountered by those with lower levels of education at later stages of their careers and on transition out of service.”<sup>45</sup> The Coalition submits that raising the minimum recruitment age to 18 would facilitate this shift.

47. The Coalition believes that raising the recruitment age to 18 would lead to significant financial savings for the Ministry of Defence by decreasing wastage during training, reducing early outflow, increasing

<sup>40</sup> www.dasa.mod.uk.

<sup>41</sup> Ministry of Defence *Recruit Trainee Survey Annual Report: January 2009 to December 2009*, July 2010. Paras. 263, 294, 300, 533. Ofsted’s report to the Minister of State for the Armed Forces, *The quality of welfare and duty of care for recruits and trainees in the Armed Forces* (2000), found that at Deepcut barracks the drop-out rate for 17 and 18-year-olds was nearly double the average.

<sup>42</sup> National Audit Office / Ministry of Defence *Recruitment and Retention in the Armed Forces* Report by the Comptroller and Auditor General, HC 1633-I Session 2005–06, 3 November 2006, para. 18.

<sup>43</sup> Citation: HC Deb, 16 November 2010, c733W.

<sup>44</sup> Dandeker and others, *Improving the delivery of cross departmental support and services for veterans*, 2003, cited in *Report of the Task Force on the Military Covenant*, September 2010, p26.

<sup>45</sup> *Report of the Task Force on the Military Covenant*, September 2010, p.24.

deployable strength, and reducing the number of vulnerable recruits who require additional expenditure on welfare services (both during and post-service).

#### RECOMMENDATIONS

48. The Coalition recommends that the Committee implement the recommendations of previous Armed Forces Bill Select Committees, the Defence Select Committee, the Joint Committee on Human Rights, and the UN Committee on the Rights of the Child by amending the Armed Forces Bill to provide for:

- The phasing-in of a new minimum age of enlistment of 18 years; *and in the interim*;
- An extended discharge as of right period for all young recruits up until their 18th birthday; *and*
- Minimum service periods for Army recruits aged under 18 to be reduced to four years or less.

49. Alternatively, the Coalition recommends that the Committee call on the Ministry of Defence to undertake, as a matter of priority, a feasibility study into means of phasing out the recruitment of under-18s from all three Services as quickly as possible. The Committee should also call on the Ministry to immediately amend relevant Army, Navy and RAF regulations to:

- Replace the “unhappy juniors” provision with an extended discharge as of right period for all young recruits up until their 18th birthday;
- Reduce the minimum service period for Army recruits aged under 18 so their minimum period of service is equivalent to or more favourable than that of adult recruits (four years or less);
- Ensure that all under-18 recruits are trained and accommodated separately from adults, with particular attention given to their specific needs and vulnerabilities as young people;

*and*

- Issue instructions to all three Service heads to prioritize recruitment of under-represented sectors of the adult population and to prioritize recruitment of the eldest amongst all potential recruits aged 18 or below.

1 February 2011

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### Written evidence from the Defence Police Federation (DPF)

#### OVERVIEW

1. The Defence Police Federation (DPF) is keen to present this written submission to the Members of the Armed Forces Bill Committee and would of course be happy to provide further oral evidence should this be helpful.

2. The Ministry of Defence Police (MDP) is the MoD’s own dedicated civil Police Force of around 3,600 officers—all with constabulary powers—and some 300 civilian staff. It operates in five geographic Divisions, serving nearly 100 MoD establishments and units throughout the United Kingdom and is headquartered in Wethersfield in Essex. It also takes part in a number of overseas commitments, notably in Afghanistan, Georgia and Kosovo.

3. The MDP is a unique and specialised national civilian police service, not to be confused with the Royal Military Police. It is focused on the defence community, providing it with the same service as any of Britain’s local police forces, as well as armed and unarmed security at key defence sites and the protection of Britain’s nuclear deterrent and Critical National Infrastructure.

#### THE DEFENCE POLICE FEDERATION

4. The Defence Police Federation (DPF) is the staff association of the Ministry of Defence Police. It was founded in 1971 after the amalgamation of representative of the police forces for each branch of the Armed Forces, from which the Ministry of Defence police was formed.

5. This short briefing note sets out our views on the most relevant clauses of the Armed Forces Bill. We hope that you will find this information useful in informing your examination of the Bill.

#### CLAUSE 2: ARMED FORCES COVENANT REPORT

6. The DPF welcomes the provision for the Secretary of State for Defence to present an Armed Forces Covenant report to Parliament every year, which will provide information on the welfare of Armed Forces personnel, veterans and their dependents.

7. The Defence Community Police Officer and Divisional Support Groups, along with the Home Front initiative, serve to support the unwritten covenant between the state and the armed forces. MDP officers play an important role in helping the UK provide the long term duty of care to its service members. The general policing duties carried out by the MDP serve to bolster the foundation of the covenant. Any reduction or alteration in the role of the MDP will therefore have a direct impact on the covenant.

8. For example, domestic unrest and concern about the safety and wellbeing of family members is a major contributor to service personnel being drawn back from theatre. Evidence suggests that the mere presence of the MDP in married quarters and other locations serves to increase the confidence of service personnel as to the safety of their families.

9. Colchester Garrison is a clear example of the MDP's important role in this. After its closure, the Garrison police station was replaced by two unit beat officers working in conjunction with the local Home Office force. Although this is an incredibly proactive and capable unit, two officers cannot possibly replace the confidence and the work that was carried out by the Garrison Ministry of Defence Police station.

CLAUSE 3: PROVOST MARSHAL'S DUTY IN RELATION TO INDEPENDENCE OF INVESTIGATIONS / CLAUSE 5: PROVOST MARSHALS: APPOINTMENT

10. The DPF welcomes these clauses which are designed to ensure the effectiveness and independence of the Service police. However, we are concerned that any attempt by the Provosts Marshalls' departments to become more like a civilian police service, could undermine the Ministry of Defence's own police force, the MDP.

11. Where there is a necessity to investigate offences which cross over into the civilian arena, the MDP should be the force of choice for the MoD. The role of the MDP should therefore not be replicated through the Service Police.

CLAUSE 4: INSPECTION OF SERVICE POLICE INVESTIGATIONS

12. This clause specifies that the independence and effectiveness of Service Police investigations should be subject to inspection by Her Majesty's Inspector of Constabulary (who are already able to inspect and report on Home Office police forces). This is something which already occurs for the Royal Military Police, but to date these provisions have not been widened to cover the RAF or the Navy provost. As with the above clauses, this appears to be an attempt to bring the Service police closer towards the police services of the civilian side of UK law enforcement and duplication with MDP powers should be avoided.

CLAUSE 6: MINISTRY OF DEFENCE POLICE: PERFORMANCE REGULATIONS

13. The purpose of this clause is to bring performance guidelines for the MDP into line with those for Home Office Police Forces under the *Police Act 1996*. This will allow for poor performance or attendance within the MDP to be dealt with in much the same way as Home Office police officers. MDP officers will no longer be dealt with under the MoD's restoring efficiency procedures.

14. The DPF supports this position as it brings the MDP in line with our colleagues in the Home Office forces and also takes full consideration of the recommendations from the 2005 *Taylor Review of Police Disciplinary Arrangements*. In 2009, the MDP took on the conduct regulations which were included in the Taylor Review, but were unable to take on the performance regulations in at the same time; this clause is designed to rectify that.

CLAUSE 7: POWER OF JUDGE ADVOCATE TO AUTHORISE ENTRY AND SEARCH / CLAUSE 8: POWER TO MAKE PROVISION ABOUT ACCESS TO EXCLUDED MATERIAL ETC

15. The DPF has concerns about these clauses which are intended to expand the power of the Service police to apply for search warrants and to allow judge advocates to make production orders for any material held on civilian or service premises, in the course of an investigation by the Service Police.

16. Clause 7 & 8 seek to bring the Judge Advocates into line with the Magistrates Courts and Crown courts. The DPF would therefore ask that the Bill Committee seeks assurances that the Judge Advocates will come under the scrutiny of the HM Court Service in relation to issues such as complaints.

17. We welcome the proposed introduction of inspections by Her Majesty's Inspectorate of Constabulary (HIMC). However, if the service police are to operate in a public arena then they should also be under the scrutiny of Association of Chief Police Offices (ACPO) and the Independent Police Complaints Commission (IPCC). HIMC only has the ability to scrutinise the processes followed, and check that procedure has been complied with. In contrast, ACPO and the IPCC have more powers to examine the conduct of individual police officers, including whether they acted proportionately and with due politeness during searches.

18. If a member of the public wishes to make a complaint against a member of the provost service, then there needs to be a clear route for them to do so.

CLAUSE 9: UNFITNESS THROUGH ALCOHOL OR DRUGS / CLAUSE 10: EXCEEDING ALCOHOL LIMIT FOR PRESCRIBED SAFETY-CRITICAL DUTIES / CLAUSE 11: TESTING FOR ALCOHOL AND DRUGS ON SUSPICION OF OFFENCE

19. The DPF fully supports these clauses to introduce a bespoke military scheme for drugs and alcohols and associated testing. This is a system which is already in existence within the military and also within the police service in relation to safety critical roles.

CLAUSE 24: BYELAWS FOR SERVICE PURPOSES

20. This clause proposes to remove the requirement for consent from the Board of Trade if the Secretary of State wishes to make bylaws for military purposes which may adversely affect any public right of navigation, anchoring, grounding, fishing, bathing, walking, or recreation.

21. There is no requirement for the Secretary of State to consult with the MDP when making such bylaws. Given that MDP officers will be responsible for enforcing the bylaws, it would make sense for the MDP to be consulted in an advisory capacity when the laws are being drawn up.

2 February 2011

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**Written evidence from the General Assembly of Unitarian and Free Christian Churches**

1. I am writing on behalf of the General Assembly of Unitarian and Free Christian Churches to express our concerns regarding the recruitment into the Armed Forces of under 18 year olds. The General Assembly has a long-standing commitment to peace and disarmament along with a recognition of the rights of children and young people. We consider that the current position regarding the recruitment of 16 year olds into the armed forces should be reviewed.

2. We wish in particular to draw the attention of the Select Committee on the Armed Forces to the following:

3. Eighteen is currently the legal age of adult responsibility in the UK, yet the UK continues to recruit into the armed forces at 16. Britain is currently the only country in Europe to recruit 16 year olds into its regular armed forces. The UK Government has been active in pressing for an end to the recruitment and deployment of child soldiers abroad, particularly in conflict zones such as the Congo. While the UK uses an entirely professional army and does not deploy prior the age of 18, present recruitment practice nevertheless makes it harder to argue with consistency against the iniquity of the use of "child soldiers".

4. After an initial period of six months, UK 16 to 18 year old recruits "have no discharge as of right". After this period, they may only leave at the discretion of their commanding officer. These arrangements do not adequately ensure that all minors serving in the armed forces are doing so after a mature consideration that one of the armed forces is the right career for them and that the decision is made with an informed adult conscience.

5. The UN Convention on the Rights of the Child requires the UK government to have regard to the best interests of the Child but there is no independent oversight of the army in this regard. For the purposes of the Convention, any one under the age of 18 is considered as a child. If young people are to develop into mature and responsible adults it is vital that young people are able to make provisional decisions and to be able to learn from their mistakes. As long as enlistment takes place at the age of 16, young people should be given the opportunity of reconsidering a provisional decision to join the army and be allowed discharge as of right at all times up until their 18th birthday.

6. Article 2 of ILO Convention 29 on Forced Labour provides that each member of the International Labour Organisation which ratifies this Convention undertakes effective measures to secure the immediate and complete abolition of forced or compulsory labour. Where a young person is prevented from leaving the career army in peacetime, restricting the right to withdraw from a statutory obligation to work undermines a free employment relationship. This is particularly serious where 16-year old recruits may not have fully understood the nature or extent of their obligations on recruitment. Failure of recruiting officers to ensure informed consent could amount to young soldiers being indentured for an extended period of service against their will.

7. RECOMMENDATIONS

For these reasons and in this context we would ask the committee to amend the bill to provide as follows:

- (i) that the age of enlistment should be raised to 18.

Failing that:

- (ii) that provision should be made for the unqualified and unrestricted right of discharge for all recruits under the age of 18; and
- (iii) for there to be a requirement that those who have enlisted under the age of 18 are required to consent in writing that they wish to renew their enlistment at the age of 18, or to exercise their right to resign.

7 February 2011

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### Written evidence from the Religious Society of Friends (Quakers)

This memorandum summarises a long held concern of the Religious Society of Friends (Quakers) regarding the recruitment into the Armed Forces of under 18 year olds.<sup>46</sup> We wish in particular to draw the attention of the Select Committee on the Armed Forces to the following:

1. Eighteen is currently the legal age of adult responsibility in the UK, yet the UK continues to recruit into the armed forces at 16. Britain is now the only country in Europe to recruit 16 year olds into its regular armed forces. In 2009–10, over a quarter of infantry recruits were under the age of 18.<sup>47</sup> The MoD is currently proposing publishing these statistics in a form that would no longer disaggregate 16 to 18 year old recruits, as a distinct legal category from those between 18 and 19. If these proposals are accepted it will become harder to have an informed public debate about the recruitment of minors into the armed forces.<sup>48</sup> The UK Government has been active in addressing the issue of the recruitment and deployment of child soldiers abroad.<sup>49</sup> While the UK uses an entirely professional army and does not deploy prior the age of 18, present recruitment practice makes it harder to argue with consistency against the iniquity of the use of “child soldiers” abroad.

2. After an initial period of six months, UK 16 to 18 year old recruits “have no discharge as of right”. After this period, they may only leave at the discretion of their commanding officer.<sup>50</sup> These arrangements do not adequately ensure that all minors serving in the armed forces are doing so after a mature consideration that one of the armed forces is the right career for them and that the decision is made with an informed adult conscience.

3. Contracts are not ordinarily enforceable against minors, and yet in the case of 16 to 18 year old recruits, what is in essence a quasi-contract gives rise to a statutory obligation to work. Those who go absent without leave or otherwise breach military discipline, may be compulsorily detained.

4. Those joining the army under the age of 18, often from the poorest backgrounds, do not have the same right to change their course or career as young people learning other trades or professions. On average army recruits have less than one GCSE at Grade A to C. Fifty per cent come from a deprived background. About half have skills in reading or writing at or below the level of an 11 year old.<sup>51</sup> This requires particular vigilance in ensuring that there is informed consent for recruitment.

5. The Army Foundation College in Harrogate, North Yorkshire trains young people between 16 years and 17 years and five months, to become Junior Soldiers for the Infantry, Royal Armoured Corps, Royal Artillery and Royal Logistic Corps. This training regime is sometimes compared to apprenticeships, yet the army is unlike other modern apprenticeship in the nature of the obligations that are undertaken; the dangers that are faced; and in that in that breaches of army discipline may result in criminal sanctions. The cost of the training provided is sometimes presented as a reason for requiring soldiers to serve beyond this period. Yet the UK offers voluntary free education to all 16–18 year olds. By enlisting in the Army the under 16-year old is subject to a more restricted curriculum than in a civilian sixth form college or college of further education. A recruit has more limited options of changing courses.

#### CONVENTION ON THE RIGHTS OF THE CHILD

6. The UN Convention on the Rights of the Child requires the UK government to have regard to the best interests of the Child but there is no independent oversight of the army in this regard. For the purposes of the Convention, any one under the age of 18 is considered as a child. Present regulations regarding recruitment appear to subordinate the interests of the child to military effectiveness. Consideration of the best interests of the child would require that the entire period prior to their 18th birthday be considered educational in the broadest sense of the word. If young people are to develop into mature and responsible adults it is vital that they are able to make provisional decisions and to be able to learn from their mistakes.

#### UN COMMITTEE ON THE RIGHTS OF THE CHILD

7. Under the Army Terms of Service (Amendments etc) Regulations 2008<sup>52</sup>, young people are required to serve for a minimum of four years from their 18th birthday. Yet, in September 2008 a UN committee of experts (UN Committee on the Rights of the Child) when considering the report of the UK Government, under the optional protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict, (Geneva, 24 September 2008), welcomed the lifting of the rule requiring young people to serve for a

<sup>46</sup> See also Evidence 402 to Defence Committee, Duty of Care, 3rd Report of Session 2004–05 and Evidence 153 to Joint Committee on Human Rights, Children’s Rights, 25th Report of Session 2008–09. HL Paper 157 HC 318. Child Soldiers: Children Deprived of Parental Care, /Submission by Friends World Committee of Consultation to UN Committee on the Rights of the Child, Day of General Discussion of Children Deprived of Parental Care, July 2005.

<sup>47</sup> See [www.dasa.mod.uk](http://www.dasa.mod.uk) in the year 2009–10 4,675 under 18s were recruited into the armed forces.

<sup>48</sup> [Http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/ConsultationsandCommunications/PublicConsultations/ConsultationOnDasasAnnualManpowerNationalStatisticsPublications.htm](http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/ConsultationsandCommunications/PublicConsultations/ConsultationOnDasasAnnualManpowerNationalStatisticsPublications.htm)

<sup>49</sup> See for instance work of DFID in northern Uganda and Nepal in relation to former child soldiers.

<sup>50</sup> Army Terms of Service Regulations 2007 provides in Section 9 2) If the recruit had not attained the age of 18 years at the date of his enlistment, the notice referred to in paragraph (1) shall not have effect unless it is given after the recruit has completed 28 days’ service and before the expiration of the period of 6 months beginning on the date of his enlistment.

<sup>51</sup> Evidence 255 to Defence Committee, Duty of Care Enquiry, HC 63-II

<sup>52</sup> Entry into force 6 August 2008

minimum period of four years beyond their 18th birthday (paragraph 18). In fact, at the time of this consideration, the rule had already been re-introduced. Nearly three years later this rule remains in place.

#### PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

8. The Joint Committee on Human Rights in its Report into Children's Rights noted the comments of the UN Committee on the Rights of the Child (above) and the UN committee' extensive set of recommendations on compliance with the Optional Protocol. It recommended "that the UK adopt a plan of action for fully implementing the Optional Protocol, including these recommendations, in the UK, together with a clear timetable for doing so".<sup>53</sup> The UK Government has so far failed to implement the recommendations of Parliament's Joint Committee on Human Rights.

#### OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD

9. On signing the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), the UK entered an interpretive declaration that deployment of young people would not be precluded where, "the exclusion of children before deployment is not practicable or would undermine the operational effectiveness of the operation" The UK retained the right to send under- 18s into conflict where "there is genuine military need" or if it is "not practicable to withdraw such persons before deployment". This interpretive declaration is so broad as to frustrate the intention of the Convention.

#### ILO CONVENTION ON FORCED LABOUR

10. Article 2 of ILO Forced Labour Convention 1930 (C29) provides that each member of the International Labour Organisation which ratifies this Convention undertakes effective measures to secure the immediate and complete abolition of forced or compulsory labour. In the case of current regulations the statutory obligation to work resulting from a quasi- contract, after the right to give notice during the first six months, undermines a free-employment relationship and is therefore incompatible with the Convention. This is particularly serious where there may be doubts about the quality and genuineness of consent of 16-year old recruits who may not have fully understood the nature or extent of their obligations on recruitment. Failure of recruiting officers to ensure informed consent could amount to young soldiers being indentured for an extended period of service against their will.

#### EUROPEAN UNION LAW

11. Council Directive 94/33, in relation to the health and safety of young people at work aged under 18 years was implemented by means of *Health and Safety (Young Persons) Regulations 1997*. The Directive specifies that young people under the age of 18 should be protected "from any specific risks to their safety ... which are a consequence of their lack of experience". It is crucial that all ranks responsible for supervising a safe system of work are not only made fully aware of these requirements but of their responsibilities for implementing them.

#### RECOMMENDATIONS

12. For these reasons and in this context we would ask the committee to amend the bill to provide as follows:

- (i) that the age of enlistment should be raised to 18.

Failing that:

- ii) that provision should be made for the unqualified and unrestricted right of discharge for all recruits under the age of 18; and
- (iii) for there to be a requirement that those who have enlisted under the age of 18 are required to consent in writing that they wish to renew their enlistment at the age of 18, or to exercise their right to resign.

And in any case:

- (iv) that information held on the recruitment into the army should be collected, recorded and published in a form that makes clear how many under-18 year olds are (a) recruited and (b) retained each year.

7 February 2011

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<sup>53</sup> Paragraph 143 Children's Rights, HL Paper 157/ HC 318

### Written evidence from David Gee (InformedChoice.org.uk and BeforeYouSignUp.info)

The *Informed Choice* report, funded by the Joseph Rowntree Charitable Trust, concluded that elements of Armed Forces recruitment policy and practice put the rights of young people at unwarranted risk. I hope the committee's inquiry will raise such issues with the MoD and make recommendations accordingly.

#### RECRUITMENT OF MINORS

1. In the context of a growing international consensus that under-18s should not be recruited for military purposes, the UK is increasingly isolated in continuing to do so. This practice is also inconsistent with how the age of adult responsibility is recognised in law. It is inconsistent that minors are expected to accept the risks and legal obligations of enlistment from age 16, while the laws deems them not yet sufficiently mature to vote in a General Election, sign a legally binding contract, join the civil emergency services or buy cigarettes.

2. The UK is the only state in the European Union, Council of Europe and UN Permanent Five to recruit 16 year-olds into the armed forces and one of only 20 such states worldwide. Given that the UK fields Armed Forces of a similar size to most European states, it ought to be possible to do so without recruiting at this age.

3. The Joint Committee on Human Rights and the UN Committee on the Rights of the Child have called on the UK to raise the minimum recruitment age. The MoD has never evidenced its repeated claim that such a change would not be feasible.

4. It could be possible to phase out the recruitment of under-18s while continuing to meet the trained strength requirement, in a staged process; for example, the minimum recruitment age could be raised in six-monthly increments over a fixed period of years.

5. *Recommendation: Recruitment of under-18s is at odds with the legal age of responsibility and with international norms. Under-18s should not be expected to enter a legally binding agreement with such far-reaching obligations and risks as enlistment in the Armed Forces. This applies a fortiori to 16 year-olds. The MoD or an independent body should carry out a feasibility study into sustainably phasing out the recruitment of under-18s into the Armed Forces.*

#### TERMS AND CONDITIONS OF SERVICE

6. Once six months have passed after enlistment, a soldier enlisted on his or her 16<sup>th</sup> birthday has no legal right to leave the Army until his or her 22<sup>nd</sup> birthday. Terms of service for the RAF and Naval Service differ but entail similarly lengthy periods of service under legal obligation. By forcing unhappy personnel to remain in the Armed Forces against their will for a period of up to six years, the current terms of service offend the natural rights of the person and risk undermining operational effectiveness.

7. Over-18s in the army must serve 3¾ years once their period for Discharge as of Right has elapsed, whereas under-18s must serve up to 5½ years, such that enlistment imposes more onerous legal obligations on minors than it does on adults. The MoD argues that this is necessary in order to assure four years' deployable service from age 18, but the policy is unfair and calls into question the department's own rationale for recruiting under-18s.

8. The "unhappy minors" provision gives Commanding Officers the discretion to discharge under-18s if they so request and if the CO deems them to be "genuinely unhappy". This provision is not published in recruitment materials for recruits or their parents. The MoD argues that almost all requests are granted, in which case it should be recognised in law as a right of discharge. However, as of 1 December 2010, five under-18s were detained in the Military Corrective Training Centre, Colchester for Absence Without Leave.<sup>54</sup> A sentence of detention for AWOL is normally reserved for a serious problem of prolonged or persistent absence, which strongly suggests that these under-18s, and possibly many others, are not being allowed to leave or are not aware that they can ask permission to do so.

9. *Recommendation: Under-18s should not be without the legal right to leave the Armed Forces. Given the ambiguous situation of dissatisfied under-18s in the Armed Forces, the MoD should make the right of discharge for this age group a legal right. Given that under-18s are currently in detention for AWOL, the MoD should also evidence its claim that the "unhappy minors" provision is currently an adequate safeguard for under-18s who are dissatisfied.*

10. *Recommendation: The terms of service should be clear, consistent, fair, and supported with a clear rationale; they are currently opaque, inconsistent, unduly onerous and lack a well-supported rationale. The MoD should harmonise and simplify the terms of service across the Armed Forces. The legal obligations of under-18 recruits should not be more onerous than those of adults.*

#### PARENTAL CONSENT

11. Parental/guardian consent is required for under-18s to apply for, and later enlist in, the Armed Forces. However, recruiting staff are not required to contact parents by phone or in person to ensure that they and their child fully understand the complex and far-reaching legal obligations of a forces career. The army literature

<sup>54</sup> Information obtained under the Freedom of Information Act, Ministry of Defence, 31 January 2011.

offered to parents is designed to persuade them that their child will be happy in the forces, rather than to brief them as fully as possible, alongside the potential benefits, on the risks, difficulties of legal obligations of enlistment. The application and enlistment consent forms are normally signed at home, away from the recruitment office. A senior recruiter told me in 2007 that most army recruits' parents never meet face-to-face with recruiters before their child enlists.<sup>55</sup>

*12. Recommendation: While recruitment of under-18s continues, potential recruits' parents/guardians should be as fully aware as possible of the commitment their child is making and of its potential consequences. The MoD should require recruiters for all branches of the Armed Forces to attempt to make personal contact with parents or legal guardians of applicants under 18 years of age; records of successful contact should be kept, with targets set accordingly.*

February 2011

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### Written evidence from the Archbishops' Council of the Church of England

1. The Church of England welcomes the opportunity to respond to the House of Commons Armed Forces Bill Committee's inquiry into the provisions of the Armed Forces Bill. The Mission and Public Affairs Council of the Church of England is the body responsible for overseeing research and comment on social and political issues on behalf of the Church. The Council comprises a representative group of bishops, clergy and lay people with interest and expertise in the relevant areas, and reports to the General Synod through the Archbishops' Council.

#### SUMMARY

2. Of the eight groupings of clauses set out in the Bill, the focus of this submission is on Clause 2, on those provisions that relate to the Military Covenant. The submission draws on our own theological understanding of what "covenant" entails as well as the insights on welfare matters provided by chaplains that have served and are serving in the armed forces. The insights of many church based voluntary services that provide pastoral and welfare support to veterans and their family has also informed this submission.

3. The Coalition Government's commitment to rebuilding the Military Covenant is clearly reflected in this Bill and we congratulate the Coalition Government for taking this step to repair the Military Covenant.

4. We believe, however, that a legitimate and convincing case can be made for ensuring that the annual report to Parliament on the health of the military covenant is entrusted to an independent reviewer of armed service welfare rather than left to the discretion of the Secretary of State for Defence.

5. The Lord Bishop of Wakefield touched on these matters in the recent debate that he sponsored in the House of Lords last month.<sup>56</sup> This submission expands on these comments and makes practical suggestions as to how this recommendation might be included within the face of this Bill.

#### CLAUSE 2—WORKING ASSUMPTIONS

6. We agree with the assumption underpinning the Bill's understanding of the military covenant, namely that the covenant is fundamentally a moral rather than legal contract involving the government, the nation and the armed forces. We are therefore encouraged that the Bill does not propose a formal legal contract or attempts to define in law the exact nature of the relationships underpinning the Military Covenant. That we believe is best done by the writing of a new Tri-Service Covenant. The living out of any Covenant should remain dependent on the commitment and trust between parties rather than on a more legalistic and prescriptive contract in which outcomes and behaviour are predetermined.

#### CLAUSE 2—WELFARE PROVISIONS

7. It follows from this that we agree that the Bill's provisions should not explicitly state what welfare provisions Service personnel, their dependants, or veterans should be entitled to as part of any Military Covenant. We would encourage the Coalition Government to resist any steps that might seek to set in law any minimum standards of care.

#### CLAUSE 2—REVIEW MECHANISMS

8. Since the moral contract underpinning the Military Covenant constitutes a reciprocal agreement with expectations and obligations on both sides, we agree that a review mechanism needs to be provided by law to ensure that the underlying trust and commitments that binds parties together is monitored and maintained. We do not however believe that the Bill's provisions stipulating that the Secretary of State for Defence present an Armed Forces Covenant Report to Parliament every year are adequate.

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<sup>55</sup> Senior recruiter, personal communication, 2007.

<sup>56</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110127-0002.htm#11012761000712>.

9. Any review undertaken should be done so independently of the Ministry of Defence and other government departments. To this end, we would suggest that Bill should make provision for the Secretary of State to appoint a Reviewer of Armed Forces. The Reviewer of Armed Forces Welfare could monitor and report on the same provision of welfare services currently listed in Clause 2 and make suitable recommendations accordingly.

10. We believe that the Reviewer should also be able to consider other issues as s/he sees fit. This would be consistent with Clause 2 paragraph 2b of the existing Bill. The only limitation on such a provision would be if the Secretary of State for Defence issued an order preventing the Reviewer from undertaking any such review on grounds that it would put at risk national security or operational requirement and efficiency.

11. We suggest that the cost of this post should be met by the Ministry of Defence. To this end, the Secretary of State for Defence should, before the beginning of each financial year, specify a maximum sum which the Reviewer of Armed Forces Welfare may spend on functions for that year. The proposed Reviewer of Armed Forces Welfare should hold and vacate office in accordance with terms of appointment (which may include provision about retirement, resignation or dismissal).

12. We hold that the any such Reviewer of Armed Forces Welfare should report in writing to the Secretary of State every year on progress being made in meeting the welfare needs of the Armed Forces, but that s/he should produce a full welfare audit once every four calendar years. The Secretary of State for Defence should be obliged to lay before Parliament a copy of any report received from the Reviewer. A copy may of course omit material if the Secretary of State for Defence thinks that its publication is undesirable for reasons of national security, may effect operational efficiency, or might jeopardise an individual's safety.

13. We believe that these proposals would be consistent with the spirit of the Government's own desire to be held accountable and to ensure that it and others are honoring the covenant.

February 2011

### Written evidence from the Ministry of Defence

#### THE PROVISION OF SECURITY AT DEFENCE INSTALLATIONS AND BASES IN THE UNITED KINGDOM

1. This memorandum addresses the division of functions and responsibilities between different bodies in relation to the policing and guarding of MoD installations and bases in the United Kingdom.

#### 2. MoD POLICE AND GUARDING AGENCY: BASIC STRUCTURE AND ROLE

2.1 This is an agency of the MoD. It comprises the Ministry of Defence Police ("MDP") and the Ministry of Defence Guard Service ("MGS"). They are both under the control of the Chief Constable of the MDP. A key aspect of both bodies is that they are civilian. The importance of this is explained below in relation to their roles.

2.2 The use of the MDP is necessary where:

- the policing and guarding role may bring them into regular contact with civilians; and
- in particular, where it may be necessary to use police powers in relation to civilians.

The MDP are trained so as to be able to provide an armed response in a civilian environment.

2.3 This reflects the fact that the MDP have normal ("constabulary") police powers, exercisable in relation to anyone within the United Kingdom. The Service police forces have similar powers but, by contrast, their exercise of those powers is essentially limited to members of the armed forces.

2.4 The Home Office Police Forces are limited geographically in their areas of operation, whereas the MDP can act anywhere in the United Kingdom on defence land and in relation what may broadly be described as defence property and personnel [*footnote*: section 2 of the Ministry of Defence Police Act 1987].

2.5 Accordingly, the MDP's main role can be described as dealing throughout the United Kingdom with the main crime and security risks faced by the MoD, which are:

- terrorist attack and the threat of it;
- disruption or harm caused by protestors;
- unauthorised intrusion on the Defence Estate; and
- major theft and fraud in the defence area.

They accordingly provide armed guarding especially at what are broadly civilian sites, including MoD Main Building, and defence nuclear sites. Their civilian powers also enable them to provide community policing for civilians living on some bases in the United Kingdom. The current complement is 3,600 police officers.

2.6 The MGS (currently 4,000 staff) provide unarmed security duties which do not require police powers, especially at broadly civilian sites. Their duties include reception and admissions, monitoring CCTV and internal patrolling. Where cost-effective at particular sites, staff of private security companies are sometimes used instead (currently about 400 commercial security staff).

### 3. THE SERVICE POLICE FORCES (“SERVICE POLICE”) AND THE MILITARY PROVOST GUARD SERVICE (“MPGS”)

3.1 The Service Police and the MPGS are composed of members of the armed forces. Within the United Kingdom they have no powers in relation to civilians. Each of the Services has a force of Service Police, headed by a Provost Marshal. Both the Service Police and the MPGS deploy on operations abroad (current complements: Royal Military Police 1800, Royal Air Force Police 1300, Royal Navy Police 300).

3.2 The role of the Service Police is essentially one of policing members of the armed forces. This includes policing off-base, and in some cases this necessitates joint policing with a civilian force. Their powers derive principally from the Armed Forces Act 2006 and the application to them of provisions of the Police and Criminal Evidence Act 1984.

3.3 The MPGS is under the control of the Provost Marshal (Army), who is also the head of the Royal Military Police. They provide armed security, broadly speaking, on those sites with less of a civilian presence. If they need to deal with civilians, they may need support from the local Home Office police or the MDP. The current complement of the MPGS is 2,900.

### 4. DIVISION BETWEEN CIVIL AND MILITARY JURISDICTION IN THE UNITED KINGDOM

4.1 Both civilian and Service police forces have jurisdiction over members of the armed forces in the United Kingdom. The broad principle applied to the choice of jurisdiction is that the Service Police will deal with offences with a purely service context. The civilian police will deal with cases in which there is a civilian context (eg the victim or co-accused are civilian). In accordance with constitutional principle, the civilian authorities have the ultimate power to decide the appropriate jurisdiction. The restriction on Service jurisdiction (excluding from that jurisdiction cases within the United Kingdom of murder, manslaughter, rape and certain other offences) was repealed by the Armed Forces Act 2006.

8 February 2011

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## **Written evidence from Dr Susan Atkins, Service Complaints Commissioner for the Armed Forces**

### 1. EXECUTIVE SUMMARY

1.1 I have found the Service Complaints system, as laid down in and under the Armed Forces Act 2006, to be based on sound principles but over engineered and complex. Measures which are designed to protect the special status of service personnel are having the opposite because of the delay they engender. Delay is designed into the system, it is endemic and the main cause of unfairness.

1.2 The role of the Service Complaints Commissioner (SCC) appears to have worked well in two respects, improving access to vulnerable service personnel and their families and bringing about improvements to the operation, culture and supporting infrastructure of the system. However, the SCC has been powerless to ensure that individual cases are dealt with properly, within a reasonable time and fairly. The Commissioner’s powers need to be strengthened so that she can investigate potential defects and make recommendations. Putting these powers on a statutory footing would be helpful.

1.3 A gap in the Armed Forces Act 2006 needs to be closed to prevent complaints by former service personnel being rejected unfairly.

1.4 Provisions in the Armed Forces Bill to enable Service Complaints Panels to sit with all independent members needs to be changed so that the Defence Council can delegate the decision as to whether an individual case requires such a panel, to an SCP with an independent member or to some other independent person.

1.5 The areas of Service life which are mentioned in the Bill for report as part of the Armed Forces covenant may be the subject of a service complaint but often only after a specialist complaints process has been exhausted. The contribution of the SCC to the Armed Forces covenant is not currently recognised. That contribution could be recognised by strengthening the SCC’s powers under the Armed Forces Act 2006 to make reports to Parliament

### 2. THE SERVICE COMPLAINTS SYSTEM

2.1 As the first Service Complaints Commissioner, I have found the Service Complaints system, as laid down in and under the Armed Forces Act 2006, to be based on sound principles but over engineered and complex. Measures which are designed to protect the special status of service personnel are having the opposite because of the delay they engender. Delay is designed in the system, it is endemic and the main cause of unfairness. Tackling delay would also improve the efficiency and effectiveness of the system.

2.2 My third Annual Report will contain radical proposals to simplify the system which will require a strengthened system of independent external oversight.

### 3. SCC'S ROLE AND POWERS

3.1 The role of the Service Complaints Commissioner appears to have worked well in two respects. The SCC does appear to be used as a route to redress for vulnerable personnel and those with genuine grievances who would otherwise have had no confidence to make a service complaint without her oversight. The SCC has also brought about significant improvements in the implementation of the Service Complaints system by use of Annual Reports to Ministers and Parliament.

3.2 However the SCC's powers under the Act are deficient. Although the Act imposes a duty on the chain of command to keep the Commissioner informed where she refers an allegation of any sort of improper behaviour, she has no power to correct a defect in process or prevent delay. Put simply she cannot ensure that service personnel are treated properly. The Commissioner's powers need to be strengthened so that she can investigate potential defects and make recommendations. Putting these powers on a statutory footing would be helpful.

3.3 This should be achieved by giving the SCC power to intervene where she believes a service complaint is not being dealt with properly or where it is not being dealt with expeditiously and by giving her power to make recommendations. The duty on the chain of command to keep her informed where she takes oversight should be extended. There should be a duty on the chain of command, up to and including the Defence Council, to respond to the SCC's recommendations on an individual case, giving reasons if they reject the recommendations. The SCC would, by virtue of s.339 of the Armed Forces Act 2006 then include any exercise of these powers and any service Response in her Annual Reports to Ministers and Parliament.

3.4 I will provide detailed evidence in my third Annual report to Ministers and Parliament of the deficiency in the SCC's powers and in levels of resources. I will also be making recommendations to simplify the service complaints system. Currently, even if the minimum time limits were met (and the Services have set targets that are twice and four times the minimum for simple and more complex cases respectively), the service complaints system takes over twice as long as the counterpart workplace grievance system that exists for MOD civil servants.

3.5 Any simplification of the service complaints system needs to be buttressed by improved external oversight. The SCC's Annual report will consider four models to achieve the outcome highlighted in bold above:

- (1) Strengthening the existing oversight model with powers to make recommendations on individual cases.
- (2) Strengthening the existing model with powers to supervise cases.
- (3) Strengthening the existing model with powers to undertake independent investigation.
- (4) Moving to an Armed Forces Ombudsman.

3.6 It is to be noted in relation to model three, that s 335(7) of the 2006 Act may give the Defence Council power to authorise the SCC (or her staff) to investigate a particular complaint or a category of complaint on their behalf. This may however confuse the lines of accountability.

3.7 Models one and four retain the primary responsibility with the chain of command to investigate and decide grievances from service personnel. In both these models, the role of the external oversight body is to hold the Services to account. Only the Armed Forces Ombudsman would have power to review a case once it has been completed. The Ombudsman would also need to retain the power to undertake a review, even if the internal mechanisms had not been completed, because of the link between delay and injustice; and to prevent the deliberate use of delay to usurp individuals' rights. The Ombudsman model also provides a more efficient and simpler way of protecting service personnel in the exercise of their rights in relation to issues for which there are special complaints system, such as housing, education, pay, and medical treatment. These specialist systems have to be exhausted before a service complaint can be made. The Ombudsman might also cover areas, such as pensions, which are currently outside the service complaints systems. This should save resources and increase the value of external oversight in an efficient and effective way.

### 4. VETERANS

4.1 Another gap in the current Service complaints system under the Armed Forces Act 2006 relates to former service personnel. A Service complaint can be made by former service personnel but must be about a wrong that was done to them in their service life and must usually be made within three months of the date of the incident. In a number of cases, particularly where there is an allegation of serious bullying or harassment, service personnel feel inhibited to make a complaint when they are still within the Service but seek to do so as soon as they leave. Until the Armed Forces Act 2006, the mechanism for appealing a refusal to accept a service complaint—whether for reasons of time or otherwise—was to appeal up the chain of command. Under the 2006 Act, the mechanism is now for the complainant to make a new complaint about the refusal to accept the original complaint. The 2006 Act recognises the importance of this new complaint, requiring there to be an independent member on any SCP that consider the complaint against refusal, where the refusal follows an SCC referral.

4.2 However if the refusal is made after the service person has left the Service there can be no new complaint. The wrong—ie the refusal to accept the complaint—has not occurred during the individual's service life. Whilst

there may be many cases where such a refusal is reasonable, this is not always or necessarily the case. The SCC currently has a role as a gateway to the service complaints system. An efficient and fair solution would be to make the SCC the final arbiter of whether it was just and equitable to accept a complaint out of time. The SCC would then automatically refer all such complaints made by Service personnel out of time to the Service and only review those where a refusal has been made. Her decision would be final.

4.3 Closing this gap and making such a change to the SCC's powers would require legislative provision.

## 5. SERVICE COMPLAINTS PANELS

5.1 Although there have not been many SCPs over the last three years, the data provided by the Services indicates that those with independent members, like Service Boards, make a wider range of decisions than those without.

5.2 The Bill makes provisions which would enable SCPs to have more than one independent member (as at present in certain cases), for the independent members to undertake certain functions—for example to chair the Panel—and indeed to be constituted entirely of independent members. It would also enable any SCP held to consider a case involving the exercise of police powers to include at least two independent members, one of whom would have expertise of professional standards in policing. The Bill also enables Ministers to decide what categories they believe it would be right, in advance of any certainty about the exact scope of Article 6 civil rights, for there to be fully independent panels.

5.3 Any recommendations I make in relation to SCPs in my next Annual Report would appear to be covered by these provisions, with two exceptions.

5.4 First, the provision of Clause 20 repeats the provision in the 2006 Act in relation to the delegation of the power of the Defence Council to decide if a case falls into the category which requires an independent member. In practice, the decision as to whether an independent member is needed is taken within the relevant service and the civil servants make arrangements for one to be available. However the decision to be made—ie if the complaint is about prescribed behaviour or other category, is of a very different nature to the decision which will be required under the situation for which Clause 20 makes provision, at least until there are also categories for cases requiring fully independent panels.

5.5 For a case being considered under Clause 20, decision will need to be taken as to whether this is a case where civil rights are engaged (this may not of itself be easy); if the matter involves the special relationship between a commander and his or her people ie involves a military or operational judgement; and even if it does, if the case turns on disputes of fact. These are not questions that should be delegated to individuals within the Service. Fairness requires that these are decisions that need to be taken with an independent external contribution. Otherwise the right under Art 6 ECHR to an independent and impartial tribunal could be confounded by the Service acting as gatekeeper to such a tribunal.

5.6 Any such external independent involvement would require statutory provision. For an independent member to be included in an SCP, if that were the most effective way for such a “pre-hearing” assessment to be made, Clause 20 needs amending.

5.7 The second exception is the removal of the requirement that at least one member of an SCP should be an officer of at least one star rank (Brigadier and equivalent). This appears to be necessary to enable fully independent SCPs to be held. However, it runs the risk that SCPs with only one or no independent members could be made up on junior personnel. The SCC's experience is that there is a correlation between seniority and wisdom and that the requirement for at least one senior officer where the Panel is not fully independent should remain. Consideration should be given as to whether Clause 20 needs to be amended accordingly.

### *Armed Forces Covenant*

6.1 The Task Force on the Military Covenant defined it as having three elements:

- The duty owed by the government to service personnel;
- The duty owed by the national service personnel; and
- The duty owed by the chain of command to service personnel.

6.2 Clause 2 of the Bill, by the examples given of the areas to be included in the Annual Report, focuses largely on the first element. The work of the SCC however plays an important part in holding the Services to account for the third and reporting to Parliament on this aspect. The oversight of the SCC of individual cases, plus visits and research, enables the SCC to have unique qualitative and quantitative information on the exercise in practice, good and bad, of the military covenant by the Chain of command. It is for this reason that in some other jurisdictions, Service Complaints Commissioners and Defence Ombudsmen have powers or duties to report on the welfare of service personnel.

6.3 The contribution of the SCC to the military covenant has not been recognised. I was not consulted on that provision of the Bill and am not a member of the External Reference Group. This is largely made up of representatives of other government departments—ie external to the MOD, rather than external independent



members with special knowledge of service personnel and their families. Yet it could be argued that the SCC has unparalleled insight into how service personnel are treated.

6.4 Under s.339 of the 2006 Act the SCC has a duty to report to Ministers and Parliament annually on the exercise of her referral functions and the working of the Service complaints system and any other matter that the SCC believes is appropriate. Ministers may ask the SCC to provide a special report on any aspect of her work within these parameters, but not, it would appear on welfare issues more widely. It is unclear as to the exact scope of the SC's powers to provide reports, say on matters such as housing, medical treatment or other issues that affect service personnel. A clarification in the Bill that it is open to Ministers to ask the SCC to report on a particular area or areas of concern, and that any such report should be laid before Parliament, may be helpful. If it was felt helpful for the Commissioner to prepare any such report, of her own volition or in response say to the House of Commons Defence Committee, the provisions of s.339 may need to be amended. There would also of course be resource implications.

## 7. ACCOUNTABILITY

7.1 As a public appointment, the appointment of the SCC is subject to Parliamentary Scrutiny. The House of Commons Defence Select Committee asked the SCC to appear before it after publication of her first Annual report. There was also a debate in the House of Commons on that report. The contribution of the SCC to the Armed Forces Covenant could be recognised by strengthening the accountability relationship between the SCC and Parliament.

*11 February 2011*

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### Written evidence from the Judge Advocate General

#### INTRODUCTION

I set out below my written evidence to the Armed Forces Bill Select Committee. I cannot comment on any pending cases in the Court Martial cases which are sub judice, and I must be cautious about commenting on legal issues on which I may subsequently have to give judicial rulings. My role as the Judge Advocate General includes conducting trials, and specifying the judges who conduct trials, in the Service Justice System (SJS), but I also have the function under Letters Patent of maintaining an oversight of the system generally. Being independent of the executive, I am in a good position to comment on the state of the system and the merits of proposed changes to it.

#### THE 2006 ACT

1. Before commenting on the 2011 Bill I would like to report on the benefits of the Armed Forces Act 2006. The new single system of Service law introduced by the 2006 Act is robust and is working well. The success of the Court Martial as a standing court, and of aligning the three Services together by creating joint authorities for prosecution, for court administration, and judiciary is self-evident. The SJS is a good system which is worth preserving and is essentially ECHR compliant. The MOD is to be congratulated for the provision of four new modern and well-appointed court centres in Colchester, Bulford, Catterick and Sennelager and I would like to pay tribute to the men and women of the Military Court Service who man these and other court centres and who are largely responsible for the efficiency of the Service Justice System.

#### REASONS FOR THE SERVICE JUSTICE SYSTEM

2. I invite this select committee to accept and publicly re-affirm the justification for a separate system which was approved of by the select committee on the 2006 Bill<sup>57</sup>. That is, there are cogent reasons for maintaining a unique system of Service justice, separate and distinct from the civilian system, namely:

- to support operational effectiveness and morale
- to maintain discipline which is an essential element of command
- to reflect the special and unique nature of the Armed Forces, in which sailors, soldiers and airmen are required to use lethal force to support Government policy, to risk their personal safety, and to be prepared to lay down their lives for their country, and
- to extend the law of England and Wales to personnel serving overseas, in every part of the world where our forces operate or train, beyond the jurisdiction of the civilian courts.

#### THIS BILL

3. The 2011 Bill is most welcome: it moves the modernisation of the SJS forward to the next stage, and accordingly has my strong support. In particular I welcome clause 27 in the Bill, and I am most grateful to the MOD for agreeing to include it. At the moment there remains some spare capacity in both courtrooms and judicial time, with very limited scope for diverting the resources elsewhere. This will be improved by Clause 27 which will introduce flexibility into judicial deployment. I have already agreed with the Senior Presiding

<sup>57</sup> House of Commons Select Committee on the Armed Forces Bill, Special Report of Session 2005–06 at paragraph 14.

Judge a protocol relating to the practicalities of deployment across the jurisdictions. It is a welcome next step in the ongoing programme of aligning the Service judiciary with the mainstream.

#### MILITARY COVENANT

4. I welcome the reference to the Military Covenant in Clause 2, although it is for others to determine whether that clause goes far enough to enshrine the Military Covenant in law. The third bullet point above reflects the part of the Military Covenant which affects the Service Justice System. There is an implicit understanding that British Service personnel are always subject to the law, but are protected from foreign judicial processes; and that they can be prosecuted for disciplinary issues which would not be considered criminal in the civilian world, but are entitled to be judged by specialist Service courts designed to understand and deal with their unique concerns. It is worth repeating that British forces operate under the law even when our enemies do not. In uncertain times the confidence of sailors, soldiers and airmen is best secured by the knowledge that they will be treated decently and fairly under the law by people who understand their unique problems.

#### CIVILIAN COURTS

5. I have mentioned the Military Covenant because I believe it is relevant to the way in which many Service personnel accused of crimes are dealt with in the civilian courts. Each year over three thousand Service personnel are dealt with by the civilian courts. Those courts do not have the specialist knowledge necessary to deal properly with Service personnel, nor do they have all of the powers of punishment available to the Court Martial. Service courts benefit from laws defining special offences, special police and prosecutors, special courtrooms and court staff, special juries (Service boards), special sentencing powers (such as loss of rank, and Service detention), and of course specially trained judges.

6. The civilian courts (the Crown Court and the Magistrates' Courts) are not well-placed to deal with this highly exceptional user group. Often they lack power to pass appropriate sentences. Sometimes they fail to understand the consequences of service in an active theatre of operations, or the effects of a sentence on future deployability; but on the other hand sometimes defendants pull the wool over their eyes about military matters to procure a lenient sentence. There is no Service input whatever into the sentencing process, which is bound by Sentencing Guidelines which (unlike those in the SJS) do not take Service considerations into account. It may be argued that this detracts from the Military Covenant in practice.

7. There is sufficient capacity in the SJS to enable the transfer of a number of cases from civilian jurisdiction. There is certainly spare capacity at the Military Corrective Training Centre to detain many of those sentenced to imprisonment by the civilian courts.

#### LACK OF FLEXIBILITY

8. The CPS and the SPA have recently updated and much improved the protocol relating to the prosecution of Service personnel. Unfortunately, however, there is no flexibility for cases involving Service defendants to be transferred between courts at any stage of the process, and both Service courts and civilian courts are entirely powerless. The situation is frustrating for all concerned, and the current Bill sadly does nothing to address the problem. Ideally, and as part of the Military Covenant, primary jurisdiction in relation to Service personnel should be transferred from the civilian system to the SJS. It would be specious to argue that it is wrong in principle to expect civilian victims of crime to travel to military courts, because they do so frequently in any event.

9. In balancing the obligations of the Military Covenant with victims' rights and the desirability of local delivery of justice, there may be many cases which would be better dealt with in the Court Martial rather than in a civilian court. Even though an alleged assault may take place far from a military base while a service person is on leave, there will often be military factors which make it preferable for the case to be treated differently from one involving a civilian defendant (for example PTSD following return from operations).

#### PROPOSALS

10. Two possible measures which would make better use of resources and would reinforce the unique nature of the Armed Forces would be:

- (a) a clause to enable Crown Courts and Magistrates' Courts to remit Service personnel to the Court Martial for sentence (I believe this would have support from the MOD and the senior judiciary); and
- (b) a clause giving statutory force to special sentencing guidelines issued by the Judge Advocate General for Service courts when exercising their discretion under AFA06 s259(2) to depart from civilian sentencing guidelines.

I invite the committee to consider whether, even at this late stage, work may be undertaken to include two new clauses in the Bill.

*The Judge Advocate General*  
*His Honour Judge Jeff Blackett*

11 February 2011

### Written evidence from Daniels Trust

1. Daniels Trust was formed in 2005 in responses to requests for help from parents of soldiers who were experiencing problems in the Army. From that we endeavour to support the parents and family and by liaising with the Adjutant Generals office to resolve the difficulties that have arisen.

2. Members from the Trust in the past have given evidence at “Blakes Review” and previous Defence Select Committees “Duty of Care 2005” and the last “Armed Forces Bill in 2006” from which various recommendations were made. We were also founder members of Deepcut & Beyond and the All Party Group on Army Deaths in the last government.

3. One of the recommendations was the appointment and setting up of the Service Complaints Commissioner.

4. Daniels Trust receives calls from both serving soldiers and veterans. The calls range from being AWOL, bullying, dismissal from the army, pensions or how some veterans have never got their lives back on track since leaving the army.

5. We have met with the Commissioner and speak to her or her office on regular occasions. If we get a complaint of bullying, discrimination, harassment from a soldier and we have had similar complaints in the past from the same regiments we will call the Commissioner this helps her identify any hot spots that may occur if she has had similar complaints, we also recommend that the soldier or their family lodge a formal complaint through the correct processes ie chain of command however, in some cases this is not possible, as we have found requests through chain of command sometimes get stopped before it reaches the correct level.

6. The setting up of the Commissioner has been for the better in ensuring the effective handling and fairness of a complaint. However, we do not feel her remit goes far enough and that the time it takes for a complaint to be dealt with can take a considerable time even though it has now been condensed to three levels instead of five. Some of the cases we have spoken to Dr Atkins about we have dealt with our selves as we can get them sorted a lot quicker but have also asked the soldier or their family to submit a complaint at the end of our process.

We feel that:

7. Dr Atkins should be able to make effective recommendations in some cases where complaints are being picked up by the Service as being significantly wrong.

8. Rather than having separate complaints system for welfare issues it would simplify the systems if there were only one oversight.

9. Daniels Trust receive complaints from veterans who have suffered whilst in the Armed Forces and that it has affected their lives when they have come out. There is nowhere for them to lodge a complaint as it is not within the three month time frame to enable them to do so. The Service should be able to look at these complaints.

10. The recommendation of a Service Complaints Commissioner was born out of the Blake inquiry and the Duty of Care which looked at the deaths of Deepcut soldiers. These deaths were non operational as a long with many others Catterick for instance and Overseas deaths in non operational countries. So you would have thought that this would be a conduit for those families to have their grievances heard. Ironically the parents of these soldiers and who gave evidence are still failed by the present system.

11. In 2009 Daniels Trust went on a visit to Catterick with Kevan Jones MP and General Rollo the then Adjutant General (AG) it was at this visit that the Trust was given a direct telephone number to the AGs office for any cases of bullying or where soldiers were AWOL and where the Trust was finding it difficult to speak to the commanding officers. This has worked extremely well over the past few years in getting soldiers either back to their regiments to sort out the problems or in obtaining transfers from one regiment to another.

12. Since November we have passed nine cases to the new Harassment and Bullying Helpline which has recently been set up in the AGs office.

- Four cases from the Mercian Regiment,
- Four soldiers from the Royal Irish Regiment, and
- One soldier that was AWOL from his regiment.

13. The four soldiers from the RIR are AWOL in southern Ireland and have suffered discrimination because they are Catholic in a mainly protestant regiment.

14. This again is another complaints system within the Armed Forces outside the jurisdiction of the Service Complaints Commissioner.

15. Some of the complaints the Trust receive are from parents of young soldier who have enlisted under the age of 18. I personally feel that the enlistment age of 16 is too young. They even had to be 17 to enlist in WW1. It was also a recommendation of the 2005 Select Committee on Duty of Care to look at the recruitment of under 18s.

16. "Thinking of joining the armed forces. BEFORE YOU SIGN UP".

17. "Still under 18? If you are under 18 and are genuinely unhappy in the army, you may apply for special permission to leave and this is normally granted, although it is at the discretion of the army and is not a legal right. To take this option you must apply to your commanding officer before you turn 18. Your CO can delay departure if he or she is unconvinced that you are permanently unhappy in the army but normally you will be allowed to leave."

18. Again the above depend on going through chain of command and in some cases the CO may never receive that request.

19. In particular quite recent a young soldier that knew he had made a wrong decision went through all legal process of asking to leave and was denied all requests. He went AWOL as a lot of them do. In the end out of desperation he had his friend run over his leg with a car. By the time all this went to court martial the soldier turned 18. Last December he was sentenced to 12 months in Colchester for malingering then to be dismissed. At his appeal the 12 month sentence was squashed and he was dismissed. This should never have gone that far.

20. Another young soldier that enlisted at 16 was finally dismissed on medical grounds from Catterick after an horrendous ordeal. He never got his life back on track, he self harmed his arms were a mess. He was dead before his 21st birthday of Drug and Alcohol abuse.

21. Another young man aged 16 saw an advert in the job centre for an armourer but after his basic training was told he did not have the necessary qualifications for this job and was allocated the infantry.

22. One young man aged 17 when he joined wanted to join the Anglian Regiment but after his basic training was put into the Mercian Regiment and has had a terrible time he is now 20 and has been AWOL more than he has been with his regiment because of the treatment he has received in the Regiment. He asked for transfer on more than one occasion and would have been happy to transfer to another regiment two years ago and has been refused even a transfer. He is now in Colchester awaiting court martial and dismissal. This is one of the cases that we recommended the parents and the soldier concerned to submit to Dr Atkins.

23. These are just a few of the cases whose parents have contacted us. Under 18s have to be signed into the armed forces by their parents or next of kin and that their engagement doesn't start until their 18th birthday so if their CO refuses to let them leave they will be 22 before this is possible.

24. The young people who go in under 18 that we are aware of usually have no or very poor qualifications so the only option opened to them is logistics or Infantry as a front line soldier once they reach 18. Over a third of under 18s are in the infantry. The average reading age at Catterick at one time was 11. Since the start of the war in Afghanistan, 24% of British fatalities have been aged 18 to 21. Many of them will have enlisted as teenagers.

25. Some argue that they have opportunities of furthering their education if enlisting under 18 continues surely this should be mandatory especially with the school leaving age being raised to 18 and the Armed Forces being seen as a training provider.

26. Some of the comments that parents make to us of under 18s is that "he didn't do very well at school", "the army was his last resort", "he is dyslexic".

27. Parents sign their children in to the army expecting them to uphold a duty of care. Where the army fails on this surely it should not be just a right to ask for special permission to leave but a right to leave if under 18 especially if these two years do not count towards Service and when there have been cases of bullying. Also with the parent giving permission for them to join the armed forces why should it be the COs decision whether they can leave or not surely the parent that signed them in should be able to rescind their permission if they feel that the army have failed and be able to sign them out. In civilian life they are still classed as children until the age of 18.

28. There is a very strong case against enlistment of under 18s. We are the only country in Europe to do so and have ratified the treaty on the use of child soldiers in 2003 but retain the right of enlistment.

## Written evidence from the Peace Pledge Union

### UNDER-18S AND CONSCIENTIOUS OBJECTION IN THE UK ARMED FORCES

#### EXECUTIVE SUMMARY

This submission is concerned with two issues: the recruitment and retention in the Armed Forces of young people under the age of 18; and the right of Members of the Armed Forces to be discharged as conscientious objectors to further service.

It reviews the policy of not only recruiting young people under the age of 18 but targeting them; their terms of enlistment; the unfair disparity, in the army, between terms for minors and those for adults; the difficulties young people and their parents may have in understanding the terms; and the refusal of the government to give an unequivocal assurance that under-18s will never again be sent into battle. It cites longstanding recommendations from previous Select Committees on Armed Forces Bills, the Select Committee on Defence, the Parliamentary Joint Committee on Human Rights, the UN Committee on the Rights of the Child and Amnesty UK that have not yet been implemented.

The submission reviews the history of, and present provision for, discharge from any of the regular or reserve Armed Forces on the ground of having developed, since commissioning or enlistment, a conscientious objection to further military service. It argues that the present provision, although important and worthwhile, is insufficiently known and available within the Armed Forces.

Eight constructive recommendations are made.

#### BACKGROUND

1. The Peace Pledge Union, an independent secular pacifist association, has campaigned for more than 40 years against the recruitment and deployment of young people under 18 by the Armed Forces. It contributed to the marginal increase in the minimum recruitment age from 15 to 16, the introduction of the limited discharge as of right discussed in paragraph 16 below, and, through its affiliation to the UK Coalition to Stop the Use of Child Soldiers, to the eventual ratification by the UK of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The PPU has worked on the right of conscientious objection to military service since 1938, and, through its co-founding of the Central Board for Conscientious Objectors (1939–88), and now as a successor body, is an established authority on conscientious objection.

#### UNDER-18S

##### *Age of recruitment*

2. The Peace Pledge Union welcomed the UK's ratification in 2003 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which required the UK to make a formal declaration of an age not less than 16 as the minimum age for armed forces recruitment. We are concerned, however, that the UK did not take the opportunity to raise its minimum recruitment age beyond the existing level of 16. That age was permitted in the Optional Protocol as an exception to the consensual norm of 18 mainly because of the intransigence of the UK, and its status as an exception is demonstrated by the UK now being one of fewer than 20 states recruiting at 16, as against 134 states which have prohibited any military recruitment below age 18. It must be asked whether Parliament can in all conscience continue to permit the UK to match the recruiting age standard set, for example, by Iran, North Korea and Zimbabwe, rather than that set by the rest of the European Union, the rest of the Council of Europe, and the other permanent Members of the UN Security Council. The Ministry of Defence presently ensures that Britain endures the obloquy of training people for warfare whilst they are still too young to drive a car or visit a public house, let alone to vote. Moreover, the two other publicly sponsored occupations involving serious risk, the police and the fire service, have a minimum joining age of 18.

3. We are also concerned that Parliament did not take the opportunity of the revised and consolidated Armed Forces Act 2006 to write into statute even the low minimum age which has been formally declared; the UK is virtually alone in the world in not having a statutory minimum age for military recruitment. However, we welcome the step towards this made at secondary legislative level by the Armed Forces (Enlistment) Regulations 2009, which, for the first time in UK history, laid down in statutory instrument form a minimum age for any enlistment. The next two steps, consistent with international norms and young people's rights, must be to raise that minimum age from 16 to 18, and to confirm it by act of Parliament.

4. **Recommendation 1:** that in Section 325 (2) of the Armed Forces Act 2006 there be inserted a new sub-subsection, "(b) prohibiting the enlistment of persons under the age of 18", with consequent re-lettering of the succeeding sub-subsections.

##### *Recruitment policy*

5. There are some 4000 under-18s in the UK Armed Forces, the great majority in the army. This results from a determined policy of targeting 16-year-olds for recruitment in preference to adults. The policy was

supported by the Select Committee on the 2001 Armed Forces Bill: “We believe it continues to be important to recruit young people straight from school, including at the age of 16. If they are not caught at this point, they are likely to take up other careers and be permanently lost to the armed forces.” [Select Committee Report, para 63] The policy was confirmed in the UK’s First Report to the UN Committee on the Rights of the Child, 2007 [para 18]: “To be unable to recruit from [the under-18] age group would mean that high quality school leavers would settle into other careers and be lost to the Services”. The implication of such arguments, especially the use of the word “caught”, is that the personal, educational and career development of individual young people is to be valued less than the insistent demand of the Armed Forces for new recruits. Such a proposition is a clear contravention of Article 3 of the Convention on the Rights of the Child, requiring that in all matters to do with children (all persons under age 18), the best interests of the child must be the primary consideration.

6. The UN Committee on the Rights of the Child, in its quinquennial report in 2002 on the UK’s observance of the Convention on the Rights of the Child, commented: “The Committee is deeply concerned that about one third of the annual intake of recruits into the armed forces are below the age of 18 years” and “that the armed forces target young people ... The Committee recommends that the State party ... while it recruits persons who have attained the age of 16 years but have not attained the age of 18 years, shall endeavour to give priority to those who are the oldest, in light of article 38, para 3, of the Convention, and strengthen and increase its efforts to recruit persons of 18 years and older.” [UN CRC, Concluding Observations on UK’s second periodic report, paras 51–52, 19 September 2002] As part of its next review in 2008, the Committee asked the UK government to “elaborate on any initiative taken to give priority to the oldest when recruiting persons below 18 years, in accordance with article 38 (3) of the Convention and in line with the spirit of the Protocol”. Acknowledging that 24,150 recruits under 18 had been enlisted during the financial years 2004–07 (32 % of the total intake), the MoD responded, “There are currently no specific initiatives or recruiting policies in place to give priority to 17-year-olds over those aged 16”. [Written responses to the List of issues to be taken up in consideration of the initial report of the UK, CRC/C/OPAC/UK/1, 2008, section 2]. The UNCRC, in its Concluding Observations, “regrets that the State party indicates that there are no plans to change this” and “encourages the State party to consider reviewing the position and raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher standard. In the meantime the Committee recommends that, in recruiting among persons who have not yet attained the age of 18, priority is given to those who are the oldest”. [CRC/OPAC/CO/GBR/1, paras 12–13, 3 October 2008]

7. The Select Committee on Defence, in its Duty of Care Report, stated, “Much of the material we received relates to the risk factors associated with young people, particularly those from disadvantaged backgrounds. Undoubtedly some people who apply to join the armed forces are vulnerable ... Concerns have been expressed about the appropriateness of recruiting under-18s into the Armed Forces. We recommend that MoD examine the potential impact of raising the recruitment age for all three Services to 18.” [Select Committee on Defence, Third Report, 14 March 2005, paras 61–62]. The UNCRC in its Concluding Observations in 2008 was “concerned that [the UK’s] active recruitment policy may lead to the possibility of targeting ... children from vulnerable groups”. [CRC/OPAC/CO/GBR/1, para 14, 3 October 2008]

The government has simply argued, “the Armed Forces must recruit school leavers if they are to be able to compete for the better candidates and meet current recruiting needs. Once people attain the age of 18 years they are more difficult to attract as recruits ... we wish to attract recruits before they have made other lifestyle choices.” [Government’s Response to the Defence Committee’s Report on Duty of Care, July 2005, para 14] In other words, catch them young before they know any better—evidence, again, of systematic flouting of Article 3 of the Child Rights Convention.

8. **Recommendation 2:** that the Select Committee examine MoD witnesses on the propriety of targeting younger under-18s for recruitment in disregard of Articles 3 and 38 (3) of the Convention on the Rights of the Child and the spirit of the Optional Protocol, as emphasised by the UN Committee on the Rights of the Child.

#### *Terms of enlistment*

9. For an under-18 recruit, the army, which recruits more personnel than the navy and air force combined, has the harshest terms of enlistment of the three forces. All army recruits are required to enter on a “versatile engagement”, but with a right to give 12 months notice to resign at any time after completing the first three years, making a four-year minimum engagement. In the case of recruits enlisting under age 18, however, the period between the date of enlistment and the 18th birthday does not count towards the four-year minimum. This means that a recruit enlisting on or soon after his/her 16th birthday is liable to a minimum six-year term, as against the minimum four years required of an adult entrant. It is described by critics as the “six-year trap”. The navy used to have a six-year trap, and the air force a five-year one, but they were both abolished in 2001, the minimum engagement for under-18s being aligned by each force with that for adults.

10. The Select Committee on the Armed Forces Bill 1996 found “the justification for the difference in length of service for under-18s and adults unconvincing” and recommended the giving of “careful consideration to the desirability of requiring minors to commit themselves to a period of service longer than that of adults”. [Select Committee Report, paras 41–42] The 1996 Select Committee also reported, “The 1991 Committee expressed dissatisfaction with the conditions of enlistment for under-18-year-olds and recommended that the

MoD bring forward proposals for change. No such proposals have materialised. However, we were told that following the Bett Review of the career structure in the Services a working party is to look at enlistment ... of under-18-year-olds." In its second report to the UN Committee on the Rights of the Child in 1999 the UK government referred to the 1996 Select Committee's report: "It again [referring back also to the 1991 Select Committee] recommended that careful consideration be given to requiring minors to commit themselves to a period of service no longer than that of adults. As a result a Working Group was set up to examine how this anomaly might be removed, and to see whether common terms of service might be introduced across the three Services ... Work is now under way to draft revised terms of service for personnel under 18." [UK Second Report to the UN CRC, 1999, para 10.65] What the Working Group reported has never been published. What is apparent is that the navy and air force eventually responded positively in 2001, as mentioned in paragraph 9 above, but the army's response in 1999 was to increase its former five-year trap to the present six-year trap. The 2001 Armed Forces Bill Select Committee, whilst approving the targeting of 16-year-old recruitment, refrained from comment on the six-year trap, despite the matter being drawn to its attention in written evidence. The 2006 Committee reneged so far on the concerns of its predecessors of 1991 and 1996 as not to discuss the issue of under-18s at all, despite written evidence calling attention to the recommendations of the Duty of Care report and of the UN Committee on the Rights of the Child.

11. The UN Committee on the Rights of the Child unsurprisingly commented adversely in its 2002 quinquennial report: "The Committee is deeply concerned ... that those recruited are required to serve for a minimum period of four years rising to six years in the case of very young recruits." [UN CRC, Concluding Observations on UK's second periodic report, para 51, 19 September 2002].

12. The Ministry of Defence had an opportunity to deal with this matter in the Army Terms of Service Regulations 2007, following the passing of the revising and consolidating Armed Forces Act 2006. The 2007 Regulations, in force from 1 January 2008, provided for a four-year minimum term of service for all army recruits, regardless of age on enlistment, thereby meeting the long expressed concerns of the two Armed Forces Bill Select Committees and the Committee on the Rights of the Child. However, in August 2008 the Army Terms of Service (Amendment etc) Regulations 2008 reinstated, with effect from 6 August 2008, the former requirement that time served by enlisted under-18s up to their 18th birthday would be an obligatory addition to, rather than part of, the stated four-year minimum term of service.

13. The MoD has said that the temporary amelioration of conditions was an oversight that was corrected as soon as it was noticed. On this, two remarks may be made. First, given the experience and authority of the legal and civil service personnel responsible for drafting such regulations, it is reasonable to conclude that the six-year trap appeared so manifestly unfair, both on its own merits and in comparison with the conditions for enlistment in the navy and air force, that it was naturally marked for writing out. Second, given that it had been written out, albeit by accident rather than design, it might have been thought reasonable for the Ministry to reflect that recommendations from two Armed Forces Bill Select Committees, the Defence Select Committee and the UN Committee on the Rights of the Child that had waited so long had at last been implemented, and the credit for that, as well as the manifest benefit to young people, might as well be gained. Eventual permanent implementation is inevitable; meanwhile, there is no evidence that during the seven months and five days for which the abolition of the six-year trap operated the safety of the realm was in any way affected.

14. One effect of the process by which the abolition of the six-year trap was reversed was that the UN Committee on the Rights of the Child overlooked its mention, without emphasis, in the middle of a paragraph in section 7 of the 2008 Written Responses [cited in paragraph 6 above]. The UN CRC, therefore, in its Concluding Observations in 2008 unwittingly "welcomed" the abolition of the six-year trap [CRC/OPAC/CO/GBR/1, para 14, 3 October 2008], whereas, had it realised the true position, it would doubtless have condemned its reinstatement at least as trenchantly as it had condemned its existence on two previous occasions. Indeed, it complemented its mistaken welcome by being "concerned that the new regulations only apply to new recruits from 1 January 2008", and recommending that "all persons who were below 18 on 1 January 2008 also have the right to convert their minimum term of service to four years from the first day of duty".

15. **Recommendation 3:** that in Section 326 (2) (c) of the Armed Forces Act there be added, after the words "reserve force", the words, " , provided that in no case shall a person enlisting under the age of 18 be required to serve a longer minimum period with a regular force than a person enlisting over that age on the same engagement".

#### *Right of recruits to give effect to change of mind*

16. For recruits aged under 18 to all three Armed Forces there is, under the respective terms of service regulations, a period, from the 29th day after enlisting to the end of the sixth month after enlisting, to claim what is known as "discharge as of right". However, as cited by the Duty of Care report, the Directorate of Operational Capability found that "staff and instructors applied pressure to recruits to dissuade them from leaving, as this reflected on success rates and wastage targets." [Select Committee on Defence, Third Report, 14 March 2005, para 102] In any case, this arbitrary period does not necessarily reflect the rapidly changing and developing attitudes of a 16- or 17-year-old. The Duty of Care report recommended, "that all Services adopt procedures that allow recruits who express a wish to leave training an opportunity to leave their training establishment and contemplate further before making a firm decision on their future." [Select Committee on Defence, Third Report, 14 March 2005, para 105] The government's bland response was, "The Services

*acknowledge the merit of timely and pragmatic management of those who desire to leave and seek to apply common sense and understanding to those individuals.*" [Government's Response to the Defence Committee's Report on Duty of Care, July 2005, para 30]

17. The unsatisfactory nature of the limited "window" for discharge as of right is further demonstrated by a provision, for recruits whose period for discharge as of right has expired, nevertheless to be discharged if, before reaching the age of 18 years three months, they have expressed "clear unhappiness" at continuing in the Armed forces. This arrangement for "unhappy juniors", however, is informal and subjective, not guaranteed as a right, even though it has been stated that it is "extremely rare" for such an individual to be refused permission to leave. Certainly, the question reported by a witness to the Defence Committee that he put to the Commanding Officer of Deepcut about a boy who kept running away, only to be put on a charge each time he was brought back, "*If he is no good, just send him away from the Army. Why are you doing this?*" remains unanswered. [Select Committee on Defence, Third Report, 14 March 2005, para 103] If the "unhappy juniors" provision is really as simple as implied, it needs to be asked why it is not straightforwardly converted to a legal right by amending the relevant terms of service regulations to extend up to the 18th birthday, for all under-18 recruits, the "window" for claiming discharge as of right. The UNCRC in its Concluding Observations in 2008 "*recommends that the State party review the requirements for, and expand the exercise of, the 'discharge as of right' for child recruits*". [CRC/OPAC/CO/GBR/1, para 17, 3 October 2008]

18. The moral force of such an amendment has effectively been admitted in the UK's First Report to the UN Committee on the Rights of the Child, 2007 [para 32], claiming, "*Service personnel under 18 years have the right to discharge at any time before their 18th birthday provided they give the required notice*". This was apparently confirmed as recently as 10 January 2011, when Andrew Robathan, Parliamentary Under-Secretary (Minister for Defence Personnel, Welfare and Veterans), in a Written Answer to Caroline Lucas MP, averred, "*Service personnel under 18 years who have completed 28 days service have the right of discharge at any time before the 18th birthday, provided they give the required 14 days notice*". In fact, such a right, purportedly extending well beyond the discharge as of right discussed in para 16 above, does not exist. The misstatements were compounded in the Written Responses to the Committee on the Rights of the Child, 2008 (section 7) by the comment, "*there are adequate safeguards in place to ensure that young servicemen or women under the age of 18 years may, if they wish, leave the Services before committing to adult service*". The comment not only implies a reinforcement of the earlier purported extension of the discharge as of right up to the 18th birthday, but also the phrase "before committing to adult service" suggests some formal procedure for "committing to adult service", apparently around the 18th birthday. There is no such procedure, the binding commitment to adult service being incorporated in an under-18's original enlistment, at whatever age that takes place. The Parliamentary Under-Secretary also compounded his misstatement on 10 January 2011 with the comment, "*These safeguards help to ensure that young servicemen and women under the age of 18 years may, if they wish, leave the armed forces, and that any commitment to service is both considered and voluntary*." The comment does not go as far as that contained in the Written Responses to the CRC, but is certainly misleading. The significance of these misstatements for the clarity and reasonableness of the procedures relating to under-18s in the Armed Forces is discussed in para 21 below.

19. **Recommendation 4:** that the Select Committee urge amendment of the terms of service regulations of all the Armed Forces to provide for the time for giving notice to claim discharge as of right to be extended up to the 18th birthday or six months after the date of enlistment, whichever is the later.

#### *Understanding what is involved*

20. The Duty of Care report stated: "*We have considered a range of written material provided to recruits ... In general the pamphlets and brochures are clear and understandable. However, since a significant proportion of those applying to the Armed Forces, and the Army in particular, have poor basic skills, they may not assimilate all the information available, particularly that related to duty of care issues.*" [Select Committee on Defence, Third Report, 14 March 2005, para 53] The significance of the reference to poor basic skills is illustrated elsewhere, it being reported that "*MoD's figures suggest 50 per cent of all recruits entering the Services have literacy or numeracy skills ... equivalent of those expected of an 11-year-old.*" [Select Committee on Defence, Third Report, 14 March 2005, para 83]

21. The problem of clear understanding has particular relevance to the Enlistment Paper given to applicants proposing to enlist, setting out the precise terms and conditions of being a Member of the Armed Forces. Amnesty International has expressed concern that "*the Notice Paper [former title of the Enlistment Paper] is written in a complex and obscure manner, which may not be readily understood by the parent/guardian or the [young person]. The commitment to serve in the armed forces has serious consequences. The onus should be on the armed forces to explain the commitment fully, yet in an accessible and clear way.*" [AI, UK Under-18s: Report on Recruitment and Deployment of Child Soldiers, 2000] It needs to be borne in mind that the parents of young people with poor educational achievement may themselves have poor literacy skills, and therefore the undertaking given by a parent on the consent form that he/she has read and understood the Enlistment Paper, as well as the young applicant, is by no means as reassuring as might appear. If, as has been shown, the legal and civil service drafters of the Army Terms of Service Regulations 2007 could misunderstand what was required, and if, as has also been shown, the compilers of the UK First Report to the Committee on the Rights of the Child in 2007 could misunderstand the various terms of service regulations themselves—a



misunderstanding repeated almost word for word by the Minister for Defence Personnel and Welfare in a House of Commons answer to a Member of Parliament—what hope is there for clear understanding of military service commitment by young people known to be lacking in literacy and yet targeted as suitable for diverting them from further education?

22. The UN Committee on the Rights of the Child, in its Concluding Observations, 2008, was concerned that “*parents ... are only involved at the final stage of the recruitment process to give their consent*” and recommended “*that the State party ... ensure that parents are included from the outset and during the entire process of recruitment and enlistment*”. This is certainly borne out by anecdotal evidence of parents of unhappy under-18s who acknowledge that they never realised the full extent of the commitment to which they had signed up their son or daughter. “I thought we could we buy him out” is one common misunderstanding.

23. **Recommendation 5:** that the Select Committee urge amendment of the Armed Forces (Enlistment) Regulations to provide that, in the case of enlistment of a person under age 18, in addition to written parental consent, a parent, guardian (or in certain cases some other responsible adult) must attend at least one interview with the recruiting officer.

#### *Deployment*

24. The Peace Pledge Union, having urged UK participation in the Optional Protocol, is concerned by the UK’s additional “interpretative declaration”, originally made on signature but confirmed on ratification, that, although the UK recognised the Protocol’s commitment not to send under-18s to take a direct part in hostilities, it would not exclude the possibility of such deployment where “*there is a genuine military need*”, or “*it is not practicable to withdraw such persons before deployment*”, or “*to do so would undermine the operational effectiveness of their ship or unit*”. The UN Committee on the Rights of the Child, in its Concluding Observations on the UK in 2008 [CRC/OPAC/CO/GBR/1, 3 October 2008], was “*concerned at the wide scope of the State party’s interpretative declaration ... according to which ... children may still be potentially deployed to areas of hostilities and involved in hostilities*”, and recommended “*that the State party review this interpretative declaration to ensure that its policy and practice are in conformity of article 1 of the Protocol and that children are not exposed to the risk of taking direct part in hostilities*”. It is significant that the UK is the only party to the Protocol that has made such a declaration—the UK has thus made itself a pariah. If withdrawing under-18s from a unit is potentially a major problem, that is all the more reason for not recruiting them in the first place.

25. **Recommendation 6:** that the Select Committee urge the MoD to withdraw its interpretative declaration on potential deployment of under-18s.

#### *Armed Guard Duty*

26. The Duty of Care report expressed concern about apparent lack of supervision of weapons handling by under-18s, and in particular their placement on armed guard duty. [Select Committee on Defence, Third Report, 14 March 2005, paras 326, 327] The UN Committee on the Rights of the Child, in its Concluding Observations on the UK in 2008, “*regrets that armed guarding of UK military establishments may be undertaken by military personnel from the age of 17 years, and that this activity entails, as a minimum, weapon handling training and assessment, as well guidance on the use of force and the rules of engagement. The Committee encourages that the handling and use of firearms is abolished for all children in line with the spirit of the Protocol*”. [CRC/OPAC/CO/GBR/1, paras 26–27, 3 October 2008] The Peace Pledge Union shares this concern.

27. **Recommendation 7:** that the Select Committee urge the MoD to prohibit the placing of under-18s on armed guard duty.

28. The recommendations collectively exemplify the increasingly widely accepted maxim that children and young persons have in no place in war or war preparations, either as participants or as victims. The view was supported by the Joint Committee of the House of Lords and House of Commons on Human Rights in its report on Children’s Rights: “*We recommend that the UK adopt a plan of action for implementing the Optional Protocol, including [the UN Committee’s extensive set of recommendations] fully ... , together with a clear timetable for doing so*”. [25th Report of Session 2008–09, HL 157, HC 318, 20 November 2009]

#### CONSCIENTIOUS OBJECTION

29. The Peace Pledge Union is recognised by the Ministry of Defence as having an interest in sittings of the Advisory Committee on Conscientious Objectors to hear applications by any member of the Armed Forces, of all ranks and rates, regulars and reserves, for discharge on the grounds of having developed, since commissioning or enlistment, a conscientious objection to further service.

30. The principle of the procedure was established during the Second World War, when it became clear that, apart from men and women who claimed conscientious exemption from conscript military service *ab initio*, there were others who originally accepted call-up but then changed their minds on conscience grounds, and others again who had enlisted as regulars but also felt unable conscientiously to continue. For these two latter groups the Appellate Tribunal, set up to hear cases of people in the first group aggrieved by the decision of their Local Tribunal, was empowered to sit as an Advisory Tribunal to hear applications for discharge on

conscientious grounds and advise the Admiralty, War Office or Air Ministry whether an applicant should be discharged. The convention was established that the advice would always be accepted, and, if discharge were recommended, it would follow as quickly as protocols would allow.

31. This procedure continued after the Second World War until the abolition of National Service in the early 1960s, when the Appellate Tribunal was wound up. An unsatisfactory period followed, during which there was no clear procedure for dealing with cases of conscientious objection by regulars. In 1970, however, after representations by bodies such as the Peace Pledge Union and the National Council for Civil Liberties—the late Fenner, Lord Brockway raised the matter in the House of Lords on their behalf on 17 March 1967—the unified Ministry of Defence established a new procedure modelled on the old.

32. An application by any member of the Armed Forces for a discharge on conscientious grounds is first submitted in writing to the person's commanding officer, who forwards it with relevant observations, including the report of an interview, to the personnel or administration level of the chain of command. If the personnel level accepts the application, the person is discharged forthwith. If the application is rejected, the applicant is informed of the right to appeal to the Advisory Committee on Conscientious Objectors (ACCO).

33. ACCO comprises a Chairperson and Deputy Chair, both senior counsel, and four lay members, all appointed by the Lord Chancellor. For a hearing a panel comprises one of the Chairpersons and two lay members. Hearings are held in public on premises away from MoD property. The applicant is invited to present, and answer questions on, his/her case in a relatively informal way, and to bring witnesses and be supported by a friend or legal representative, if desired. The Committee's conclusions are presented in the form of advice to the Secretary of State for Defence, and, if the advice is for a discharge, that follows as expeditiously as possible.

34. During the Second World War and the post-war conscription period the Ministry of Labour and National Service recognised the Central Board for Conscientious Objectors (CBCO) as having a legitimate interest in the matter and an expectation to be informed of developments and procedures. That recognition was continued, so far as ACCO was concerned, until CBCO was wound up in 1988, when the Peace Pledge Union was recognised by the Ministry of Defence as the successor body for that purpose.

#### *Rights hidden*

35. There remains, nevertheless, a problem. In a memorandum to the 2006 Armed Forces Bill Select Committee the MoD averred, "*these procedures are well established [as] Departmental policy for many years ... We therefore see no need for them to be included in primary legislation*". Such a claim ignored the fact that very few people within the Armed Forces are aware that the procedure exists.

36. It is not simply that the procedure is not included in primary legislation; it is not even mentioned, let alone included, in secondary legislation, such as the Terms of Service Regulations for the various armed forces or the Armed Forces (Enlistment) Regulations, all Statutory Instruments subject to Parliamentary scrutiny. Although the procedures for the three Armed Forces are broadly similar, they are contained in differing types of document within differing administrative protocols.

37. The RN document, *Application for Discharge on Grounds of Conscientious Objection*: is in Personnel, Legal, Administrative General Orders (Royal Navy), chapter 08.01 (Sponsor: Fleet DCS Law).

38. The Army document, *Retirement or Discharge on Grounds of Conscience*, is in Army General and Administrative Instructions, Vol 5, Instruction 006 (D/AG/M/66/02), with internal reference to Queen's Regulations for the Army, para 9.402.

39. The RAF document, *Procedure for Dealing With Conscientious Objectors within the Royal Air Force*, is free-standing Leaflet 113, referenced to AP [? Administrative Procedures] 3392, Vol 5, with internal reference to Queen's Regulations for the RAF, para 607.11.

40. None of these documents is ordinarily or easily available to serving Members of the Armed Forces, and it is evident that they are not normally known even to NCOs and officers. It is also to be noted that in all three Armed Forces a discharge resulting from recognition of conscientious objection is classified as a compassionate discharge, so that no figures normally appear of discharges by reason of conscientious objection.

41. In 2004 the High Court considered the appeal of Mohisin Khan, an air force reservist who had gone absent without leave rather than go to Iraq to take part in a war he could not support. He explained that he was unaware of his right to apply for discharge as a conscientious objector. The court upheld his court-martial conviction, but noted, significantly, "*It is, however, true that the call-out materials in this case, like the 1997 [terms of service] regulations, do not mention conscientious objection expressly. In that respect, it would seem that the information provided to this recalled reservist could be improved*". After more than six years no such improvement, either in the regulations or the call-out papers, has been made.

42. In 2010 Michael Lyons, a Leading Medical Assistant in the navy, began to have scruples over a pending deployment to Afghanistan, where he concluded that the killing of civilians by coalition forces was contrary to his conscience, particularly in view of his purposeful choice of a paramedical career. He had never in his naval service been told about his right to object to war if he disagreed with it strongly enough, and his chain of command were unsure about what to do with him once he had begun to raise objections; when he requested

non-combatant duties he was warned of the offence of disobeying orders. He eventually stumbled across the voluntary advice service At Ease by googling some question like, "How do you not go to war if you think it's wrong?" Through At Ease he became aware of the conscientious objection procedure, and formally applied for discharge. His application was under internal consideration for some three months before he was informed of its rejection, but without any stated reasons. Although he was told of his right to appeal to ACCO, the chain of command were "reluctant to let me put it in there and then, even though it had taken so long to get an answer" to his original application. Only by his persistence, was LMA Lyons able to submit his appeal and eventually have an ACCO hearing on 17 December 2010. The hearing resulted in the Committee announcing its advice to the Secretary of State to dismiss the appeal, for the reason that it was held to derive from a political rather than a conscientious or moral objection. More than a month later he had not been formally notified of the Secretary of State's actual acceptance of ACCO's advice. Moreover, since then he has been charged with disobedience for formally requesting transfer to non-combatant duties, pending resolution of his application for conscientious objection discharge, and then refusing to draw a rifle from the armoury preparatory to attending a course of rifle training; he is awaiting court-martial, expected in March 2011.

43. A further case is that of a time expired short-service army officer, but still with a reserve obligation, who began to have scruples over the UK's ventures in Iraq and Afghanistan. He found the PPU website and contacted us as to his rights. Although a graduate, he responded to a detailed exposition of the appropriate procedure with the comment, "I am in awe that someone (other than a regimental adjutant) has been able to demystify the mighty Queen's Regs!" Having submitted his application for discharge as a conscientious objector, he waited several months before being told that he was being allowed to "relinquish" his commission, with no mention, one way or the other, of his application as a conscientious objector. Since his ultimate purpose of renouncing his military commitment would thereby be achieved, he reluctantly accepted this, although aware that his stand as a conscientious objector would never be recorded.

44. The three cases of Khan, Lyons and the army officer (whose name is not in the public domain and therefore remains confidential), as it happens from the three different Armed Forces, demonstrate that the procedure for conscientious discharge is by no means as well known and effective as the MoD submission to the 2006 Select Committee suggested. Although there have been six discharges on conscience grounds since 2001 (information disclosed by the MoD under the Freedom of Information Act), because of the lack of knowledge of the procedure, and the evidence, in Lyons' case, of pressure not to appeal to ACCO, and the fact that ACCO's hearing in 2010 was the first since 1996, the possibility remains of other Armed Forces Personnel who may have suffered in one way or another because they never knew of their right to apply as a conscientious objector, or who were dissuaded from pushing on to an appeal to ACCO. The army officer's case also shows that some discharges actually arising from conscientious objection are disguised as other forms of discharge, and therefore will not be included even when conscientious objection statistics are reluctantly divulged under Freedom of Information requests.

45. The Peace Pledge Union welcomes one development with regard to ACCO, namely the decision of the Committee who heard Lyons' case to publish their reasoned judgement. A decision had been made in the late 1950s that all conscientious objection tribunals should announce reasoned judgements, but abolition of conscription forestalled proper implementation of the decision. The lack of a record of decided cases may have contributed to the 2010 ACCO apparently misdirecting themselves that they could not accept what they described as a "political" objection; such an objection has been recognised as acceptable since at least 1941, provided that it "*was so deeply held that it became a matter of inner conviction as to right and wrong and not merely an opinion*". [UK section of a *Study on the Legal Position of Conscientious Objectors in the Member States of the Council of Europe*, published by the Council of Europe, Doc 2170, Appendix, 23 January 1967, and never disputed by any UK government since then.]

46. Just as the MoD, in the Explanatory Memorandum on the Armed Forces (Enlistment) Regulations 2009 recognised that "Making the regulations ...by statutory instrument ensures not only that they are properly scrutinised, but also that they are published and that servicemen [*sic*] may easily ascertain their rights and obligations", so it would be beneficial to all if the core of the three documents named in paragraphs 28–30 above were codified into one and promulgated as a statutory instrument, leaving minor administrative details for the third level procedural manuals. The proposed Armed Forces (Discharge as Conscientious Objector) Regulations would necessarily be founded upon statute.

47. The need for such statutory provision is emphasised by Recommendation CM/Rec(2010)4 of the Council of Ministers of the Member States of the Council of Europe, on human rights of Members of the Armed Forces, 24 February 2010, that "*Professional members of the armed forces should be able to leave the armed forces for reasons of conscience ... requests should be examined within a reasonable period of time; ... pending ... examination ... they should be transferred to non-combat duties where possible ... Members of the armed forces should be informed of their rights [as to claiming conscientious discharge] and the procedures available to exercise them*". Although this came after Khan's and the army officer's case, the recommendation was clearly ignored in Lyons' case.

48. **Recommendation 8:** that in Section 328 of the Armed Forces Act there be inserted in subsection (2) (a), after the word: "discharge", the words " , including on the grounds of having developed a conscientious objection to further service,".

49. Such recommendation takes advantage of the attempt in the Act to consolidate and unify the law on many aspects of Armed Forces procedure; also, for the first time it would bring into the public arena the established, but almost entirely concealed, provision for conscientious objection by regular Armed Forces Personnel. If an officer and graduate finds difficulty in wading through regulations the problems of Khan, Lyons and others become even more obvious and urgent.

50. The UK first made provision for conscientious objection to part-time military service as far back as the Militia Act 1757, and was the first country to legislate, in the Military Service Act 1916, for conscientious objection simultaneously with full-time conscription. In an era of open government and import of human rights into domestic law it is time to bring recognition of conscientious objection to continued regular or reserve service out of the shadow of obscure documentation and into the daylight of the statute book. Almost a century on from 1916, it is time for a new beginning.

*February 2011*

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### **Written evidence from ForcesWatch**

#### **A. INTRODUCTION**

1. ForcesWatch is a network of organisations and individuals concerned with ethical issues relating to the Armed Forces. As the Armed Forces Act is the primary legislation that provides the basis for military law in the UK, we are raising our concerns relating to the human rights of service personnel with the Armed Forces Bill Committee. We make a number of recommendations to bring the UK into line with current international standards and improve terms of service.

#### *Complying with international standards on the minimum age of recruitment*

2. The UK is the only country in Europe and the only permanent member of the UN Security Council to recruit 16 year olds into its Armed Forces and is one of fewer than 20 countries in the world which recruit from the age of 16 years. Those who sign on when 16 or 17 years old must serve until they are 22.

3. Since the Armed Forces Act 2006, the recruitment of minors has been criticised by the United Nations Committee on the Rights of the Child, Parliament's own Joint Committee on Human Rights, and children's charities amongst others. The Armed Forces Bill is an opportunity to phase out the recruitment of people under 18 in line with international standards, while introducing greater protection for 16- and 17-year-old personnel in the meantime.

#### *Concerns over terms of service*

4. Employment in the Armed Forces is unique in placing severe restrictions on rights and freedoms that are available to the rest of the UK population. The Armed Forces are also the only employers in the UK who legally require their employees to commit themselves for several years, with the risk of a criminal conviction if they try to leave sooner.

5. This situation is all the more worrying given that many recruits are very young. There is also evidence that many personnel are unclear about the length of their commitment and their rights to leave and that the information they receive can be misleading. Terms of service need to be less restrictive and more transparent.

#### *Upholding the right to conscientious objection*

6. Life in the Armed Forces can have a significant effect on the outlook and attitudes of those who undertake it. Exposure to warfare can radically alter a person's values and beliefs.

7. While the Armed Forces recognise the right of serving personnel to be discharged if they develop a conscientious objection, this right is not set out clearly in legislation, is not mentioned in the terms of service and many, perhaps most, forces personnel are unaware of it. The system for registering a conscientious objection needs to be far easier to access and the different types of conscientious objection need to be fully recognised.

#### *Political rights of serving personnel*

8. A number of fundamental political freedoms can not be enjoyed by those in the Armed Forces including the right to join a trade union or a political organisation, to speak to the media or in public without permission or to stand for elected office. This is out of step with the US and much of Europe. Personnel in the Armed Forces should not be exempt from rights granted to all others under the Human Rights Act.

## B. OUR CONCERNS

### *Recruiting minors*

9. People under 18 are not legally recognised as adults. They cannot vote or, in most cases, sign contracts. They are barred from buying the most violent films and video games. For minors to join the Armed Forces, they must have parental consent. Yet, a contract which they signed as a minor will legally bind them for up to six years.

10. Independent research has highlighted many areas in which the recruitment of young people into the Armed Forces is not characterised by transparency. Not only is recruitment material often less than balanced about the risks, obligations and dilemmas involved but after enlistment there is considerable misunderstanding by those recruited as to their rights. The research concludes that, as a result, many young people are not making an “informed choice” to join the army.<sup>1</sup>

11. The UK is the only country in Europe which routinely recruits minors into the Armed Forces. Worldwide, 134 countries have prohibited the practice. 37 countries recruit from the age of 17. The UK is one of only 20 countries in the world to recruit 16-year-olds. These countries include no other member of NATO and no other permanent member of the UN Security Council. But they do include several regimes with little respect for human rights, including Iran, Zimbabwe and North Korea.<sup>2</sup>

### *Restrictive and unequal minimum length of service*

12. Those recruited under 18 must serve up to two years more than those who join as adults as they are committed for four years from their 18th birthday to remaining in the forces until turning 22. On turning 18, those already serving are not given the opportunity to reconsider their commitment as adults.

13. In 1999 the army increased its minimum length of service from three to four years, or up to six years for under 18s. If they wish to leave they then have to give a year’s notice (in the army or navy) or 18 months (in the air force). Recruits may also be required to serve for longer than the usual period if they undertake education or training other than their initial training.

14. On leaving full time service personnel are then transferred into the reserves which usually lasts for six years further extending the commitment someone must make even if they wish to leave.

### *Limited discharge as of right*

15. Recruits have a discharge as of right (DAOR) at certain points in their early days in the forces. This allows them to leave by giving fourteen days’ notice. For those aged over 18 in the army the DAOR is after 28 days’ service, but before three months’ service. For those under 18 in the army and all those in the Navy and air force, the DAOR period is after 28 days’ service but before six months’ service.<sup>3</sup>

16. After the period of six months is over, an “unhappy junior” in the Armed Forces may be discharged at the discretion of their commanding officer. However, this is not a legal right and thus is not equivalent to DAOR.

17. For most recruits, their entitlement to DAOR elapses during the period of training and preparation and before they have had any experience of the frontline.

### *Calls for change to be made*

18. Since the Armed Forces Act 2006, two significant authorities on children’s rights have called on the UK to reconsider its policy of recruiting under 18s into the Armed Forces. In 2008, the UN Committee on the Rights of the Child asked that the UK “reconsider its active policy of recruitment of children into the Armed Forces and ensure that it does not occur in a manner which specifically targets ethnic minorities and children of low-income families”. It also recommends that the UK Government review the limited discharge rights for child soldiers and “that parents are included from the outset and during the entire process of recruitment and enlistment”.<sup>4</sup> In 2009, the Joint Human Rights Committee called on the UK Government to raise the minimum age to 18. In their report on Children’s Rights, they recommend that the “UK adopt a plan of action for implementing the Optional Protocol, including these recommendations, fully in the UK, together with a clear timetable for doing so”.<sup>5</sup>

19. These calls echo the recommendations made in 2005 by the Defence Select Committee, which recommended that the Ministry of Defence look into raising the minimum recruitment age, and previous Armed Forces Bill committees which addressed the issue of the minimum age of recruitment.<sup>6</sup> Both the 1991 and 1996 Armed Forces Bill Committee reports sought answers to questions relating to the recruitment of under 18s and their terms and conditions, particularly difference in the length of service and discharge as of right, and made recommendations requesting proposals for change.

20. As far as we are aware, the MoD have not carried out a feasibility study on phasing out the recruitment of under 18s, despite the requests noted above.

*Confusion over terms of service for recruits*

21. There is evidence that many personnel, and their parents, are unclear about the minimum commitment and rights to discharge. The SSAFA and At Ease helplines report that the most common questions raised by callers relate to their length of service, with frequent confusion about the conditions.<sup>7</sup> The researcher David Gee found in 2007 that a number of parents of 16- and 17-year-old personnel believed that they would be able to choose whether to continue when they reached 18. This is not the case.

22. Anecdotal evidence suggests that recruitment officers have told young recruits and their families that if the recruit is unhappy they will be allowed to leave. Although there is a provision for “unhappy minors” to request discharge from their commanding officer, there is no guarantee that this will be granted and further evidence from those requesting advice from At Ease is that discharge requests are often refused, although statistics on refusals are not kept.

23. The Notice Paper, which recruits sign on joining the forces, sets out their terms and conditions in language that is often unclear and technical. In 2008 the wording of the army’s Notice Paper was improved but changes are still needed to make it reasonably clear. Research by the MoD has found that fifty per cent of people joining the army at non-officer level have a reading age at or below that of an average 11-year-old,<sup>8</sup> meaning many will find it particularly difficult to understand the Notice Paper.

24. In 2008, the Ministry of Defence (MoD) made a mistake with the papers which new recruits signed, allowing those under 18 committed to a minimum of four years instead of committing until their 22nd birthday. The MoD rectified their mistake a few months later and later recruits had to sign up to up to six years’ service once more. This error means that a number of personnel will soon be leaving below the age of 22, while their colleagues who signed up just before or just after them will have to wait for up to two years longer.

*Confusion over terms of service in government*

25. There is also confusion at Government level. In January 2011, Defence Minister Andrew Robathan, told Parliament that “service personnel under 18 years who have completed 28 days of service have the right to discharge at any time before their 18th birthday provided they give the required 14 days’ notice”.<sup>9</sup> This is not the case. It contradicts the Armed Forces regulations, which state that the right to discharge elapses after six months’ service.

26. A very similar erroneous statement was made in the UK report to the UN Committee on the Rights of the Child that, “service personnel under 18 years have the right to discharge at any time before their eighteenth birthday provided they give the required notice”.<sup>10</sup>

27. These errors suggest that the complexity of the situation is a serious cause of confusion all round. A more just and clear system would be for young people to indeed have a right to discharge until their 18th birthday.

*Lack of awareness of the right to conscientious objection*

28. Although each member of the Armed Forces has a right to conscientious objection, this right is not mentioned in either primary or secondary legislation relating to the Armed Forces and, of the three services, only the army sets out the procedure for registering a conscientious objection in its Queen’s Regulations.<sup>11</sup> Procedure for discharge due to conscientious objection is different for each service and difficult to access. The regulations governing conscientious objection in the Navy and RAF have only become apparent by using Freedom of Information requests.<sup>12</sup> Finally, no reference is made to this right in the Notice Paper which is signed on joining the forces.

29. It is very likely that most forces personnel are unaware of their right to discharge if they develop a conscientious objection. Discharges due to conscientious objection are rare, with only six granted between 2001 and 2010<sup>13</sup> but there is evidence that the small number of cases recorded by the MoD does not reflect the true number of those who act on their ethical objections. There is anecdotal evidence of personnel with ethical problems being encouraged to suppress their feelings and carry on. The forces helpline At Ease reports that at least some who raise a conscientious objection have been discharged on other grounds such as for “service no longer required” or “unfit for further service”.<sup>14</sup>

30. More worryingly, there is evidence to suggest that serving personnel are going absent without leave on the basis of ethical issues.<sup>15</sup> In these cases the procedure for registering a conscientious objection is not safeguarding the rights of those in the Armed Forces and, through lack of awareness, some could end up facing court martial and a criminal conviction.

31. In 2004, the High Court considered the appeal of Mohisin Khan, an air force reservist who had gone absent without leave rather than fight in Iraq in a war in which he did not believe. He explained that he was unaware of his right to appeal for discharge due to conscientious objection. The court upheld his conviction,

but declared, “It is, however, true that the call-out materials in this case, like the 1997 regulations, do not mention conscientious objection expressly. In that respect, it would seem that the information provided to the recalled reservist could be improved”.<sup>16</sup>

#### *Treatment during the process of requesting a discharge on the grounds of conscientious objection*

32. While an application for discharge is being considered, the applicant remains a member of the forces and is subject to military discipline. He/she can therefore be punished for refusing to obey orders for reasons of conscience. This contradicts a recommendation by the Council of Europe Committee of Ministers that personnel applying for discharge due to conscientious objection should be removed to non-combatant duty while the application is considered.<sup>17</sup>

#### *Concern over the dismissal of “political” objections*

33. In December 2010, The Advisory Committee on Conscientious Objectors (ACCO) met for the first time since 1996 (which is in itself an indication of the difficulties inherent within the system). They heard an application for discharge from Michael Lyons, a medic in the Royal Navy who was due to be deployed to Afghanistan in 2011.

34. Lyons had developed an ethical objection to participating in the war in Afghanistan after having been told at a medical briefing not to waste resources by treating civilians and after hearing that the majority of casualties were civilians. Subsequent research into the reasons for going to war and the number of Afghan civilian casualties had led him to believe the war was wrong. Lyons requested an appeal to be held by ACCO who advised the Defence Secretary to reject Lyons’ request to be discharged.<sup>18</sup> In giving their decision, ACCO stated that they considered Lyons’ objection to be “political” rather than “moral”.

35. It is not at all clear that objections can easily be split into these categories. In the case of Michael Lyons, why has an objection based on medical ethics and to the killing of civilians case been dismissed as “political” rather than as a matter of conscience? How does a deeply held “political” conviction differ from one based on morals or religion?

36. A study presented to the Council of Europe as long ago as 1967 stated that “in principle all grounds of conscience resulting in refusal to do military service are respected [in the UK]”. It noted that “In the UK objections to military service in specific circumstances—so called political objections—have been allowed regularly since 1941”.<sup>19</sup> This assertion appears never to have been disputed by any UK Government.

37. The study quotes a staff member of the Central Board for Conscientious Objectors, that political objectors were recognised as “the objection was so deeply held that it became a matter of inner conviction as to right and wrong and not merely an opinion”.

38. ACCO’s have clearly failed to apply the test of “inner conviction as to right and wrong”. This suggests confusion on the part of the authorities about the legal situation regarding conscientious objection.

#### *Restriction of political rights*

39. Members of the Armed Forces face considerable restrictions on political freedoms that are taken for granted by most of the population. They are not permitted to join a trade union or a political organisation, to speak to the media or in public without permission or to stand for elected office.

40. Members of the Armed Forces can be criminalised, and even imprisoned, for relatively minor acts of personal expression. The political restrictions imposed on UK personnel are more extreme than those that govern the Armed Forces in the US and in many EU member countries.

41. The Council of Europe Committee of Ministers has recommended that members of the Armed Forces should have freedom of expression and freedom of peaceful assembly and association with others (complying with Articles 10 and 11 of the European Convention on Human Rights respectively) and the right to stand for election to political office.<sup>20</sup>

#### *Dissatisfaction in the Armed Forces*

42. An inability to leave the forces legally before several years have elapsed almost certainly contributes to the number of personnel going absent without leave (AWOL). In the last 10 years, between 2,000 and 3,000 serving personnel have gone AWOL each year, mainly from the army.<sup>21</sup> At Ease also report that some who wish to leave resort to self harm, taking drugs to get caught and suicide attempts.

43. The Armed Forces Continuous Attitude Survey reports that, across the services, only 32% felt valued in the service and only 51% agreed with the statement “I am reluctant to leave”.<sup>22</sup> 20% were dissatisfied or very dissatisfied with their job—with 189,420 members of the Armed Forces in all ranks, that is nearly 38,000 servicemen and women who say they are not satisfied with their job.<sup>23</sup> It is therefore unsurprising that many try to find more immediate ways of leaving than those legally available to them.

### C. RECOMMENDATIONS

#### *Addressing concerns about the recruitment of minors*

In order to bring the UK into line with international standards regarding under 18s in the Armed Forces, to provide greater protection for the rights of young people, ForcesWatch recommends:

- implementing a phasing out of the recruitment of minors into the Armed Forces;
- in the meantime, minors should be given Discharge As Of Right at any point until they turn 18;
- until recruitment of minors is phased out completely, those who enlist under 18 should be given the opportunity to reconsider their commitment to the Armed Forces on turning 18; and
- the minimum length of service should be the same for all personnel regardless of the age they joined.

#### *Improving terms of service for all personnel*

In order for people who find they are dissatisfied with life in the services to leave within a reasonable timeframe, ForcesWatch recommends:

- an overall reduction in the minimum length of service;
- a reduction to the required notice period to 6 months in all three branches of the forces; and
- bring the period for discharge as of right for adults serving in the army in line with over 18s in the Navy and RAF.

In order to allow recruits and their families to make an informed choice about enlistment:

- the terms of service should be simplified so every recruit is clear about the commitment involved; and
- the length of service should be unified for all three services to help avoid confusion.

Allowing Armed Forces personnel to benefit from human rights legislation:

- A commitment in line with the Council of Europe recommendations to improve freedom of expression and association for members of the forces.

#### *Upholding the right to conscientious objection*

ForcesWatch recommends that:

- the right to conscientious objection, and the basic procedures for applying for discharge, should be unified across the three forces and set down clearly in primary legislation (the Armed Forces Bill);
- the Notice Paper should state clearly that there is a right to discharge due to conscientious objection;
- information on conscientious objection should be freely available to all members of the Armed Forces. It should be mentioned in appropriate literature;
- ethical concerns should be formally treated as conscientious objection, and recorded as such, whether or not the term “conscientious objection” is used by the person concerned;
- people registering conscientious objection should be suspended from duty while the application is considered; and
- objections, where seen to be based on political reasons, should be viewed as a matter of inner conviction as to right or wrong, rather than merely as an opinion.

14 February 2011

### NOTES

1. See David Gee, *Informed Choice: Armed Forces Recruitment Practice in the UK*, 2007  
<http://www.informedchoice.org.uk>

2. Information supplied by the Coalition to Stop the Use of Child Soldiers—<http://www.child-soldiers.org/regions/country?id=225>

3. Terms of Service Regulations: <http://www.legislation.gov.uk/>

4. UN Committee on the Rights of the Child, *Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland under the Optional Protocol on the Involvement of Children in Armed Conflict* (UN Doc: CRC/C/OPAC/GBR/CO/1) 2008, para.13.

5. Joint Committee on Human Rights report: *Children’s Rights*, 2009

6. House of Commons Defence Committee report: *Duty of Care*, 2005



7. See David Gee, *Informed Choice: Armed Forces Recruitment Practice in the UK*, 2007  
<http://www.informedchoice.org.uk>
8. Analysis of socio-economic and educational background of non-officer recruits, submitted as written evidence to House of Commons Defence Committee Duty of Care, 2004–05, Volume II, Ev255
9. Hansard, 10 January 2011  
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110110/tex>
10. Consideration of reports submitted by States Parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: UK. 2007  
<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.GBR.1.pdf>
11. The Armed Forces Act 2006 has no mention of conscientious objection. Terms of Service Regulations for the Royal Navy, Royal Marines, Army and Royal Air Forces, (Statutory Instruments) do not mention conscientious objection. The Queen’s Regulations for the Royal Navy has no mention of conscientious objection; details can only be found in administrative guidelines. The Queen’s Regulations for the Army sets out the procedure for conscientious objection in full. The Queen’s Regulations for the RAF references an administrative leaflet about conscientious objection but mentions no further detail.
12. See <http://wri-irg.org/news/2007/uk2007-unreport-en.htm>
13. This information was supplied by the Ministry of Defence under the Freedom of Information Act—<http://www.mod.uk/DefenceInternet/FreedomOfInformation/ConscientiousObjectors20012010.htm>
14. See David Gee, *Informed Choice: Armed Forces Recruitment Practice in the UK*, 2007  
<http://www.informedchoice.org.uk>
15. At least 1,000 UK soldiers desert, BBC News online, 28 May 2006, <http://news.bbc.co.uk/1/hi/uk/5024104.stm>
16. For details of the case see  
<http://www.baillii.org/ew/cases/EWHC/Admin/2004/2230.html>
17. Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the Armed Forces, February 2010 <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1590149&Site=CM>.
18. Navy medic loses appeal over objections to Afghan duty, Daily Telegraph, 17 December 2010 (<http://www.telegraph.co.uk/news/newstopics/politics/defence/8209595/Navy-medic-loses-appeal-over-objections-to-Afghan-duty.html>) and other reports.
19. Study on the Legal Position of Conscientious Objectors in the Member States of the Council of Europe, presented by the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, to the Consultative Assembly of the Council Europe, 23 January 1967 (Doc 2170, Appendix)
20. Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the Armed Forces, February 2010  
<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1590149&Site=CM>.
21. Ministry of Defence AWOL statistics including Prosecution and Sentences for Desertion 2000–10  
<http://www.mod.uk/DefenceInternet/FreedomOfInformation/DisclosureLog/AwolStats20002010IncludingProsecutionAndSentencesForDesertion.htm>
22. Armed Forces Continuous Attitude Survey 2009  
<http://www.mod.uk/DefenceInternet/FreedomOfInformation/PublicationScheme/SearchPublicationScheme/ResultsForArmedForcesContinuousAttitudeSurveyafcas.htm>
23. UK Armed Forces—Quarterly Manning Report, 1 July 2010, Defence Analytical Services and Advice  
<http://www.dasa.mod.uk>. Figures for “dissatisfied” and “very dissatisfied” are aggregated by the MoD.

### **Supplementary written evidence from the Ministry of Defence**

#### ALCOHOL AND DRUGS PROVISIONS OF THE ARMED FORCES BILL

1. This Memorandum is in response to questions raised by Thomas Docherty MP during oral evidence taken before the Select Committee on the Armed Forces Bill on 3 February 2011. The questions were in relation to the differences between Road Traffic legislation and the Armed Forces Bill regarding the quantity of samples required (set out in sec 93E (5) (c) and 93 (6) (b)); and the requirement to obtain a specimen of urine within one hour of the requirement for its provision being made.

#### QUANTITY OF SAMPLES

2. This requirement was requested in para 21.32 and 21.33 of the initial instructions to counsel. Para 21.32 of the instructions dealt with the admissibility of a sample of blood or urine requiring the sample obtained to

be one of two parts which was to be divided at the time it was provided and the other part was to be made available to the person to arrange his own analysis. Para 21.33 dealt with the requirement for a specimen of sufficient quantity for two samples. These instructions reflect the position set out in the provisions of the Road Traffic Offenders Act 1988<sup>58</sup>. Therefore the provisions set out in 93E(5)(c) 93E(6)(b) requiring a specimen to be of sufficient quantity to divide into two parts for analysis is required to tie in with the provisions of the Road Traffic Offenders Act 1988.

3. It is clear that there are two issues here: the admissibility of the samples; and the procedure for obtaining the samples.

4. Parliamentary Counsel advised that the appropriate place for provisions relating to admissibility of evidence is in rules made under section 163(2)(d), 153(2)(b) and 288(2)(d) of AFA 06<sup>59</sup>. However she acknowledged that for the process to work properly, it must be the case that the sample is large enough to divide into 2 parts and the accused is given part of the sample on request; therefore, these issues are dealt with in sections 93E(5)(c) 93E(6)(b) and 93F(5)<sup>60</sup>. The admissibility of evidence will be dealt with in later rules.

5. Therefore the provisions relating to specimens being of a quantity to enable them to be divided into two parts for analysis is required to reflect the provisions of the Road Traffic Offenders Act 1988.

#### REQUIREMENT TO OBTAIN A SPECIMEN OF URINE WITHIN ONE HOUR OF THE REQUIREMENT FOR ITS PROVISION

6. This requirement, as set out in Section 93E(6) is exactly the same wording as is contained in Section 7(5) Road Traffic Act 1988.

15 February 2011

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#### Further written evidence from the Ministry of Defence

##### EMAIL EXCHANGE BETWEEN THE SERVICE COMPLAINTS COMMISSIONER FOR THE ARMED FORCES AND MOD OFFICIAL

**From:** Dr Susan Atkins, Service Complaints Commissioner for the Armed Forces

**Date:** 2 February 2011

Humphrey,

Thank you and also for all your time today. Exceptionally helpful.

You suggested I drop you a line about my concerns about a potential risk in relation to one provision in the current Bill, designed to enable SCPs with independent members to be appointed. My concern is that removing the requirement for at least one member of an SCP to be an officer of 1\* or above, may lead to SCPs being made up of more junior officers, even where there was no independent member.

In my experience over the last three years, there is a link between seniority and wisdom. The risk is that the Services will take a rank based approach without recognising the need to have people of the right quality and experience, who can see the wood for the trees and are able to hold up the Services' hand when a mistake has been made. I gave you a number of examples where individuals of Colonel and equivalent—at level 2—were not able to do so.

Your explanations on a number of points were re-assuring. I will keep in touch with you if I believe there are other changes that may be usefully made.

Kind Regards

*Dr Susan Atkins*

Service Complaints Commissioner for the Armed Forces

**From:** Humphrey Morrison, Head of Legislation, Central Legal Services, Ministry of Defence

**Date:** 4 February 2011

Susan

Thank you for your email. I am very pleased that our discussions were a help. On the point mentioned in your email of 2 February above, however I think that my comments over the phone suggested to you that there was a risk that Service personnel appointed to Service Complaint Panels might lack the necessary seniority. My apologies for doing so, as I do not think there is a risk of this.

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<sup>58</sup> Section 15(5) Road Traffic Offenders Act 1988

<sup>59</sup> Para 37 of letter PC to CLS dated 11 Sep 10.

<sup>60</sup> Para 19 of letter PC to CLS dated 4 Oct 10.

It is indeed the case that the Bill removes the requirement for a Service Complaint Panel to include a senior officer. As you mention in your email below, this change is being made so that it is possible to have panels made up entirely of independent members. This will be achieved by the repeal of section 336(3) of AFA2006. But it will remain the case that, if a panel does have Service Members (or even one Service Member) they must be senior officers. This is in section 336(1) of AFA06. Of course the Defence Council, in appointing a senior officer to a panel, will also need to have regard to appointing persons of the right experience.

I hope this provides the reassurance you need. I gather from Darren Beck that you have provided the Select Committee with a copy of your email. I think it would help the Select Committee to have an explanation of how the appointment of officers to panels will work and so, if you have no objection, I propose to send them a copy of this reply.

Very best wishes

*Humphrey Morrison*

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### Written evidence from AT EASE

#### SUMMARY

#### [1] *Contracts for under 18s. Progress by mistake. Regress by intention*

This year, 2011, some soldiers aged nineteen or twenty will be able to give 12 months notice to leave full time Army service. Others with similar length of service, of the same age and in the same regiment will have to wait up to two years longer to do the same. At the time of writing this has already caused confusion, is likely to cause great resentment and damage morale in all Army units with soldiers aged under 22.

#### [2] *Unequal opportunity in recruitment*

The haste with which 16 year olds are recruited straight from school in Britain is contrasted with the requirement on applicants from Commonwealth countries to prove that they have the means to support themselves for up to 12 months in the UK, without permission to work, as their application to join the British Army may take that long to process.

#### [3] *The Service Complaints System*

The Armed Forces Act 2006 created the post of Service Complaints Commissioner which started on 1 January 2008.

The Armed Forces Bill 2011 proposes adding independent members to a Service Complaint Panels. The experience of AT EASE does not indicate that these reforms will be sufficient to remedy a complaints system described by the Service Complaints Commissioner herself in 2010 as “not yet operating efficiently, effectively or fairly”. We ask the Committee to consider the example of the Military Ombudsman system in other Western European countries.

#### [4] *Life Imprisonment*

The Armed Forces Act 2006 ruled that absence without leave to avoid an active posting should be defined as desertion and be punishable by a maximum sentence of life imprisonment. This measure was not mentioned in the Report of the Select Committee on the Armed Forces Bill 2006 and appears to have been overlooked by them. As this drastic measure was not discussed by the Select Committee of 2006 before it became law, the Select Committee of 2011 may wish to consider the implications now.

#### [5] *Conscientious Objection*

The ADVISORY COMMITTEE ON CONSCIENTIOUS OBJECTORS has only sat once since before the start of the war in Afghanistan. The result of that hearing on 17 December 2010 raises serious questions about the correct definition of conscientious objection.

#### [6] *Observations on previous Parliamentary Reports*

AT EASE has submitted evidence and observed the progress of every Select Committee on the Armed Forces Bill since 1986. Attention is drawn to previous Parliamentary Reports especially the Report of the Select Committee on the Armed Forces Bill 1991 and the [post-Deepcut] *Duty of Care Report 2005* both of which are relevant to problems which remain unresolved today.

[7] *References*

[8] *Statistics of reasons for contacting AT EASE*

[1] UNDER 18S PROGRESS BY MISTAKE. REGRESS BY INTENTION

1.1 On 1 January 2008 an important reform was announced but reversed on 6 August 2008. As the reversal cannot be retrospective there are this year, 2011, different regulations for young soldiers who joined within these dates and those who joined just outside these dates.

1.2 The background has been of concern to previous Parliamentary Committees. The anomaly that army recruits aged less than 18 have to commit themselves to up to two years longer minimum service than those aged over 18 was identified by the Select Committee on the Armed Forces Bill 1991.

It is, in our view, reasonable to require those enlisting as adults to commit themselves to a minimum of three or four years' service. Whether the same should be expected of minors is more doubtful. Perversely, those signing up before the age of 18 actually sign up for longer: they must serve until their 18th birthday and then the minimum period of adult service. [1]

The next Select Committee on the Armed Forces Bill in 1996 shared the concern of their predecessors on this point.

We found the justification for the difference in the length of service for under-18 year olds and adults unconvincing. [2]

We recommend that the working group considering the position of under-18 year olds should give careful consideration to the desirability of requiring minors to commit themselves to a period of service no longer than that of adults. [3]

1.3 However the longer commitment for those aged under 18 was not changed but in 1999 a year was added to the minimum service for all age groups. So the earliest age at which soldiers could give 12 months' notice became 21. That means they can leave full time service aged 22. For those who join at 16 what we in AT EASE formerly called "the five year trap" [4] became the six year trap.

1.4 In January 2008 it was announced that minimum service in the Army would be four years subject to 12 months prior notice.[5] This applied to all age groups. This long awaited reform was welcomed by AT EASE. It meant that recruits under 18 no longer had to serve up to two years longer than adults. The unfair condition criticised by the Select Committees in 1991 and 2001 had been finally rectified.

1.5 It should be noted that in the RAF, the minimum service, irrespective of age on joining, is still four years. It is much easier for RAF recruits to understand their terms of service and fairer to younger entrants.

1.6 However in August 2008 the Army reversed the ruling of January 2008 and restored the obligation on soldiers who had joined under-18 to serve four years from their 18th birthday plus service from joining until their 18th birthday.[6] A progressive, much needed reform had been treated as a clerical error and the unjust status quo ante restored.

1.7 Because the change back could not be retrospective, the recruits who had signed the attestation forms with the January 2008 regulations and taken the oath were and are not liable to the August 2008 conditions. The soldiers who signed on in 2007 or 2008 will have completed three or more years of service during the course of this year 2011. Those, of whatever age, who signed on between 1 January 2008 and 5 August 2008 are eligible to give 12 months notice and leave in 2012. Those who were under 18 when they signed on outside these dates are not.

1.8 Already AT EASE has had two enquiries from soldiers who both signed on in January 2008 when they were under 18. One had contradictory responses from different Officers. One Officer agreed he was entitled to leave in January 2012. Another told him he had to wait until four years from his 18th birthday like everyone else. Fortunately he had kept his original attestation paper. The Officers have now taken further advice and agreed that he can leave in January 2012. Since then another soldier in a different Regiment, who also joined in January 2008 when he was under 18 has, after several interviews, been given the wrong information and told he has to serve four years from the age of 18. What is very worrying is that, in his case, the wrong information is alleged to have come from the Army personnel department in Glasgow which means the wrong information may be going out to other units.

1.9 In units with the correct information, those who joined when they were under-18 before January 2008 will be told they have to wait longer before they can be released although they have served longer than those entitled to leave between January and August 2012. Not only is this inevitably going to cause resentment and confusion in the ranks, it places the NCOs and Officers, who have to administer the manning sections and explain the disparity, in a very difficult position.

1.10 What is most regrettable about this whole sorry confused situation is that the mistake was an improvement and a step towards rectifying injustice. The correction was the opposite.

1.11 One positive development was that in August 2008 a new attestation document for new recruits [7] was issued. Having complained to previous Select Committees, about the lack of clarity AT EASE is pleased to acknowledge that the new document is an improvement. It does warn recruits about the minimum length of service and extra time beyond that minimum which may be added on if they do an education course. However there is still the problem that impulsive, excited 16 year olds may not read the whole or “take in” the implications. Parents can also be confused. AT EASE still gets contacted by parents who think soldiers can “buy themselves out” although this form of discharge was ended in 1991 and is only available to soldiers who joined before that date.

1.12 More recently there has been a similar development in that another much needed reform has been announced by mistake.

1.13 On 10 January 2011 the Minister for Defence Personnel, Welfare and Veterans, mistakenly stated in the House of Commons in answer to an MP that, after serving 28 days, any soldier could give fourteen days notice and leave up until the age of 18.[8] Later an answer to another MP he gave a more correct answer[9] that is that the right for minors to give 14 days notice and leave expires six months after joining. Many are still only 16 when their right to give notice expires.

1.14 This incident demonstrates that the present terms of contracts for the youngest recruits are very confusing. If even a Government Minister could misunderstand them it is not surprising that so many 16 year olds do not understand and miss the six month deadline. The other reason that the Minister may have thought that the right to give fourteen days notice and leave continued until the 18th birthday may be that such a regulation appears reasonable. It is what one would expect in a modern society where 18 is the legal age of majority.

1.15 These are two examples where the mistaken information represents what would be a much fairer system than the present reality. It is sometimes argued that extending the period of discharge as of right for young recruits is not necessary because Commanding Officers have discretionary powers to discharge unhappy minors who have “made their unhappiness known” to their Commanding Officer.[10]

1.16 The Select Committee on the Armed Forces Bill 2001 acknowledged the concern of their predecessors about the terms of service [ but accepted assurances from the Director General of Service Personnel Policy that change was not necessary because Commanding Officers have discretionary powers to discharge unhappy minors and he did not know of any case of a Commanding Officer being difficult if an unhappy youngster wanted to leave [11] The exact numbers of those who have left under the unhappy minors provision is known because all discharges and the reason for discharge have to be recorded. Refusals of requests do not have to be recorded so their numbers are not known.

1.17 Young soldiers face a problem in how they “make their unhappiness known” to their Commanding Officers. A teenage private soldier can’t just walk up to his Commanding Officer and say he wants to leave the Army. Some demonstrate their unhappiness in various ways of self harm including suicidal gestures, deliberately injuring themselves, taking illegal drugs or going AWOL.

The Parliamentary Defence Committee Report Duty of Care 2005 stated:

We are concerned that the period of time available for recruits to exercise their right to leave training .....is unnecessarily restrictive and may lead to recruits going AWOL. We heard evidence of recruits who wanted to leave the Army outside of this time restriction who, having been refused permission to leave, went AWOL. [12]

1.18 This echoes the finding of the MPs in the 1991 Select Committee who were told by soldiers serving sentences at MCTC Colchester that they would not have gone AWOL if they could have left legally. In the long experience of AT EASE most soldiers who go AWOL would not have done so if they could have got a discharge legally.

1.19 The Duty of Care 2005 investigation was undertaken as a result of the deaths of four young soldiers at Deepcut. Unfortunately it did not have as much influence on the Select Committee on the Armed Forces Bill 2006 as we, in AT EASE, had hoped. The Deepcut Review under Nicholas Blake QC was published in 2006 [13] towards the end of the Select Committees deliberations.

We think it inappropriate to make recommendations on the issues on which Mr Blake commented prior to the Government response to the Deepcut Review. [14]

1.20 As the last Select Committee felt unable to make recommendations on the issues arising from the Deepcut tragedy, we appeal to the current Select Committee to consider them now. They are very relevant to the present situation. What happened at Deepcut demonstrated vividly that the discretionary power of a Commanding Officer to discharge unhappy young soldiers is not an adequate safety net. Some unhappy young soldiers who were outside the six month window were refused permission to leave. The four who died were not the only soldiers being abused and humiliated. If the Commanding Officer had any knowledge of what was going on he surely would have intervened to try to stop it.

1.21 We appeal to this Select Committee to propose the following amendments.

- (1) That minimum service be counted from the date of joining the Army, whatever the age at enlistment.
- (2) That all members of the Armed Forces under the age of 18 have a right to give fourteen days notice and leave.

## [2] UNEQUAL OPPORTUNITY IN RECRUITMENT

2.1 The Select Committee on the Armed Forces Bill 2001 endorsed a policy that is still actively followed today.

We believe it continues to be important to recruit young people straight from school, including at the age of 16; if they are not caught (sic) at this point, they are likely to take up other careers and be permanently lost to the Armed Forces. [15]

2.2 This policy requires that the recruitment procedure has to minimise any delay between leaving school and joining up. At present although recruits may not join the army until they are 16 years old, they can start the application process from the age of 15 and seven months [16]. Over hasty-decisions made when young are major reasons given to AT EASE for wanting to leave the Armed Forces, especially the Army.

2.3 By contrast AT EASE has recently received enquiries from people from African countries who wish to join the British Army. The recruitment procedure for them is very long.[17] They have to travel to the UK at their own expense before being considered. In order to be considered they must have a sponsor who is resident in the UK. They do not have to live with the sponsor but the sponsor must be responsible for contacting them while they are in the UK. The applicant recruit and the sponsor are warned that the recruitment assessment may take up to 12 months. During that time they are not allowed to take paid employment or to have recourse to public funds. On entry they have to prove they have funds to support themselves for up to 12 months.

2.4 It is accepted that time spent on the recruitment process may need to differ for recruits with different backgrounds but both these extremes are, we submit, indefensible.

Please consider the following making the following recommendations:

- (1) That the age at which applications to join the Army can be first submitted be raised to 16 years old.
- (2) That the earliest date of joining the Army be at least one month after leaving full time education.
- (3) That applicants from Commonwealth countries undergo preliminary assessment in their own country and are only invited to the UK if preliminary assessment indicates they are likely to be accepted.
- (4) That, when in the UK, the final stages of assessment and recruitment of Commonwealth applicants be carried out as speedily as possible.

## [3] THE SERVICE COMPLAINTS SYSTEM

3.1 The post of Service Complaints Commissioner was created by the Armed Forces Act 2006 and started on 1 January 2008.

In her latest report available at the time of writing, the Commissioner said:

Despite improvements I cannot give an assurance that the Service complaints system is yet working efficiently, effectively or fairly.[18]

3.2 The experience of AT EASE over many years is that the procedures in the UK have indeed been inefficient, ineffective and unfair. As one Senior NCO put it “The Complaints Procedure has been an absolute nightmare for me and my family”.

3.3 The Military Ombudsman system used in several other Western European countries is an example of a system that is more efficient, effective and undeniably much more fair.

3.4 For instance in Germany [19] the Military Ombudsman is a civil servant who is completely independent of the Military. In every barracks the contact details are displayed. It is a punishable offence for any Officer to suggest that a complainant should withdraw. The Ombudsman has authority to investigate complaints and to question all involved irrespective of rank. The Ombudsman is able to come to a decision from a neutral position. If, for instance, an Officer is cleared of an untrue allegation, it is known that was the result of an independent investigation.

3.5 By contrast, amongst UK Forces, there is a widespread belief that in any dispute or conflict of evidence the more senior officers will always accept the version of the most senior in rank involved. Some believe it is their duty to do so. They think it would undermine authority and discipline to do otherwise.

3.6 A basic flaw in the Redress of Grievance system in the UK [19] is that the military are the judges in their own case. Two or more service men or women are not allowed to complain so it is always a solitary individual up against the system. A complaint moves slowly up the Chain of Command. At each level the complainant gets a written reply. If not satisfied he/she has to write back stating reasons why the complaint should go to the next level. In the experience of AT EASE most complainants just give up at some point. They are then asked to sign that they withdraw their complaint or are satisfied with the result. Both original

complainants and NCOs, at the lower levels of the Chain of Command, who back complainants are sometimes intimidated into withdrawing.

3.7 The creation of the post of a Service Complaints Commissioner in the 2006 Armed Forces Act was welcomed by AT EASE as a step in the right direction but we were dismayed that the new Commissioner would have only two powers:

- (1) to refer back to the Chain of Command; and
- (2) to be informed of the decision of the Chain of Command. [20] This must be the most frustrating job in public service.

3.8 In November 2007 AT EASE was informed that the Commissioner Dr Susan Atkins would start her post on January 1st 2008. The letter from the MoD stated an aim of a transparent, fair complaints system. It also stated Dr Atkins's credentials which are very impressive. This gave us hope that, despite the limited description of her role in the 2006 Armed Forces Act, it was intended that she would have some real authority or influence. We did not think such a highly qualified person would be employed just to pass on messages.

3.9 A complaint on behalf of an AT EASE service user was submitted to the new Commissioner as soon as she started. We received a reply asking for further details which we sent. Then it was referred to the Chain of Command. After that it became apparent that nothing had changed. It was the same unfair procedure as in the past. Even the forms, the terms used etc were unchanged. The complainant had to continue with the unreformed Redress of Grievance procedure. Such references as there were to the Commissioner did not indicate that she was being respected as an independent arbiter. At one point the complainant got a letter saying "You complained to the Service Complaints Commissioner but the Army were already dealing with it". As usual with the Redress procedure it was more like an adversarial contest with the Chain of Command on one side and the lone complainant on the other. When he complained at the delay he was told that "some suggestions of the Service Complaints Commissioner had been referred to the Army's legal advisers". He was never told what the suggestions were or what that legal advice was. In an adversarial dispute like a civil action each side can keep their legal advice private. However those entrusted to bring in a verdict such as Justices in a Magistrates Court would not give legal advice to just one side. The whole procedure took 21 months.

3.10 This experience leads AT EASE to agree with the Commissioner's statement that the system is not efficient, effective or fair. [21] We do not think that is in any the fault of the Commissioner or her staff.

3.11 Section 20 of the Armed Forces Bill 2011 which is before you, proposes measures whereby independent persons may be appointed to Service Complaint Panels. The three separate systems of the branches of the Armed Forces will be merged.

3.12 The Panels would deal with the final stages of an appeal. Many Service complainants give up in despair before they reach that stage as has been noted by a SSAFA statement.

We believe that independent participation ideally needs to be at all levels of the process, not just at the Service Board Level, which is too inaccessible and in practice relatively rarely attained. [22]

3.13 The merger of three unfair systems will not make one fair one. What is proposed is to top and tail the complaints system with token independent persons. The Service Complaints Commissioner will receive complaints at the beginning of the system and there will be some independent members of the final panel for the minority of complainants who persevere to the final stages.

3.14 Would-be complainants in the British Armed Forces are not just malcontents with petty grudges. Lives might have been saved in Deepcut, Iraq and Afghanistan if British troops had the services available to other Western European troops.

3.15 We suggest an enquiry be set up to investigate whether there is a need for an independent Military Ombudsman in the UK, seeking advice from countries which have such systems.

#### [4] LIFE IMPRISONMENT

4.1 Section 8 of the Armed Forces Act 2006 defined absence without leave with intent to avoid a particular relevant active service posting as desertion. Relevant service was defined in terms that may be applied to the conflicts in Afghanistan and Iraq. It ruled that desertion in such circumstances could be punished with imprisonment which "may be for life"[23] This has been the law since November 2009.

4.2 The Report of your predecessors in 2006 refers to a "clause by clause consideration of the Bill". That was not what happened in reality. This present Select Committee on the Armed Forces Bill 2011 is asked to re-consider this measure because it appears to have been overlooked by your predecessors in 2006. Reading the Armed Forces Bill 2006, it is easy to miss those four words "may be for life". It is not mentioned in any of the 62 paragraphs of the Special Report of that Select Committee [24]

4.3 Some MPs not on the Select Committee did propose an amendment opposing life imprisonment and there was a debate in the House of Commons which a small number of MPs attended. After the division bell sounded, about 350 MPs who had not attended the debate, arrived, voted and immediately left the Chamber. They did not even wait to hear the result and could be heard talking and laughing outside. The impression of

observers was that those MPs might not know and certainly did not care that they had voted for life imprisonment for members of another occupation who were absent from their place of work.

4.4 It is undeniable that absence without leave is a huge problem and that numbers have grown during the wars in Iraq and Afghanistan. You may wish to ask the MoD witnesses for the current figures. What may be significant is that, during previous wars, such as that in the Falklands and the Balkans, the rate of absence without leave dropped. When there were media reports about troops acting as peacekeepers in the Balkans AT EASE was contacted by AWOL soldiers for help giving themselves up.

4.5 That numbers of troops wish to avoid deployment or return to Afghanistan is certainly a serious problem that needs to be addressed. What is questionable is whether the threat of the maximum punishment in our penal system will be the solution to that problem.

4.6 In the experience of AT EASE, unwillingness to deploy to Iraq or Afghanistan is sometimes due to some form of traumatic stress disorder or some form of conscientious objection. A historical parallel indicates that the threat of maximum punishment will not be a solution to either of these problems. During the First World War 306 British soldiers were executed for desertion or cowardice. The threat of the maximum penalty did not deter conscientious objectors who were prepared to die rather than kill. Nor did it enable traumatised soldiers to return to battle even though their lives literally depended on doing so.

4.7 On 15 August 2006 the, then, Defence Secretary announced a posthumous free pardon for those executed in the First World War.[25] It is strange that in the same year the same Government that recognised that these men should not have suffered the maximum penalty, passed a law condemning their present day equivalents to the present day maximum penalty.

Please consider recommending:

That Sections 8 (4a) and 8(5) of the Armed Forces Act 2006, that permit a sentence of life imprisonment, be repealed.

#### [5] CONSCIENTIOUS OBJECTION

5.1 The experience is described of a serving member of the Royal Navy with a genuine conscientious objection to a posting to Afghanistan. He did not go absent without leave, commit any offence or refuse any order. He scrupulously followed the correct procedure in applying for a discharge as a conscientious objector. He appeared before the Advisory Committee on Conscientious Objectors on 17 December 2010.

5.2 This appeal hearing was very important because it is the first and only such hearing to be held since several years before the start of the current war in Afghanistan and recent war in Iraq. Members of AT EASE had observed four ACCO appeal hearings in the past and regarded them as fair procedures. We regretted that ACCO had been inactive when it was most needed so this hearing was very welcome.

5.3 The appellant, a Leading Medical Assistant in the Royal Navy described the two main reasons why he had become a conscientious objector during 2010.

#### *Medical ethics*

5.4 During his early training he was taught that Royal Navy Medics must at all times observe the letter and spirit of the Geneva Convention. He quoted the instructor. "Even if your patient is an enemy soldier who has just killed your best friend, you are medics. It is your duty to tend to his injuries". He accepted these standards and served over five years in the medical service of the Navy believing that he would be required to uphold them in all circumstances.

5.5 In July 2010 he attended a briefing to prepare him and other medics for posting to Afghanistan. He was shocked that the instructions contradicted the ethical standards he had previously been taught. He was told that injured UK and allied troops should be given priority over civilian casualties who might have to be sent away. He asked if this would apply to a seriously injured Afghan child and was told it would.

5.6 Another Leading Medical Assistant with 12 years service testified that this was what they were told at the briefing and that it had greatly upset the appellant.

#### *Killing of civilians*

5.7 After this briefing he tried to find out more about what he would be involved in while serving in Afghanistan. He asked colleagues who had served in Afghanistan and learned he might be involved in firing a gun as well as medical duties. He searched the internet for information about the war and was horrified by reports of the scale and nature of killing civilians. Finally the WikiLeaks films of deliberate killing of civilians by allied troops and the knowledge that he might be ordered to refuse treatment to civilians injured by his own side convinced him that he could not take part. He said he felt that members of the Forces who felt as he did had to "stand up and be counted". He would have been willing to continue to serve in the Royal Navy if he could do so and still object to the war in Afghanistan. This is not possible. Serving members of the UK Armed Forces have to be available for all deployments that may be required. For that reason conscientious objections to specific conflicts are allowed but the objectors have to apply to leave the Armed Forces on those grounds.



*The decision of the Advisory Committee on Conscientious Objectors*

5.8 This application was turned down on the grounds that his objection was political rather than based on morals or conscience. The Committee also reminded itself (and indeed wishes to stress) that political objection to military service is not a ground for discharge and that only objections based on moral or conscientious grounds may be taken into account by the Committee upon a serviceman's application for discharge from military service. [26]

5.9 The "reminded" in this context is puzzling because this appears to be a new ruling by new ACCO members. In 1916 the UK Parliament decided that conscientious objection could be recognised on any grounds that were genuinely against the conscience of an individual. It was not just restricted to religious grounds. There has not been an Act of Parliament since then to overturn this.

5.10 Certainly cases of conscientious objection on more recognisably political grounds than this were allowed during the twentieth century. None of the Committee members at previous hearings observed by AT EASE indicated that any particular form of objection was disqualified so long as it was sincerely held by that individual.

5.11 Because of its strict adherence to confidentiality, AT EASE would not normally comment on an individual case but this matter is already in the public domain as an ACCO hearing is in public and has been reported in the press. Before this hearing, AT EASE had for many years, on the basis of our previous observations of ACCO hearings, advised conscientious objectors (including this appellant) that they would get a fair hearing and a reasonable result. Since 17 December 2010 we can no longer have that confidence.

5.12 This case has serious implications for other members of the Armed Forces that this Select Committee is asked to consider and clarify.

- [i] Two Leading Medical Assistants in the Royal Navy have testified that they were given contradictory instructions in basic training and in pre Afghanistan briefings. This Select Committee is asked to consider which is correct. Is it the duty of medical staff in the UK Armed Forces to treat casualties according to medical criteria irrespective of race or occupation? Is it the duty of medical staff in the UK Armed Forces to always treat members of their own or allied Forces before civilian casualties irrespective of severity of injury or need for immediate treatment? These rules cannot both be correct. It is unfair to send any troops into a conflict zone with confused or contradictory instructions.
- [ii] Should an objection based on medical ethics be defined as a political objection or can it be a matter of morals or conscience?
- [iii] Can an objection to taking part in unjustified killing of civilians be a matter of morals or conscience?
- [iv] Can a political conviction be a matter of morals or conscience?

## [6] UNFINISHED BUSINESS-PREVIOUS PARLIAMENTARY REPORTS

6.1 The fact that AT EASE has made submissions to every Select Committee on the Armed Forces Bill since 1986 may be described as "the triumph of hope over experience". The Select Committee of 1991 was very conscientious. Members of different political parties were united in trying to address the problems arising from the contracts of young soldiers. [27] It helped that some Members had young soldiers unable to leave the Army amongst their constituents. The Committee visited MCTC Colchester and interviewed inmates serving sentences for AWOL who told them they would not have gone AWOL if there had been a legal way of leaving the Forces.[28] This concurs with AT EASE experience. It can confidently be predicted that, if Members of the 2011 Select Committee did the same, they would get the same answers. Despite stating several concerns [29] the only reform regarding under-18s achieved by the 1991 Select Committee was that the minimum age of recruitment was raised to 16 years old. Unfortunately instead of making their recommendations as amendments to the Act, they instructed the MoD to bring forward proposals within a year to change the conditions for soldiers under 18.

6.2 AT EASE gave evidence to the 1996 Select Committee that seventeen year old soldiers were being sent on active service to the Balkans conflict in defiance of the strong condemnation of that practice in the 1991 Report. There had also been no reform of the contracts binding them into adulthood signed by under-age recruits. We thought the Select Committee in 1996 would be outraged that the recommendations of their predecessors had been ignored. Only one member of the 1996 Committee pursued the question of what changes had occurred in response to the 1991 recommendations. He got an admission from a Military witness that "nothing has happened". [30]

6.3 The 1991 Select Committee devoted considerable time and attention to the issue of the contracts of young soldiers. Subsequent Select Committees on the Armed Forces Bills were asked to devote time and attention to matters less directly affecting members of the Armed Forces. In 1996 it was the sale of the Royal Naval College at Greenwich. In 2001 it was the change in regulations of the Ministry of Defence Police.

6.4 In 2006 AT EASE hoped that the parliamentary Defence Committee Report Duty of Care 2005 [31] which considered some of the implications of the deaths of young soldiers at Deepcut would influence the 2006 Select Committee on the Armed Forces. The findings of the Duty of Care Report echo those of the Select Committee on the Armed Forces Bill 1991 indicating that little has changed since then.

6.5 In 2010 it was announced in Parliament that this 2011 Armed Forces Bill would be modest because so much had been achieved in 2006. It appears to be being rushed through so that Members of this Select Committee will not have time to consider the need for any reforms. Potential witnesses like AT EASE were told in advance that there would not be time for any oral evidence as the Select Committee must report by early March. It might be justified to devote less time to the Armed Forces Bill 2011 if there was evidence that there is now less need for considering the situation of the Armed Forces. The indications are that there is more not less need at the present time. Troops are dying and suffering horrific injuries in a controversial war. The rate of absence without leave is soaring. The Service Complaints Commissioner appointed by the last Armed Forces Bill reports the complaints system is not effective, efficient or fair. Respected charities are complaining about the treatment of serving troops and veterans.

6.6 Previous Select Committees made the mistake of thinking that issues would be dealt with elsewhere. The 1991 Select Committee asked the MoD to bring forward plans for changing the conditions of under-18s within a year. It did not happen. The 1996 Select Committee was told that a working group following the Betts Review would consider the same topic. The Betts Review did not deal with that subject and in 1999 a year was added to minimum service. The 2006 Select Committee thought that the implications of Deepcut would be studied by other Parliamentary bodies. We ask this Select Committee not to assume that issues that have been deferred and deferred can be left to a future "Armed Forces Covenant" report.[32]

Please will this Select Committee re-negotiate with your parliamentary colleagues so that you have time to give serious outstanding issues the time and attention that is needed.

17 February 2011

#### REFERENCES

##### *Under 18s Progress by mistake. Regress by intention*

- [1] Report of the Select Committee on the Armed Forces Bill 1991 page x 25
- [2] Report of the Select Committee on the Armed Forces Bill 1996 page xv 41
- [3] Report of the Select Committee on the Armed Forces Bill 1996 page xvi 42
- [4] Report of the Select Committee on the Armed Forces Bill 1991 page x 25
- [5] ARMY TERMS OF SERVICE REGULATIONS 2007 (SI 3382)
- [6] ARMY TERMS OF SERVICE REGULATIONS 2007 (SI 1847)
- [7] Army Form B271W Notice Paper-Regular Army-Full Time
- [8] Hansard HC deb 10 January 2011 c3w Reply to Caroline Lucas MP
- [9] Hansard Colum 27w 7 February 2011 Reply to Fabian Hamilton MP
- [10] *ibid*
- [11] Report of the Select Committee on the Armed Forces Bill 2001 page xxv 61
- [12] Defence Committee 2005 Duty of Care Report page 53. 103
- [13] Nicholas Blake QC 2006 The Deepcut Review published TSO
- [14] Report of the Select Committee on the Armed Forces Bill 2006 Page 54. 50

##### *Unequal Opportunity in Recruitment*

- [15] Report of the Select Committee on the Armed Forces Bill 2001 page xxvi 63
- [16] <http://www.army.mod.uk/join/20193.aspx>
- [17] Letter sent to Commonwealth applicants by Army Personnel department

##### *The Service Complaints System*

- [18] Dr Susan Atkins 20 March 2010 2nd Annual Report of the Service Complaints Commissioner
- [19] Andreas Prufert 2006. This is based on a talk given to an AT EASE meeting by the, then, Secretary General of EUROMIL
- [20] Armed Forces Bill 2006.
- [21] Dr Susan Atkins 2010 op cit
- [22] Report of the Select Committee on the Armed Forces Bill 2006 Ev.157

*Life Imprisonment*

- [23] Armed Forces Act 2006 Section 8. Desertion 4(a)
- [24] Report of the Select Committee on the Armed Forces Bill 2006 pages 50–56
- [25] Des Brown, Defence Secretary 15 August 2006. Cited in The Economist 17 August 2006

*Conscientious Objection*

- [26] T King, C M Lake and K Walton December 2010 Advisory Committee on Conscientious Objectors, Advice to Her Majesty's Secretary of State for Defence.

*Unfinished business-Previous Parliamentary Reports*

- [27] Report of the Select Committee on the Armed Forces Bill 1991
- [28] Report of the Select Committee on the Armed Forces Bill 1991 page x 24
- [29] Report of the Select Committee on the Armed Forces Bill 1991 pages x-xi 24–28
- [30] Report of the Select Committee on the Armed Forces Bill 1996 Keith Mains MP
- [31] Defence Committee 2005 op cit
- [32] Armed Forces Bill 2011 Armed Forces Covenant Report 5 (1)

## [8] STATISTICS OF REASONS FOR CONTACTING AT EASE

## SUMMARY OF AT EASE CASELOAD FOR SIX YEARS TO 9 DECEMBER 2010

<i>By 1st "reason" code</i>	<i>Total</i>	<i>In (foreign forces)</i>	<i>In (foreign forces)</i>	<i>Ex forces</i>	<i>?Joining</i>	<i>Civilian</i>	<i>Unknown</i>	<i>Unknown (foreign forces)</i>
<i>Total (all reasons)</i>	<b>206</b>	122	4	36	27	2	12	3
Wants discharge	<b>48</b>	47	1	0	0	0	0	0
Info only	<b>32</b>	6	0	1	23	1	1	0
AWOL	<b>30</b>	30	0	0	0	0	0	0
Ethical/political	<b>25</b>	17	2	1	1	1	0	3
Medical/Psych.	<b>24</b>	6	1	15	1	1	0	0
Involuntary discharge	<b>14</b>	4	1	8	0	0	1	0
Disciplinary	<b>8</b>	1	0	5	0	0	2	0
Family problem	<b>8</b>	5	0	2	0	0	1	0
Bullying	<b>4</b>	2	0	1	0	0	1	0
Gay	<b>1</b>	1	0	0	0	0	0	0
Other	<b>11</b>	3	0	3	2	0	3	0
<b>By any "reason" code (up to four "reason" codes allowed per case)</b>								
Wants discharge	<b>73</b>	70	1	0	1	0	1	0
Medical/Psych.	<b>57</b>	30	2	22	1	1	1	0
Info only	<b>42</b>	13	0	4	23	1	1	0
AWOL	<b>33</b>	33	0	0	0	0	0	0
Ethical/political	<b>32</b>	22	2	3	1	1	0	3
Disciplinary	<b>24</b>	12	1	7	0	0	2	2
Family problem	<b>17</b>	12	0	3	1	0	1	0
Involuntary discharge	<b>16</b>	5	1	9	0	0	1	0
Bullying	<b>14</b>	11	1	1	0	0	1	0
Gay	<b>2</b>	1	0	1	0	0	0	0
Other	<b>31</b>	17	1	8	2	0	3	0

**Counts are of cases for six years to 9 Dec 2010 (by date of 1st contact)—earliest case 12 Dec 2004**

Cases known to relate primarily to service in foreign forces are counted separately

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### Supplementary written evidence from the Ministry of Defence

#### SERVICE COMPLAINT PANELS

1. During the evidence session on 3 February, witnesses undertook to provide the Select Committee with a memorandum in response to Question Q54, about the number of Service Complaint Panels that had taken place with an independent member and how many panels there had been altogether.

2. The table below sets out the information requested, together with additional figures for the number of Service Boards that have been held over the same period.

<i>Year</i>	<i>Service</i>	<i>Panels convened with an independent member</i>	<i>Panels convened without an independent member</i>	<i>Service Boards</i>
2009	Navy	3	7	0
	Army	0	2	2
	RAF	1	1	0
2010	Navy	1	3	1
	Army	4	0	8
	RAF	9	14	1
2011 up to 4 Feb	Navy	0	0	0
	Army	2	1	0
	RAF	0	0	0
Total	Navy	4	10	1
	Army	6	3	10
	RAF	10	15	1

#### Notes:

(a) These figures represent the Defence Council-level adjudications of Service complaints made under the auspices of Armed Forces Act 2006.

(b) Redress of complaint cases which were made under the legislation that preceded the Armed Forces Act 2006 and which reached the same level have not been included because service complaint panels were not available as an alternative to Service Boards under the earlier arrangements.

(c) Service Complaint Panel totals have been separated out to show those panels which included an independent member and those which did not.

16 February 2011

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### Written evidence from the Welsh Assembly Government

The Welsh Assembly Government welcomes the proposals to introduce and develop a Covenant Report. It is important that this is relevant to Armed Forces communities irrespective of where they live. We are grateful for the opportunity to contribute to an Armed Forces Covenant Report which recognises the Welsh Assembly Government's work to support the wider Armed Forces community in Wales. Any devolved issues are of course a matter for scrutiny by the National Assembly for Wales. Our position is based on an understanding that clause 2 of the Bill does not confer, remove nor modify any functions of the Welsh Ministers. We are not requesting any changes to the Bill as currently drafted.

My officials work regularly with the Ministry of Defence on these matters. We are represented on the Armed Forces External Reference Group overseeing the Covenant. Further to this, you may wish to note that I have set up and Chair an Expert Group on the Needs of the Armed Forces Community in Wales of which taking forward the principles of the Covenant is an important aspect of its work. The Group is attended by Dr June Milligan, Director General for Public Service and Local Government Delivery, Welsh Assembly Government, in her capacity as Armed Forces Advocate for the Welsh Assembly Government, and has representation from the three Services, their Families Federations, Ministry of Defence and voluntary organisations which support the Forces community.

*Carl Sargeant AM/AC*  
Minister for Social Justice and Local Government

16 February 2011

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### Written evidence from the Scottish Government

Thank you for your letter of 7 February to Bruce Crawford seeking a Scottish Government view on the provisions in the Armed Forces Bill relating to the Armed Forces Covenant Report currently under consideration by the Select Committee you chair. I am responding since I have the Ministerial lead in Scotland on veterans and many of the public services on which the Report and the forthcoming Covenant impact.

As you may be aware, the Scottish Government has contributed significantly to the production of the Armed Forces Covenant Report. I met with Professor Strachan last year and impressed upon him the need to recognise the Scottish legislative and structural landscape that will often require a different approach to the planning and delivery of new and developing initiatives for the Armed Forces community here. I believe this has been reflected in the Covenant Report. Moreover, in ongoing dialogue with their Ministry of Defence counterparts, Scottish Government officials have made clear that implementation of the Report recommendations and the introduction of the Armed Forces Covenant will require close collaborative working on the best way forward.

The six key areas and their accompanying recommendations in the Report are welcome. In my view they correctly focus on developing a strategy for the provision of services appropriate to the Armed Forces community and in a way that suit local circumstances. I also welcome the identification of those strategic bodies and organisations that could make use of the Armed Forces Covenant. However, many recommendations require ongoing and careful consideration to establish a timeline for their introduction and how they might be arranged and funded.

The housing elements of the Report fall primarily to the Ministry of Defence since they are concerned with Service accommodation. However, I have already made representations to UK Ministers expressing disappointment over the decision not to extend coverage of the Armed Forces Home Ownership pilot into Scotland given that many Service personnel in Scotland face the same type of affordability problems as those faced by Service personnel in England.

Healthcare in Scotland is planned and delivered in a way that suits local circumstances and the structure of Health Boards here. The Report acknowledges this different approach and provides sufficient scope for the Covenant to be implemented in Scotland in a way that reflects the needs and aspirations of the Armed Forces community. Indeed, the Scottish Government has already moved forward on a number of fronts that improve healthcare provision that are consistent with the aim of the Report.

I also endorse the general direction of the education related recommendations of the Report. While these are designed to improve opportunities for Service personnel I can confirm that the Scottish Government is already developing new initiatives and exploring ways in which to improve the educational experience of Service children based in Scotland. Nevertheless, we are prepared to work with the Ministry of defence and other UK Departments on any specific initiative.

Finally, the Select Committee will wish to note that the Scottish Government fully supports the view expressed in the Report that veterans should be offered an ID card. We have already explored whether a card could be introduced in Scotland but established that this would only be possible with the full cooperation of the UK Government. Were a decision take on a UK wide basis to proceed with this recommendation, the Scottish government would be delighted to assist with the successful implementation of an ID card.

In conclusion, the Armed Forces Covenant Report provides an excellent platform for joint working on the development and implementation of initiatives and services specifically designed for the Armed Forces community. There is a need to tailor these in a way that fits with the Scottish legislative landscape and matches and compliments existing initiatives. Significant progress has already been made but much more needs to be done, as identified by the Report. However, I believe the Report is a very good tool to help direct and deliver the Armed Forces Covenant in a fair and transparent way.

*Alex Neil MSP*  
Minister for Housing and Communities

*10 February 2011*

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### Written evidence from the British Armed Forces Federation

1. This evidence is submitted by the British Armed Forces Federation (“BAFF”), an independent non-statutory organisation representing its members, who are predominantly serving personnel in the three Armed Services; membership is also available to veterans. Our Steering Group submitted written evidence to the previous Armed Forces Bill Committee in 2006.

#### REPRESENTATION OF ARMED FORCES PERSONNEL

2. The Ministry of Defence continues to have an ambivalent attitude towards the Federation. It accepts that serving personnel of any service or rank have every right to join such an organisation if they wish. We had positive meetings in 2008–09 with a Defence Minister and with the relevant senior officials. Along with the Ministry of Justice, Ministry of Defence, Electoral Commission and the three Service Family Federations, we

were fully represented on the Service Voting Working Group which was active for several months before the 2010 General Election.

3. We are permitted to place paid advertising in Service publications. However, in early 2010 the Ministry intervened to prevent BAFF from making printed publicity material available within Service establishments, and from offering presentations for those who wished them, after the Commanding Officers concerned had readily agreed to accept such material and visits. The Ministry contends that no such facilities are afforded to any other organisations, which is demonstrably not the case.

4. We therefore acknowledge that irrespective of the political colour of Government, we still have some way to go on recognition. Our concern is to ensure that nothing is inserted in the current Bill which might inadvertently make it more difficult at a later stage to make sensible progress on these issues.

5. In the course of the 2006 Bill Committee's evidence sessions, two witnesses who did not favour a British forces federation supplied anecdotes about their experiences with other nations' forces in the past. While we do not expect the same to happen during the present inquiry, we would appreciate the opportunity to check and respond to any such anecdotes which do arise.

#### THE MILITARY COVENANT AND THE EXTERNAL REFERENCE GROUP

6. As BAFF has been highlighting the Covenant since the early days of our Steering Group in 2006, we welcome its increased profile. Much is being made of consultation with "stakeholders". The one stakeholder who is not consulted—except in roundabout ways and on the Ministry's terms—is the Service person.

7. The Ministry rightly makes a virtue of its work with special interest organisations representing gay, lesbian, bisexual and transgender personnel, Muslim personnel, and others but personnel in general are not yet allowed to be represented in a similar way.

8. We do not suggest, of course, that the hard working Service charities and family federations should not endeavour to reflect the Service person's point of view and to comment robustly, as they do, on matters affecting Service personnel. Similarly, with married personnel amongst our membership we naturally do comment on Service family issues from time to time. The very fact that other organisations do quite rightly comment on personnel issues proves, in our view, that there is a need for the Ministry's consultative activities to include—but not to the exclusion of others—a representative body which is appointed by and answerable to its own membership in the armed forces.

#### COMPLAINTS AND REDRESS

9. We agree with the Service Complaints Commissioner that the existing Service Complaints system is based on sound principles but is over-engineered and complex. Our main concern, as an independent all-ranks body representing members who may be involved on either side of a complaint, concerns the length of time being taken to process complaints. Justice delayed is justice denied. Grievances can acquire a life of their own if not resolved within a reasonable time; they can have a corrosive effect on working relationships, cohesion within the team, and mutual trust up and down the chain of command.

10. We support an increase in the SCC's powers to intervene and to review, and the development of her functions towards those of a true Armed Forces Ombudsman. Because this is a national matter and we do not wish the SCC to be overshadowed, we have already expressed serious reservations about a proposal elsewhere for the establishment of a European Military Ombudsman.

11. On complaints made after leaving the Service, we agree that the SCC should be the final arbiter of whether it was just and reasonable to refuse to accept a complaint submitted out of time.

12. While there is already nothing to prevent BAFF from providing appropriate support to its members who may be involved on either side of a complaint, a fully-recognised armed forces federation would contribute to the fair and efficient working of the complaints system.

#### RECRUITMENT OF YOUNG PEOPLE

13. We note the evidence submitted by Mr David Gee and others about the recruitment of under 18 years olds into the armed forces. We would not wish suitable 16 and 17 year-olds to be deprived of the educational and training opportunities afforded by the two Army Colleges. We would not, therefore, support the raising of the minimum recruitment age to 18.

14. We agree with other witnesses, however, that there is an issue about 16 and 17 year olds entering into binding commitments, enforceable by criminal sanctions under Service law, to continue serving for at least four years in adult service.

15. The present "unhappy minors" provision rightly allows a Service person under the age of 18 years to leave after completing 28 days of Service and having given the required 14 days' notice. Between their 18th birthday and attaining the age of 18 years three months, they can request permission to leave provided they have already registered, before their 18th birthday, their "clear unhappiness" at their choice of career. This

procedure does not adequately provide informed consent as an adult. We were also surprised to learn that permission has been withheld from any individuals applying to leave at that stage.

16. It would be better to have a positive requirement for a Service person who enlisted at 16 or 17 to reaffirm their commitment at or shortly after their 18th birthday, but still be able to request permission to leave before they attain the age of 18 years three months.

17. An adjustment along the above lines would in our view deal with valid human rights and child protection objections to the present system. It would also be much fairer to parents for the Service person to be required to make a positive informed decision as an adult, rather than leave parents with the continuing moral burden of having committed their under-age child to four years adult Service.

#### HUMAN RIGHTS

18. Armed forces personnel generally take a realistic and unsentimental view of human rights issues. They respect human rights and may (unlike most citizens) risk their lives to defend those rights. They tend however to lack sympathy for those who “wave the human rights card”, or any other “card” for that matter.

19. It was, on the other hand, argued in a recent House of Commons debate (HC Deb, 10 February 2011, c55) that it was to the ECHR that the armed forces owe the demise of the former “March in the guilty man” principle of military justice. The same could be said of the development of the redress system, the establishment of the Service Complaints Commissioner, and the abolition of the ban on homosexuals serving in the military. With the benefit of hindsight, the existence of the Convention has proved on the whole to have been helpful in such matters.

20. Human rights issues affecting armed forces personnel are the subject of Recommendation CM/Rec(2010)4 to members states adopted on 24 February 2010 by the Committee of Ministers of the Council of Europe. The United Kingdom (MoD) was represented on the Council of Europe Working Group which revised the draft recommendations, as was BAFF as part of the “EUROMIL” observer delegation. One of the approved recommendations is that “Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively; where these rights are not granted, the continued justification for such restrictions should be reviewed...”

#### CONCLUSION

21. We are grateful for the opportunity to submit written evidence, and would be pleased to give oral evidence if that would be helpful.

*16 February 2011*

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### **Supplementary written evidence from the Ministry of Defence**

#### JURISDICTION AND TRANSFER FOR SENTENCING IN A SERVICE COURT A SERVICE PERSON FOUND GUILTY IN A CIVILIAN COURT

1. This memorandum provides further information on points that were raised by members of the Select Committee during the visit to Colchester Garrison on 14 February 2011. The points were related to the idea of transferring to the Court Martial cases which involved Service personnel and which were being tried in the civilian jurisdiction. In particular the Ministry of Defence understands that the Select Committee wished to have a note on the bars to transferring cases and to sentencing in the Court Martial cases which have been heard in the civilian criminal courts.

#### CONTEXT: CHOICE OF JURISDICTION BETWEEN CIVILIAN AND SERVICE COURTS IN THE UNITED KINGDOM

2. It is hoped that it will be helpful to the Committee to have an explanation of the broader legal context. There is a concurrent jurisdiction in the civilian and Service courts over offences committed in the United Kingdom by members of the Armed Forces. The Constitutional position is that, in the event of a question arising as to the appropriate jurisdiction, it is the civil authorities which have the final decision. This is reflected in the current Home Office circular of 1986. The circular also provides broadly that a Service jurisdiction is appropriate where a case has a purely Service context, but if there is a significant civilian context (such as civilian co-accused or a civilian victim) the appropriate jurisdiction is civilian.

3. An inter-departmental working group, including the Director of Public Prosecutions and the Director of Service Prosecutions, is reviewing the Home Office circular. The Judge Advocate General proposed that there should be a change to the existing principle of jurisdiction and that in future Service personnel charged with offences against civilians or their property should be dealt with in Service rather than civilian courts. The Judge Advocate General believed this would better utilise Service courts and improve operational effectiveness. The Ministry of Defence is aware that the working group, on which it is represented, does not propose to alter the existing principles, though it will propose that those principles should be applied to certain offences (principally

murder, manslaughter and rape) which until the coming into force of the Armed Forces Act 2006<sup>61</sup> could not, if committed in the UK, be tried by Service courts. This will result in an immediate extension to the jurisdiction of Service courts, where the context of the offence is military.

#### FURTHER CONSIDERATION OF JUDGE ADVOCATE GENERAL'S PROPOSALS BY THE MoD

4. The Judge Advocate General's views on the division of jurisdiction and on transfer to Service courts for sentence were also discussed at a meeting of the Service Justice Board<sup>62</sup> on 12 January 2011. The Board rejected the Judge Advocate General's proposals on the division of jurisdiction (noting that issues on the division of jurisdiction would also require the agreement of the Director of Public Prosecutions and the authorities in Scotland and Northern Ireland) but agreed that the MoD's Central Legal Services should lead further work to assess whether, and if so how, greater flexibility could be achieved in the transfer of cases between jurisdictions and the possibility of transferring cases to the Court Martial for sentencing. This work is in hand at present, with a view to the outcome being considered at the next Board meeting in July 2011.

#### ISSUES AS TO TRANSFER FOR SENTENCING

5. At present there is no power in any civilian criminal courts in any part of the United Kingdom to transfer convicted persons for sentence by the Court Martial, or for the Court Martial to deal with such cases. Primary legislation, including legislation by the Devolved Administrations, would be required to provide for this.

6. A preliminary issue will be whether there would be any benefit in transferring cases for sentence. It is true that the Service courts have available certain penalties which are not available to civilian courts. Of these, reduction in rank and dismissal can in effect be achieved by the Armed Forces administratively, where a person is sentenced by a civilian court, but is not available to the civilian courts as an alternative to other penalties. Service courts can also impose Service detention at the Military Corrective Training Centre in Colchester, and this is not available to civilian courts. In relation to any legislation to allow transfer, it would have to be provided on what grounds it was to be decided whether a case should be transferred to the Service courts for sentence. A relevant factor here is that, as explained above, where an offence has a purely military context, and the disciplinary aspect is therefore predominant, the principle is that the case should normally go the Service courts. It is not easy to see what factors should determine that a case with civilian co-accused or a civilian victim should be transferred. It would need to be considered whether the power (or duty) to transfer would be limited to where the civilian court considered that the availability to the Court Martial of other sentences was likely to be relevant, or whether some other test was appropriate. It would also have to be considered:

- whether other factors could (or must) be taken into account, such as possible delay; and
- whether any particular categories of offence should be excluded.<sup>63</sup>

7. Other issues requiring consideration include (and would probably require legislation):

- custody and bail during transfer and pending decision by the Court Martial, with the related issues of delay;
- the operation of appeals: there can be appeal against conviction and sentence, but the appeal against conviction would have to be to the relevant civilian court and the appeal against sentence would be to the Court Martial Appeal Court;
- the powers of sentencing which the Court Martial would have. These are related by statute to the powers of the Crown Court, but the legislation would need to deal also with transfer from Magistrates' Courts in England and Wales (Magistrates' Court convictions may well be more relevant than Crown Court convictions where detention is a real option instead of imprisonment). In such cases, the Court Martial's powers would presumably have to be limited to those of the Magistrates' Court, and the legislation would have to deal with such questions as whether even the Service powers of punishment (maximum of two years' detention) should be limited to be commensurate with Magistrates' Courts powers of one year imprisonment;
- if transfer was to be provided from the Scottish courts, provision would be needed to enable the Court Martial to sentence for offences which are not part of the law of England and Wales,<sup>64</sup> and to define the powers of the Court Martial to be consistent with those of the relevant Scottish court for the offence;

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<sup>61</sup> 31 October 2009.

<sup>62</sup> The Service Justice Board is a non-statutory forum, chaired by a MoD Minister for considering issues relating to the Service justice system. It includes a number of interested parties from the MoD, other Government departments and the Armed Forces, as well as the Judge Advocate General and the Director of Service Prosecutions.

<sup>63</sup> Obvious categories are driving offences, as the Court Martial has no power to disqualify from driving or to award points, and offences carrying mandatory sentences.

<sup>64</sup> Under the Armed Forces Act 2006, the criminal offences under that Act are defined by reference to offences under the law of England and Wales and the Court Martial's power to imprison is limited to the maximum sentences which the Crown Court can impose for those offences.



- the ability of the Court Martial to decide the sentence: issues of practicality and principle arise here. Briefly, the Court Martial would not have heard the evidence. It would be necessary to provide so that the Court Martial had a sufficient grasp of the facts of the offence and the surrounding circumstances (which might be extenuating or make the offence more serious) to be able to sentence justly;<sup>65</sup>
- presentation of the case to the Court Martial at the sentence hearing before the Court Martial. Consideration would need to be given as to the transfer of the prosecution role from the Crown Prosecution Service to the Director of Service Prosecutions; and
- whether the person convicted should have an option not to be transferred to the Court Martial.

16 February 2011

### Supplementary written evidence from the Ministry of Defence

#### ALCOHOL AND DRUGS PROVISIONS IN THE ARMED FORCES BILL

1. This memorandum is a supplemental memorandum provided in response to questions raised during the taking of oral evidence before the Select Committee on the Armed Forces Bill. The questions relate to the new sections of the Armed Forces Act 2006, provided for in clause 11 of the Bill (Testing for alcohol and drugs on suspicion of an offence). The Committee asked:

- (a) whether the requirement in the proposed new sections 93E(5)(c) and 93G(6)(b) for a specimen of blood or urine to be of sufficient quantity to be divided into two parts for the purpose of analysis is consistent with road traffic legislation; and
- (b) whether the requirement to provide a urine sample within one hour of it being required is consistent with road traffic legislation.

2. The question about the requirement as to the quantity of blood and urine samples:

2.1 Under road traffic legislation, the procedure for taking samples is dealt with mainly in Part 1 of the Road Traffic Act 1988. That Act does not deal with the required size of a sample. That issue is dealt with in the Road Traffic Offenders Act 1988 (“RTOA”) by reference to the question whether a sample is sufficient to be admitted in evidence. The aim is to provide a safeguard for the accused. Under the RTOA, when a person provides a specimen of blood or urine, he is entitled to ask for a part of the specimen. Evidence of the proportion of alcohol, or of any drug, found in the specimen is not admissible in court unless:

- (a) the specimen in which the alcohol or drug is found is one of two parts into which the specimen provided by the person was divided when it was provided, and
- (b) the other part of the specimen was available to the person if he wished to arrange his own analysis of it.

2.2 The overall effect of the road traffic provisions is that the evidence will not be admitted unless the specimen is large enough to be, and is in fact, divided, with one part provided to the accused for analysis.<sup>66</sup>

2.3 The approach adopted in clause 11 of the Bill is slightly different in that it includes in the provisions as to the taking of samples the requirement for them to be capable of division into two parts for analysis.<sup>67</sup> It also includes the requirement that the person providing the specimen must (if he or she requests it) be given a part of the specimen for analysis. It was thought helpful to include these requirements in the provisions governing the taking of the samples, because of the importance of the person taking the samples being aware of them. Provision governing the effect of the requirements on the admissibility of a sample as evidence will be included in court rules under the Armed Forces Act 2006.

2.4 The provisions in the Bill for offences with respect to alcohol and drugs are related to safety-critical duties. This broadly reflects the approach of the Railways and Transport Safety Act 2003 with respect to the carrying out of aviation and navigation functions. As regards the provisions for testing, the Bill’s provisions are consistent with those of the 2003 Act, as that Act adopts (with necessary modifications) the provisions for testing in road traffic legislation, including the provisions of the RTOA summarised above.

<sup>65</sup> It may be noted that Magistrates’ Courts have power under section 3 of the Powers of Criminal Courts (Sentencing) Act 2000 to commit a person for sentence to the Crown Court. But this power is limited to where the Magistrates’ Court considers that its powers are not great enough for the case. The Magistrates’ Court has to provide a number of documents including a statement of the facts as found and the court’s reasons for considering that its powers are too limited to sentence appropriately. Under the Judge Advocate General’s proposal it would need to be decided what information should be provided to the Court Martial to allow it to decide generally on sentence, including whether the court of trial should state its own view of the seriousness of the case, and perhaps its own view of an appropriate sentence.

<sup>66</sup> Section 15(5) of the Road Traffic Offenders Act 1988.

<sup>67</sup> New sections 93E(5)(c) and 93E(6)(b) of the Armed Forces Act 2006.

3. The question about the timing requirement for the giving of a urine sample:

3.1 As mentioned in the Ministry of Defence's first memorandum on drugs and alcohol provisions, this requirement, which is set out in the proposed new section 93E(6)(a), is exactly the same as that contained in section 7(5) of the Road Traffic Act 1988.

16 February 2011

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### **Supplementary written evidence from the Ministry of Defence**

#### **TRANSFER OF MEDICAL RECORDS**

1. This memorandum is provided in response to a question raised during the Select Committee's oral evidence sessions on the Armed Forces Bill. The question related to the tracking of ex-Service personnel within the NHS through their medical record.

2. The electronic record exchange system in the NHS is called "GP2GP" and it transfers a patient's full primary healthcare record as and when patients move between NHS GP practices. Around 50% of NHS GPs are able to use this system at present, with the coverage expected to reach 90% in the next 12 months.

3. Traditionally, a summarised record was produced during the discharge medical and handed to the patients themselves. The Defence Medical Services are piloting a new process for the direct transfer of medical records to the NHS GP of Service leavers upon discharge. This process is manual and includes summary medical record, NHS GP registration form and a covering letter advising NHS GP practices to code the individuals as having "a history of military service". This letter was produced by the Department of Health to encourage English GPs to code the veteran status within their electronic health records. This is seen as the first step in what may in time be a requirement on GPs in the NHS to record an individual's veteran status.

4. No transfer of records can occur without consent of the patient and, at present, it appears that take-up in the RAF and Navy is low—these personnel appear to prefer to make their own arrangements. Early indications are that there is a higher uptake in the Army, but the Department is waiting for the evaluation figures.

5. It is likely that during the Armed Forces Bill Select Committee's visit to Chilwell, the GP was referring to a separate plan that was considered in 2009. The Department investigated the possibility of matching MoD records to NHS and attaching a flag on the NHS national demographic database. However, this would have cost the Government between £4 million and £6.5 million but would have identified only about 20% of current veterans; thus the project was not taken forward as it would have been only a partial solution and would not have provided value for money.

6. The Department is working with the NHS to develop the electronic transfer of records via "GP2GP". The project to make the Defence Medical Service IT system compatible with NHS systems is complex given the nature of the data exchanged, and it is likely that a solution may take around another two years to implement. We therefore expect to introduce "GP2GP" for Defence use in 2013.

7. Eventually, when a full medical record is transferred to a NHS GP electronically, the individual's veteran "status" could automatically be identified within the record. This could become an integral part of the health record without the need for the GP to input any data. However, because consent is currently required for the recording of military service, the system will not capture those who do not want to be identified as ex-Service personnel. To remove the requirement for consent would require legislation to modify the duties under the Data Protection Act 1988 and the Health and Social Care Act 2008.

24 February 2011

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## Appendices

### Official Report of Committee Proceedings

First Sitting	Thursday 10 February 2011 .. .. .	Col 1
Second Sitting	Tuesday 15 February 2011 (Morning Sitting) .. .. .	Col 31
Third Sitting	Tuesday 15 February 2011 (Afternoon Sitting) .. .. .	Col 79
Fourth Sitting	Thursday 17 February 2011-03-08 .. .. .	Col 87



**The Committee consisted of the following Members:**

*Chair:* MR JAMES ARBUTHNOT

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|--|---|
| † Cunningham, Alex ( <i>Stockton North</i> ) (Lab)                         | Osborne, Sandra ( <i>Ayr, Carrick and Cumnock</i> ) (Lab)                           |
| † Docherty, Thomas ( <i>Dunfermline and West Fife</i> )<br>(Lab)           | † Pincher, Christopher ( <i>Tamworth</i> ) (Con)                                    |
| † Doyle, Gemma ( <i>West Dunbartonshire</i> ) (Lab/Co-op)                  | † Robathan, Mr Andrew ( <i>Parliamentary Under-Secretary of State for Defence</i> ) |
| † Ellwood, Mr Tobias ( <i>Bournemouth East</i> ) (Con)                     | † †Russell, Bob ( <i>Colchester</i> ) (LD)  |
| † Francois, Mr Mark ( <i>Vice-Chamberlain of Her Majesty's Household</i> ) | † †Wright, David ( <i>Telford</i> ) (Lab)   |
| † Jones, Mr Kevan ( <i>North Durham</i> ) (Lab)                            | Georgina Holmes-Skelton, <i>Committee Clerk</i>                                     |
| † Lancaster, Mark ( <i>Milton Keynes North</i> ) (Con)                     |   |
| † Lopresti, Jack ( <i>Filton and Bradley Stoke</i> ) (Con)                 | † <b>attended the Committee</b>   |

# Select Committee on the Armed Forces Bill

Thursday 10 February 2011

[MR JAMES ARBUTHNOT *in the Chair*]

## Armed Forces Bill

2.10 pm

**The Chair:** This is the first formal sitting to consider the Armed Forces Bill. This Committee is by tradition a Select Committee, but one which has decided to adopt General Committee procedures to consider the Bill line by line. As such, I remind Members that the required notice period for amendments is three working days. Therefore, amendments should be tabled by the rise of the House on Monday for consideration on Thursday and by the rise of the House on Thursday for consideration on Tuesday.

### Clause 1

DURATION OF ARMED FORCES ACT 2006

*Question proposed,* That the clause stand part of the Bill.

**The Parliamentary Under-Secretary of State for Defence (Mr Andrew Robathan):** I have never taken part in one of these Select-Public Bill Committee hybrids, and I find it extremely interesting. Some of the evidence that we have heard has influenced my thinking on the Bill. I should like to make a few introductory remarks about the Bill that fit neatly under clause 1. The Bill is much more modest than its predecessor, the Armed Forces Act 2006. Two members of the Committee served on the Committee that considered that Act, which established a single system of service law for the first time. The Bill reflects feedback from the services following implementation that the 2006 Act is proving a good one in practice, too.

I hasten to add—I will say it now and I will try not to say it any more—that I do not hold in contempt everything that the previous Administration did. They did many sensible things that we are continuing with. I pay tribute to them for many of the things that they did, such as the service Command Paper and various things that they introduced.

**Thomas Docherty (Dunfermline and West Fife) (Lab):** In that spirit of bipartisanship, would the Minister like to comment on whether my hon. Friend the Member for North Durham was correct to press for the introduction of the Service Complaints Commissioner? I understand at the time there was some scepticism among Conservative Members about the issue.

**Mr Robathan:** That is slightly off the clause. I was not party to that scepticism; I was not involved in at all. We had an interesting and valuable meeting with Dr Susan Atkins. I had met her previously and found her to be reasonable, sensible and very much on the side of getting better results for the armed forces. That change was valuable, notwithstanding any scepticism that there may have been before. Indeed, generals I have spoken to,

who were somewhat sceptical at the time, have said that they are pretty much convinced now, not least by the way in which Dr Atkins has gone about her job.

The Bill provides the legal basis for the armed forces to continue to exist, as was explained on Second Reading. It contains eight main groups of clauses. The first group deals with renewal and the second with the armed forces covenant, of which much more later, I expect. The third group makes provision for the service police forces and the Ministry of Defence police. The fourth group relates to powers of entry, search and seizure. The fifth group provides for the testing of service personnel, in specified circumstances, for alcohol and drugs. The sixth group relates to punishments and other court orders. The seventh group will make a small number of changes to the Armed Forces Act 2006. The eighth group will make amendments and repeal other primary legislation.

**Mr Kevan Jones (North Durham) (Lab):** I welcome the Minister to his position. It is nice to hear his voice at last in this Committee. May I congratulate him on behalf of the Committee on his promotion to the Privy Council yesterday? There is hope for us all. The hon. Member for Colchester and I seem to have done something wrong as children; we seem damned eternally to sit on Armed Forces Bill Committees. As the Minister said, this Bill is a lot shorter and narrower in scope than the last one. The last one basically welded together nearly 50 years of legislation and three different service Acts.

Some of the Bill's provisions clear up points in the 2006 Act, and they have been broadly welcomed. The Bill contains some important provisions not only for members of our armed forces regarding discipline and procedure, but for wider engagement—especially on the covenant, which we will be coming to—in the relationship between society and members of the armed forces. Debating such a Bill every five years is important in ensuring not only that our armed forces have the confidence of Parliament's taking a proper scrutiny interest in their affairs, but that modern military law is as up to date as possible.

2.15 pm

**Bob Russell (Colchester) (LD):** I thank the Minister for the way in which he has introduced the Bill. I am one of two survivors from the previous Armed Forces Bill Committee, and it was very rewarding to serve on that Committee. We had, broadly speaking, unanimous outcomes in most of our deliberations. Our armed forces look to Parliament to have a consensus and a united voice wherever that is possible.

When the Bill came before the House, I rushed to the Whips Office to request that I be allowed to serve on the Committee. It is not a penance; I regard it as a reward, because I have the privilege and the responsibility of representing a garrison town. If the Bill becomes an Act that is as successful as the one from five years ago, it will be work well done by us all. I pay tribute to the previous Government for the many measures that they introduced to make life better for our armed forces. I hope that that evolution will continue through the rest of this Parliament and beyond.

*Question put and agreed to.*

*Clause 1 accordingly ordered to stand part of the Bill.*

## Clause 2

### ARMED FORCES COVENANT REPORT

**Gemma Doyle** (West Dunbartonshire) (Lab/Co-op): I beg to move amendment 2, in clause 2, page 2, leave out lines 5 to 10 and insert—

‘(1) The External Reference Group must in November of each calendar year prepare for the Secretary of State an armed forces covenant report. The Secretary of State shall lay the report before Parliament.’.

**The Chair:** With this it will be convenient to discuss the following: amendment 4, in clause 2, page 2, line 42, leave out ‘Secretary of State’ and insert ‘External Reference Group’.

Amendment 5, in clause 2, page 2, line 44, at end add—

‘(7) In this section “External Reference Group” shall mean an independently chaired body of interested parties, appointed by the Cabinet Office, who represent the armed forces, families, veterans and reservists community, to monitor progress and hold departments to account in the delivery of government obligations arising from the Armed Forces Covenant. The External Reference Group will continue to produce a publicly available Annual Report on the Military Covenant.’.

**Gemma Doyle:** It is a pleasure to serve under your chairmanship, Mr Arbuthnot, on my first Bill Committee, even if it is constituted in a slightly different way from normal Committees. I will begin by explaining why I believe that it is necessary to amend the clause, and I will make some specific remarks about each amendment.

When the Government orders British armed forces into harm’s way, our servicemen and women act without hesitation or question. As though the disruption to family life and the separation from loved ones were not hardship enough, our service personnel stand firm in the face of danger and, sadly, on occasion, make the ultimate sacrifice on our behalf. It is only right that in responding, in return, to their needs and to those of their loved ones the Government demonstrate equal resolve. We simply cannot let them down.

Unfortunately, despite their having been in office less than a year, there is already cause to question the Government’s ability and commitment to make good on the intentions that they heralded so vocally when they were in opposition. At the end of last year, the Government published their long-awaited report on the Task Force on the Military Covenant, in which the Government pledged to strengthen the bonds between this country and the armed forces. The report sought only

“innovative, low-cost policy ideas”.

Some of them were very worthy, but none was a substitute for meaningful policy proposals and concrete action that is backed by adequate funding.

We must also touch on the Government’s recent decision to link forces’ pensions to the consumer prices index rather than to the generally higher retail prices index, which was previously used. That will disproportionately affect members of the forces, and it has caused Sir Michael Moore, chairman of the Forces Pension Society, to say:

“I have never seen a Government erode the morale of the Armed Forces so quickly”.

Our amendments seek to ensure that the warm words of opposition are matched by firm action from not only the current Government, but all Governments for all time.

In July 2009, the Prime Minister promised a written military covenant enshrined in law, but the Bill falls far short of that pledge, proposing merely an annual report written by the Government. Clearly, that does not enshrine the rights and expectations of our brave service personnel into law. It does not even give them the courtesy of independent scrutiny that is free from political interference, because it moves responsibility for monitoring the Government’s progress on strengthening the covenant away from independent experts and into the political hands of Ministers.

Our amendments attempt to hold the Government to their pledge of a written, legally binding military covenant. The Government must meet their commitment to protect and improve the well-being of the whole armed forces community by putting the obligations on to the statute book, which will ensure that Ministers are held to account for their actions. The amendments would ensure the independence and legitimacy of the annual covenant report by putting it into the hands of an independently chaired external reference group and getting it out of the political control of Ministers.

On amendment 2, the Bill contains a specific proposal that the Secretary of State will publish an annual report on the Government’s progress on the military covenant. Indeed, the Bill enshrines in law a report on the covenant, but not the covenant itself, as was touted by the Prime Minister and by Defence Ministers. In the media yesterday, the Minister for the Armed Forces said that the Government are defining the covenant in law, which, for anyone who has read the Bill, is clearly not the case.

The Bill falls far short of the written armed forces covenant enshrined in law that the Prime Minister promised before the election. Furthermore, it removes responsibility for monitoring the Government’s progress on the covenant into the hands of Ministers who are, of course, political—as we all are. The Army Families Federation warned us today about raising expectations, and we should heed their warning. Members will be aware of the external reference group established by the previous Government to chart progress by Departments in delivering the commitments made to our armed forces in the service personnel Command Paper.

**Christopher Pincher** (Tamworth) (Con): Does the hon. Lady not feel that her amendment, which requires that the external reference group, rather than the Secretary of State, reports, actually circumscribes the inputs to the report? As we heard from the witnesses and as we believe from what the civil servants have said, the inputs to the report that the Secretary of State can provide under the Bill will have more than just the ERG’s participation.

**Gemma Doyle:** My concern is that the input of the ERG will be lost entirely, and I will move on to set out those concerns more clearly. As we know, the ERG has representatives from service charities and the Army Families Federation, and it is considered to provide a somewhat independent progress report. I am concerned about how the ERG will fit into the new proposal for

[Gemma Doyle]

the Secretary of State to provide a report. Despite several evidence sessions, that matter has not been cleared up. In fact, the situation is now more confused than when we started.

I raised those concerns in the House on 10 January, and the Minister gave the following assurance:

“We have no plans to get rid of it, or to not publish its reports. It will produce a report, which will be seen and will be transparent.”  
—[*Official Report*, 10 January 2011; Vol. 521, c. 120.]

However, in a briefing from the Bill team to the Committee, Gavin Barlow stated that the Secretary of State’s report would replace the ERG’s report. That is contradictory to the position that the Minister set out in the House. We had further questioning on the matter, as hon. Members will recall, which revealed great confusion within the Bill team about how the ERG will continue to fit into the process. The one thing that those giving evidence were clear about was that one report will be published only. As has been mentioned, we have not been able to question the Minister during the evidence sessions, and I was disappointed about that, because the issue needs to be cleared up.

**Mr Robathan:** The hon. Lady is disappointed, but we had a meeting at the tail end of January where we discussed who we would like to interview. She had the opportunity then to suggest that she might like to me to appear before the Committee, and I would have been perfectly happy to do so, but she did not raise that at the time.

**Gemma Doyle:** As I recall, that discussion was about whether the Secretary of State should come before the Committee. I also recall that we decided that, although we did not think that that was necessary at the time, we should see how matters developed. The reason that it became important for the Minister to give evidence to the Committee is that, although we had had a clear assurance about the how the ERG would continue to function from the Minister in a debate on the Floor of the House, recorded in *Hansard*, we then had evidence from the Bill team—his own officials—that contradicted what he said. We have not yet been able to clear up the matter. We heard from members of the ERG who have no idea of how they will be asked to fit in.

**Bob Russell:** I think that I understand what the hon. Lady is seeking to achieve by wanting to put the ERG’s report before Parliament. We heard in our evidence sessions that some voluntary and charitable organisations felt uncomfortable about their being brought into the official Whitehall or Ministry of Defence machine. However, if the clause goes ahead as published, I am pretty confident that right hon. and hon. Members who wish to refer to the ERG will not be stopped by Mr Speaker from so doing, as that is in any case part of the building bricks of the Secretary of State’s report.

**Gemma Doyle:** I am impressed by the hon. Gentleman’s confidence in the Secretary of State that he will consult the ERG, but the Bill places no statutory duty on the Secretary of State to do so, which is what concerns me. The independent evidence provided by the ERG could be lost.

**Mr Jones:** Does my hon. Friend agree that there is great confusion? In response to her question on the process of drawing up reports, Mr Barlow said:

“We haven’t come to a final view on how we’re going to do that. We will do that when the legislation is passed.”

**Gemma Doyle:** Indeed. That is why I think there is so much confusion on the issue and why I have tabled a series of amendments that relate to the ERG. I think it would be irresponsible of us if we simply accepted verbal assurances and assumed that they will be followed through. As the Bill stands, there is no requirement on the Secretary of State to consult the ERG.

**Mr Robathan:** The hon. Lady and her colleagues have made much of the fact that I have not sat in front of the Committee in an evidence session. May I assure her and everyone in the Committee that I am not intending to cut and run? I shall remain here throughout the Committee’s sittings, and when I am making my speeches, she may intervene as often as she likes to ask me questions.

**Gemma Doyle:** I am delighted to hear that, and I thank the Minister for his intervention. Our evidence sessions have informed our interpretation of the Bill and led us to table the amendments that we feel are necessary. If the Minister had given evidence before the Committee and if we had been able to get a clarification from him on the record about the ERG’s role, which we do not currently have, it might not have been necessary to table the amendments.

**Mark Lancaster (Milton Keynes North) (Con):** The hon. Lady says that what was said in our evidence sessions has been taken into account. It was pretty clear from some of the evidence this morning that the ERG was set up originally for a separate purpose, which is related to the service Command Paper. That should not be confused with the covenant’s role. With that in mind, does she think that for her amendment to work, we would have to change the ERG’s terms of reference? If that is the case, how would she change them?

**Gemma Doyle:** The hon. Gentleman makes a good point. The external reference group’s terms of reference would need to be changed, but it has an important role to play in scrutinising the implementation of the covenant. That is why I have tabled amendments to include it in the process.

2.30 pm

**Mark Lancaster:** I accept that, but there is a feeling that the hon. Lady might have tabled the amendment for partisan reasons, which I am sure is not the case and is very unfair. Given that she has clearly thought about the amendment and she agrees that the external reference group’s terms of reference must be changed, she must have thought about what those changes should be. Could she tell us what the terms of reference should change to?

**Gemma Doyle:** The external reference group’s report, as my amendment states, should reflect the implementation of the military covenant and should be laid before Parliament.



Members of the external reference group who have given evidence to the Committee have expressed differing views on how the ERG will fit into the process of reviewing the covenant. It would be wrong for us to proceed with the Bill without giving them some sort of statutory involvement in that process. Had the Minister given evidence, we would have been able to consider and debate this matter before tabling amendments on it.

We have heard from charitable organisations and from military officials on the value of the ERG, and we do not want to lose the valuable contribution that it makes. As such, if only one report is to be published, it should be the report of the external reference group.

**Bob Russell:** Did the hon. Lady share my surprise at discovering that the majority of people on the external reference group are actually from within the Government system? The external reference group is really an internal reference group, because external people are in the minority.

**Gemma Doyle:** I was somewhat surprised to hear that. It relates to one of my other amendments, which I will come to later. I felt that the independent members of the reference group—those members who are not civil servants or MOD officials—stated quite clearly that the current process is one of compromise. If they are not satisfied with the final report, they take a step back—I believe that is the phrase they used—and make their views very clear.

If only one report is to be published, which is what the evidence suggests, it should be the report of the external reference group. That would ensure that it is fully involved in the process.

**Christopher Pincher:** The hon. Lady has said that she looks forward to the report being produced in November, which I assume is November each year. Dr Atkins, the chairman of the service complaints panel, told us—if she did not, it is certainly in the notes on her report—that her report is published every March.

Does the hon. Lady not think that publishing an ERG report in November and an SCP report in March would mean that important input to the ERG report either would not be available or would be out of date?

**Gemma Doyle:** They are two different things. Various reports come out from various parts of the MOD throughout the year. One report informs the next, which I do not see as a problem.

This morning we heard testimony expressing concern that it would not be good enough for the Secretary of State alone to decide what goes into the report. Consequently, my amendment specifically tasks the ERG, not the MOD, with preparing an annual report for the Secretary of State on the covenant. I believe that the ERG is better placed than the Government to assess the success of past measures and to identify areas for further action. The report should be laid before Parliament for debate, and that provision is already included in the Bill. I think the consensus is that it is a welcome measure and that there should be an annual debate on the covenant. Any Government who truly wish for the

best deal for our forces should recognise and welcome the move for a regular, independent and expert-led review.

Amendment 4 would tidy up the wording of the Bill to reflect amendment 2. It seeks to reinforce the independence and legitimacy of the annual report by tasking the ERG, rather than the Secretary of State, to define precisely which issues should be included in the report.

Amendment 5 would insert a new paragraph to define the ERG. As we heard this morning from Chris Simpkins of the Royal British Legion, the ERG currently has no statutory role—that was the concern he expressed. It is right that in examining the state of the armed forces covenant, the best interests of the armed forces community are placed ahead of everything else. It is of concern that the value of the covenant report could be undermined if it were perceived to be pulling its punches in order to protect the Government from criticism or embarrassment. That is why the ERG is better placed to produce the report than Government Ministers.

The amendment will ensure continued legitimacy, and that it will ensure that independent views are not squeezed out of the ERG through the selection of an independent chair, thereby guaranteeing the credibility of the covenant report by freeing it from potential political interference. It will also ensure that the ERG continues to draw on the expert advice of armed forces families, veterans and related organisations and charities.

The Committee will note that the ERG has already produced two annual reports that were welcomed by Ministers and service organisations alike. Political considerations must not be allowed to distort, weaken or detract from further constructive appraisal of Government progress in meeting their commitments under the covenant.

**Thomas Docherty:** I am grateful to be called to speak, and I place on record my thanks to you, Mr Arbuthnot, for your chairmanship. I have the privilege of being chaired by you in my other role as member of the Defence Committee, and I hope that you will be equally kind to a new Member who might occasionally lose his footing.

I support the three amendments tabled by my hon. Friend the Member for West Dunbartonshire. If there is any reason why it is so vital to have external scrutiny, it is the Government's disappointing decision to cut £250 million of allowances from the service personnel. I will not list them all as that would take far too long.

**Mark Lancaster:** I am sorry that the debate is becoming slightly partisan. I recall 2006 when the Government introduced the operational allowance—I was a recipient of it when I served in Afghanistan. It was perhaps a cause of some cynicism among our troops, because at the same time the Government also cut the longer service separation allowance. That meant that the £2,000 operational allowance introduced was offset by the £2,000 cut to the longer service separation allowance. If the hon. Gentleman insists on making a partisan point, does he accept that the dramatic overspend conducted by the previous Government has probably contributed to the situation in which we now find ourselves?

**Thomas Docherty:** I am nervous about going too far off the subject matter, but the hon. Gentleman refers to black holes. As you will know, Mr Arbuthnot, the permanent secretary of the MOD confirmed in evidence that a black hole exists under this Government. Perhaps the hon. Gentleman would like to step outside and talk to either the Minister or his Parliamentary Private Secretary about overspends and black holes, before he has a go. I am sorry if the hon. Gentleman, who I know has done gallant service, believes that challenging ministerial decisions is somehow partisan. If he wishes us all to sit around and hold hands, I suspect that the nature of the debate would alter somewhat.

Perhaps I can return to more substantive points. If the Government make such stringent cuts to the allowances of service personnel—

**Bob Russell:** Would the hon. Gentleman be surprised to know that not a single member of 16 Air Assault Brigade has contacted me to say that they disapprove of the doubling of their overseas operations allowance while they are in Afghanistan? Not one of them has contacted me to say how much they deplore what the Government are doing on other allowances.

**The Chair:** Order. In responding to that comment, Mr Docherty, no doubt you will get back to the external reference group.

**Thomas Docherty:** Indeed. I am sure that the hon. Gentleman's constituents expect him to stand up for their interests without their having to contact him, but I will return to the subject matter.

**Mr Robathan:** Consistency is a great thing in politics. During the Second Reading debate, the hon. Gentleman said clearly that he did not believe that the continuity of education allowance should continue, because it was a way of subbing private schools. He must be consistent. As a matter of interest, does he know what has happened to the motor mileage allowance that he and I get for driving around or to our constituencies? It has been reduced and consolidated to 25p a mile as a way of encouraging people not to drive too far. I would have thought that he would applaud that. The reductions in allowance are quite sensible.

**The Chair:** Order. I am unable to see in the amendments any reference to the motor mileage allowance. Mr Docherty, we are discussing amendments 2, 4 and 5.

**Thomas Docherty:** I am trying to stay on the agenda, Mr Chairman, but hon. Members—or right hon. Members, as I must now call the Minister—insist on challenging me, and I am getting dragged off it. If the Government are to cut £250 million in allowances, it is absolutely right that some independent body should be able to challenge their thinking. That is what my hon. Friend the Member for West Dunbartonshire seeks to do in the amendments. Surely, given that the Cabinet Office will still control appointments, if I have read her amendments correctly, the ERG will not seek to castigate the Government simply for the sake of it or, to use the language of the hon. Member for Milton Keynes North, to behave in a partisan manner. The Cabinet Office would, obviously,

continue to have control, but would seek to bring in people with a long record of championing our service personnel and veterans.

**Gemma Doyle:** Was my hon. Friend as disappointed as I was that the measures in the Bill on the military covenant were so weak? If the Government had introduced a stronger proposal, we might have spent more time in Committee debating the important issues, such as allowances, that he has raised.

**Thomas Docherty:** My hon. Friend is entirely right, although I must confess that my disappointment is nothing compared with that of the witnesses whom we heard this morning. I was also disappointed that we did not hear from the Minister, for the simple reason that he is a charming fellow, as I discovered again last night. I think that we would all have enjoyed hearing his thoughts on the matter.

The hon. Member for Tamworth asked why the Service Complaints Commissioner would report in March and the ERG in November. I would have thought that he would have seen the obvious reason. When Dr Atkins makes her report about trends of problems and issues—some eight months, if my maths is not entirely wrong, before the ERG report is published—it will help to shape the ERG's thinking about what it would like to receive investigation and further scrutiny. I suggest gently to Government Members that if the two reports were published at the same time, we would effectively have to go a whole year without an opportunity to react through scrutiny.

**Christopher Pincher:** The point that I was making is that the gap—it is seven months, actually—is too long.

**Thomas Docherty:** I do not know how much experience of the civil service the hon. Gentleman has, but it is probably fair to say that it does not tend to move quickly. Indeed, perhaps seven months is not enough time.

**Mr Jones:** Does my hon. Friend also agree that the areas and, in many instances, individual cases that the Service Complaints Commissioner considers might have an interest in the covenant, but they are not fundamental to the issues outlined in the report?

**Thomas Docherty:** My hon. Friend makes a very good point. If I could just perhaps labour the point—pardon the pun—one issue that we touched on with Dr Atkins was IVF treatment. Of course, I hope that health care for service personnel is something that the Minister will, if he accedes to the very sensible amendments from the Opposition, support. As he knows, there is a kind of postcode lottery—if I can use that phrase—with regard to IVF treatment, as some parts of the country have a residency requirement. In some cases, I understand that that is up to two years. Clearly, for many service personnel who move on a regular basis, that is a problem. I am delighted to hear that Dr Atkins has been able, in individual cases, to try and resolve that issue. However, I hope that the Minister he will take the issue back to his civil servants.

2.45 pm

**Mr Jones:** I am intrigued. I accept that we should have perhaps looked at that, but that is not actually one of our terms of reference. On IVF, I do not know whether the present Government have followed this up, but there were some clear commitments and benchmarks put down in the Command Paper, and followed up by the ERG, to deal with exactly that issue of the move-ability of individuals when they are receiving IVF treatment.

**Thomas Docherty:** Again, my hon. Friend makes a valid point. I am very conscious, Mr Arbuthnot, that if I stray too much on to the definitions of the commissioner's role you would, probably rightly, pull me back into line. In her evidence, Dr Atkins indicated that there is some fluidity in the scope of her work. Perhaps, as more amendments are tabled later this week and next week, we will come back to the issue.

Let me finish the point about IVF treatment, because there are other hon. Members who wish to speak both in favour and, bizarrely, I am sure, against these sensible amendments. If Dr Atkins highlights particular problems with health care, notwithstanding the excellent work from my hon. Friend the Member for North Durham from his time as Minister with responsibility for veterans, it is only right that the ERG picks up on those issues and sets a direction of travel for further scrutiny, and I think that that is what my hon. Friend the Member for West Dunbartonshire seeks to do with her amendments.

When I first saw that amendment 4 had been tabled, I assumed it was merely a technical amendment, a kind of cleaning up, and a logical subsequent follow-on from amendment 2. On reflection, it deserves consideration in its own right. I hope that the Minister has listened to the arguments on amendment 2. I was encouraged by his opening remarks when he said that, if I am not paraphrasing him incorrectly, he had his mind shaped slightly by the witnesses we have heard. If, however, my hon. Friend has not succeeded in persuading the Minister to accept amendment 2, I hope that he will consider accepting amendment 4 in its own right.

If I have understood correctly, and perhaps the Minister will correct me if I am wrong, the Secretary of State both sets the direction for the reporting—which areas will be covered—and does the report himself. Now, I have absolute respect for the current Secretary of State. I am disappointed that the colleague of the hon. Member for Colchester, the right hon. Member for Berwickshire, Roxburgh and Selkirk (Michael Moore), does not share that view of the Secretary of State for Defence, but I think that he is a decent enough chap. I am sure that he would not abuse his ability to determine what is considered, because that is a possibility, although I stress that I am sure that this Secretary of State would not do it. The MOD could say, “You know what, we know that there is an area that we are falling down on, so we will not do a report on that matter”. The key part in the Bill is subsection (2)(b), which contains the phrase, “in such other fields as the Secretary of State may determine.”

As it currently stands, the Secretary of State is both gamekeeper and poacher in this scenario. If the ERG is tasked with determining the matters that should be reported on, I think that that is a perfectly reasonable way of taking some of the power away from the Secretary of State.

I can see that the Minister is having a think about that. Will the Government at least accept that reasonable and sensible proposition? Indeed, it might go some way to providing some satisfaction to the ERG. It was disappointing to hear, in the evidence from the civil servants, that they felt the ERG would “wither on the vine”. None of us would seek that, and I hope that the Minister could find his way to giving some ground on that.

Turning briefly to amendment 5, my hon. Friend the Member for West Dunbartonshire has made a sensible suggestion about independent chairing. There was some discussion earlier about the number of civil servants in the room. While I accept their point that no formal votes are taken, it does not do a disservice to the civil servants or to the Minister's team to say that his civil servants are both fluid—I should say fluent—and professional.

**Mr Jones:** Fluid is more like it.

**Thomas Docherty:** My hon. Friend may have more experience of that than I do.

If we can restrict the number of voices that we hear from the establishment—the Minister will pardon me for saying this—from the Ministry of Defence and from the Government as a whole and provide an independent chair to the group, who could, as you do very successfully on the Defence Committee, Mr Arbuthnot, steer in an impartial and elegant manner, it might give some comfort to the ERG. I hope that the Minister will also reflect on whether that is a sensible and pragmatic approach.

Finally, I hope that the hon. Member for Milton Keynes North will not see this as a partisan approach. In my brief time in the House, I have found that when it comes to matters concerning the armed forces and the defence of the realm, both sides of the House are as one, although we may disagree on some of the technical details. I appreciate that he and his colleagues approach this in the right spirit, and I hope that he can see that we do, too.

**Bob Russell:** On a point of order, Mr Arbuthnot. Are we debating the first three or all four of the amendments tabled by the hon. Member for West Dunbartonshire?

**The Chair:** We are debating amendments 2, 4 and 5.

**Bob Russell:** Thank you, Mr Arbuthnot.

If the Bill becomes an Act, clause 2 will enshrine in law the phrase “armed forces covenant report”. It will be part of an Act of Parliament.

**Gemma Doyle:** Does the hon. Gentleman not accept that this Bill enshrines in law a report on the military covenant, but not the military covenant itself?

**Bob Russell:** I am merely observing that if the Bill becomes an Act it will enshrine the phrase “armed forces covenant report”. It has already been established that the majority of the members of the ERG are in fact internal. I thought that most of us were opposed to the outsourcing of parliamentary matters.

**Mr Jones:** I agree with the hon. Gentleman, but at this stage, it is nothing to do with Parliament. The report recommended in the amendment will be drawn up by departmental civil servants, Ministers, external experts and the devolved Administrations. It will have nothing to do with Parliament at that stage.

**Bob Russell:** The hon. Gentleman brings to this debate the experience of being a Minister in the last Government. From that we must assume that that is the way he operated in the past, and he did not take advice or information from elsewhere but kept very narrowly to his circle of civil servants and political advisers. I would like to think that the Secretary of State would be open and receptive not only to the ERG, but to any other bodies that wish to make representations to him.

**Mr Jones:** Yes, but as the Bill stands at the moment, the Secretary of State does not have to consult anyone at all. There is nothing in the Bill that says that he has to consult other Departments or the ERG. If the hon. Gentleman wants what he wants, why did he not table an amendment to suggest that?

**Bob Russell:** I am happy with this part of the Bill. I am grateful to the hon. Gentleman for confirming that when he was a Minister, he had a closed-door policy to matters being brought forward. My belief is that an active Member of Parliament who received representations from any organisation or individual would make sure that those views were heard on the Floor of the House through parliamentary questions and in debates, and through direct communications with the relevant Defence Ministers. Therefore I do not think the amendments will achieve what they say on paper.

**Mr Jones:** What the hon. Gentleman said about my time as Minister could not be further from the truth, and he knows that. I should not have bothered using my time when I was a Minister visiting Colchester so often for him. The reference group involves not just Departments but devolved Administrations. What we have in the Bill is the Secretary of State making decisions without reference to anyone.

**Bob Russell:** I am grateful to the hon. Gentleman for his visits to my constituency when he was a Minister, and I am also grateful to him for being the one who managed to arrange for me to do a 13,000-foot free-fall parachute jump, which I have clearly survived.

I believe that the coalition Government's proposals will take things forward from the Armed Forces Act 2006, and that is to be welcomed. It may well be that in the fullness of time, with experience, those who succeed us may feel that those proposals are worth expanding or amending, which is exactly what we are doing now with the measures in the previous Act. I would urge caution about trying to spell out everything.

**Thomas Docherty:** I am loth to start mentioning words such as "independent" and "parliamentary" and things related to that, because we would definitely get off the point if we started talking about the Independent Parliamentary Standards Authority. If I am looking at the matter correctly, five years ago, when we had last

had an Armed Forces Bill, the hon. Gentleman voted for an independent commissioner to investigate complaints. I therefore genuinely struggle to understand why he, despite IPSA, is reluctant to have independent scrutiny of what the Secretary of State is doing.

**Bob Russell:** The hon. Gentleman moved too quickly, because I have not even reached that amendment. I was going to refer to the list of things that should be included for deliberation rather than just health care, education and housing.

**The Chair:** Order. That list relates to amendment 3, which is not what we are discussing at the moment. Perhaps the hon. Gentleman will be ingenious in bringing that in.

**Bob Russell:** I apologise, Mr Arbuthnot. I will not pursue that matter. I had sought clarification, but I obviously misunderstood it. May I refer to amendment 5?

**The Chair:** Yes.

**Bob Russell:** Can we have a separate vote on that amendment, as it brings in the independent aspect that the hon. Member for Dunfermline and West Fife was referring to when he intervened on me?

**The Chair:** As a matter of information, amendment 5 will fall if amendments 2 and 4 are rejected.

**Mr Jones:** It is a pleasure to serve under your chairmanship, Mr Arbuthnot. It is just like the old days on the Defence Committee. When I left, you referred to the fact that it was like a toothache; you miss it when it has gone.

Under clause 2:

"The Secretary of State must in each calendar year—

- (a) prepare an armed forces covenant report; and
- (b) lay a copy of the report before Parliament."

The hon. Member for Colchester said that the provision was taking things forward. I have to say, though, that this Bill is a missed opportunity in terms of taking forward measures that the previous Government introduced—on some occasions those measures were opposed by the Conservatives.

3 pm

As we heard this morning, the External Reference Group was set up specifically to report on the Command Paper, which was the first piece of Government legislation that looked across Whitehall and involved the charitable sector, devolved Administrations and local government. It considered how it could ensure that armed service personnel, their families and veterans were not disadvantaged in their service life or by having served their country. The ERG has done a valuable job in that regard.

In the newspapers in the past few weeks, we have seen the Prime Minister putting a spin on this Bill, saying that it enshrines the military covenant in law. Well, Mr Arbuthnot, it does nothing of the sort. The hon. Member for Colchester summed it up correctly when he

said that the only thing that it enshrines in law, perhaps for the first time, is the phrase “armed forces covenant report.”

How the report is drawn up and how it gains respect will be very important. I am sorry, but I do not agree with the hon. Gentleman who says that we can wait and see how these things develop. What we have to do in the proposed legislation is deal not just with this Government but with Governments in the future and consider how the Act will be looked at and interpreted by future Secretaries of State. The Bill quite clearly states that the Secretary of State must

“prepare an armed forces covenant report”.

Will Secretaries of State they have to consult anybody on how it is drawn up and what goes into it? No, they will not. We are not clear what will go into it, apart from these three areas. As my hon. Friend the Member for West Dunbartonshire said earlier, there seems to be some confusion about the relationship between the covenant report and the ERG report. As she said, the Minister gave a commitment in January that the ERG report would still be produced. How that will then relate to this report is completely unclear. We were told by officials giving evidence that there would be one report. In Question 21 of the evidence session, my hon. Friend asked:

“How do you envisage the process of drawing up the report taking shape, and who do you think would be consulted on that?”

Mr Barlow replied:

“We haven’t come to a final view on how we’re going to do that. We will do that when the legislation is passed. We’ve had some discussions in the External Reference Group about how we might take the report forward, and we’ve agreed that consultation is important.”

I am sorry, but it is not good enough that we are left in a situation in which we have been asked to consider this Bill—in fact pass an Act of Parliament—without even being clear about the constraints on or the terms of reference for the Secretary of State when he draws up this report.

**Gemma Doyle:** My hon. Friend has a good deal more experience in the House than me. Was he as shocked and disappointed as I was when the Minister refused to give evidence to the Committee? These are exactly the kind of issues that we could have discussed. Does he recall a similar situation taking place before?

**Mr Jones:** I feel disappointment, but I do not think that it will upset the Minister that I have been disappointed. Perhaps I have also been disappointed by him on other occasions, but overall I think that he is quite a jolly fellow.

**Mr Robathan:** I am glad that the hon. Gentleman thinks that I am quite a jolly fellow. I will reciprocate. However, he could have attended the meeting that we had in January, where we decided the report, if he had wanted to. I am sure that his visit to Pakistan was extremely important—was it a Commonwealth Parliamentary Association visit? However, one must prioritise what one wishes to do. He could also have discussed with his colleagues whether he wanted me to appear in front of the Committee.

**Mr Jones:** We missed an opportunity. If I was in the Minister’s position, I would want to clarify some of this confusion. The other issue that I asked about was how this policy was being formulated and how it has been arrived at. There were inconsistencies, for example, in the evidence that we heard yesterday. The Head of Personnel for the Army said that my previous Green Paper and other Green Papers were taken into consideration, whereas Mr Barlow more or less drew a line under it in May.

I cannot understand why the Minister is so reluctant to help the Committee. If he says that he is going to help, with the greatest respect, the process in Committee, where there is a debate and there are limited opportunities and he has control over who intervenes on him, is different from that involved in appearing before a Select Committee.

**Bob Russell:** My recollection is that the last time the Armed Forces Bill Committee met to deliberate was the first time that any Committee of this House had met in this sort of hybrid situation.

**Mr Jones:** No, it was not.

**Bob Russell:** Well, it was one of the very earliest—it was in the early days of those hybrid Committees. I wonder if the hon. Member for North Durham can remind the Committee how many occasions the then Minister, who sat on that earlier Committee, was questioned in an evidence session?

**Mr Jones:** I think that the hon. Gentleman will find that the Civil Contingencies Bill was the first hybrid-type Committee. I sat on that Committee, which was a joint Committee of the House of Lords and the House of Commons. However, I am now talking about this Committee. It is important that we actually get the understanding that we want. Hopefully this afternoon we will get some enlightenment. Regarding this clause, the important thing is that basically the Secretary of State will be able to decide how the report is prepared.

The ERG has been a valuable tool. It certainly held the previous Government to account, in terms of the measures that it put forward in the service Command Paper. The other valuable exercise that the previous Government did was the Boyce review on the armed forces compensation scheme. That review was under the chairmanship of Admiral Lord Boyce but it had independent members. Many were drawn from the ERG, but I hasten to add that there were other independent members. That process was important in ensuring that the recommendations that came from the Boyce review were not only robustly argued and considered in depth but could be said to be independent from Government.

It is important for the credibility of the report that is going to be produced now that it is seen to be independent. Otherwise, and I am not only talking about this Government but future Governments, it will be felt that a Government can decide what is and what is not in the report, as my hon. Friend the Member for Dunfermline and West Fife has just said.

It would be helpful if we knew what the input of the ERG is going to be, because the information is clearly contradictory. The Minister and his Government will

[Mr Kevan Jones]

find it very difficult to put the genie back into the bottle on this issue, because the armed forces community and the devolved Administrations in Scotland, Northern Ireland and Wales have been involved in this process, which is important to ensure that they have an input into it.

Regarding the points made by the hon. Member for Colchester about civil service input, I still think that that has been a problem. It was actually a benefit in the ERG, because the civil servants were the advocates from the different Departments. We heard this morning from the representatives of the armed forces charities sector that their ability to engage directly with Department of Health officials and other officials allowed them to affect policy directly.

I think that my hon. Friend the Member for West Dunbartonshire is saying in her amendments that the ERG should draw up the report and that it should not be left to this or any future Secretary of State. The report will go to Parliament. I will put it on record that that is important; it would also be good if it were debated every year. I hasten to add that the Defence Committee may well scrutinise the report each year.

On the point about independence, it is also important that an independent chair is appointed to the group. That will lead the outside world and certainly the charitable sector to feel not only that they have input but that it is not just a done deal by Government. These days, whether we as politicians like it or not, there is a huge amount of cynicism about Governments doing their own—

**Mr Robathan:** The last thirteen years.

**Mr Jones:** The Minister chunters from a sedentary position, “Thirteen years,” but he was one of many Opposition Members and others who called for more independent and external scrutiny. In the clause, he seems to be going in exactly the opposite direction, taking us away from independent input and saying that the Secretary of State should decide what happens. In terms of credibility—we will come next to the amendment that deals with what is in the report—the process has been horribly done. It clearly has not been thought out. To lose the ERG’s expertise would be a mistake.

I do not know whether the hon. Member for Colchester has gone native and is now a Tory in some parts. It is not good enough to accept, if we do not put on the face of the Bill how the report will be drawn up—not the content but whether the onus is on the Secretary of State to consult or involve individuals—that future Secretaries of State, if not this one, could completely ignore anybody and propose what they want. That would be a fundamental mistake.

Tony Stables made the point this morning that it is quite clear that officials want the ERG to wither on the vine, and that it is important that the ERG should evolve. It is obvious that with an independent chair, the ERG could have valuable input. I think that it would assist Government. When I was a Minister, I thought that the work of the ERG, families federations and other bodies was helpful. They did not always agree with the Ministry of Defence and were quite critical on occasions, but that grit in the oyster was important in

keeping on board not only me as the Minister but civil servants in the MOD and other Departments and ensuring that we carried out what was needed. In this case, what is needed—I think that it is agreed across the Committee—is to ensure that armed service personnel, their families and veterans are not disadvantaged and that the report has credibility. Without independent and external input, it will have little credibility.

**Mr Robathan:** I will turn to a few of the points raised and the specific wording of the amendments. I will start by laying to rest—what is it that one lays to rest?—the corpse, canard or whatever about what we have said about putting the military covenant in law. This is exactly what the Prime Minister said in June 2010:

“It’s time for us to rewrite the military covenant to make sure we are doing everything we can.”

I have a draft copy here. The Committee heard earlier today from the people whom we interviewed that they have been consulted on it and its ramifications.

The Prime Minister discussed one or two issues and then went on to say:

“I want all these things refreshed and renewed and written down in a new military covenant”,

which is what we are doing,

“that’s written into the law of the land.”

We are here making the law of the land. The title of clause 2 is “Armed forces covenant report”. It cannot be much clearer than that. This is being written into the law of the land.

**Gemma Doyle:** Does the Minister accept that there is a difference between the armed forces covenant and the armed forces covenant report? Does he think that those two statements refer to the same document?

3.15 pm

**Mr Robathan:** It depends on what interpretation is put on what the Prime Minister said. Unsurprisingly, the Prime Minister is happy with what we are doing at the moment in fulfilling what he spoke about in June.

**Gemma Doyle:** Will the Minister clarify whether the armed forces covenant and the armed forces covenant report are one document or two?

**Mr Robathan:** Obviously, the hon. Lady was not listening this morning when various people said—there was quite a consensus of opinion with the exception of one witness—that the point about the armed forces covenant is that it develops and is a conceptual, philosophical statement. To write it down and try to codify it by statute would be, frankly, rather surprising.

**Mr Jones:** I am even more confused than I was before the Minister stood up to speak.

**Mr Robathan:** Good.

**Mr Jones:** That is obviously a good tactic—we have seen it used by the Prime Minister. Is the Minister saying that at some time in the future another document called the military covenant will be produced? If so, why is that not being done now as part of the Bill?

**Mr Robathan:** That is a perfectly reasonable question. We wish to have comments and genuine consultation on the covenant, and that is what has been happening. I

now have a draft that has taken into account many of the comments made by the Royal British Legion, for example, and we have therefore changed the original draft. Rather than just announce something with spin, which is what seems to have happened for the 13 years between 1997 and last year, we actually get something right.

The Bill encapsulates, as does the debate on the clause, the different attitudes between the coalition Government and the previous Government. We are much less interested in box ticking, prescription and the bureaucratic laying down of this, that and the other. We are interested in better results and outcomes.

**Mr Jones:** Will the Minister clarify whether another document will be produced some time in the future called the armed forces covenant? If that is the case, how does it relate to this document? Why is that not part of the Bill? How will it be put into the Bill later on? Frankly—I am going to use a rude phrase—it is a bit arse about.

**Mr Robathan:** I am surprised that the hon. Gentleman is being so obtuse. I am not used to that from him, especially after he has been so polite to me. The covenant is a conceptual thing that will not be laid down in law. The report will measure the actions, results and policies of the Government against the covenant. The hon. Gentleman will see that shortly—I have the draft with me.

**Mr Jones:** I am grateful to the Minister for clarifying that. He says that the covenant will not be laid down in law. He has just attacked the previous Government for box ticking and target setting, but that is exactly what he will do. That is why, with the Command Paper, the previous Government got improvements in the health service and other areas.

**Mr Robathan:** I am afraid that I really do not accept what the hon. Gentleman has said. I feel that we are not likely to agree, and from his wry smile I think that he, too, accepts that. *[Interruption.]* From a sedentary position, the hon. Gentleman says that it is not going to be in law, but I shall pick up a piece of legislation. It states, “Armed forces covenant report.” That looks pretty much in law to me.

**Thomas Docherty** *rose*—

**Mr Robathan:** I will take an intervention from the hon. Gentleman, who has been uncharacteristically quiet.

**Thomas Docherty:** As you know, Mr Arbuthnot, I speak only when I feel that I have something that is worth saying. The Minister will be aware that my ten-minute rule Bill has its Second Reading on Friday 11 November, and it is entitled the Armed Forces Charter Bill. Perhaps he would like to confirm to the Committee whether he will support my Bill?

**Mr Robathan:** I think it highly unlikely, because I happen to know that I am already busy on Friday 11 November; it being Armistice day.

**Mr Jones:** I may need to get a hammer and chisel in a minute, but can I clarify something? Reference has been made by the Minister today and by officials to some other work that is ongoing. Will a document called the covenant be produced, and if so, how will that relate to the Bill?

**Mr Robathan:** The hon. Gentleman is being obtuse. The covenant will be produced—I would expect it at some stage in the spring—and he can comment on it then. The report, which is in the Bill, will measure the actions and policies of the Government against the covenant and its effects.

**Mr Jones:** So we now have it finally confirmed that there will be another report. What will be its legal status in relation to the Bill? If a report is being produced, why will it be measured by something that the Committee cannot see for some time? How will that legislatively and legally link to the Bill?

**Mr Robathan:** I do not think that I am being particularly opaque. There will be one report. The Secretary of State will present to Parliament—the elected tribunes of the people—a report on the effects of Government policy on the military covenant. The military covenant will be published this spring, and the hon. Gentleman will have plenty of time to comment on it again.

**Mr Jones:** What is its legal position?

**Mr Robathan:** As I have explained already, it will be a conceptual, philosophical statement, and it will have about the same legal position as the service Command Paper, I think. I might move on now, because this is rather sterile.

**Mr Jones:** It is not sterile.

**Mr Robathan:** Go on then—one last occasion.

**Mr Jones:** So we will have a separate armed forces covenant, which will not be legally enforceable and which will have no legal status whatsoever, and that is the reason why the Minister has not brought it in as part of the Bill. Is that correct?

**Mr Robathan:** I return to my original point, which was that the Government do not want to be as prescriptive as the previous Government, and we are not as prescriptive. We are producing the covenant, which the hon. Gentleman can see shortly, and we will report against the measures listed in the covenant. The Secretary of State will make an annual report to Parliament.

The hon. Member for West Dunbartonshire referred to cost, and I am awfully sorry, but I am not going to let her get away with that. She mentioned the linking of pensions to RPI and CPI. She can stand up now and commit the next Labour Government—should there ever be one—to relinking public sector or armed forces pensions to RPI, but it is highly unlikely that she will. The decision has not been a particularly happy one, but it will introduce greater stability to the public finances, and that is why the Government decided on it.

**Gemma Doyle** *rose*—

**Mr Robathan:** The hon. Lady is going to stand up; it could be the end of her career.

**Gemma Doyle:** The Minister should probably worry about his career, rather than mine, given that he has just completely contradicted what the Prime Minister said about enshrining the military covenant in law. Will the Minister accept that the armed forces community will be disadvantaged compared with other public servants, because of the measures that the Government are implementing on pensions?

**Mr Robathan:** No, I will not, because that is not the case.

**Thomas Docherty** *rose*—

**The Chair:** Order. I am becoming a little concerned about the relevance of these exchanges to the external reference group, and I trust that the Minister will now return to the amendments.

**Mr Robathan:** Mr Arbuthnot, I would love to. My final point on the hon. Lady's speech is that we think that the ERG, which was set up by the previous Government, does good work. Indeed, I pay tribute particularly to its independent members, led by Professor Hew Strachan, whom I saw not 24 hours ago. We saw several of its members in the evidence session this morning. We value it enormously; but, as we heard this morning, it is not a statutory body. The previous Government, in their wisdom, saw no reason to make it a statutory body. We consider that there will be changes, but I will come on to that later.

**Mr Jones:** Will the Minister give way?

**Mr Robathan:** I will be very happy to let the hon. Gentleman intervene later.

How kind the hon. Member for Dunfermline and West Fife was to me. I find him very charming. That is why I find this Committee slightly strange. The agreement on these issues is massive, and most of the measures in the Bill would have been introduced by the previous Government if they had won the election—luckily, they did not. They were developing the covenant at the same time, but it was still work in progress. We are bringing it forward, and I think that quite a lot of nit-picking is going on in an attempt to make—dare I say it?—rather partisan points.

Specifically, the hon. Gentleman mentioned IVF treatment. Funnily enough, the ERG can deal with that matter, with the Department of Health. That is a good point, which we will take forward and ensure that there is no disadvantage—

**Mr Jones:** It has been dealt with already.

**Mr Robathan:** From a sedentary position, the hon. Gentleman says that the issue has been dealt with already, in which case he might have told the hon. Member for Dunfermline and West Fife before he raised it in debate.

This morning, we heard Tony Stables praising the co-operation with the Department of Health through the ERG. That is why it is there, and it has done good

work. On amendment 4 and an issue that the hon. Member for North Durham has raised, the ERG could, of course, make a report to Parliament, but it would not be accountable to Parliament. It is important that we, as Members of Parliament, hold the Government to account.

**Mr Jones:** I am sorry, but the Minister has not read the amendment, which states that the ERG would produce the report for the Secretary of State that would go to Parliament.

**Mr Robathan:** Amendment 4 states: “leave out ‘Secretary of State’ and insert ‘External Reference Group’.”

**Mr Jones:** Clause 2.

**Mr Robathan:** I was responding to the hon. Gentleman's comments on clause 4, as the record will show.

**Mr Jones:** With the Minister give way?

**Mr Robathan:** Not again.

I thank the hon. Member for Colchester for his support and his sensible comments. He particularly said, as I am trying to say, that we will not spell out everything, and we do not intend to spell out everything. Funnily enough, I do not think that spelling out everything and making bureaucratic demands on people, which the previous Government apparently used to delight in doing, is necessarily the best way forward.

**Thomas Docherty:** I fear that the Minister, in his enthusiasm, has perhaps jumped over this issue under clause 2(2)(b). The key thing is that the Secretary of State will determine such other matters. I hope even now that the Minister accepts that we seek to provide some balance and a health check on the matters that are chosen.

**Mr Robathan:** If the hon. Gentleman can restrain his enthusiasm, I will come to that subsequently. The hon. Member for North Durham, with his great experience as the former Minister—was it for two years?

**Mr Jones:** Two years.

**Mr Robathan:** The hon. Gentleman seemed to imagine that the Secretary of State might dream up a report in his bath without any reference to other people. That will not happen, and I will come to that subsequently, so I ask the hon. Gentleman not to intervene. He has said that we cannot put the genie back in the bottle. We have no desire to put the ERG genie—to which I think he was referring—back in the bottle: quite the contrary, since we are committed to transparency. We want the ERG to evolve; he particularly mentioned evolution and it is evolving as we speak, as we heard this morning. Some very useful comments in the evidence session this morning revealed how members of the ERG wanted evolution and change, although they did not all agree.

3.30 pm

**Mr Jones:** I am not questioning the intention of the Government or of the Minister, but the legislation has to endure future Governments. Nothing in the Bill states that the Secretary of State has to consult anyone at all. How do the comments that the Minister has just



made about the ERG fit with what we heard from his officials, who said that the ERG would wither on the vine?

**Mr Robathan:** The hon. Gentleman asks about the officials. Perhaps it was different in his day, but nowadays officials give advice and Ministers decide. I think that I made it quite clear on Second Reading, as I am about to make it entirely clear again now, how much we value the ERG.

**Gemma Doyle:** Will the right hon. Gentleman clarify the role of the ERG in proceeding with the report on the military covenant? Will it continue to produce a report that will be put into the public domain?

**Mr Robathan:** Yes, it will. This group of amendments seeks to strengthen the role and status of the external reference group, about which we have heard a great deal in evidence. I thought that today's evidence was probably more valuable than anything else we have heard; it was particularly good. I would like to put on record my thanks to those who came today and gave evidence, because they made some extremely pertinent points that made me sit up and think. That is why we have evidence sessions.

The Government firmly support the ERG and the role it plays, and I will say more on that in a moment. The authors of the amendment have, I think, misunderstood what we are trying to achieve through the Bill. The Government want to emphasise the accountability of Ministers for their actions in relation to the armed forces covenant. Amendment 2, in contrast, would turn the Defence Secretary into a sort of post-box for a report from the ERG.

As I said before, it is Ministers who decide and who are accountable for their actions. I want Parliament not to read a report that simply highlights issues for the Government to consider, but to get one that also sets out the Government's position on such issues, so that it can take an informed view on whether the Government's response is adequate. Our approach acknowledges and strengthens the Government's responsibility for the armed forces covenant, whereas the amendment seems more designed to stir up controversy.

**Mr Jones:** I am sure that it does not. The question, which the Minister has yet to answer, is what is there to stop the Secretary of State, or a future Secretary of State, completely ignoring everyone—the ERG or any other consultee—in drawing up the report? There is nothing in the Bill, because it is the Secretary of State's report, which is completely different from what the Minister has just said.

**Mr Robathan:** The hon. Gentleman will question me later, I think. *[Interruption.]* Does he want an answer to that?

**Mr Jones:** Yes.

**Mr Robathan:** In the same way as there is nothing to stop any Government from doing what they so wish, including legislating to allow them to do so within

reason, we do not prescribe exactly the way in which the Government should operate. I will come to those points further.

**Bob Russell:** Can the Minister, with his knowledge of a free, democratic and independent Parliament, foresee an occasion when individual Members of Parliament would not challenge the Secretary of State about a report produced by an organisation such as the ERG should the Secretary of State be foolish enough to try to cover it up?

**Mr Robathan:** My hon. Friend makes exactly the right point. I happen to believe in the supremacy of Parliament. We have Defence Question Time once every five weeks—

**Thomas Docherty:** Six.

**Mr Robathan:** Five.

**Thomas Docherty:** Six.

**Mark Lancaster:** On a regular basis. *[Laughter.]*

**Mr Robathan:** On a regular basis. I attend Defence Question Time every five weeks.

We are considering amendments 2, 4 and 5 together because if we agree that the ERG should be the body that prepares the annual report, we must explain what is meant by that body, and we referred to that issue earlier. That explanation is unnecessary if we place the duty on the Secretary of State, as we have proposed. Nevertheless, it gives me the opportunity to comment on the kind of external reference group that the amendment would create. If I might say so to the hon. Member for West Dunbartonshire, it would not be the current mix of officials from Whitehall and the devolved Administrations, key stakeholders and experts from outside government; on the contrary, it would be limited to independent representatives of certain groups. It would probably exclude Professor Hew Strachan, who does not represent anything except himself, a deep knowledge of military affairs and a lot of common sense.

The ERG is developing as we speak—as hon. Members heard this morning, it has been going for just over two years and has issued two reports—and various questions need to be answered. At its most recent meeting, as we heard this morning, it talked about the input that it might have. Should it continue to be part of the Cabinet Office? I suggest that it should, but I need to consult the independent members before coming to a decision. Should it report to the Prime Minister or to the Secretary of State? My view is that it should report to the Secretary of State, and I will explain that in a second.

The ERG's creation through the service personnel Command Paper was an action of the previous Administration that we support.

**Mr Jones:** The Minister's comment is nonsense. He is suggesting that, if the Committee agrees to amendment 5, the groups he has mentioned would not be able to sit on the ERG, which is not the case. The amendment states that the ERG is

“an independently chaired body of interested parties, appointed by the Cabinet Office”.

It does not say anything about the exclusion of the groups that the Minister has mentioned.

**Mr Robathan:** I go back to the hon. Gentleman's previous intervention, in which he asked what is to stop the Government. That is exactly the point, we do not prescribe; we want to leave it open. This is the converse of what he asked earlier. The ERG has proved its worth and at no time has its continued existence or its vital role been in doubt in my mind.

Members of the Committee have attempted to create distinctions between what my ministerial colleagues and I have said and the evidence the Committee has received from officials. Those distinctions do not exist, because officials, in the end, give advice and do as Ministers decide. The issue is the timing of final decisions. As has been identified this morning and this afternoon, the situation is changing and developing.

The concern above all else, as we heard this morning, is not to pre-empt the views of the ERG itself. It is strange that some who declare themselves to be concerned about the independence of the ERG are pressing Ministers to finalise decisions about the ERG's work without consulting it.

Let me make it clear exactly where I stand, both to reassure colleagues and to demonstrate why these amendments are unnecessary. I am committed to the ERG continuing to report, and I am committed to full transparency in the whole process. It would be pointless to proceed in any other way, as my hon. Friend the Member for Colchester has identified, because of the possibility that the report would be disowned as soon as it was published.

**Mr Jones:** I am very grateful for that clarification, but would the Minister answer the following questions? Where will the ERG report to? Will its annual report be published publicly? What relationship will the House report have to the Secretary of State's report? Will there be two reports on the covenant?

**Mr Robathan:** It would have been better in many ways if, before leaping in to question me, the hon. Gentleman had waited until I had said a few things. First, the ERG, as he knows, works on a lot more things than just the covenant. We need, with the co-operation of the ERG, and particularly its independent members, to see how we can develop that work and the work on the covenant.

We see the ERG as being inherently involved in the production of the report for the Secretary of State—involved, but not writing it. There are only so many independent members, but they will put forward their views. We will give the draft report to the ERG. The independent members are the ones that matter to us—everybody matters to us, of course, but the views of the independent members are the ones that need to be made public. We will then publish the report and a statement will be made. It will be given to the House of Commons with the comments of the independent members of the ERG published as well. I can make that commitment and that is what will happen.

**Mr Jones:** So there will no longer be a separate ERG report then?

**Mr Robathan:** I thought I had made that plain. We have to discuss with the ERG whether it should continue with some of the work that is separate from the covenant—

working and reporting to the Prime Minister, which was I suppose was possibly set up under the previous Administration—and whether that should still go to the Prime Minister. We have yet to decide that, but as regards the covenant, which is what we are discussing at the moment, the group will be inherently involved in the production of the report and its comments, good or otherwise, will be published. That is our intention, as a matter of policy, as part of the annual report from the Secretary of State. With that assurance, the Committee should reject amendments 2, 4 and 5.

**Gemma Doyle:** The ERG has clearly played an invaluable role in the past few years. It is imperative that its independence, expertise and scrutiny is not lost. It has become clear to me that Ministers and officials have not considered its role with the covenant when drawing up the Bill, or until, I have to say, the Minister came under some heavy fire about the role of the ERG and whether it would continue to produce an independent report. As I have already stated, that is an issue that I feel would have been best dealt with in evidence from the Minister before the Committee.

I share the trust of the hon. Member for Colchester in the Secretary of State about who will be consulted about drawing up the report, but I do not think that it is good enough to leave it to a wing and prayer. The Minister has, I think, now clarified that the ERG will comment on the Secretary of State's report, but seems to be now contradicting his own statement to the House that the ERG would continue to produce its own report, which would be published in full. If I understand him correctly, a decision on that has simply not been taken.

**Mr Robathan:** He is quite right, because—[HON. MEMBERS: "She!"] I am awfully sorry, she—

**Bob Russell:** It has been a long day.

**Mr Robathan:** Not that long. [*Interruption.*] I hear "Should have gone to Specsavers" from a sedentary position. Indeed.

The hon. Lady is quite right, but we are not in the business of having independent members comment on Government policy and then dismissing it or trying to hide it under a bushel. As has already been pointed out, the hon. Lady met some of the independent members today. They are unlikely to sit quietly if we ignore what they have to say, and their comments will be published. Whether they will continue to report to the Prime Minister is something we have yet to decide.

**Gemma Doyle:** I am disappointed, frankly, to hear that the Minister is not clear about whether the ERG will continue to report to the Prime Minister, and I think that will be disappointing news. I understand the current state of affairs and, as we have had about four different positions on this, things may change again.

**Thomas Docherty:** Perhaps my hon. Friend can tease out from the Minister when exactly he told this information to the ERG members, because I suspect that it will come as a bit of a surprise to them. Does she agree with that?

**Gemma Doyle:** My understanding is that there is confusion among the members of the ERG about exactly what their role is going forward, so my understanding is that they have not been informed of exactly what their role is.

**Mr Robathan:** I say to the hon. Lady, and to the hon. Gentleman, that I could quote back to her what the hon. Member for North Durham said about the ERG evolving. It is evolving. We heard this morning what people had been discussing at the last meeting. We are not minded to be prescriptive with independent people whose work we value. They have not yet discussed this—I do not whistle and they come; they are independent people—but if they said that they wished to continue to produce a report to the Prime Minister it is highly unlikely that we would say they could not. However, we want them to be involved transparently in the development of the covenant, which is what we are discussing this afternoon.

3.45 pm

**Gemma Doyle:** I am beginning to wonder what other position we could push the Minister into, as the position seems to have been evolving during this discussion even. I accept that the ERG is an evolving body, but I am concerned that it is not mentioned in the clause, hence the amendments. I thank the Minister for stating that the covenant will not be laid down in law by the

Government. There has been confusion about that—the Prime Minister said that it would be laid down in law—so I thank the Minister for clarifying the issue but do wish to press the amendment to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 5, Noes 7.*

**Division No. 1]**

**AYES**

Cunningham, Alex  
Docherty, Thomas  
Doyle, Gemma

Jones, Mr Kevan  
Wright, David

**NOES**

Ellwood, Mr Tobias  
Francois, rh Mr Mark  
Lancaster, Mark  
Lopresti, Jack

Pincher, Christopher  
Robathan, rh Mr Andrew  
Russell, Bob

*Question accordingly negatived.*

*Ordered, That further consideration be now adjourned.—(Mr Francois.)*

3.47 pm

*Adjourned till Tuesday 15 February at Ten o'clock.*

**The Committee consisted of the following Members:**

*Chair:* MR JAMES ARBUTHNOT

- |  |   |
|--|---|
| † Cunningham, Alex ( <i>Stockton North</i> ) (Lab)                         | † Osborne, Sandra ( <i>Ayr, Carrick and Cumnock</i> ) (Lab)                         |
| † Docherty, Thomas ( <i>Dunfermline and West Fife</i> ) (Lab)              | † Pincher, Christopher ( <i>Tamworth</i> ) (Con)                                    |
| † Doyle, Gemma ( <i>West Dunbartonshire</i> ) (Lab/Co-op)                  | † Robathan, Mr Andrew ( <i>Parliamentary Under-Secretary of State for Defence</i> ) |
| † Ellwood, Mr Tobias ( <i>Bournemouth East</i> ) (Con)                     | † Russell, Bob ( <i>Colchester</i> ) (LD)   |
| † Francois, Mr Mark ( <i>Vice-Chamberlain of Her Majesty's Household</i> ) | † Wright, David ( <i>Telford</i> ) (Lab)  |
| † Jones, Mr Kevan ( <i>North Durham</i> ) (Lab)                            | Georgina Holmes-Skelton, <i>Committee Clerk</i>                                     |
| † Lancaster, Mark ( <i>Milton Keynes North</i> ) (Con)                     |   |
| † Lopresti, Jack ( <i>Filton and Bradley Stoke</i> ) (Con)                 | † <b>attended the Committee</b>   |

## Select Committee on the Armed Forces Bill

Tuesday 15 February 2011

(Morning)

[MR JAMES ARBUTHNOT *in the Chair*]

### Armed Forces Bill

10.10 am

**Thomas Docherty** (Dunfermline and West Fife) (Lab): On a point of order, Mr Arbuthnot. I have given the Minister prior notice of this. You will recall that a fortnight ago the civil servants promised to write to the Committee about why there were some minor differences between civilian rules on breathalysing and drug testing after an incident, and military rules. The civil servants still have not given us an answer. We have moved on to consideration of the Bill and are out of time to table amendments. Could the Minister inquire as to why the civil servants have been unable to give us an answer?

**The Parliamentary Under-Secretary of State for Defence (Mr Andrew Robathan)**: Further to that point of order, Mr Arbuthnot. I thank the hon. Gentleman for giving me notice of that point of order some eight minutes ago. I spoke to officials and was distressed to discover that a memorandum has been written but is somewhere in the bureaucratic chain. That is not an excuse; I put it forward as the reason. I have given instructions that the memorandum should reach the hon. Gentleman by the end of play today. If it does not, I shall want to know why not.

**Mr Kevan Jones** (North Durham) (Lab): Further to that point of order, Mr Arbuthnot. May I seek your advice? Clearly, we shall reach the parts of the Bill that cover these changes on Thursday. If we have not received that memorandum by the end of today, how can we table any amendments that may be necessary?

**The Chair**: Amendments for Thursday had to be tabled by close of play yesterday, but in a circumstance such as this it is within the discretion of the Chair to allow late amendments, and I would be very amenable to using such discretion in this case.

**Mr Jones**: Further to that point of order, Mr Arbuthnot. That is very helpful, but if we get the memorandum tonight, what is the latest point at which we can table amendments?

**Mr Robathan**: Further to that point of order, Mr Arbuthnot. The House will be sitting until 10 o'clock this evening, and you have said that you would be sympathetic to late amendments being tabled. I am glad to say that my civil servants do not normally work until 10 in the evening. They work more normal hours and I would expect their response to come at the latest—they are listening—by 6 o'clock this evening. I think the hon.

Member for North Durham will find that the discrepancies identified by the hon. Member for Dunfermline and West Fife are fairly minor and technical. I do not think they will necessarily lead to huge concerns.

**The Chair**: I think the Minister might wish to hear again whether 6 o'clock is the appropriate time for him to have mentioned. As he taking inspiration on that point—

**Mr Robathan**: Further to that point of order, Mr Arbuthnot. I am sorry—I hear, hot off the press, that the hon. Gentleman will get the memorandum by 2 pm.

### Clause 2

#### ARMED FORCES COVENANT REPORT

**Gemma Doyle** (West Dunbartonshire) (Lab/Co-op): I beg to move amendment 3, in clause 2, page 2, leave out lines 11 and 12 and insert—

- (a) education;
- (b) accommodation;
- (c) healthcare;
- (d) mental healthcare;
- (e) pensions and benefits;
- (f) employment and training;
- (g) support for reservists and their employers;
- (h) the running of the Armed Forces Compensation Scheme;
- (i) progress on armed forces rehabilitation services; and
- (j) other such fields as the External Reference Group may determine.

**The Chair**: With this it will be convenient to discuss amendment 1, in clause 2, page 2, line 12, at end insert—

‘(2A) The armed forces covenant report must also include analysis of the effects of membership, or former membership, of the reserve forces in such fields as the Secretary of State may determine.’

**Gemma Doyle**: As the Bill stands, only health, education and housing are specifically cited as issues that the report on the covenant should cover. I do not think that sufficient. The list set out in amendment 3 is more comprehensive and more appropriately reflects the Secretary of State's own responsibilities. The Minister or the Secretary of State may not be keen to be directed by this amendment, but when the Conservatives were in opposition they were only too pleased to speak at length about all the things they promised they would do for our armed forces when they got into government. The same was true of the Lib Dems. Now they find themselves in office together, neither seems willing to take detailed and practical action. The alternative that the Minister has to offer is, in the words of the chairman of the Forces Pension Society,

“all flute music and arm waving.”

As a flautist myself I have nothing against flute music, but I would suggest that it has its place—which is not anywhere near the armed forces covenant. It is perhaps

of no great surprise that MOD Ministers are not keen to talk about pensions, allowances and employment right now.

10.15 am

We heard evidence last Thursday from service charities—in particular from Tony Stables of the Confederation of British Service and Ex Service Organisations—from the armed forces families federations and from the Forces Pension Society that a move to expand the list of issues set out in the Bill would be welcome, and that the Secretary of State should not report on the work of other Departments without reporting on his own. It would be bizarre if we had a report that criticised local authorities or the Department for Education for disadvantaging the children of servicemen and women, but that made no reference to the MOD's responsibilities. Conservative Members have expressed disappointment over the fact that reservists are not even mentioned in the Bill, and I agree that the particular challenges they face should be considered.

Benefits paid to former serving personnel—for example, under the armed forces compensation scheme—have been the subject of great interest in previous years. There is also a huge amount of interest in armed forces pensions at the moment because of the Government's cuts and the disproportionate impact on service people, who often draw down their pensions much earlier than other public sector workers. Servicemen and women, some of whom will have suffered horrendous injuries in battle, may see the value of their pensions reduced by hundreds of thousands of pounds. War widows will be affected likewise. This change is fundamentally unfair on the very people who give their service to defend our way of life, which is why we have suggested an alternative and potentially much fairer approach, given the need for restraint in public sector pay and pensions. I cannot envisage a time when this would not be an area of interest on which the Secretary of State should report, even if the situation changed and people felt that the direction was satisfactory.

I would have liked to explore with the Minister why he chose to include education, health care and housing in the Bill at the expense of other matters. As we have already discussed, he declined calls to give evidence to the Committee. Last week, he said he would be happy to take as many interventions as Members wanted to make, but when he spoke that was not the case.

**Mr Robathan:** I am sorry but I must correct the hon. Lady, because I am very surprised that she has said that. I have the transcript here and if she looks at the page that I have just opened at random where I was speaking, she will see several interventions. It is uncharitable, to put it mildly, of the hon. Lady to say that I did not take as many interventions as were needed.

**Gemma Doyle:** I did not say that the Minister did not take any interventions—he certainly took plenty—but certain Members who wanted to intervene were not able to do so. As we have discussed already, there is a great difference between giving evidence to a Committee and taking interventions in a speech. I made that comment because I would have appreciated the chance to explore with the Minister why those three issues were included in the Bill at the expense of others.

We heard in evidence last week from Dawn McCafferty that her organisation, the RAF Families Federation, was not consulted about what the Bill should contain. The Minister said last Thursday that the charities from which we have heard told us that they had been consulted. I want to clarify that they said they had been consulted on a first, very rough draft of the covenant, which was described as “weak”, but not on the Bill. Amendment 3 expands the matters that are to be covered to include mental health care, pensions and benefits, and employment and training.

**Mr Jones:** Does my hon. Friend agree that when the charities referred to the covenant, they were not talking about the Bill but to another document, which we assume will appear at some time in the future, called the covenant? Exactly how that relates to the Bill is not clear either to the Committee or to the service charities.

**Gemma Doyle:** My hon. Friend makes a good point. In Thursday's sitting we finally had a clarification that there will be two different documents: the report on the covenant and the covenant itself. Unfortunately, the Bill has given us no scope to consider what the covenant should contain. My hon. Friend is correct; the charities said that they had been consulted on a first, very rough and weak draft of the covenant, not on the Bill.

**Christopher Pincher (Tamworth) (Con):** The hon. Lady mentions the RAF Families Federation and Dawn McCafferty. Does she recall that Mrs McCafferty also said that she did not want the covenant or the report to be a prescriptive document? The hon. Lady also mentioned John Moore-Bick, who said that he did not want the covenant or the report to be a “shopping list”. Does not the amendment fly in the face of that advice?

**Gemma Doyle:** With respect, I think the hon. Gentleman is confusing two different issues. One is about setting out minimum standards, and the difference was made clear in questioning from the hon. Member for Filton and Bradley Stoke. The charities giving evidence last Thursday were clear that they did not want the Bill to lay down a list of minimum standards or demands. However, every charity, if I recall correctly—I may be mistaken about one of them—agreed that the list, which they had not seen and had only heard read out by the hon. Member for Milton Keynes North, seemed to be a much better list for the Secretary of State to report on than the three issues in the Bill.

**Christopher Pincher:** Is the hon. Lady saying that “employment and training;...support for reservists and their employers;...the running of the Armed Forces Compensation Scheme;...progress on armed forces rehabilitation services” were all specifically mentioned in those charities' responses?

**Gemma Doyle:** A number of those issues were brought up in the evidence. The hon. Gentleman shakes his head, but perhaps he will let me finish. The hon. Member for Milton Keynes North read out the list to those giving evidence.

**Christopher Pincher:** That is not the same thing.

**Gemma Doyle:** The people from whom we were hearing agreed that it would be much better to have an expanded list of responsibilities, which more accurately reflects the Secretary of State's responsibility. The hon. Gentleman is confused about setting out minimum standards in the Bill. When I watched him ask the panel his questions, I thought that he was getting confused.

**Mr Jones:** Question 378 in the evidence reads:

“Chair: Mr Moore-Bick, you said you said you thought pensions should be in the Bill.

John Moore-Bick: I think so, because there is so much concern at the moment that there ought to be some responsibility laid on the Secretary of State to tell Parliament about the whole pay and pensions area.”

Is not that an example of Mr Moore-Bick raising pensions as something that ought to be on the list?

**Gemma Doyle:** Yes, I certainly agree with my hon. Friend's point.

**Mr Robathan:** As the recipient of an armed forces pension—

**Thomas Docherty:** You are far too young.

**Mr Robathan:** The hon. Gentleman is very kind.

It is important to bear it in mind that Major-General Moore-Bick made it clear that the Forces Pension Society is not a charity but a membership organisation, which, perfectly reasonably, is there to stand up for its membership. I think there are 40,000 of them and they each pay £30 a year, which is a pretty good business if you happen to be working for it. I do not denigrate the fact that he is standing up for his membership, but the hon. Lady should understand that he is *parti pris*.

**Gemma Doyle:** If the Minister is suggesting that pensions was an unreasonable issue to raise last Thursday, he is much mistaken. If I may say so, I think it a bit distasteful for him to bring up the issue of the salaries of the people who were giving evidence to us. In a visit to Colchester yesterday, soldiers raised the issue of their pensions with me, so it is right and proper to discuss it here and put it in the Bill.

The amendment also includes the armed forces compensation scheme and rehabilitation services, which reflects the importance we place on long-term support for injured service personnel. Paragraph (g) ensures that the report considers the particular challenges and issues faced by reservists and employers. When deployed on operations, reservists are almost indistinguishable from their regular counterparts; nevertheless, we should not overlook the fact they can face separate issues. I am conscious that there is an amendment on that specific point from the hon. Member for Milton Keynes North.

Paragraph (j) places the onus to decide what other areas of study merit inclusion in the report on the independent external reference group, rather than the Secretary of State.

As I have mentioned, a number of members of the Committee visited Colchester yesterday, and the issues set out in the Bill were not what was raised with me there. Matters such as education, health care and housing

were not discussed by the soldiers and their families I met yesterday. They spoke about cuts to allowances, cuts to pensions and difficulties faced by family members who are seeking employment. In addition, in the news only this morning, it was not education, housing or health care that was being discussed, nor was it the actions of another Department. Rather, the MOD was in the news because redundancy notices have been served by e-mail to dozens of serving personnel, including at least one that we know of who was serving on the front line.

**Mr Robathan:** As the hon. Lady has raised that point, I would like to clarify the issue for the Committee and, indeed, for the whole House, if hon. Members would care to read the report of proceedings in Committee. We very much regret what has happened. It should not have happened. I do not think that any employer should ever sack an employee or give warning of redundancy—which is what this was, of course—by e-mail. We very much regret it and we are investigating how that process took place, because we are not happy with it at all, either.

**Gemma Doyle:** I thank the Minister for his intervention. As he knows, the Secretary of State guaranteed that no redundancies would be issued to those on the front line, so I welcome the fact that that will be investigated.

**Mr Jones:** If it had not been for *The Sun* reporting on that this morning, we would not have known that that was the disgraceful way that this Government are treating people who have served this country loyally for a number of years. Is the covenant report not the obvious place for the Government to explain and report on that each year, especially as we will see reductions in manpower over the coming years in all three services? The report could be a benchmark to show how the Government are not only treating people, but living up to their commitments under the covenant.

**Gemma Doyle:** Yes, absolutely. Such issues should be included in the Bill and we need to be talking about them. Education, health care and housing are important, too, and they should be included, but those are not the issues that are being discussed by our soldiers and their families right now.

**Jack Lopresti** (Filton and Bradley Stoke) (Con): For clarification, when we spoke to families, the issues of health care, housing and education were raised. Does the hon. Lady remember the session in the afternoon, where we met families? That is very much what was fed back to me.

**Gemma Doyle:** I thank the hon. Gentleman for that intervention. Those issues were not raised with me yesterday, although I entirely appreciate that they may have been raised with him.

At Colchester, like other members of the Committee who went there, I had lunch with some of our soldiers. They were angry about their pensions and their travel allowances being cut. These men cannot get home to see their families at weekends any more, because they do not have the money to pay their train fare. They were

worried about whether they would have a job next year, and they were right to express their concerns to us. As Dawn McCafferty reminded us last week, if a serving person loses their job, they lose their home as well, because they get evicted.

When I spoke to the families, they wanted clarity, not uncertainty, about what is happening to allowances. There are particular changes that they say would make their partner leave the armed forces. They wanted to talk about employment and the fact that they cannot get a job because most employers will not take them on once they realise that they are the spouse of someone in the forces. They, too, wanted to talk about whether their partner will have a job in a year, or whether they will be evicted from their home. Those women are well qualified, and they would be an asset to any employer. The Bill should have been an opportunity to discuss such issues and make real progress. Instead, it is weak and simply not good enough.

As a Scottish MP, I am also concerned that nothing in clause 2 applies to Scottish, or indeed Welsh, veterans. At the very least, the Bill should be amended to send a clear signal about the UK-wide responsibilities of the Secretary of State. Perhaps our colleagues on the Government Benches are separatists, but I do not think so, and nor am I. If there were not even one UK-wide responsibility included in the Bill, that would send out a very regrettable signal indeed. Although I am aware that the Secretary of State is one of a select number of Conservative exiles who had to flee south of the border to pursue their political ambitions, I am sure that he has not forgotten his roots entirely. Take serving personnel in Scotland. A Scottish service person might have children who go to a state school, but those responsibilities are devolved. We have been advised that the Secretary of State will update the House even where those matters are devolved. It seems odd that a Secretary of State would do such a thing, on the basis that he or she is not responsible for the delivery of devolved services, nor is he or she accountable and able to answer questions on such issues. However the process is handled with the devolved Administrations, the inclusion of pensions and benefits and the other issues set out in the amendment as a defined area within the report would ensure that the report reflected issues for service people throughout the UK. As the Bill stands, Scottish and Welsh veterans in particular are being ignored.

Even more importantly, the list in the Bill does not give an adequate summary of the issues being discussed by our serving men and women and their families, and by veterans.

10.30 am

**Mark Lancaster** (Milton Keynes North) (Con): It is a pleasure to be able to contribute to this group of amendments. Before I move to my own amendment perhaps it is appropriate to comment on that of the hon. Lady the Member for West Dunbartonshire. At the heart of this discussion is the debate about whether the Bill should be more prescriptive about the categories. Although we have heard examples from the evidence sessions of witnesses arguing both sides of that coin, neither side of the debate can say that it has overwhelming evidence. Both sides can pluck quotations from witnesses, but the argument is at best balanced.

**Gemma Doyle:** Does the hon. Gentleman not accept that the evidence we have heard against expanding the list of issues to be covered has come from MOD officials, and the evidence we have had suggesting that we should expand the list has been from people representing service people and their families?

**Mark Lancaster:** No, I do not accept that – not in its entirety. I am trying to be reasonable and balanced in my comments. I hope the hon. Lady will respect that. Forgive me, I cannot remember his name off the top of my head without a note, but I think General Sir John Moore-Bick from the pensions organisation wanted pensions to be included in the Bill. When I read out the list to the witnesses from the Royal British Legion, and others, they were not rushing to support the exact list in the hon. Lady's amendment. Indeed, when it came to the service families, they did not want to have what they described as a shopping list. All I am trying to say is that I think the evidence on both sides of the coin is balanced and we should bear that in mind.

**Sandra Osborne** (Ayr, Carrick and Cumnock) (Lab): Does the hon. Gentleman not agree that including just health, education and social housing is arbitrary to say the least, and that at least having an expanded list is more relevant?

**Mark Lancaster:** I shall get to my own amendment in a second, and perhaps we can cover that point then, but what I am arguing is that there no overwhelming evidence on either side of this debate, and I think we should bear that in mind.

**Alex Cunningham** (Stockton North) (Lab): One of the things that strikes me from this list is the inclusion of mental health care. I know of one young man on the streets of Stockton on Tees, a former soldier, who is homeless, with mental health problems. Does the hon. Gentleman agree with me that it is important that the issue that affects so many of our armed service people, and results in so many of them ending up on the streets, ought to be included and specifically reported upon, so that we can see what progress is made as the Government try to improve services in that respect?

**Mark Lancaster:** I am slightly surprised that the hon. Gentleman has mentioned that, given that one of the three headings already on the face of the Bill is health care. One would assume that that would be reported in the Bill as a matter of course.

**Alex Cunningham:** I said specifically mental health care, because it is a specific problem for many of our armed service people who find themselves on the street. In fact, I understand that large numbers of homeless people on the streets are ex-armed services people with mental health problems.

**Mark Lancaster:** The hon. Gentleman makes a reasonable point, but I can only restate what I have just said, which is that I am personally confident that mental health care will fall under the category of "health care" as already listed in the Bill.



**Thomas Docherty:** I am grateful to the hon. Member. I cast my mind back to less than a year ago, when many Opposition Members and many candidates suggested that the previous Government were not doing enough on mental health care, so there is a bit of a U-turn going on among those on the Government Benches.

**Mark Lancaster:** With respect to the hon. Gentleman, he is now dancing on the head of a pin if he is suggesting that the heading of “health care” is not going to include mental health care. The hon. Member for North Durham wanted to intervene.

**Mr Jones:** I am grateful to the hon. Gentleman.

**Mr Mark Francois** (Rayleigh and Wickford) (Con): Well, he was a Minister.

**Mr Jones:** I did a lot in that area. The Bill includes education, accommodation and health care, but it excludes areas that are a direct responsibility of the MOD, such as pensions, employment training, the armed forces compensation scheme and the armed forces rehabilitation scheme. The Secretary of State will have no remit to report on those, even though he or she will report on education, accommodation and health care, which are areas that he or she has no direct responsibility for.

**Mark Lancaster:** I am grateful to the hon. Gentleman for his intervention, but, so that I am clear, can he point out where the Bill specifically excludes anything?

**Mr Jones:** If the hon. Gentleman was listening to my previous interventions on the Minister, he will know that the problem is that it is left to a future Secretary of State to decide what he or she includes in the report. That is what is fundamentally wrong. I am not questioning for one minute the Minister’s or the Secretary of State’s intentions to include such things, but the Bill must be future-proofed. If it is not specified in the Bill, a future Secretary of State could exclude those areas, and there would be nothing that anybody could do about it.

**Mark Lancaster:** I am grateful for the clarification. We have, therefore, established that the Bill does not exclude anything. I do, however, take the hon. Gentleman’s point on board.

**Mr Jones:** The point that I was making is that we must always future-proof legislation. If a future Secretary of State decided, for example, that he did not want to report on something, even though it was an issue that had raised concern among members of the armed forces—pensions and benefits is an example—there would be nothing that anyone here or anywhere else could do to force them to put that on the report for that year.

**Mark Lancaster:** I hear what the hon. Gentleman says, although I sense that he may be judging the current Government by the standards of the previous Government, and that concerns me. *[Interruption.]* Having taken an intervention from everybody on the Opposition side of the Committee, may I perhaps proceed?

My point is that there is a balance of evidence as to whether the Bill should be more prescriptive. There are some parts of amendment 3, which is in the name of hon. Member for West Dunbartonshire, with which I have sympathy. I have particular concern about the current status of the external reference group, which was made clear during the evidence sessions. We need to change the terms of reference for that group to make it more relevant to the military covenant, because that was not the objective of the group when it was first set up.

It will come as no surprise to the Committee that I now want to move on to the involvement of the reserve forces, having mentioned it on several occasions during the evidence session. I joined the Army on Remembrance Sunday in 1988, and, apart from a brief period of service in Hong Kong in the Queen’s Gurkha Engineers, almost all of my time has been spent as a member of the reserve forces. Over the past 21 years, I have seen a radical change in the role of the Territorial Army from a cold-war force—I served on airfield damage repair, waiting to repair runways after the Russian bombers had been—to an integrated part of the one-Army concept. It is perhaps that concept that causes concern for some hon. Members in terms of my amendment, and I understand that. If we were to do anything that suggested that we are moving away from the one-Army concept towards two armies, it would be a retrograde step. We must be very cautious when we look at the Bill’s implications.

For my part, I am deeply concerned that, although we hear a lot about the one-Army concept, all too often it does not happen in practice. I shall give one specific example that occurred under the previous Government, although that is not why I am making the point. As a member of the Territorial Army I was horrified that, mid-year in the financial year 2008-09, it was hit with a £24 million cut to its budget, which meant that all training was planned to cease for six months. During the effort to prepare for mobilised service, the TA was completely cut for six months. The previous Government, to their credit, ultimately saw the error of their ways and reversed that decision following pressure to do so.

**Thomas Docherty:** Obviously, I pay tribute to the hon. Gentleman’s service. My understanding is that that cut was recommended by the generals themselves, and it was the politicians who ultimately stepped in. Does he accept that is a valid viewpoint?

**Mark Lancaster:** I am grateful to the hon. Gentleman for making my point for me, which is that in practice, although we have the one-Army concept, in the MOD main building the TA is always the first port of call for such cuts. It was ultimately a political decision to implement those cuts, and it was a political decision to reverse them. I am afraid that Ministers cannot absolve themselves of making that decision.

Although we have the one-Army concept in theory, in practice all too often we do not. That is why my colleagues and I are deeply concerned that the three categories that have been chosen to be reported—health, education and accommodation—do not best reflect the specific needs of the reserve forces.

During the evidence sessions we touched on the problems of education and accommodation, which are not relevant at all to reserve forces, but health care is.

I take on board the points raised by the hon. Member for Stockton North on mental health, which is particularly relevant to the reserve forces. I also made that point when we visited Chilwell not long ago.

It is also important to realise that when it comes to health care, members of the reserve forces receive the same treatment as their regular counterparts only when on mobilised service. As a reservist standing here today, I have no access to an MOD doctor or to an MOD dentist. I have such access only when I am mobilised and treated equally as a regular soldier.

I am also concerned that some areas do not fall naturally in the scope of the Bill—employer relations, for example. As a reservist I am entirely reliant on my employer giving me leave to go on mobilised service, although, yes, there is compulsory mobilised service. Having myself been mobilised three times in the past 10 years, members of the reserves are prepared to go and do their bit. They are prepared to be mobilised, but they are not prepared ultimately to sacrifice their primary career for their secondary career. That is why the relationship we have with employers through SaBRE is so vital, and it is why I would like to see that guaranteed in the Bill, too.

**Gemma Doyle:** I picked up from the hon. Gentleman's opening comments that he is not likely to support my amendment. I support his measures to include reservists in the Bill, but does he not share my concern that Scottish veterans are being shut out of the clause? How would he address that point?

**Mark Lancaster:** I am fortunate in that I am not the Minister, because I am going to reserve judgment until I hear the Minister's comments. Otherwise what is the point of having a debate? I am confident—I say looking at the back of his head—that the Minister will offer me some reassurance, but we shall have to wait and see. Perhaps when the Minister responds, the hon. Lady would like to make her point to him.

**Mr Jones:** Although I support amendment 1, it makes no reference to what the Secretary of State should report on. The hon. Gentleman has just raised the relationship between reservists and their employers, which I know can be contentious. Without addressing that important issue in the Bill, any future Secretary of State could completely ignore it.

10.45 am

**Mark Lancaster:** Once again we are going back to the argument about how prescriptive the Bill should be. The areas that are particularly relevant to me as a reservist are employer relations and welfare. TA families may live some miles from their TA centre and so lack the level of support that regulars have. There are also issues around the TA bounty. As hon. Members will know anyone who fulfils their minimum requirement and is deemed fit for role receives a tax-free bounty. That is a large financial consideration that keeps many members in the reserve forces and also encourages them to be fit for role. It would be a great shame if that was not a matter that was reported under the clause.

I do not wish to take up too much of the Committee's time. We are at an interesting juncture here. We have ample opportunity now to hear from the Minister but

also, perhaps, from the Secretary of State in our debate tomorrow in the Chamber on the military covenant, and they will demonstrate that for the first time we are taking the reserves seriously. I was deeply disheartened on Second Reading that neither the Secretary of State nor the shadow Secretary of State made any reference to the reserves in their opening remarks. I hope that perhaps tomorrow that omission will be corrected.

**Thomas Docherty:** May I begin by clarifying something for the Minister? He asked from a sedentary position what my background was and talked about the Secretary of State having fled Scotland some time ago. For the record, I have English maternity and Scottish paternity, so either I am a half caste or I have the best of both worlds. I leave it to the Minister to decide which it is.

I pay tribute to the hon. Members for Filton and Bradley Stoke and for Milton Keynes North, who have served our country as reservists. It is right to recognise that at this time.

On the substance of the debate, having listened to the earlier exchange, I must confess that the Minister reminds me somewhat of Phil Collins. You are far too young to recall it, Mr Arbuthnot, but Mr Collins, a popular singer of an earlier time, once divorced his wife by fax. Unfortunately, the behaviour of the Minister, the Secretary of State and their officials this morning in sacking 38 senior officers by e-mail is incredibly disappointing.

**Mr Robathan:** I am rather disappointed in the hon. Gentleman. I have made the position quite clear. We deeply regret what happened and it was not the Secretary of State's intention. He is less than well pleased, if I can put it that way, as am I. The hon. Gentleman is making rather a meal of something that I have already explained. If he wishes to make it partisan, I suppose that is up to him, but it is not worthy of him.

**Thomas Docherty:** Perhaps I gave way slightly too early, because I was about to say that we have a Speaker's conference taking place this morning. I am sure that the Secretary of State has requested an opportunity to make a statement to the House on this very serious issue. The Minister indicates dissent. I can only assume that the Secretary of State, however regretful he is about the actions of his officials—I assume that he was not involved in the decisions, and will not comment on the rights and wrongs of whether he should have been involved—still does not think that the House should have an opportunity to hear the Government's argument. That is disappointing, given that the Minister is doing penance in Committee on this matter.

**Mr Robathan:** I really do not think that this is worthy of the hon. Gentleman. The Secretary of State has insisted on making a quarterly statement to the House on Afghanistan, which he did yesterday. I am not sure whether the hon. Gentleman was there. I do not think anyone can accuse the Secretary of State of being unwilling to come to the House. This was an error, which we deeply regret. While it has indeed attracted a great deal of publicity, I am not sure that it is exciting the House of Commons as much as the hon. Gentleman suggests.

**Thomas Docherty:** I do not wish to be drawn on what does or does not excite the Minister, but that leads on nicely to the substance of the issue, which is, who sets the terms of reference for the welfare of our forces, the ERG and the covenant?

Last week, we debated the very serious issue of amendment 4 and, specifically, who sets the terms of reference for the ERG support—whether that be the Secretary of State or the ERG itself—and the terms of the military covenant. If I have understood the Minister and his hon. Friends correctly, they are loath to hand any responsibility to the ERG. I am sure he will leap to his feet if I have misunderstood, but one of their arguments is that the ERG would not be accountable for any terms that it set. Given his lack of dissent, I think that is an accurate description. If that is the case, surely it is right that the decision on which aspects are covered by the military covenant—and, therefore, the report—be determined by the House? Who is more accountable on this matter than Members of Parliament? Indeed, if I can be so bold as to suggest it, Members of Parliament as a whole are more accountable than is the Secretary of State. That is why I think the amendment is entirely sensible and reasonable.

I will not rehearse last week's arguments—they were fairly well aired—beyond saying that I remain deeply unsatisfied with the wording

“in such other fields as the Secretary of State may determine.”

I suggest that that is far too loose and woolly.

**Bob Russell (Colchester) (LD):** Amendment 3 refers to

“other such fields as the External Reference Group may determine.”

Will the hon. Gentleman confirm that we established last week that the majority of the ERG is internal to Government? I suggest, therefore, that it is far better that we keep it as open as possible for Members to influence that report, rather than keeping it in-house, as the amendment would have it.

**Thomas Docherty:** I am not sure I fully understand.

**Gemma Doyle:** Does my hon. Friend think that if the hon. Member for Colchester is as concerned about the independence of the ERG as he says, he should have supported my amendment last week, which would have made the chair of the ERG independent? *[Interruption.]*

**The Chair:** Order. I call Thomas Docherty.

**Thomas Docherty:** I am grateful that we now have two Chairs in the room, Mr Arbuthnot, in case you were failing in some way. My hon. Friend makes the point I was going to make, which is one of surprise that the hon. Member for Colchester acted as the strongest voice for the Government on this occasion—a badge I am sure he often wears.

**Bob Russell:** Representing a garrison town comes before any party allegiance. I suggest to the hon. Gentleman that, as with the Armed Forces Bill 2006, playing the party political card is not well received by those who serve our country.

**Thomas Docherty:** I am sorry if the hon. Gentleman feels that being described as a defender of his Government is in some way a slur on his character. That, of course, was never my intention. I would have thought that sitting on the Government Benches would be an honour for him, although I often see him in our Lobby, showing some dissent. *[Interruption.]* I am sorry that, yet again, the Minister's PPS, who has not opened his mouth to make a speech, is making comments from a sedentary position and throwing brickbats at Opposition Members. It is perfectly reasonable to suggest that we need to widen the list of issues that the Government should be held to account on.

Returning, as I tried to do some time ago, to the substance of the point made by the hon. Member for Colchester, if I am not mistaken, there is no contradiction between the amendment and the clause. If there is a matter that is not covered by proposed new paragraphs (d) to (i), it can still be picked up under the wording

“other such fields as the External Reference Group may determine.”

I struggle to see why the hon. Gentleman thinks that a contradiction. If he wishes to make an intervention, I am happy to take one; if not, I will move on.

My final point is that when we had the debate last Thursday, and in the House itself on Second Reading, the Minister gave me the impression that he had had some discussion with Ministers and officials from Scottish and other devolved Administrations and that there had been a dialogue on the issue of the covenant and the welfare provisions. After last week's proceedings, I tabled a written question to which I have now had a reply. The Minister's written answer confirms that there were no specific discussions between Ministers and officials of the devolved Administrations.

Unless the Minister wishes to correct me, my understanding of his written answer is that on one occasion, while he was having a meeting with devolved Administration Ministers on another matter, there was a brief discussion of the armed forces covenant. I am sorry, but that cannot be classed as a substantive or detailed discussion on the implementation of the armed forces covenant with respect to Scotland, Wales and Northern Ireland. I hope he will clarify the situation and set out what steps he will now take to have a genuine dialogue with the devolved Administrations.

**Sandra Osborne:** It is extremely disappointing to hear that there have not been substantial discussions with the devolved Administrations about this. My hon. Friend will be aware that there is a Minister for veterans in the Scottish Government, and I would have thought he was an obvious person to discuss the matter with. Does my hon. Friend agree that this will add to the anger in Scotland about the general attitude of this Government towards defence matters and particularly to the closure of bases in Scotland?

**Thomas Docherty:** My hon. Friend makes a good point about the anger that has been felt. I would be straying off the path too much if I suggested that the problem is that the Secretary of State for Scotland cannot be found anywhere and is a will-o'-the-wisp figure. Will the Minister clarify what discussions he has had with the Scotland and Wales Offices on the issue of implementation? I suspect that the answer might be that

he has delegated the matter to the Secretary of State, but it would be incredibly helpful if he put it on the record exactly how long those discussions lasted, who was involved in them and what plans he has to meet with the devolved Administrations.

**Bob Russell:** I think we have already established that, for the purposes of the armed forces covenant, the term “service people” also involves family members. One reason I feel the amendment should be rejected is that it does not embrace everything, although it embraces everything that those who tabled it thought of at the time. The Bill’s great strength is that it allows anything and everything to be added or included as and when circumstances require it.

I say that because there are three items I have written down here that are not included in the extended list, but all of which have been raised with me over the years by constituents and their families. Those issues are learning difficulties, physical difficulties and marriage breakdown. Those are important issues that should be considered as part of the armed forces covenant. They are not listed here, but they would be caught up, along with anything and everything else, by the wording of proposed new section 359A(2)(b) in clause 2, which is

“in such other fields as the Secretary of State may determine.”

I am pretty confident that the ERG will be one of the bodies that contributes evidence to the Secretary of State, along with individual MPs, groups of MPs and outside charitable organisations. Those may be the big boys—the Royal British Legion; Help for Heroes; the Soldiers, Sailors, Airmen and Families Association Forces Help; the Army Benevolent Fund and so on—or the small but very important charitable groups such as Veterans Aid and the War Widows Association. With respect to the latter organisation, my understanding is that some of those bereaved in more recent conflicts do not even have the dignity of being referred to as war widows on their pensions.

11 am

**Mr Jones:** It is very sad to see an independent-minded Member, such as the hon. Gentleman, falling into being part of the human shield for the Conservative party. Is it not a fact that what he has just said is complete nonsense? Proposed paragraph (j) would allow any of the issues he raised to be included in the report. By supporting the Conservatives today, he is excluding areas that are within the remit of the Secretary of State for Defence and impact on the covenant, but there is no responsibility in the Bill to report on them.

**Bob Russell:** I am sorry to hear the hon. Gentleman’s comments, particularly the opening one, because if anyone has even minor knowledge of me they will know that I always put the armed forces ahead of party political affiliation. To my mind, paragraph (b) is much better than proposed paragraph (j) for the reasons I set out. I feel that if we widen the list, we are in greater danger of making it prescriptive. I have cited three examples of cases that I have taken up over the years on behalf of army families.

**Gemma Doyle:** Does the hon. Gentleman think that the issues listed in the amendment are not of concern to servicemen and women?

**Bob Russell:** Of course they are of concern. My point is that when we start extending the list, there is a danger that other items that should be included will not be.

**Several hon. Members rose—**

**Bob Russell:** We are not going to agree on this. My honest assessment is that —[*Interruption.*] I suspect that if those among my constituents who are serving in Afghanistan at the moment could witness these cheap jibes, they would be appalled.

I believe that the clause is best for our military personnel and their families. I do not disagree with the sentiments behind the amendment, but I believe the clause before us is better. I would appreciate it if I could be shown the same respect by the Opposition.

**Mr Jones:** I am sorry; it is very interesting how the parties in the coalition start bringing in party politics. Some of us who were Ministers remember when the Government were in Opposition; frankly, they used every opportunity in disgraceful ways with their colleagues in certain newspapers to denigrate not only the work that civil servants and armed forces members do, but the efforts we made to improve the lot of servicemen and women, and their families.

The amendment is important because the Minister already told us last week that the covenant will not be in legislation, irrespective of what the Prime Minister and others said. Therefore, what is in the report will be very important. It will enable a judgment on whether the Government of the day—this Government or any future Government—is honouring the covenant and their commitment to the armed forces. I find the resistance to the amendment strange. The hon. Member for Colchester spoke as if it were somehow prescriptive, but he obviously has not read proposed new paragraph (j), which allows other issues to be brought in at any time. He is right that issues such as marriage breakdown are very important. The armed forces families federations raised those issues with me on a number of occasions when I was a Minister. We did a lot to support Relate and other organisations in supporting servicemen and women whose relationships were affected by their military service and related issues.

If we reject the amendment and agree to the clause, we will have a report that will cover only education, accommodation and health care. We have been told that the Secretary of State can then bring in anything else. He or she can, but those are the only three areas on which they will be judged and forced to do. The question became clear: what would that include? It came out in last week’s evidence session. Are we talking about education, accommodation and health care of those people in service? If that is the case, the Secretary of State has responsibility for education of servicemen and women and for the education of armed forces’ families, for instance in Cyprus and Germany. Are we talking about just that?

Clearly, there is also responsibility for accommodation here in the UK and overseas. Are we to include in that the effect of people who leave and cannot get accommodation in the areas where they live? Or are we going to report on the ability of servicemen and women leaving and veterans’ access to accommodation? My

[Mr Kevan Jones]

hon. Friend the Member for Stockton North raised the issue of homelessness, which I would say is included in the idea of accommodation.

We come on to health care. Again, the Ministry of Defence and the Secretary of State have responsibility for the health care of those people who are in service and, as was raised by the hon. Member for Milton Keynes North, for reservists as well. Likewise, they have responsibility for primary health care for families in Germany and other parts of the world. Is the report going to be limited to that, or are we going to have a report on the delivery, as raised by my hon. Friend in the last sitting, of such things as access to IVF treatment, dentistry—which was an issue for local families when I was a Minister—and the broader spectrum of health care? I would say a report needs to do that. However, as it is billed at the moment, we will be limited to what is the responsibility of the Secretary of State.

I find it remarkable that, as my hon. Friend the Member for West Dunbartonshire said, in parts of Scotland and Wales where these issues are devolved, there is to be no reporting mechanism at all. I am surprised to hear my hon. Friend the Member for Dunfermline and West Fife say that the Minister has not even raised or discussed these issues with his Scottish counterpart.

We have many issues for which the Secretary of State is directly responsible; I am not sure if some are actually in the Minister's portfolio. We have pensions and benefits, and Mr Moore-Bick said last week how important it is that they should be in the report. It is clearly a controversial issue at the moment, with the Government's change from the retail prices index to the consumer prices index for the uprating of pensions. I note this morning, for example, that RPI is higher than CPI. Obviously, a lot of future pensioners will be looking at that very closely. Again, the Bill does not provide for pensions and benefits to be included in the report.

**Bob Russell:** Is the hon. Gentleman telling me that when the Secretary of State produces the report to Parliament and the subject matter he has referred to missing, he would remain silent? Or would he raise the issue?

**Mr Jones:** The hon. Gentleman has known me long enough to know that I do not sit silent very often. The point is that if we look at the covenant we need to ensure that what we give our servicemen and women and veterans in the future—we are not talking just about this Government—will be included in the report. As it now stands, it is up to the Secretary of State alone to decide what is in the report. If a future Secretary of State is embarrassed and does not want pensions and benefits in the report, he or she can exclude them. That is completely wrong. I am surprised that the hon. Gentleman is not supporting the amendment because it strengthens the Bill, not just in terms of accountability of the current Secretary of State, but of future Secretaries of State. If, as is being spun at the moment, this report will be so important in ensuring that we honour the military covenant, is it not fundamental that pensions and remunerations for veterans should be included in the Bill?

**Bob Russell:** Does the hon. Gentleman not accept that this would be the first time that the armed forces covenant, as it has become known, has been formally included in an Act of Parliament? Surely he must accept that only a fool of a Secretary of State would narrow his report knowing full well that hon. Members such as the hon. Gentleman himself would be the first to seize upon anything that has not been reported.

**Mr Jones:** I wish the hon. Gentleman would read the Bill and stop listening to the spin by the Conservative party and No. 10, because it does not enshrine the covenant in law. That was confirmed by the Minister in the sitting the other day.

The amendment seeks to ensure that the issues for which the Secretary of State has direct responsibility are included in the report, rather than leaving the provision as weak as it is. I am surprised that the hon. Gentleman is not prepared to support the amendment—the amendment does not state that it is the only list, because paragraph (j) allows for the inclusion of other points—and I can only assume that, like many of his Liberal Democrat colleagues, he is so wedded to the coalition that he fears that anything he does to weaken it will ensure both his and its political oblivion.

**Christopher Pincher:** Does the hon. Gentleman not accept that the longer one makes the list the more prescriptive the report will be, to the exclusion of many other things that could be included? If there is a long list to work through, a Secretary of State will naturally stick to it and only report on those items. It is not the advice that we received from the Soldiers, Sailors, Airmen and Families Association, the Royal British Legion, Help for Heroes or from anybody else who gave evidence.

**Mr Jones:** I am sorry, but I do not know where the hon. Gentleman is coming from or what planet he is on.

**Christopher Pincher:** Planet Earth.

**Mr Jones:** Well, it is a very strange planet Earth. I should ask what colour the sky is.

The amendment would insert a list of areas that are the direct responsibility of the Secretary of State. By supporting the Government line, the hon. Gentleman would leave it to a future Secretary of State to decide what should be in the report. The idea that inserting a list of areas for which the Secretary of State has direct responsibility would be somehow prescriptive is absolute nonsense. It would clearly lay out those areas and add paragraph (j), which is the catch-all for everything else and would be better than the current paragraph (b), which leaves it to the Secretary of State to decide what goes in the report.

The amendment provides for the independently chaired external reference group to determine that certain things should be included in the report, which would give confidence that a future Secretary of State would not be able to stop things being included in the report and would be held accountable for the things for which he or she is directly responsible.

**Thomas Docherty:** Does my hon. Friend share my puzzlement at the existence of subsection (2)(a)? If I have understood their logic, coalition Members are saying that there should not be a list at all. What we

have now is a halfway-house nonsense. Some things are listed, but not others. Is that not more to do with the fact that the Government did not think of such a list? That is the real reason why they do not support it.

**Mr Jones:** My hon. Friend makes a good point. The Secretary of State has responsibility for service education, accommodation and health care. They are deemed good enough to be in the list, so I completely follow his logic. But why not include the other areas? They are not wet and woolly, they are specific areas for which the Secretary of State is responsible. Let us be honest—I say this from my experience as a former Defence Minister—many of them are central to the idea of the covenant.

**Mark Lancaster:** Perhaps I could come at this from the other end. Would the hon. Gentleman explain why welfare is not included on the list?

**Mr Jones:** Welfare is included, but it depends how you define it.

**Mark Lancaster:** Precisely.

**Mr Jones:** But with this amendment my hon. Friend the Member for West Dunbartonshire has tried specifically to include the areas for which the Secretary of State is responsible. Things such as pensions and benefits, the armed forces compensation scheme and the armed forces rehabilitation services are part of the welfare bubble that we should put around our active servicemen and servicewomen, and veterans, too.

11.15 am

**Christopher Pincher:** The hon. Gentleman wants the report to be accountable, as he puts it, and he does not think that the Secretary of State can do that job. If we dredge up amendment 5 from the oblivion into which it has sunk, we see that the hon. Gentleman wants the ERG, which is an unaccountable group, to be appointed by the Cabinet Office—unaccountable civil servants—to provide input to the report. How does that make the report accountable?

**Mr Jones:** Well, it is far better than what the Government are proposing. *[Interruption.]* I am sorry, but we have confusion about the ERG's role. A Minister says on the Floor of the House that a report will be produced, and officials tell us that the ERG will wither on the vine.

There is nothing wrong, in my opinion, with the ERG chair and others being independently appointed by the Cabinet Office, according to the rules that were laid down for other external bodies and quangos and that would bring into it the independence of that process. I am sorry to have to tell the hon. Gentleman that he seems to question the entire role of the Cabinet Office in making appointments to NHS trusts and everything else.

Amendment 5 would make sure that the ERG or the Secretary of State at least has some people from an independent position feeding into the process. The hon. Gentleman is supporting basically leaving a Secretary of State of the future to decide first that the report is only limited to certain areas and secondly what the extent of the future areas would be.

I move on to support for reservists and their employers. Although I support amendment 1, which was tabled by the hon. Member for Milton Keynes North, in extending the report to cover the reserve forces, it is rather a waste of time if he does not support amendment 3. Amendment 1 states:

“The armed forces covenant report must also include analysis of the effects of membership, or former membership, of the reserve forces in such fields as the Secretary of State may determine.”

Again, the hon. Gentleman's amendment would allow the Secretary of State to determine what should be in that report regarding reservists. If he was minded to support amendments 3 and 1, that would at least wed the two together. As it is framed, however, a Secretary of State in future could completely ignore what the hon. Gentleman is trying to do.

Paragraph (h) of amendment 3 would extend the report to cover the running of the armed forces compensation scheme. That legislation, which was introduced by the previous Labour Government, substantially increased the awards to those in service who are injured as a result of that service. The Boyce review made some recommendations, some of which have not yet been implemented because of the time delay involved in setting up a group to consider some specific mental health issues.

In supporting the covenant, how we treat our servicemen and women not now but in the future is very important. I always had that concern as a Minister. The idea of somehow excluding that from the Bill is wrong; let us remember that the Secretary of State for Defence is responsible for that area. It would be valuable to ensure that the country is meeting its debt to those who are wounded either in service or in accidents or other injuries through their service to this country, and that should be reported on as part of the covenant.

My final point concerns paragraph (i) of the amendment, which is very important and relates to the rehabilitation service. I am quite proud of the work that the previous Government did to put in place the Army recovery capability and other support for injured servicemen and women. I am very grateful that the present Government are following through on that work and making sure that the recommendations are acted on. A key test of whether we are meeting the covenant and our obligations to those who have been wounded or severely injured in the course of their service to this country should be how we treat them. To hold this or any future Government to account, that should be part of the report.

The amendment would improve the report, which we are told is central to determining whether this or any future Government honour the covenant. I cannot for the life of me think why the Government should resist the amendment, except from embarrassment that the idea of a covenant enshrined in law has been over-spun and is slowly unwinding.

**Mr Robathan:** May I say how disappointed I am by this morning's debate? I genuinely regret the highly partisan tone taken by the Opposition. As my hon. Friend the Member for Colchester pointed out, we are dealing with the welfare of our armed forces and how we can best serve them by looking after that welfare, yet we have heard nothing more nor less than petty attacks. The record will show how partisan they have been. I have said specifically that, although it might have taken

[Mr Robathan]

a bit of time, the last Administration deserve credit for how they evolved measures such as the armed forces compensation scheme, the service Command Paper and the setting up of the external reference group. We are continuing that work.

One would imagine from the speeches we have heard that we have been in power for the past 13 years. Actually, I recall the years between 1997 and 2010 well. Labour was in government, and during that time, there was no impetus at all to address the issues in the covenant and put them into a Bill, as we are doing.

**Mr Jones:** Will the Minister give way?

**Mr Robathan:** I will, but I counted just now the number of substantive interventions that I took in Thursday's debate. There were more than 20, most of which were purely time-wasting and some were silly. I will take interventions, but only sensible ones. Does the hon. Gentleman wish to comment?

**Mr Jones:** I do. If the Minister had given evidence to the Committee, perhaps that would have eliminated some of the need for interventions. He says that we had 13 years in government. If he looks at the Green Paper that I produced in 2008, he will see that it was exactly the forerunner of these proposals to enshrine in law issues from the Command Paper and elsewhere. Our sense of disappointment arises from the fact that the Bill does nothing of the sort. As for being party political, if he looks back over the past five years, he will see that he and his colleagues, when they were in opposition, were very partisan in using the issue as a party political football.

**Mr Robathan:** I think that that intervention makes my point.

**Jack Lopresti:** I echo what the Minister says. I am a relatively new Member of Parliament and new to the Committee, and I have been disappointed by the partisan interventions. We have a serious job to do here, and I think that we should raise our game a little.

**Mr Robathan:** I should like to make a couple of points on issues raised in the debate and then turn to the substance of the amendments.

My hon. Friend the Member for Milton Keynes North asked whether we would amend the ERG's terms of reference. We will most certainly review them. Currently, the ERG reports to the Prime Minister. We want a more focused ERG, although it might continue to report to the Prime Minister; I cannot speak for him. However, it will also be required to consider issues of the covenant for the Secretary of State, and we will ensure that that happens. We will review the terms of reference.

The hon. Member for West Dunbartonshire spoke about the devolved Administrations. I am not sure whether she appreciates that the Scottish Executive and the Welsh Assembly Government are represented on the ERG and have taken part in discussions there and that we have cleared the covenant with Alex Neil and the Welsh Assembly. I understand that they have said

that they are perfectly happy with it. The Scottish Executive and Welsh Assembly have real roles to play, and to be fair to them, I do not think that there is any division between us about what we wish to do for our service personnel.

**Gemma Doyle:** The Minister says that the covenant has been cleared with the devolved Assemblies. If there is a document fit to be cleared by other Parliaments, perhaps he can show us a copy of it.

**Mr Robathan:** Perhaps I misspoke—personnel responsible in the Welsh and Scottish Governments have sent back their comments on the covenant. As I explained to the hon. Lady beforehand, this is something that we want to get right, so we are consulting groups such as the British Legion. We are getting that right, and the result will be published this spring.

**Thomas Docherty** *rose*—

**Mr Robathan:** I am not minded to give way to the hon. Gentleman, as he has spoken quite enough.

**Gemma Doyle:** I have here a copy of a letter that Alex Neil sent in response to a request to give evidence to the Committee. That letter is specifically about the taskforce's report on the covenant. It does not relate to how the Bill will operate in practice, to the mechanism of reporting or to whether the Secretary of State can report on devolved issues. Although it comments on the taskforce's report, it is not about how the Bill will operate in practice. I merely say that as a point of clarification, because my concerns about Scottish veterans are still outstanding.

**Mr Robathan:** The hon. Lady makes a perfectly reasonable point. I am pretty certain that I have seen a letter from Alex Neil, who is the Scottish National party Minister involved, saying that he has no further comments on the actual covenant and its consequences. If I am wrong, I will let the hon. Lady know, but I am pretty sure that I am not. We are in communication at official level and, indeed, from time to time, at ministerial level with the devolved Administrations. It would be foolish not to do that because we want this to work, for heaven's sake.

Both amendments would extend the range of subjects that the Defence Secretary would be obliged to cover in his annual report to Parliament. With amendment 3, which we have discussed at some length, the hon. Lady's aim must be to prevent the Secretary of State from ignoring key issues in his annual report. However, requiring every report to cover all the issues that anybody can think of will inevitably mean that the report lacks depth and focus, and it is extraordinarily prescriptive. What the Government and I have in mind is a process through which, with the benefit of the external reference group and independent comments, we identify and investigate real problems and provide practical solutions. The report should include a wide review, but it should not be required to consider everything, which would result in it doing very little. As a Government, we are not interested in box-ticking, which looks good on paper somewhere, but in genuine results.

A further problem is that, although the amendment aims to cover everything, it fails to do so. For instance, does the mention of the armed forces compensation scheme mean that we should be less interested in those who receive war pensions, which is, of course, a different scheme? Perhaps there will be a different scheme in the future.

**Gemma Doyle:** I refer the Minister to paragraph (e), which specifically mentions “pensions and benefits”.

**Mr Robathan:** Of course, the war pensions scheme is altogether separate, which the hon. Lady understands. In the future, there may easily be a different scheme following the Hutton review.

**Gemma Doyle:** Will the Minister give way?

**Mr Robathan:** Not again. What about welfare support? That is surely as important as some other topics listed, but it does not appear. The purpose of having the three key issues—health, education and housing—is that they are raised every year, and we are putting the report firmly into the welfare domain.

The list of subjects in amendment 3 would not increase the accountability of Ministers. It would simply tie us to a checklist, or a box-ticking exercise. It may or may not look right today, but I feel that it will almost certainly look wrong tomorrow. The greater discretion involved in the Bill is the right way to ensure that the key issues are covered. Philosophically, we trust the Government, and if the Government do not live up to that trust, the Opposition or even Government Members should hold them to account for failing.

11.30 am

Amendment 1 makes it even clearer that the report must cover the effect of service on members of the reserve forces. From what we have heard in the evidence sessions, we all understand the reasons why my hon. Friend the Member for Milton Keynes North tabled the amendment. I have a great deal of sympathy with what he said, and I agreed with almost everything in his short speech. He will be aware that the reserves review is ongoing, although I do not know whether he has taken any part in it, so I am optimistic that many of his concerns will be addressed in that review, because using the reserves is not an easy way—perhaps this happened in the dim and distant past—for the regular armed forces to save money. We are not interested in that; we are interested in bolstering our reserves because of the excellent work that they are doing. I hope that he will understand that there is no doubt in the minds of Ministers about the important role that the reserves play in the life and work of today’s armed forces and the extent to which we are in their debt.

We need look no further than the sacrifices that the reserves have made in the conflict in Afghanistan to realise that we really are one force. I have met reservists out in Afghanistan—sitting behind me is one reservist who has been out to Afghanistan—and I know that the hon. Member for Colchester has met reservists in Colchester who were going out to Afghanistan. When I was in the Army, we talked about one Army, and I am delighted to see that in practice today. Not only is my hon. Friend

the Member for Filton and Bradley Stoke a reservist, but other members of the Committee are either present or former members of the reserve forces, and I pay tribute to them. Their presence here has done a huge amount to enrich our work.

I must say to my hon. Friend the Member for Milton Keynes North that I am not keen on his amendment. Proposed new section 359A(3) in clause 2 specifically provides for reserve forces—and so it should—and also covers other groups, including veterans and a wide range of people within the service community. The amendment would imply that less importance is attached to other groups of service people and would be prescriptive about how reserves are covered in the report. I would like to see the reserves covered in every element of the report. I understand that their needs are different and that health care, education and housing are not necessarily important in the same way for them. However, such prescription would not be the right way forward.

I can assure my hon. Friend, however, that, in addition to the vital contribution made by the reserve forces, we recognise the special problems that they face, and I will aim to ensure that those are adequately considered in the preparation of the reports from the Secretary of State. I am sure that the members of the external reference group will join me in that aim. From my discussions over the past six months, I know that we need to look at the health care, and particularly the mental health care, of the—typically—young men who, having served on operations for six months, return to the reserve unit but are quite isolated in comparison with those who are serving in a regular unit. I am absolutely committed to that.

In the light of what I have said, I suggest that amendments 3 and 1 should be rejected.

**Gemma Doyle:** Last week the Committee rejected amendments to bolster the independence of the report by enshrining the role of the ERG in the Bill. Given that Government Members could not bring themselves to support such a move, amendment 3 becomes even more important. I would have been delighted to have discussed with Government Members what they thought were the right issues to include in the report to Parliament, but there seems to be a bizarre attitude that the Bill is perfect as it is.

**Mr Jones:** Does my hon. Friend agree that we have had no opportunity to decide why the Government chose the three areas? The Minister did not answer that in his conclusions or in any interventions. Could we not have had an answer to that if the Minister had not refused to give evidence to the Committee?

**Gemma Doyle:** Indeed. I am concerned that there has been no detailed discussion and that there is no specific rationale for why those three issues are included. If Government Members choose not to support amendment 3, I assume that they will not support amendment 1 either. I have heard no rational explanation for why we should expand the list to include support for reservists but not any other matters.

**Mr Robathan:** The hon. Lady has just said that we have not explained why health care, housing and education are in the Bill. A logic raised by one of her hon. Friends



[Mr Robathan]

says that we should have nothing in the Bill. We specifically mentioned these three things because they are the concerns that are raised perennially—

**Mr Jones:** Pensions?

**Mr Robathan:** As it happens, pensions are raised at the moment, but have not been raised perennially. The three issues are central to the welfare of our serving personnel and their families, and they are raised each year by the families federations and serving personnel.

**Gemma Doyle:** The Minister can expect the organisations to raise the issues of pensions, allowances, jobs and redundancies this year and for a number of years to come.

Clause 2 is weak as it stands. It does not live up to the hype that is being spun in the media about the Bill. The Minister and his colleagues should thank us for attempting to strengthen the Bill. It is nonsense to say that expanding the list makes it more likely that other issues will be left out. Amendment 3 expands the list of issues to be reported on more accurately to reflect the responsibilities of the Secretary of State, and we heard support for such an approach in our evidence session last Thursday. I therefore wish to press the amendment to a Division.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 7.

#### Division No. 2]

##### AYES

Cunningham, Alex	Jones, Mr Kevan
Docherty, Thomas	Osborne, Sandra
Doyle, Gemma	Wright, David

##### NOES

Ellwood, Mr Tobias	Pincher, Christopher
Francois, rh Mr Mark	Robathan, rh Mr Andrew
Lancaster, Mark	Russell, Bob
Lopresti, Jack	

*Question accordingly negated.*

*Amendment proposed:* 4, in clause 2, page 2, line 42, leave out “Secretary of State” and insert “External Reference Group”—(*Gemma Doyle.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 6, Noes 7.

#### Division No. 3]

##### AYES

Cunningham, Alex	Jones, Mr Kevan
Docherty, Thomas	Osborne, Sandra
Doyle, Gemma	Wright, David

##### NOES

Ellwood, Mr Tobias	Pincher, Christopher
Francois, rh Mr Mark	Robathan, rh Mr Andrew
Lancaster, Mark	Russell, Bob
Lopresti, Jack	

*Question accordingly negated.*

**Mr Jones:** I beg to move amendment 6, in clause 2, page 2, line 44, at end add—

‘(7) The Secretary of State must by Order through Statutory Instrument establish a written Military Covenant (henceforth referred to as “the Covenant”) which sets out the definition of the word “covenant”, used in Clause 2, line 6 of the Armed Forces Bill. The definition would set out the principles against which the annual armed forces covenant report would be judged. No Order establishing the definition of the term “covenant” shall be made unless a draft of the Order, prepared after public consultation, has been laid before and approved by a resolution of both Houses of Parliament. An Order to review the definition of the term “covenant” would be made every five years and would not be passed unless a draft of the Order, prepared after public consultation, has been laid before and approved by a resolution of both Houses of Parliament.

(8) In this section “public bodies” means—

- (a) United Kingdom government departments;
- (b) local authorities; and
- (c) National Health Service trusts.’

**The Chair:** With this it will be convenient to discuss amendment 8, in clause 2, page 2, line 44, at end add—

‘(7) The Parliamentary and Local Government Ombudsman shall have the duty to investigate complaints from service personnel that a public body or local authority has failed to meet the commitments outlined in the Covenant.’

**Mr Jones:** The amendments would enshrine the military covenant in law for the first time and provide a means of redress for service people, as defined by the Bill, through the parliamentary ombudsman. The country’s commitment to our servicemen and women is not negotiable. When I was the Minister with responsibility for veterans, I certainly knew of the public gratitude and united support and admiration for the courage, skill and dedication of our servicemen and women. We must do our utmost to ensure that we support not only them, but their families, as well as those who have served in previous conflicts and those who have served Her Majesty generally in the service of their country.

I have already referred to the covenant and the previous Government’s work. I recognise the point made earlier by the Minister, but it is a pity that, when in opposition, his party did not recognise or support some of the things that we were doing. We have heard accusations about playing party politics this morning, but they were played—and disgracefully so—by certain members of the present Government when they were in opposition.

The work builds upon the service Command Paper, which was introduced by my right hon. Friend the Member for Coventry North East (Mr Ainsworth) when he was Armed Forces Minister. I was responsible for ensuring that the cross-departmental work and the Command Paper were implemented. It was the first time that such cross-departmental work had ever been undertaken, and its main aim was to ensure that those serving and who had served were not disadvantaged by their service. The Command Paper followed a sustained campaign by the Royal British Legion and others to raise awareness of our debt of honour to our servicemen and women, and to veterans. It was an important campaign to ensure that politicians, wider society and government at all levels recognised our debt of honour to servicemen and women.

I never believed that the military covenant had been broken, unlike the Conservatives when they were in opposition.

**Bob Russell:** May I draw the hon. Gentleman's attention to the opening remarks made by my right hon. Friend the Minister last Thursday? He said of the previous Government:

"They did many sensible things that we are continuing with. I pay tribute to them for many of the things that they did, such as the service Command Paper and various things that they introduced."—[*Official Report, Select Committee on the Armed Forces Bill*, 10 February 2011; c. 3.]

Are not those words of praise for the previous Government?

**Mr Jones:** I recognise that. Had the hon. Gentleman been listening, he would know that I said as much a moment ago. That comment, however, is in marked contrast to others made during the last two years of the previous Labour Government, when we were constantly being told by the current Secretary of State and Prime Minister, among others, that the covenant had been broken and that we were offering very little support. It was frustrating that the press did not cover some of the positive things that we did, which the present Government, who clearly played party politics with the issue, now recognise. I am grateful that sinners have realised the error of their ways.

It is important that we build upon that work. We heard last week from the Army Families Federation, the Royal British Legion and others about the need to ensure that the covenant is recognised in relation not only to our current debt, but to the future, when the armed forces are no longer involved in conflicts.

If the hon. Gentleman would like to be reminded of what we did as a Government, I shall do so now. We should be proud of our record in introducing the armed forces compensation scheme, which doubled lump sum payments to veterans who were severely injured, not only in action but in general service. We brought in lump sum payments for the first time. The comments of some Government Members when they were in opposition gave the impression that lump sum payments had been there all the time, but they were in place before 2005.

11.45 am

**Bob Russell:** In a spirit of even-handedness and in an attempt to get back to consensus, may I repeat what I said last week:

"I pay tribute to the previous Government for the many measures that they introduced to make life better for our armed forces. I hope that that evolution will continue through the rest of this Parliament and beyond."—[*Official Report, Select Committee on the Armed Forces Bill*, 10 February 2011; c. 4.]

I hope that the rest of this debate will be in that vein.

**Mr Jones:** It is, but I am also disappointed that the hon. Gentleman is not following through in ensuring that the Bill holds not just this Government to account in their support for armed forces members and veterans, but future Governments. When I was a Minister I visited Colchester on a number of occasions and I would not doubt his commitment to the armed forces, not just the Army but in general. But there is a real opportunity in this Bill to follow through on that. I am disappointed that he is not doing that and is nodding through a weak Bill. Even though it has been hyped up to be more than it is, it presents a real opportunity to do that and that is what my hon. Friends and I are trying to do.

Before anyone stands up and says the operational allowance has been doubled, let me point out that it was introduced by the previous Labour Government. We also had a very good record on armed forces pay, honouring the Armed Forces Pay Review Body in full in each of the last 12 years, unlike this Government, who doubled the operational allowance but froze armed forces pay for the majority of people, except those on active service.

**Mark Lancaster:** The hon. Gentleman knows what I am going to ask him. Does he perhaps with hindsight regret, amid the fanfare of introducing that operational allowance, covertly cutting the longer service separation allowance?

**Mr Jones:** We did, but we also increased the welfare package overall. However, we did not trumpet, as this Government are doing, the fact that the operational allowance has been doubled but is being paid for basically by a pay freeze for the majority of members of the armed forces and in many cases reducing their pensions through the change from RPI to CPI. In terms of our commitment, we honoured the Armed Forces Pay Review Body in full. That meant that service men and women were at the top of the public sector pay round every single year. I think that was the right thing to do.

One thing that would keep morale up would be to make sure that pay is in the covenant. The Government have made a mistake by not meeting the Armed Forces Pay Review Body and freezing pay for the majority of those people who are not on active service in Afghanistan or other parts of the world. We also introduced the Service Personnel and Veterans Agency, recognising for the first time the unique role of veterans in our society with a Minister responsible for veterans. We have a good record which we should be very proud of. I am glad that I played a small role in implementing that. It beats any post-war record of any Government of any political persuasion.

**Mr Robathan:** I am staying very quiet and calm but I served in the Army in 1979. I know the hon. Gentleman was still at primary school at the time.

**Mr Jones:** I was not.

**Mr Robathan:** I know he was not. I remember the days before 1979 and the so-called black hole. The pay and conditions of service were so poor that my contemporaries were leaving in droves. When the Thatcher Government came to power in 1979 they walloped up the pay by approximately 33% and as a result the armed forces continued to run smoothly. I will not have it said that the last Government were the best Government the armed forces ever had.

**Mr Jones:** Taking into account the overall package, they were, certainly in terms of the armed forces compensation scheme and the recognition of the pay, pensions and terms and conditions. Regarding veterans, I know that we hear a lot from the Conservative party about its commitment to veterans, but it was the last Labour Government that introduced the Minister for Veterans and the Service Personnel and Veterans Agency, specifically to look after veterans' affairs. So if we take the package as a whole rather than just looking at pay, our record is one that we can quite rightly be proud of.

**The Chair:** Order. No doubt soon you will be getting back to the subject of the debate.

**Mr Jones:** I certainly will. It then comes down to the covenant itself, and we must continue to improve what we can do. However, it is also important to say that this Bill has clearly been spun when it is claimed that it is putting the covenant into law, which it clearly is not. I will come on to that issue in a moment. The amendment tabled in my name and that of my hon. Friend the Member for West Dunbartonshire aims to put it into law.

It is also important to look at the rhetoric of the Conservatives when they were in opposition. During the election, they produced “A New Covenant for our Armed Forces and their Families”, which says on page six:

“We will establish a tri-Service Military Covenant that will articulate our commitment to the men and women of the Armed Forces.”

In June last year, while he was standing on the Ark Royal, which was soon to be decommissioned, the Prime Minister said:

“It is time for us to rewrite that Military Covenant, to make sure that we are doing everything we can...whether it is the schools you send your children to, whether it is the healthcare that you can expect, whether it is the fact that there should be a dedicated military ward for anyone who gets injured...I want all of these things refreshed and renewed and written down in a new Military Covenant that we write into the law of our land”.

The forces community, and for that matter the public, are entitled to ask where that new military covenant is. We can ask that question today, because quite clearly this Bill does not write it into law.

That has been reflected in some of the media coverage. I listened with amusement to the Minister for the Armed Forces, who is sadly not on this Committee, when he told the “Today” programme that the Bill enshrined the covenant in law. I must tell the Committee that a report from the Secretary of State to Parliament, which is what the Minister for the Armed Forces was referring to, is a weak interpretation of writing the military covenant into law.

The only way that the Minister for the Armed Forces might be proved correct is if the amendment were accepted today, because the Royal British Legion has made it clear that the Bill, as it stands, does not enshrine the covenant in law. Indeed, Chris Simpkins from the Royal British Legion said last Wednesday on “Channel 4 News” that he was:

“disappointed at the very least”

that there is no provision in the Bill to enshrine the military covenant in law. He went on to say that that was:

“completely counter to a commitment the Prime Minister gave when he made a speech on board Ark Royal last June”.

He continued:

“We’re very concerned to see this U-turn because it undermines what we know the government is trying to do and support the armed forces in very difficult times.”

I think that Chris Simpkins made similar points to this Committee when he appeared before us last week.

That is comment. Last week, however, we had the Minister’s own comments on this issue when he appeared in an evidence session. It is worth reminding ourselves and a wider public what he said in that session. He said:

“The covenant is a conceptual thing that will not be laid down in law.” —[*Official Report, Select Committee on the Armed Forces Bill*, 10 February 2011; c.21.]

The Minister may claim that he misspoke or was misinterpreted. However, he goes on to say, referring to me:

“The hon. Gentleman is being obtuse. The covenant will be produced—I would expect it at some stage in the spring—and he can comment on it then. The report, which is in the Bill, will measure the actions and policies of the Government against the covenant”. —[*Official Report, Select Committee on the Armed Forces Bill*, 10 February 2011; c.22.]

When I asked about the legal position, he said—it may be another mistake—

“As I have explained already, it will be a conceptual, philosophical statement, and it will have about the same legal position as the service Command Paper, I think. I might move on now, because this is rather sterile.” —[*Official Report, Select Committee on the Armed Forces Bill*, 10 February 2011; c.22.]

I am sorry, it is not rather sterile: it is central to the Bill that the covenant will not be enshrined in law, and the Minister has clearly stated that before this Committee.

Confusion still reigns about when we will get the work referred to in questions this morning by my hon. Friend the Member for West Dunbartonshire. A document has been produced that Scottish counterparts have had sight of, which could be called a covenant. However, it does not put it into law. It is important to know the relationship between the two. Clearly, it will not be part of the law, as is being spun by No. 10, the Ministry of Defence, and even the Secretary of State as late as last night on the “Sky News” blog.

**Mr Robathan:** First, I hope the hon. Gentleman does not think I was being patronising. It was meant to be funny when I said he was in prep school at the time I was referring to. There are two points: he asks what the relationship will be between the covenant and the report. The report will be measured against the covenant. It is as simple as that. The second point refers to whenever it will happen. It will happen in the spring. I very much hope we will be publishing it before Easter, but that depends on the comments of other people. We are trying to get an agreed, consensual position, rather than a non-consensual one.

**Mr Jones:** Knowing the MOD’s interpretation of spring, I would not hold out much hope.

**Mr Robathan:** Over Easter.

**Mr Jones:** I would not hold out much hope for early spring—or possibly autumn. It is clear, as he said to the Committee, that the covenant is a conceptual thing—it will not be laid down in law. Is he reaffirming that today?

**Mr Robathan:** That is right.

**Mr Jones:** If that is the case, that is not what is being spun as the headlines of the Bill. If we are bringing forward a Bill to look at how we honour the military covenant, it is odd that a piece of work to draw up that covenant should be ongoing, when the Bill talks about the military covenant. I have yet to see how the two will be linked. That is why I give the Minister the opportunity today to support the amendment tabled by the Opposition, which would enshrine in law the military covenant by

order of the Secretary of State, with a review every five years and a vote in both Houses to renew it. If he were prepared to agree that today, it could still fit in his timetable. If he is still working on what a covenant could be, he could fit it in later by order of the Secretary of State.

There will also be consultation before the order is laid, so the public can examine the Government's record and what actually is meant by the covenant. The amendment would also ensure that all public bodies in the UK took into account the special nature of service, to ensure that people are not penalised as a result of their service. When the Prime Minister talked of writing the covenant into law, I believe this is what the British people thought he meant by that—not a simple report being laid before Parliament, without any recommendations or view of what the covenant should be. I am certain that services charities that gave evidence to the Committee thought that was what he meant by it.

When it comes to ensuring that the covenant means what it says, individuals need some type of redress. Confusion also arose on that point at the beginning. When we were trying to determine from officials what this states and how the policy was generated, the Minister—in response to an intervention—was dismissive of all previous work, saying that the election had taken place and that was it. I think Mr Barlow told us that the response to the former Green Paper, which I produced two years ago, would take into consideration the policy form and process. If that were the case and if the Minister had given evidence, we would have had an opportunity to find out exactly how that came about. If this report or the covenant are to mean anything, the individuals affected will need redress. The amendment would create a course of redress for individuals to the parliamentary ombudsman, so that the rights contained in the covenant are enforceable in some way. Many servicemen and women, veterans and others would become rather cynical if all we do is produce a report that is somehow noted by Parliament when, on an individual basis, there is no redress.

In drawing up the Green Paper, there were various proposals on how to do that, including a body of opinion that wanted an altogether separate armed forces ombudsman. That could have become over-bureaucratic. The best way forward would be to use the existing parliamentary ombudsman as a route to seek redress, and the amendments would at least give the legislation teeth by doing two things: enshrining the covenant in law, which clearly the Bill does not do, and giving individuals some redress against those organisations if they were not responding to the issues put forward.

Last week, the Minister was at pains to point out that officials advise and Ministers decide, but, given the weak nature of the Bill, it appears that officials are in control. When I was drawing up the Green Paper, there was a lot of resistance from some officials not only in the Ministry of Defence, but in other Departments, to anything that held other Departments and others to account. It was sad that that should be the case.

As we heard during the evidence sessions, it would be entirely wrong if a member of the armed forces, their family or veterans felt that they had to seek redress through law. I agree that that would not be a way forward as it would tie up the legal process and be expensive. As stated last week by the veterans' community,

we want to avoid lawyers at all costs. People know my comments on things such as the coal industry's compensation scheme for coal miners. I do not want to get lawyers involved in this process, because the only people who benefit from such things are the lawyers themselves.

We need some redress and this provision provides that opportunity. If we are talking about support for our armed forces and bipartisanship, the amendment would be helpful in creating a mechanism to assist the Government to ensure that they fulfilled what they said when they were in opposition about wanting the covenant in law, as the Prime Minister clearly wants. At the election, it seemed that the coalition parties were offering some promise that we would try to have a new type of politics. I give the Government the opportunity to do that today.

12 noon

If we accepted the amendment, the covenant would be enshrined in law. It would not hamstring the Government in making them define it today. It would give the Secretary of State the opportunity to introduce, by order, whatever work he is undertaking at the moment. Clearly, we have had evidence that that is taking place. Having travelled the journey that we have, we can look back on the work of the previous Government with pride. If we mean what we say on the covenant, it has to be enshrined—not only in being referred to as a report within the Bill, but as a central part of it. There is the opportunity here to do that.

I ask hon. Members to support the amendment to ensure that servicemen and women and veterans get support from hon. Members from all parties, as well as from the public, because I think they would also support the amendment. In opposition, we all get carried away with the rhetoric, but I urge the Government, rather than spin things out, to follow through and deliver. The amendment gives them the chance to do that today.

**Mr Robathan:** The hon. Gentleman finished by talking about spin, but I do not think we have been spinning at all. He also said that the Bill is hyped up to be more than it is. Down the Dog and Duck, be it in Durham, Colchester or Leicestershire, people would not recognise that we have spoken a lot about the covenant. We are talking about what form the covenant should take.

I was glad to hear the hon. Gentleman say that he thought an armed forces ombudsman would be over-bureaucratic, and glad to hear his comments about lawyers. I once joined the Inner Temple, but the other day I threw away my Rapid Results College Bar part 1 course when clearing out my mother's house. I am afraid to say that it was still wrapped in cellophane, so I did not get much further than that.

I accept that this is a different approach, but, like the hon. Gentleman, we do not want to be over-bureaucratic. We do not want to be over-prescriptive and we judge this way forward to be the better way.

We have looked carefully at the amendments. Amendment 6 sets out complicated arrangements involving renewable orders and public consultations. In the end, however, it boils down to imposing a legal requirement on public bodies to ensure that service people suffer no disadvantage and sometimes get special treatment.

[Mr Robathan]

Let me deal first with the suggestion that the legislation should require the production of the military covenant. As the Committee is aware, the Government will publish the text of a new armed forces covenant. That will be this spring—by Easter, I hope. I am looking at my officials to ensure that they get that idea in their heads. I see no reason why the covenant should not be produced by Easter, which, after all, is yet two months away.

That is not an issue, but the covenant is a statement of moral obligation—something that I take pretty seriously, as I am sure the hon. Gentleman does. It is broad, aspirational and a developing notion that reflects the relationship between society, the armed forces and, indeed, the Government. Where there is a problem that should be remedied, legislation can be introduced to deal with it if legislation is the right answer. Generally, however, I tend away from prescriptive legislation.

**Mr Jones:** Today and last week, the Minister told the Committee that the Government are working on defining what the covenant should be. He told us that it will not be enshrined in law, but how will the work he produces later this year fit in relation to the report? Surely, if the report is to mean anything, it must be joint with the principles of what the covenant should cover. This is a golden opportunity for him to do that.

**Mr Robathan:** The hon. Gentleman makes a rather good point. They will, of course, be intertwined. However, we still do not think that the covenant should be codified on a statutory basis any more than the service Command Paper was.

**Mr Jones** *rose*—

**Gemma Doyle** *rose*—

**Mr Robathan:** There are so many to choose from. On this occasion, I will give way to the hon. Lady, then to the hon. Gentleman, and then I will make progress.

**Gemma Doyle:** In light of those comments, will the Minister explain why, just last week, the Minister for the Armed Forces said in the media, “We are defining the covenant in law.”?

**Mr Robathan:** I am afraid that I cannot comment on that because I did not hear it. The Minister for the Armed Forces and I are at one on the issue, and we are defining the report on a statutory basis. The report is on a statutory basis, as one can see from clause 2. We will then put the military covenant in the public domain, I hope before Easter.

**Mr Jones:** I want to clarify the matter. Not only did the Minister for the Armed Forces say something completely different on the radio, but, in a speech on HMS Ark Royal, the Prime Minister himself said:

“I want all these things refreshed and renewed and written down in a new military covenant that’s written into the law of the land.”

Quite clearly, it is not going to be written into the law of the land.

**Mr Robathan:** This is becoming marginally like a cracked record. I explained that last week. The amendment would require us to put a sweeping burden on a huge range of bodies without any regard to cost—cost is important—to do nothing that would create a disadvantage for service people. I certainly do not want to disadvantage service people but, as the hon. Gentleman has accepted, a culture of claims and litigation could be encouraged, which might well lead to a loss of the appreciation and respect now given to the armed forces by the public.

**Christopher Pincher:** We all agree that we do not want to open the matter up to lawyers, but the amendment states that

“service people must not be disadvantaged by virtue of what they do, and... this will sometimes call for special treatment.”

Given that “sometimes” is not a legal term and that “special treatment” can be interpreted in all sorts of ways, does the Minister not agree that such woolly wording would be open to legal interpretation in a way that we do not want? It would create the lawyers’ paradise that the Opposition say they do not want either.

**Mr Robathan:** I am grateful to my hon. Friend for his intervention, because that is exactly what I think. The point I would make to the Opposition is that we are all, broadly, on the same side and that we wish to achieve the same results. The results are more important than the amendment, which could open a can of worms.

**Mr Jones** *rose*—

**Mr Robathan:** I give way to the hon. Gentleman one last time.

**Mr Jones:** I am sorry, but I disagree completely with what the Minister has just said. The Command Paper gives special treatment to veterans—for example, priority treatment in the health service. To define that special treatment, it is something that people get because they have served their country. The amendment would ensure that those things that are laid down—not in the Bill, but in the report—were legally enforceable.

**Mr Robathan:** I am grateful to the hon. Gentleman, because he has made my point for me. The service Command Paper is not laid down in law, which is what he is attempting.

**Bob Russell:** Does my right hon. Friend the Minister agree that a debating point is being made? The important thing is that the words “armed forces covenant” appear, quite clearly, in clause 2 of the Bill, which, if passed, will become an Act of Parliament and thus the law of the land. I urge both sides of the debate to seize on that as a step forward, building on the Armed Forces Act 2006. I have every confidence that, in four or five years’ time, as things unfold, another Committee will want to build on what is here. It is not possible to have an all-singing, all-dancing, word-perfect Bill today, because we do not know how things will unfold in the months and years ahead.

**Mr Robathan:** I am grateful to my hon. Friend for his intervention, because he is right—a debating point is being made. We broadly agree about the results that we want to achieve, and results are very much more important than semantics, which is what we seem to be dealing with here. The amendment would also ride roughshod over the needs of local authorities and the NHS not to be burdened with unworkable legal obligations. That is the issue. I therefore believe this to be the wrong route to follow. The Bill provides for an annual report to give the right level of assurance about the covenant, without the disadvantages I have outlined.

Where that process shows that fair treatment for the service community requires legislation, including special treatment, that will be the way forward, as my hon. Friend has just suggested, dealing with specific problems with clear solutions. Where the right result can be achieved without legislation, Government Members very much prefer the non-legislative route.

Amendment 8 envisages providing a means of redress for service people if they believed that the legal requirement outlined in amendment 6 was not being met. Clearly, amendment 8 would fall if the legal requirement fell, but if the amendment were agreed to it would be impossible for an ombudsman to apply it without detailed laws explaining what was really required of all the public bodies to which the amendment would apply.

Both amendments have many other problems. We have spent a long time teasing out why, for example, amendment 8 would give access to an ombudsman only to service personnel. However, I think that I have covered the fundamental points and I ask the Committee to reject both amendments.

12.15 pm

**Mr Jones:** We have again seen that the Bill cannot be justified, despite the best attempts of the hon. Member for Colchester, because it goes back on what the Prime Minister has said publicly. If the Government are already working on defining the covenant, it is disappointing that the opportunity to make it law will be missed today. The opportunity will also be missed to give legal teeth to some of the issues, unless the report will be a sterile document. Issues were brought into the Command Paper and the Green Paper, which I produced and which was in my party's manifesto at the last election. We heard from the British Armed Forces Federation last week that people have become cynical because politicians and the Government are raising the bar and expectations, but when it comes to a veteran or a service family member not being able to get priority access to the NHS, no recourse is available. There is an opportunity here to strengthen both the Bill and support for not only servicemen and women and their families but for veterans. I therefore wish to press the amendment to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 7.*

#### Division No. 4]

#### AYES

Cunningham, Alex  
Docherty, Thomas  
Doyle, Gemma

Jones, Mr Kevan  
Osborne, Sandra  
Wright, David

#### NOES

Ellwood, Mr Tobias  
Francois, rh Mr Mark  
Lopresti, Jack

Pincher, Christopher  
Robathan, rh Mr Andrew  
Russell, Bob

*Question accordingly negated.*

**The Chair:** We now come to amendment 7.

**Thomas Docherty:** On a point of order, Mr Arbuthnot. As you know, I am a great stickler for “Erskine May”, and on page 446 it states that all Members are required to wear jackets and ties during the business of the House. Does that apply to Committees as well?

**The Chair:** That is subject to the decision of the Chair, and the Chair will permit Mr Docherty to take his jacket off, if he wishes to do so.

**Mr Jones:** On a point of order, Mr Arbuthnot. What happened to the amendment tabled by the hon. Member for Milton Keynes North? Was it withdrawn?

**The Chair:** I have been taking advice, and I understand that the hon. Member for Milton Keynes North did not wish to press the amendment to a vote. Unfortunately, the notice that the Opposition wished to do so came too late, in practice, for it to be dealt with. In future, if Members wish to press an amendment that has lapsed in an earlier debate to a vote, good notice would be preferable. There will be opportunities on Report to come back to that amendment.

**Mr Jones:** Further to that point of order, Mr Arbuthnot. I would not want to question the Chair's ruling, but it was not put to the Committee that the hon. Member for Milton Keynes North wanted to withdraw the amendment, and there is no formal record of that, so how were we to know?

**The Chair:** Mr Lancaster had indicated to me that he had no wish to put the amendment to the vote. It is up to members of the Committee to decide whether they wish to push an amendment to the vote.

**Mr Jones:** Further to that point of order, Mr Arbuthnot. Does that not leave the Opposition in a rather difficult position? If we did not know that the hon. Member for Milton Keynes North was not pressing his amendment, how were we to know to press it to a vote? Must we have telepathy, or second sight of what the hon. Gentleman is thinking?

**The Chair:** Members of the Committee must keep on their toes. On the previous day, Members made it plain that they wished to press to a vote an amendment that would come later in the morning. Anyway, my ruling is that the amendment was not pressed to a vote and cannot now be pressed to a vote, because the moment has passed.

**Mr Robathan:** Further to that point of order, Mr Arbuthnot. I ask this question to get the matter clear in my mind. Is it the case that if the hon. Member

[Mr Robathan]

for North Durham had not proceeded to speak to his amendment, the moment before he stood up would have been the time to move it?

**The Chair:** That is hypothetical. I shall not deal with a hypothetical point of order, because that is not my role.

**Mr Jones:** I beg to move amendment 7, in clause 2, page 2, line 44, at end add—

(7) The existing network of Armed Forces Advocates will be extended through the nomination of supporting advocates at regional and local level to ensure that local authorities work together to identify and resolve issues in local policy or the delivery of services that may affect service people.

(8) In this section “Armed Forces Advocate” means a civil servant nominated to resolve policy or legislative issues that may affect service people.’

Before I discuss the amendment, I want to mention my disappointment at the last ruling. I will go no further than that.

Amendment 7 extends the network of armed forces advocates. One strength of the service Command Paper was the individual armed services advocates in each Department to raise and address issues relating to servicemen and women and their families and to veterans. I know that the issue of the health service was raised last week by the armed forces families federations. I found it enlightening and pleasing that they felt that issues that they had raised with the Department of Health were now changing the Department’s policy to ensure that armed forces families and servicemen and women not only have a voice and are recognised but influence policy at an early stage.

**Bob Russell:** Will the hon. Gentleman clarify for the Committee who the supporting advocates are? Are they military people, local authority personnel or lay advocates who give their time voluntarily?

**Mr Jones:** In terms of what was done nationally, they were civil servants. However, the previous Government piloted an armed forces welfare pathway. It did not get a great deal of recognition—to be fair, it was recognised in Professor Strachan’s report—but it involved a number of local authorities appointing armed forces advocates whose job it was to ensure that in policy development terms, armed forces families and veterans were put to the forefront. I envisage that the existing network could be extended to regional level, although I accept that the Government are doing away with Government regional offices at the local level. The amendment would ensure the thrust of the covenant in terms of what has been outlined and issues relating to the veterans’ community and to servicemen and women and their families.

I will give an example of how the system worked in practice at the national level. An issue has been raised—I think in a previous session with the Service Complaints Commissioner—about IVF treatment. Servicemen and women who were being moved around the country and, in some cases, to other countries found that they went to the bottom of waiting lists for IVF treatment. That issue was raised by the armed forces families federations when I was a Minister. The advocacy system ensured

that the rules governing local PCT guidance and strategic health authority guidance were changed to ensure that those people were not disadvantaged by having to wait to go through the cycle again.

The other example concerns service children. The issue of statements was raised by the Defence Committee report into the education of service children, which caused a great deal of distress to servicemen and women and their families. If those families had a child with an educational special needs statement, whether it was from the educational service in Germany or a local authority in this country—if, for example, you moved from Wiltshire to Catterick—there was no way to passport that educational statement. That meant that the poor child had to go through the process yet again when they moved to their new home. It could often take many months, or indeed years, to get that statement issued again.

**Bob Russell:** Does the hon. Gentleman agree that the previous Government addressed that point? My understanding is that now the statement goes with the child, so the previous Government resolved that problem.

**Mr Jones:** They did, and I was pleased. That was thanks to the Defence Committee, which raised the matter in its report on the education of service children and followed through on it. However, the way in which the Committee was able to affect that was by issuing guidance through the Department for Education. The advocates ensured that that was an issue and gave guidance to local authorities and—in terms of IVF treatment—to local PCTs and others. That is the strength of the advocates network at a national level, which has worked very well, and the Bill is trying to push that practice down to a local level to ensure that it continues.

There are many policies—I think this was raised recently in “Panorama”—where it is said that there is a lot of help out there but very little co-ordination. Certainly the welfare pathway was a way of making sure that we could co-ordinate. I am not sure what happened with the four pilots that we kicked off with and whether they were followed up on. I know the Minister in question did not like the name—nor did I—and that we were trying to think up another. It was a way to make sure that when developing policy—whether at a county council level, in a local health service, or anything else—the special nature of servicemen and women and their families was taken into consideration, and also the position of veterans. This is very important in terms of housing, the health service and education.

To be fair to Professor Strachan, he recognised the fact that trying to bend policy locally is the way we can have the greatest effect. On the pathways, a number of authorities, such as Wigan, Kent, Wiltshire and North Yorkshire, appointed local advocates whose job was to make sure that service families were thought of when the council discussed the implications of any type of policy. People have asked whether that was a major change. I think it was where the Command Paper really started to make a difference, because it made sure policy makers in those departments thought about veterans, servicemen and women and their families. The amendment would add to and ensure that we follow through on that, and put it on a legal footing to ensure that when

any of those Government agencies are thinking about developing policies they remember service families and veterans.

**Bob Russell:** I am sure that the thinking behind this amendment is laudable, and so it should not be opposed, but I am concerned about logistics and how it will work in practice. I intervened on the hon. Gentleman, but I did not get a reply to my question. Who would the supporting advocates be? Would they be legal people, people from the local authority, civil servants or lay advocates? It is an open question. I would like to think that organisations such as SSAFA are already dealing with the work suggested in the amendment, certainly in the major naval and garrison towns.

12.30 pm

**Thomas Docherty:** I draw the hon. Gentleman's attention to proposed subsection (8), which defines who the advocate would be. I hope that provides the clarification that will let him vote with us on the amendment.

**Bob Russell:** I understand what the hon. Gentleman says, but that subsection refers to the "armed forces advocate", and I am referring to the nomination of supporting advocates. Bearing in mind that the number of personnel in the civil service, local government and the armed forces is likely, if not certain, to be reduced, I do not think that the proposal could be delivered, other than in the manner in which it is already being delivered.

On service redundancies, I have been advised that there is an urgent question this afternoon. I am not sure how that will impact on our deliberations or their timing.

**Mr Robathan:** The existing network of armed forces advocates was set up by the previous Administration as one of measures in their service personnel Command Paper under the heading "Joining It All Up". Each of the main Departments responsible for services that affect the armed forces community has an advocate. He or she is expected to champion the interests of service people within their Department. I was told yesterday that they were generally approximately two-star positions—so quite senior. There are also advocates in the Scottish and Welsh Assembly Governments.

**Thomas Docherty:** Parliaments.

**Mr Robathan:** Governments.

In most cases, those advocates also represent their Departments on the external reference group. Their role is additional to their main duties, and we believe that they have done an excellent job. It did not need legislation to set up the advocate system, and it does not need legislation now—people have just got on with it.

The same considerations apply locally. Some local authorities already have an armed forces champion. The hon. Member for North Durham referred to Kent and other places. That was one of the themes of the welfare pathway that he promoted when he was a Minister. We agree on the title. It expresses the intention, and the intention of the welfare pathway was clear. I applaud that.

**Mr Jones:** Will the Minister give way?

**Mr Robathan:** I said that I would not give the hon. Gentleman further plaudits, but perhaps I have done so by mistake.

**Mr Jones:** As the Minister knows, there were four pilots. Have the lessons learnt from them been evaluated yet? Is he going to roll out the process nationally?

**Mr Robathan:** Again, this is developing. I say again that it did not require legislation in the first place and does not require it now.

Advocates have a variety of roles, from ensuring that the armed forces community gets the right priority within the local authority's planning, to acting as someone who can be approached if a service person has problems with the services that they receive. No legislation was required. No doubt, the champions perform their roles very well, and if it is the right solution for a local authority, I am delighted to endorse that approach, which came from the previous Administration. We should all work to ensure that best practice is exposed and publicised.

Similarly, if the work of the existing armed forces advocates in central Government Departments would benefit from the appointment of supporting advocates across the country, we should look at that idea. However, those are not the questions before us today; we are being asked to require the nomination of supporting advocates across regional and local government, whether or not that suits the operation of the local authority concerned.

The amendment would impose a solution, rather than allow local solutions to local needs. My contention is that it is entirely unnecessary. Indeed, my hon. Friend the Member for Colchester made much the same sort of point. We agree with the way that things are going with the awfully named welfare pathway; we do not need legislation to change it. We need to develop things outside the strictures, restrictions and prescriptions of legislation. Accordingly, I ask the Committee to reject the amendment.

**Mr Jones:** I welcome what the Minister said, but I believe that there is an urgent need for advocates to be put on a more statutory footing. Two areas in the report—health care and education—affect servicemen and women and veterans. The Government are doing away with primary care trusts and strategic health authorities and moving towards free schools and a reduction in the role of local authorities. I therefore believe that including advocates in the Bill is important, and I shall give one example of why.

One issue included in the Command Paper was priority treatment for veterans. That commitment, given by the Department of Health, is to be supported by strategic health authorities and implemented through primary care trusts. In the not-too-distant future, if the Health and Social Care Bill is enacted, we will no longer have those bodies; there will no longer be a system allowing individual GP fundholders to give priority access to veterans, service families and servicemen and women. The Minister argues that it is working fine now so why change, but there is an urgent need for the amendment to ensure that the rights of veterans and servicemen and women are enshrined in legislation.



**Mr Robathan:** The hon. Gentleman states boldly that there is an urgent need for change, but we have no evidence for that. Such a need may come, in which case we could revisit the matter, but there is no urgent need at the moment.

**Mr Jones:** What discussions has the Minister had with his health service counterparts? How will he ensure that his commitment—one that we introduced—to allow veterans priority access to the health service will happen in practice? It will be down to individual fundholders to decide people's priorities; unless there is some central advocacy, those people will lose out. There is an urgent need for change; this is another example of the unjoined-up thinking that we have seen in various Departments.

**Thomas Docherty:** I wonder whether my hon. Friend is surprised as I am, given the Prime Minister's championing of the big society. Does he think that the Bill will be a prime example of the big society in action? Perhaps it is becoming slightly commonplace to have rhetoric in one place and a lack of follow-through elsewhere.

**Mr Jones:** My hon. Friend makes an ingenious point, which gets us back to the big society, but I do not want to go down that path.

Advocates have been important in ensuring that what the Government are saying and what Parliament wants can be delivered locally. Without the amendment and with the changes that are taking place in the health service and elsewhere, their services will no longer be guaranteed. The Prime Minister and other Ministers will soon see that, although they may push levers, nothing is connected to them to deliver what they want.

I think that all members of the Committee agree that servicemen and women and their families should not be disadvantaged, and nor should veterans. Without that reassurance and without a mechanism to achieve it, we will leave a big problem for the future. We should ensure that those things that have already been advanced, such as priority access for veterans, are implemented. That is why I shall press the amendment to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 7.*

#### Division No. 5]

##### AYES

Cunningham, Alex	Jones, Mr Kevan
Docherty, Thomas	Osborne, Sandra
Doyle, Gemma	Wright, David

##### NOES

Ellwood, Mr Tobias	Pincher, Christopher
Francois, rh Mr Mark	Robathan, rh Mr Andrew
Lancaster, Mark	Russell, Bob
Lopresti, Jack	

*Question accordingly negated.*

*Amendment proposed:* 8, in clause 2, page 2, line 44, at end add—

'(7) The Parliamentary and Local Government Ombudsman shall have the duty to investigate complaints from service personnel that a public body or local authority has failed to meet the commitments outlined in the Covenant.'—(*Gemma Doyle.*)

*Question put, That the amendment be made.*

*The Committee divided: Ayes 6, Noes 7.*

#### Division No. 6]

##### AYES

Cunningham, Alex	Jones, Mr Kevan
Docherty, Thomas	Osborne, Sandra
Doyle, Gemma	Wright, David

##### NOES

Ellwood, Mr Tobias	Pincher, Christopher
Francois, rh Mr Mark	Robathan, rh Mr Andrew
Lancaster, Mark	Russell, Bob
Lopresti, Jack	

*Question accordingly negated.*

*Question proposed, That the clause stand part of the Bill.*

**Mr Robathan:** We have discussed most elements of the clause at quite some length, and although I do not want to detain the Committee unnecessarily, this clause has engendered most interest both inside and outside the House. Members of the armed forces and their families can face exceptional demands. The Government have confirmed their commitment to rebuild the covenant and to do the right thing by the men and women who have joined our armed forces today and in the past, together with their families. We have been looking at the best way in which to make that happen.

Our starting point is that the armed forces covenant is fundamentally a moral obligation on the Government, the nation and the armed forces themselves. It can never be defined by a host of rules and regulations designed to tell everyone exactly what to do in every circumstance. For the first time, the clause will give statutory recognition to the covenant and a mechanism for ensuring that it is addressed by Ministers and Parliament, which represents the people. It places a duty on the Secretary of State to prepare and lay before Parliament an annual report about how service affects service people—regulars and reservists, veterans and their families. Different groups within that broad community face different problems.

In response to the very helpful observation of my hon. Friend the Member for Milton Keynes North about the position of reservists, I should like to acknowledge specifically their important contribution to our operations. The contribution of our volunteers creates particular issues and challenges for them, and we need to ensure that they are considered during the preparation of our reports. While I have it in my power to do anything about it, I can assure my hon. Friend that I will do it.

The covenant itself and the service community of current and former members and their families are very broad. If each report tried to cover everything, it would lose focus and be less useful to the House. As a result, that would fail to solve the practical problems that the service community faces. The clause requires that every report will cover the effects of service in the fields of health care, education and housing as they affect the groups of service people reported on. Experience tells us that such issues are always likely to be important to the service and the ex-service community.

The Defence Secretary will not neglect other areas where issues need to be addressed. With the help of the external reference group, he will identify those issues.

He will consult widely with interested parties both inside and outside Government, the charities and the devolved Administrations. The clause gives him the flexibility to do that and to focus on any important issue. I look forward to the first of the reports and to engaging with Parliament in response to it.

12.45 pm

**Gemma Doyle:** In June last year, the Prime Minister visited the aircraft carrier HMS Ark Royal and pledged to her sailors:

“Whether it’s the schools you send your children to, whether it’s the healthcare that you expect, whether it’s the fact there should be a decent military ward for anyone who gets injured... I want all these things refreshed and renewed and written down in a new military covenant that’s written into the law of the land.”

Fast forward eight months and what a change we have. HMS Ark Royal is consigned to the scrap heap and the Prime Minister’s pledge has not fared much better.

A written legal covenant must leave no room for ambiguity or sidestepping. The Government are not being honest with our armed forces. They promised a military covenant enshrined in law, yet the Minister last week finally admitted that the covenant will not be laid down in law. He admitted that the report and the covenant will be two different documents. He therefore proved my point that the Bill enshrines in law a report on the covenant, but not the covenant itself. There is a difference.

**Mr Robathan:** I have not known the hon. Lady for very long, but I find her genial company and we get on quite well. We are talking about the covenant and how it affects our armed forces personnel, their families, reservists and veterans. Frankly, she is banging on about semantics, which is peripheral.

**Gemma Doyle:** The fact is that there is nothing else in the Bill to talk about. It is so weak that we have not spent the time we would have liked on the covenant itself. As he has admitted, that work is going on elsewhere. It has not been addressed in the Bill and is not before the Committee to discuss. That is why we have had to have these debates on the central point of whether the Bill enshrines the military covenant in law. And, as he has now admitted, it simply does not.

The Minister should take care to update the Minister for the Armed Forces, who in the media last week said “we are defining the military covenant in law.”

The Minister said that he and his colleague are at one on this issue, but, frankly, the facts do not bear it out. I leave it to him to discuss it with his colleague, but clearly there is still either confusion or a degree of misleading going on.

During last Thursday’s sitting, the Minister described the Government’s view of the covenant as a “philosophical statement”. He later described it as a “conceptual thing”. Our servicemen and servicewomen deserve more than fuzzy assurances and woolly platitudes, and our amendments were designed to ensure that the Bill offers nothing less than an unshakeable commitment and cast-iron guarantees.

We have already heard about the discrepancy between what the Government promised to deliver when they were in opposition and what they are proposing to

deliver now. Enshrining in law a report on the armed forces covenant is not the same as enshrining in law the covenant itself. We know that, the armed forces know that, the service charities know that and I think deep down the Government know that. If they did not at the start of the process, they have probably realised it now. I do not even think that the Minister continues to believe that the Bill enshrines the covenant in law.

Our amendments would have ensured that the covenant is not merely a “philosophical statement” or a “conceptual thing”, as the Minister interprets it. They would have enshrined the military covenant in law and strengthened the independence of the report on the covenant, too, to ensure that we are meeting our obligations to service personnel. It is extremely unfortunate that the clause has not been amended and, as such, the Bill’s provisions on the military covenant remain weak.

**Mr Jones:** Like my hon. Friend, I am disappointed that the Government have not taken on board some of our amendments. The coalition promised us new politics, but we are seeing the same old politics with the Liberal Democrats providing a human shield to the Conservatives in their support of some of the more unpalatable measures. The Bill is a lost opportunity. There was an opportunity today to enshrine the covenant in law.

**Mr Robathan:** The hon. Gentleman is talking about lost opportunities. I must have missed something between 1997 and 2010.

**Mr Jones:** Power?

**Mr Robathan:** Not power—I am not in it for that.

Between 2007 and 2010 there were no moves whatsoever by the last Government to bring the covenant into law.

**Mr Jones:** I am sorry, but the Minister is just not correct. If he had actually seen and read the Green Paper that I produced in 2008—it did not get much publicity, but that is not something one could bash the Government with—that is exactly what it was doing. It was putting the questions—

**Mr Robathan:** Where was it?

**Mr Jones:** It was part of our manifesto, if the Minister had cared to read it. In terms of the Green Paper, that is exactly what it was going to do. There is a missed opportunity there—

**Mr Robathan:** The same manifesto that meant the Lisbon treaty.

**Mr Jones:** The Minister chunters on, but I suspect that he has never even read the Green Paper.

**Mr Robathan:** I certainly have not read the Labour manifesto.

**Mr Jones:** I take care to try to read all my opponents’ manifestoes because it is obviously important to discover their inconsistencies when you get them to do something

[Mr Kevan Jones]

about them. Today, the hype before the election and the promises that have not been followed through by the Prime Minister and the Conservative party have been exposed. I do not think that the servicemen and women or the veterans community in this country will be conned or fail to see the Government's spin.

There was an opportunity today. My amendment was crafted to provide an opportunity for the Government to follow through on. As I said, we did not have an opportunity to have the Minister before us, but he tells us that there is work ongoing in defining the covenant. My amendment gave an opportunity for the Government to follow through on that work and introduce it in this Bill. There is no understanding of how this report is going to link to the covenant at all. It seems odd to me that work should still be going on to define the covenant when the Government bring a major piece of legislation like this forward. But I think that the Minister defined it himself when he said that

“The covenant is a conceptual thing that will not be laid down in law.”—[*Official Report, Select Committee on the Armed Forces Bill*, 10 February 2011; c.21.]

We had it quite clear on that occasion. He also said that the covenant could have no more legal status than the service Command Paper in the last Parliament. That is a missed opportunity, which we should have grasped today given that commitment which we all want to see in terms of our servicemen and women.

It also concerns me that the Government seem happy to leave with the Secretary of State the decision of what the report should contain. That is not just this Secretary of State, but future ones as well. Confusion still surrounds the role of the external reference group. We are still told by the Minister on the Floor of the House that it will be produced in the report. We were told by officials that they hoped it would wither on the vine. In terms of independent oversight and input, there is a big difference between being consulted by the Secretary of State and what we were proposing—to ask the external reference group, independently chaired, to be able to draw up the areas they thought were added to the extensive list. We heard the absolutely ludicrous position that the Secretary of State will report on entire areas that he has no direct responsibility for whatsoever, and in areas in which he does have direct responsibility and which affect the servicemen and women and veterans such as pensions, pay and the armed forces compensation scheme—there will be no legal requirement for him at all to put them in this report. I do not understand the Government's hostility, although I think that it demonstrates again the difference between what is being spun out in the newspapers and what we are seeing in practice. As this Bill passes through this House and the House of Lords, that will unravel even more.

**Bob Russell:** For the first time, an Act of Parliament will contain the words “armed forces covenant”, and an Act of Parliament is the law of the land. We can argue as to whether the Bill should contain more, but I regret that there is opposition to it, because I have not detected a party political line outside this place from the service charities, military personnel or the people whom we met yesterday at the Colchester garrison.

The hon. Member for North Durham said that I am supporting the Conservatives, but those who know me will know that I support the members of Her Majesty's armed forces, their families, the reservists and veterans. If it happens that I am supporting the same Bill as Conservative Members, that is a coincidence. I am not blindly supporting the Conservatives. If that was the case, I do not see how I could be elected as a Liberal Democrat in Essex, in one of the super-garrison towns and with an increased majority unless I was seen to be supporting our armed forces.

The last such Bill was enacted with a broad consensus. There were differences around the edges, but that is my recollection. I regret the partisan element of the past few minutes, which members of our armed would not think a good idea. I hope that we will agree with the clause and that the Bill will become an Act. As time flows on, I am confident that some of the concerns that have been expressed will prove unfounded or be proved to have some substance, which will require a subsequent Bill to correct them. At the moment, the Bill is important, and we can build on it and improve it. It will not be spot on from day one, but the 2006 Act is not spot on, which is why we have the Bill in front of us today.

**Thomas Docherty:** I will be brief. I am sorry that the hon. Gentleman thinks that some hon. Members are embarking on partisanship, and I hope that he believes that all parties have a genuine interest in the welfare of our armed forces.

I want the Minister to reflect on the fact that it is somewhat disappointing that neither his Government officials nor the ministerial team have yet had a specific meeting with any of the devolved Administrations to discuss the implementation of the armed forces covenant or its report. I hope that, by the time we reconvene on the Floor of the House on Report, there will have been an opportunity for him or his officials to sit down with those from the devolved Administrations to discuss the genuine and serious issue of how the proposals should be implemented. I will leave my comments at that.

*Question put and agreed to.*

*Clause 2 accordingly ordered to stand part of the Bill.*

*Ordered.* That further consideration be now adjourned.—(Mr Francois.)

12.58 pm

*Adjourned till this day at ten minutes past Two o'clock.*

**The Committee consisted of the following Members:**

*Chair:* MR JAMES ARBUTHNOT

- |  |   |
|--|---|
| † Cunningham, Alex ( <i>Stockton North</i> ) (Lab)                         | † Osborne, Sandra ( <i>Ayr, Carrick and Cumnock</i> ) (Lab)                         |
| † Docherty, Thomas ( <i>Dunfermline and West Fife</i> ) (Lab)              | † Pincher, Christopher ( <i>Tamworth</i> ) (Con)                                    |
| † Doyle, Gemma ( <i>West Dunbartonshire</i> ) (Lab/Co-op)                  | † Robathan, Mr Andrew ( <i>Parliamentary Under-Secretary of State for Defence</i> ) |
| † Ellwood, Mr Tobias ( <i>Bournemouth East</i> ) (Con)                     | † Russell, Bob ( <i>Colchester</i> ) (LD)   |
| † Francois, Mr Mark ( <i>Vice-Chamberlain of Her Majesty's Household</i> ) | † Wright, David ( <i>Telford</i> ) (Lab)  |
| † Jones, Mr Kevan ( <i>North Durham</i> ) (Lab)                            | Georgina Holmes-Skelton, <i>Committee Clerk</i>                                     |
| † Lancaster, Mark ( <i>Milton Keynes North</i> ) (Con)                     |   |
| † Lopresti, Jack ( <i>Filton and Bradley Stoke</i> ) (Con)                 | † <b>attended the Committee</b>   |

# Select Committee on the Armed Forces Bill

Tuesday 15 February 2011

(Afternoon)

[MR JAMES ARBUTHNOT *in the Chair*]

## Armed Forces Bill

2.10 pm

**The Parliamentary Under-Secretary of State for Defence (Mr Andrew Robathan):** On a point of order, Mr Arbuthnot. May I apologise to the hon. Member for Dunfermline and West Fife for the fact that, although he was promised the information that he now has in front of him by 2 o'clock at the latest, it has only just arrived? I assure him that there was no intention in any way to obfuscate or disrupt the proceedings.

**Thomas Docherty (Dunfermline and West Fife) (Lab):** Further to that point of order, Mr Arbuthnot. I thank the Minister for his strenuous efforts on behalf of the Committee to try to expedite matters this afternoon, and I accept that we are not going through a ministerial process. I hope that he will understand that we want to take some time to read through the document before we comment further.

**Mr Kevan Jones (North Durham) (Lab):** Further to that point of order, Mr Arbuthnot. Although we have just received the document, there is a chance that we will reach the related clause, so I ask your guidance. I think that you said that we could introduce amendments throughout this afternoon. Would it be possible to deal with that clause later, or perhaps on Thursday?

**The Chair:** The words that I used were, I think, not quite that I would take amendments throughout the afternoon, but it is within my discretion to be as amenable as I can be, and I shall continue to be. If any motion is proposed about a change in the order of proceedings, that matter will be dealt with when such a motion is proposed. At the moment, that is something that might be appropriate for discussion outside the Committee.

*Clauses 3 to 10 ordered to stand part of the Bill.*

### Clause 11

TESTING FOR ALCOHOL AND DRUGS ON SUSPICION OF  
OFFENCE

*Question proposed,* That the clause stand part of the Bill.

**Thomas Docherty:** I do not wish to labour the point. Given that the clause relates to alcohol and drugs policy, I hope that the Minister will look favourably, perhaps either on Thursday or even when the Bill is considered on the Floor of the House, on the fact that we might seek technical changes if we feel that they are

necessary. I do not wish to object to the clause, but I seek an indication from the Minister that he will be helpful on the matter.

2.15 pm

**Mr Robathan:** I wish to be helpful. I reiterate my apology for the fact that the document has been delayed for more than a few hours—two weeks perhaps. Having read the submission, I do not think that there are any grounds for concern. However, if the hon. Gentleman considers that there is a concern, he may wish to table an amendment later in the proceedings.

I note that the provisions that relate to specimens being of a quantity to enable them to be divided into two parts for analysis are required to reflect the requirements of the Road Traffic Offenders Act 1988. As I think that the hon. Member for North Durham and I have already established, we are not necessarily keen on giving lawyers too much work. I am not a lawyer, but I assume that this is the right way forward. Of course, if the hon. Member for Dunfermline and West Fife wished to table an amendment on Report, we would consider it.

*Question put and agreed to.*

*Clause 11 accordingly ordered to stand part of the Bill.*

*Clauses 12 to 23 ordered to stand part of the Bill.*

### Clause 24

BYELAWS FOR SERVICE PURPOSES

**Bob Russell (Colchester) (LD):** I beg to move amendment 9, in clause 24, page 27, line 18, at end insert

'(c) consult with stakeholders responsible for the enforcement of such byelaws, including the Ministry of Defence Police.'

Timing is all important. [*Laughter.*] I am delighted that colleagues were able to filibuster sufficiently to get to this stage. It is one of those days when everything is crashing in, but I am delighted to have an opportunity to speak to the amendment. Hon. Members will recall that the chief constable of the Ministry of Defence police appeared before the Committee, and that organisation is very much a species that is, if not extinct, close to extinction on garrisons.

I need to press the MOD elsewhere, not during proceedings on the Bill, on precisely what its long-term intentions are for the MOD police. So far, they continue to exist, even though as a skeleton of what they used to be. Evidence has been given in respect of my own Colchester garrison that the number of MOD police has gone from 30 to three in the past 13 years. No doubt, those of us who visited the garrison yesterday will have been made aware of the views of some of the families who sense that they no longer have the number of police in their community that they had and, indeed, that the nature of their community is changing.

Under the amendment, for so long as the MOD police exist in the garrison environment, as opposed to other places of work, they would be considered as stakeholders in byelaws. Whenever anything relates to the enforcement of byelaws, among those who are consulted must be the MOD police. The amendment is as simple as that. They currently exist, they are stakeholders in enforcing byelaws and they should be consulted.

**Mr Robathan:** I pay tribute to my hon. Friend for his defence and, indeed, upholding of the MOD police. I agree with him; they do an excellent job. Of course, they, as with everything else, are subject to review at the moment, but I do not envisage that we will see the disappearance of the MOD police. I am sometimes surprised by such things, but I do not expect to be on this.

May I put the amendment in context? The purpose of the clause is to amend the Military Lands Act 1900—legislation with which everyone in the room is very well acquainted—to remove the requirement that the Secretary of State for Defence should seek the consent of the Board of Trade when he makes byelaws in respect of certain sea, tidal water and shore areas that injuriously affect certain public rights that relate to navigation, the anchoring and grounding of vessels, fishing, bathing, walking and recreation.

The change is needed because the wide-ranging responsibilities of the Board of Trade have been gradually reduced and redistributed since 1970. I am not entirely clear whether the Board of Trade still exists, but I expect that if I were to read on, I would discover whether it does or not. I seem to remember that Lord Heseltine became President of the Board of Trade a few years ago.

The need to check that byelaws can be operated is well recognised, but I am not sure that it is necessary to legislate further to ensure that that happens. Such byelaws are rarely made, but it has been standard practice to consider carefully how they can be policed. The MOD police jurisdiction in relation to the defence estate is laid down in statute, so they have a role in this respect. That fact, together with the fact that they are part of the MOD, is sufficient to ensure that they are consulted wherever necessary. My hon. Friend said that he wants to ensure that the MOD police are stakeholders. In fact, they are one of the primary stakeholders, because they will police any right of way.

As a further safeguard, the military lands Acts require that proposed byelaws be publicised and that an opportunity to object be given. Such objections could come from my hon. Friend or, indeed, the MOD police, but they would have been consulted already, as well as local people. Those Acts also require that the Secretary of State considers any objection before making his decision. I hope that that will sufficiently reassure my hon. Friend.

**Bob Russell:** I am grateful to my right hon. Friend for that response. His words are now on the record. Indeed, if I pressed the amendment to a vote and lost it might do more harm than good, as that might be interpreted by a subsequent Secretary of State for Defence as meaning that the MOD police should not be consulted. With the assurances that Committee has just been given, spelling out what is already in statute, and the Minister's interpretation and words of support, I am content to beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 24 ordered to stand part of the Bill.*

*Clause 25 to 33 ordered to stand part of the Bill.*

*Schedule 1 agreed to.*

## Schedule 2

### JUDGE ADVOCATES SITTING IN CIVILIAN COURTS

*Question proposed,* That the schedule be the Second schedule to the Bill.

**Bob Russell:** I seek your guidance, Mr Arbuthnot. Those of us who visited Colchester garrison yesterday had the privilege of sitting in on part of a court-martial hearing and, in private session, meeting the judge. You will recall from that conversation that there could be capacity in the courts-martial system to carry out the sentencing in cases involving military personnel that have been heard in magistrates courts.

I wonder whether we can investigate with officials whether there is any prospect of that happening. It struck me that the judge, who was fair and generous in considering the pros and cons of the case, thought that there are often cases where military personnel appear before magistrates, probably in locations where there is not much of a military footprint and where a referral of sentencing, either after a guilty plea or when someone is found guilty, to courts martial would result in a sentence more appropriate to a military person, especially when the military wish to retain them in Her Majesty's armed forces, rather than having a civilian prison sentence in serious cases, which would ruin their military career. I flag that up because it was a useful part of yesterday's visit and I wonder whether we can take forward the judge's excellent suggestion, as it would benefit everyone.

**Mr Robathan:** I am grateful to my hon. Friend for referring to that important matter. I chair the Service Justice Board, which met last month and gave the Judge Advocate General, Mr Jeff Blackett, the opportunity to give his view on the issue. He is very much of the opinion that more cases should be tried in courts martial. There was a great deal of sympathy for that—it is a sensible opinion—where there is spare capacity and where it is appropriate. I am afraid that there is some discrepancy across the country about where the police and the Crown Prosecution Service think that might be appropriate.

We believe that it is possible for more cases to go to courts martial, rather than be tried in civilian courts, but—again, I stress this at length—where appropriate, particularly in cases that only involve military people outside the wire. However, we must consider the fact that soldiers are citizens first and soldiers second. We have agreed to study that very subject, so that we can make best use of courts martial where appropriate, without undermining in any way the civilian justice system. The Solicitor-General and a Minister from the Ministry of Justice were present at the Service Justice Board meeting.

**Thomas Docherty:** The Minister will be aware that justice is a devolved matter for the Scottish Parliament and there is, of course, a separate judiciary and process. Further to the helpful clarification that he has just given, can he confirm that any discussion involving the MOJ and CPS will also involve their counterparts in Scotland, so that there is no separation between the two systems?

**Mr Robathan:** I will ensure that we inform them.

2.30 pm

**Bob Russell:** A further point made in the discussions with the judge yesterday was that there appears to be a lack of consistency at magistrates courts around the country in that magistrates and magistrates clerks are not necessarily fully briefed and aware of their powers in respect of desertion and someone being absent without leave and so on. May I ask the Minister through you, Mr Arbuthnot, whether he will refer that matter to the working party that he described earlier?

**The Chair:** Order. That is not a matter for me; it is an appropriate matter for debate under schedule 2.

**Mr Robathan:** Yes, that can be looked at as well. There is a big issue about consistency. I shall try to quote off the top of my head from the Judge Advocate General's submission. I have probably got this wrong, but he said that the problem is that in magistrates and

other courts a soldier—or an airman or a sailor—would appear with some fresh-faced young lieutenant who would plead his case and win over the court. It might surprise my hon. Friend to know that, once upon a time, I was that fresh-faced young lieutenant and I did win over a court—not that there was anything the matter with that and not that I was not quite right—but there is a need for consistency, and not just in how the serviceman's representative officer will be judged by the court.

*Question put and agreed to.*

*Schedule 2 accordingly agreed to.*

*Schedules 3 to 5 agreed to.*

*Ordered,* That further consideration be now adjourned.  
—(*Mr Francois.*)

2.32 pm

*Adjourned till Thursday 17 February at Ten o'clock.*

**The Committee consisted of the following Members:**

*Chair:* MR JAMES ARBUTHNOT

- |  |   |
|--|---|
| † Cunningham, Alex ( <i>Stockton North</i> ) (Lab)                         | † Osborne, Sandra ( <i>Ayr, Carrick and Cumnock</i> ) (Lab)                         |
| Docherty, Thomas ( <i>Dunfermline and West Fife</i> ) (Lab)                | † Pincher, Christopher ( <i>Tamworth</i> ) (Con)                                    |
| † Doyle, Gemma ( <i>West Dunbartonshire</i> ) (Lab/Co-op)                  | † Robathan, Mr Andrew ( <i>Parliamentary Under-Secretary of State for Defence</i> ) |
| † Ellwood, Mr Tobias ( <i>Bournemouth East</i> ) (Con)                     | † Russell, Bob ( <i>Colchester</i> ) (LD)   |
| † Francois, Mr Mark ( <i>Vice-Chamberlain of Her Majesty's Household</i> ) | † Wright, David ( <i>Telford</i> ) (Lab)  |
| † Jones, Mr Kevan ( <i>North Durham</i> ) (Lab)                            | Georgina Holmes-Skelton, <i>Committee Clerk</i>                                     |
| † Lancaster, Mark ( <i>Milton Keynes North</i> ) (Con)                     |   |
| † Lopresti, Jack ( <i>Filton and Bradley Stoke</i> ) (Con)                 | † <b>attended the Committee</b>   |



# Select Committee on the Armed Forces Bill

Thursday 17 February 2011

[MR JAMES ARBUTHNOT *in the Chair*]

## Armed Forces Bill

### New Clause 1

#### VETERANS ID CARD

(1) The Secretary of State shall institute a Veterans' Identification Card to assist former members of the armed forces in obtaining the access to public services to which they are entitled, including priority treatment on the National Health Service and other services which may become available to them from other organisations.

(2) In this section "veteran" is taken to mean former members of any of Her Majesty's Forces who are ordinarily resident in the United Kingdom.—(*Alex Cunningham.*)

10 am

*Brought up, and read the First time.*

**Alex Cunningham** (Stockton North) (Lab): I beg to move, That the clause be read a Second time.

I start by reassuring the Minister that this is a probing new clause; I would like to hear the Government's view. A veterans identity card would be a way to ensure that veterans who had risked their lives for their country were valued by the community in a practical and clear way that would be welcomed by our veterans. It would make them easily identifiable, so that we could ensure that they received priority treatment in areas such as health care and housing, as well as various financial benefits. An extension to that could be access to services from other organisations, public or private, that might choose to recognise our service people's contribution to our country by offering concessions for everything from theme parks to the local butchers.

We owe it to our veterans to ensure that a system is in place that allows them easily to obtain the services to which I have referred and the benefits to which they are entitled. That would be a small acknowledgement of their hard work fighting for their country. It is particularly relevant now, as many veterans have served in recent conflicts and suffered serious injuries. For the period 7 October 2001 to 31 January 2011, 241 UK military personnel were categorised as very seriously injured from all causes excluding disease, and 252 UK military personnel were categorised as seriously injured from all causes excluding disease.

Similar systems exist in the USA, Canada and France. In the USA, there are several veterans card schemes. Most are run at state level. Benefits depend on the state, but can include financial assistance for home ownership and further education, as well as free hunting and fishing licences. I am not suggesting that any of us should endorse hunting, but I am sure that the Committee knows exactly what I am getting at. Our nation states might want to provide different benefits, as US states do, but I do not see that as a problem for the proposal.

Hew Strachan's "Report of the Task Force on the Military Covenant" recommended a veterans privilege card:

"Currently veterans have no convenient way to identify themselves. A recognised identity card would allow veterans to identify themselves to service providers and to claim any discounts offered by private companies."

**Mr Kevan Jones** (North Durham) (Lab): Would it be a useful mechanism if such a card was endorsed by and linked to the Service Personnel and Veterans Agency, which would have a record of who was a veteran, to stop the terrible practice, which unfortunately occurs, of people purporting to be veterans when they are not?

**Alex Cunningham:** It most certainly would. My hon. Friend is totally correct. Of course, he is much more experienced in these matters than I am and will recognise the benefits much more than I can.

Lieutenant-General Sir Freddie Viggers was reported in *The Independent* in March 2009 as welcoming a veterans card. He said that service people very much regretted handing in their service card:

"It is about value and self worth, not about a piece of plastic. We carry these cards for the whole of our service and when we leave we are required to hand them in. Psychologically, it is a bad thing. It is a little bit of plastic but it represents who you are and what you did."

Clearly, Sir Freddie Viggers believed that a veterans card would help to restore and retain the identity afforded by the service card. I believe that such a card would help with the transition from leaving the armed forces to becoming a civilian again, with the many challenges that that poses for our people.

A veterans card has also had support from Conservative MPs. The hon. Member for Newark (Patrick Mercer), who is himself a distinguished veteran, welcomed proposals for a veterans ID card in 2009, saying in the same article in *The Independent*:

"It is about bloody time. At last, a reasonable, sensible minister"—that was my hon. Friend the Member for North Durham—"who listens to ideas from across the political spectrum."

**Mark Lancaster** (Milton Keynes North) (Con): I have some sympathy with the new clause. The problem I have is with the definition of "veteran". I speak from experience, as someone who commanded a TA squadron. Quite often, we would have people joining the TA who would come in, attest and officially join the Army. We would then never see them again, or see perhaps only 10% of them. Is the hon. Gentleman saying that, according to his definition of "veteran", somebody who attested and was in for perhaps one day would be entitled to the card and all the benefits?

**Alex Cunningham:** No, I am not suggesting that at all. We need to be very clear, and I will comment further on who we could include in such a scheme if we were to go ahead with it. The Government have been reluctant to commit to this idea, with the Veterans Minister ruling out ID cards for veterans in letters to hon. Members. In the House in December last year, my hon. Friend the Member for West Dunbartonshire asked the Minister about a veterans card scheme. The Minister replied that "it is difficult to identify who has been in the armed forces over a period of perhaps 60 years, and to ensure that it is feasible".—[*Official Report*, 13 December 2010; Vol. 520, c. 645.]

I agree with the Minister, which is why I think it would be best to roll a scheme out over time to all new veterans as they leave the service, having done proper service, and perhaps to those from modern-day conflicts, such as the 500 injured service people I mentioned earlier, rather than trying to identify all 4 million veterans who live in the UK.

The previous Government were in discussions about introducing a veterans card, and the Labour party manifesto pledged to introduce such a scheme. As I am sure hon. Members remember, the manifesto said:

“A Veterans ID card will help Veterans access their improved benefits and will be free to service leavers.”

Last week, the leader of the Welsh Conservatives, Nick Bourne, announced proposals to introduce such a card. The card would include an expansion of the existing free bus pass scheme to include veterans, as well as free entry to local swimming pools, but Labour in Wales pointed out that many of those benefits were already in place in Wales, so it is critical that, whatever happens, the card offers real and additional services to our veterans, on everything from education and health care to employment support and leisure.

In 2009, the Royal British Legion welcomed plans to propose a veterans card. If the USA, Canada and France see fit to fund schemes, why do we not do so?

A veterans card would also provide a useful database of veterans that would help us to monitor, and potentially improve, the services that veterans are using. In the evidence session on 10 February, Bryn Parry, the chief executive officer of Help for Heroes, said that we need better co-ordination in helping veterans. I think the ID card would help with that.

A veterans card would be a very real symbol of our gratitude to those who have served in the armed forces. It would be easy to use and would guarantee veteran entitlements. It would ensure the official connection to the armed forces that many veterans feel is missing once they leave. People across the UK have demonstrated again and again their appreciation for the very difficult job done by our armed forces—attending parades, signing petitions and raising many millions of pounds to support our serving members of the armed forces and their families, as well as our veterans.

I am pleased that in the north-east of England there is some brilliant leadership in this area. A great deal of hard work has gone into a regional review of the health of the ex-service community, a collaboration between the 12 local authorities in the region. That report represents the culmination of intensive work by the members and officers of the north-east's joint health overview and scrutiny committee, working in close partnership with a wide range of individuals and agencies.

The report is due to be considered for action later today by Stockton-on-Tees borough council, of which I was proud to be a member for more than 11 years. The council's cabinet is expected to endorse the 47 recommendations, including one that applies to our own business today:

“Her Majesty's Government should consider the potential for an individual's NHS or National Insurance number to be used to identify their veteran status to improve identification of needs and services that may be available. This might be considered alongside the proposal by the Task Force on the Military Covenant for the creation of Veterans' Cards.”

A veterans card is very much needed. We have the opportunity today to indicate that Parliament is in tune with public opinion, and also values our veterans by providing them with a card that they can be proud of.

**Bob Russell** (Colchester) (LD): I congratulate the hon. Gentleman on the measured way he spoke and the research he has put into the new clause. I am sure that the principle behind it will be supported everywhere. It may be that the wording needs to be refined, not least following the observations made by the hon. Member for North Durham, the former Veterans Minister, who in that job had experience of people who claimed to be former members of the military but were not. My hon. Friend the Member for Milton Keynes North pointed out the potential shortcomings, but the spirit is absolutely spot on. I hope it will be possible to find some way of taking this measure forward, even if it is not included the Bill.

It is now more than 60 years since national servicemen—they were only men—were recruited. One of the great successes introduced by the previous Government in helping former military personnel was the veterans badge. I know the pride people feel in that badge, whether they did national service or volunteered to join Her Majesty's armed forces in subsequent years. I consider this proposal a continuation of that badge, but with substance. I hope that, by the end of this Parliament, a veterans medal will be introduced for the same reasons that the veterans badge was introduced. However, that is not part of the Bill.

I ask the hon. Member for Stockton North to reflect on the use of the phrase

“who are ordinarily resident in the United Kingdom.”

Many people from the overseas territories serve in Her Majesty's armed forces. Some remain in the United Kingdom while some return to their home countries and visit. I like to think that the new clause would affect somebody from the island of St Helena, for example. I believe that, at the last count, there were about 40 people in military service from that small island, from a population of 4,500. Per head of population, more people from St Helena serve in the British Army than do people from mainland Britain, and I like to think that they would qualify under this measure.

Lastly, there is another category of people who have a special place. Hon. Members will recall a question that I put to the Prime Minister and have raised subsequently regarding the change in pension arrangements for war widows—and they are war widows. There is a young war widow in my constituency, but she has no documentation that says she is a war widow. She receives a military pension, but she is not seen as a war widow because she is a young lady, not an old lady. People cannot grasp the fact that we have war widows who are young. They need some form of recognition or documentation to prove that they are what they say they are.

I like the sentiments behind the new clause, and if it is not possible to include it in the Bill, for whatever logistical reasons, I hope that the Government will revisit the matter. I am sure that the idea would command respect from the British public, as well as from those who serve and those who have previously served.

**Mr Jones:** I congratulate my hon. Friend the Member for Stockton North on the new clause. When I was Veterans Minister, I was very much in favour of a veterans ID card and got tantalisingly close to introducing one. The reason I support a veterans ID card and think we need one is that, if we are to follow through on our commitment to veterans, in terms of special treatment in the NHS and other benefits, we need a tangible way to identify them, whether to councils or the NHS.

10.15 am

**Mark Lancaster:** Having considered the matter during his time as Minister, will the hon. Gentleman give the estimated cost of the card?

**Mr Jones:** I was going to do it—and if the election had not been called and I had had another month I might have introduced it—on the back of the national ID card system, which unfortunately has been abolished. That was because I had spoken to representatives of service charities and the armed forces, and they did not want another piece of plastic to go in a wallet—another discount card. They wanted something meaningful for identifying individuals, which could not be mass produced and would give other benefits. It was proposed that we give the new ID cards, with an indication on them that the holder was a veteran, to all service leavers.

The reason for dealing with the matter in that way has to do with the issue that the hon. Member for Milton Keynes North raised about cost. To distribute the card straight away would be impracticable and expensive. I think about 22,000 people leave the armed forces every year; a lot more will be leaving under this Government's proposals. My proposal was that people would get the card as they left, and, with the support of charities and using the Service Personnel and Veterans Agency, veterans of other conflicts could apply for the cards.

**The Parliamentary Under-Secretary of State for Defence (Mr Andrew Robathan):** This is a very reasonable discussion, but of course, the devil is in the detail and the technicalities, so if, for instance—as my hon. Friend the Member for Milton Keynes North suggested, and going by the definition used by the Soldiers, Sailors, Airmen and Families Association—someone left the services with one day's service, or after a week, would that person also be entitled to the veterans card in the same way?

**Mr Jones:** That is the definition that we use for identifying veterans, and I am not aware that this Government have changed that definition. I accept the point made by the hon. Member for Milton Keynes North: there is a big difference between someone who had been in action and was severely wounded, and someone who perhaps left after a day, but the service charities' opinion is that if we tried to sort out a system based on those who had served six weeks—or six months or six years, or 22 years—it would get difficult to arbitrate on where to draw the line. I thought that the simplest approach was to follow the definition already outlined.

I proposed, and had Home Office support, to offer the card to those who were now leaving. The estimated cost was about £2 million. Clearly, it would cost much

more now because of the abolition of the national identity card scheme, which would have subsumed some of the costs. The option for veterans of other conflicts was to ask whether they wanted to apply. I had time to get agreement from the large service charities, including the RBL, to help to fund that. It would be an expensive exercise to go all the way back to second world war veterans.

The charities were quite keen to be involved, because they saw the benefit to them in people getting access to their services and because of our promises on the health service. That is even more important now, because of this Government's proposals on the health service. At present, we have strategic health authorities, primary care trusts and others that can follow through on policies on priority access set out in the Command Paper, and, I think, supported by the Government. Under the new system there will be GP commissioning, and it will be difficult to hold individuals to account, or to ensure that GPs know who veterans are. From that point of view, this is important.

Another point, which I agreed with, was raised by the service charities. It was about something that appalled me when I was Veterans Minister, which is the large number of individuals who claim to be veterans when they are not. Sometimes they do that because of a psychological problem, or in some cases, people are trying to bend the system to their advantage. The Howard League for Penal Reform keeps talking about the huge numbers of veterans being in prison, but those numbers are rhetoric that keeps being repeated.

We have done the research, which I know the Minister has seen: it is a comprehensive study that cross-matched data from the three services, going back as far as 1968, with Ministry of Justice records, to find out exactly what the population of veterans in prison was, and who they were. However, when I spoke to the governors of Durham prison, they said that if everybody in Durham prison who claimed to be a veteran or a member of the Special Air Service actually was, the SAS, for example, would number many tens of thousands. It is very important to help services such as prisons to identify veterans. It is not hard for us to find out who exactly has been in one of this country's services.

**Jack Lopresti (Filton and Bradley Stoke) (Con):** Although I understand and appreciate the sentiments behind the new clause, it seems to me that, instead of going down the road of more bureaucracy and having the costs of setting up a new scheme, which would give the boys—or the men and women—another bit of plastic to carry, the sensible option might be allowing people to keep their MOD 90. That would prove that they were veterans and it would be cheaper, although there may be security implications.

**Mr Jones:** I am glad that the hon. Gentleman raised that point, because in the huge process of trying to push the policy through, we looked at all the options, including that one. One of our proposals—which may be a good alternative for the Government now, unless there is a cost—was to let people keep the cards, which could be etched with some kind of veterans ID-type mark. That option is still open to the Government. We need a veterans ID card. The national ID card system would have been an obvious solution. Although it would have

cost about £2 million to roll such a scheme out, an opportunity has been missed. If the result of the general election had been different, that is certainly a road we would have gone down.

I welcome the new clause and the opportunity to have this discussion. The Government need to look at the issue and ensure that they do not invent another piece of meaningless plastic.

**Bob Russell:** Can the hon. Gentleman tell us the result of the survey that was done with the Home Office on prisoners who claimed to be veterans when they were not? He told us that it had happened, but did not mention the outcome—I apologise if I missed it.

**Mr Jones:** I think the figure was between 3% and 4% of the prison population. What irritates me—I think it irritates the Minister, too—is the fact that individuals, even in this place, repeat the nonsense that 15% or 20% or more of the prison population are veterans. That is just not true, and I find it frustrating that people are not looking at the facts. It was even stated a couple of weeks ago by Tim Collins on “Panorama”, and he is a respected individual. He repeated the suggestion that, somehow, a huge number of veterans are in prison. Part of what we need to do is link to the facts. Are there emotions when we talk about veterans? Yes, quite rightly. However, what I have tried to do—in fairness, the Minister is trying to do it, too—is deal with facts.

In debates on this matter and on mental health, some of the rhetoric has gone ahead and people have believed the urban myths. That has not been helped by certain politicians repeating them. One repeated on numerous occasions—with no evidence—is that more Falklands veterans have committed suicide than died in conflict. There is no evidence whatever for that. I urge all Members to look at the evidence. I commissioned the work on veterans in prison because those claims were being made. All those matters require hard evidence. To be fair to the Department now, it does have hard evidence. That allows us to put policies in place to help that small number of individuals who get into difficulties. I make the same point about mental health: the numbers might be small, but each one is a personal tragedy.

We have a duty of care as a nation to look after those individuals, and an ID card would enable that to happen. I congratulate my hon. Friend the Member for Stockton North on raising the matter and urge him to follow through—as I think it is in the Hew Strachan report—on whether it is, as the hon. Member for Filton and Bradley Stoke suggests, a way to adapt the military ID card. That is something we need to do to ensure that veterans get the priority access to services that we all want.

**Mark Lancaster:** I have great sympathy with the broad thrust of the new clause, but, as I have already hinted, I have a couple of problems with the way it is drafted. I appreciate that it is difficult to define a veteran, but we must come to the heart of that matter. Veterans come in all shapes and sizes. Now we have incredibly young veterans in their early 20s, which people do not appreciate, as well as middle-aged veterans, such as my hon. Friend the Member for Bournemouth East, and much older veterans, such as the Minister.

None the less, we have to define the term “veteran”. I have concerns from my experience. On benefits that are now available to veterans, I was delighted to discover that, as a serving member of the armed forces and a veteran, I get a 30% discount at Nando’s, which is fantastic news. However, that raises a serious point. When I commanded a TA squadron, we would get people—

**Mr Jones:** Before the hon. Gentleman moves on, for the benefit of the Minister, will he explain what Nando’s is?

**Mark Lancaster:** It is a very popular restaurant, to which I am sure I will be taking the Minister in due course.

**Mr Robathan:** I am grateful to my hon. Friend for explaining about this popular restaurant. Does he think that the food served there would fit in with the public health policies of not eating junk food?

**Mark Lancaster:** I am only too aware that, as a senior veteran, my right hon. Friend is concerned about his waistline; I do not think that I should encourage him to go there.

My point is serious: given the benefits that can now be acquired as a veteran, I see loopholes, as in the case I have highlighted, whereby it is relatively easy to turn up at a TA centre, be attested one evening and never be seen again. Of course, the TA and the reserve forces operate very differently, which is why I would like the definition of “veteran” in the new clause to be tightened up. We have to look at that seriously; it is not something that should be given away. I would not want to create a burden for the armed forces, whereby people were encouraged to join for a short period and go through all the administration, as I experienced in the TA, to get a veterans card.

**Sandra Osborne (Ayr, Carrick and Cumnock) (Lab):** Does the hon. Gentleman think it would be fair to deny a card to genuine veterans, for the sake of a small minority who might try to work the system?

**Mark Lancaster:** If the hon. Lady listens to the argument, I think she will accept that we have to. I cannot accept the proposal as it stands because we have not defined clearly enough what a veteran is, but I have sympathy with the broad thrust of where the hon. Member for Stockton North is going. I hope she accepts that that is a reasonable point.

**Jack Lopresti:** Thinking back to my basic training, I rushed it through in a year, when normally it can take up to two years for TA recruits. From memory, I did not get my MOD 90 until I completed basic training. Returning to what we have said about perhaps using the MOD 90 as the card, if it were necessary to complete basic training to obtain a card, that would to some degree eliminate the possibility of people joining and signing on the line to get their veterans card.

10.30 am

**Mark Lancaster:** My hon. Friend makes a reasonable point, and that is exactly the sort of discussion that I hope the Minister will have, perhaps seeking advice from his predecessor. Perhaps this is an area that the Department can pursue. I repeat that I have great sympathy with the thrust of the new clause, but as it is currently tabled I cannot accept it. There is also the question of cost. We must be mindful of cost, given the current situation. Although I cannot support the new clause as it is currently written, this is an area that I encourage the Minister to look at. I hope that, in the future, we can find some way forward.

**Mr Robathan:** May I say what a pleasure it is to serve under your chairmanship, Mr Arbuthnot, particularly as this is probably the last formal sitting that we will have—God willing?

I am grateful to the hon. Member for Stockton North for introducing the new clause, because we have had a reasonable and sensible debate. Unlike the hon. Member for West Dunbartonshire, I do not view him as an exile at all, because I think that we are all Unionists here.

**Gemma Doyle (West Dunbartonshire) (Lab/Co-op):** It is Scottish Conservatives who are forced to be exiled to England to pursue their political careers, not Scottish Labour Members. Labour supporters in Scotland may quite easily find themselves elected to Parliament, just as easily as they can south of the border, as my hon. Friend the Member for Stockton North has said.

**Mr Robathan:** I have to say that that is very interesting.

**Alex Cunningham** *rose*—

**Mr Robathan:** Oh, go on then.

**Alex Cunningham:** For the record, I would like it to be known that my parents brought me to England at the grand old age of 11 and a half. It was 1966, which was punishment itself for any young man coming into England, when England had just won the World cup. Having said that, my accent has strengthened from being in contact with people such as my hon. Friend the Member for West Dunbartonshire. Even if I were representing a constituency in Scotland, I could not be any more proud than I am to represent the people of Stockton North.

**Mr Robathan:** I am very glad to hear that clarification from both the hon. Lady and the hon. Gentleman. I think that that is quite a twisted version of exile, but never mind; I think that we have all quite enjoyed it.

I have great sympathy with the spirit of what the hon. Gentleman has been saying, which is borne out by other members of the Committee. On the point that he made about injured personnel, he is absolutely right. The Committee—certainly, myself and the Government—is determined that those who have returned from Afghanistan, often having suffered horrific injuries, should get absolutely the priority that they need in the national health service, for instance, and they will need it.

During our debate, we have drawn out the difficulties that are involved, such as whether we should treat such a person with grave injuries in the same way as we might treat someone who is discharged after one week of training. We all know what our inclination is, but as the hon. Member for West Dunbartonshire has said, it is pretty difficult to know where to draw the line. Indeed, my hon. Friend the Member for Colchester has already tried to widen the scope to widows and perhaps families. That is where the difficulty arises, and the previous Government encountered the same difficulty.

The hon. Member for Stockton North has particularly brought out the fact that we might get concessions for hunting and fishing, which has very much turned my view on these matters, and perhaps I shall look at them rather more closely.

The hon. Gentleman has also talked about the entitlement to education. Again, we need to look at how it would work specifically and at how the public would view it. Let us imagine two people—both, say, fathers aged 45—one of whom had served in the Army between the ages of 18 and 21. If some greater privilege or entitlement was given to the children of the person who had served in the armed forces some 20-plus years before, it might lead to some resentment, which is exactly what we do not want. [*Interruption.*] The former Minister grimaces, but entitlement to education is what he mentioned.

**Mr Jones:** I do not quite follow the Minister's logic. It would surely be helpful in ensuring that those that leave after six years, who are entitled to assistance with higher education and other services, are dealt with and that institutions can identify those individuals in the education system.

**Mr Robathan:** The hon. Gentleman has just helped my argument, because the point is that this is a confusing issue. What exactly would the veterans ID card entitle someone to in terms of education, which is one example of many that I used?

**Mr Jones:** The fact of the matter is that they are entitled to certain things already—unless the Government change them—such as priority treatment on the NHS. The idea of the veterans card is that, as benefits for veterans are developed, it would be the access point for them. Charities are certainly in favour of the card, because it would be a way for them to expand the privileges that they could negotiate with, for example, Nando's or with local councils, so that they know exactly who the veterans are when they are applying for services.

**Mr Robathan:** Again, the hon. Gentleman makes my point for me. Supposing that he has two constituents aged 45, one of whom served for three years in the Army and left at 21, should that person get priority treatment on the NHS?

**Mr Jones:** Yes.

**Mr Robathan:** Should they get priority treatment on the NHS over the other person, leapfrogging them in the waiting lists, when that has nothing whatsoever to

do with their service? Perhaps it could be appendicitis—that is a bad example—or some chronic issue that has nothing do with their service. Should that take preference? The hon. Gentleman says yes.

**Mr Jones:** Yes, I do. I am sorry, but that is the core thing that I believe in. If someone has served their country, they should get some special treatment. It is quite controversial to say that that allows them to get benefits that other citizens do not, but they should. That came out in the debate yesterday. If people are prepared to serve their country, whether they see action or not, the ultimate thing is that they may give their life for their country. Should they get special benefits for that? Yes, they should.

**Mr Robathan:** They should certainly get special consideration where necessary, but we will agree to differ on that. I was about to say what a change it was to have a consensual debate this morning.

The hon. Gentleman referred to prisons. He put in hand the Defence Analytical Services and Advice examination of exactly what part of the prison population had served in the armed forces, and the figure that came out was just over 3.5%. When tied up with their service numbers and records, it transpired that over 50% of that population were over the age of 45—which is interesting, because it is counter-intuitive—and, indeed, 30% were over 55. If they reflected the general population at large, we would expect 43% more ex-service personnel to be in prison than there are at the moment. Those are the statistics. We all know about statistics, but I am willing to go along with those.

I am grateful to my hon. Friend the Member for Milton Keynes North for bringing both his experience and a realistic attitude to the debate.

I have great sympathy with the spirit of what the hon. Member for Stockton North has said, but there are no plans to introduce a veterans ID card. It is important to make clear what the significance of such cards might be. If they are intended to guarantee that a public service will be provided to a person who produces the card, they are, in effect, a proof of identity. Their production would have to take careful account of the risks of misuse if they were lost or stolen, which hundreds would be. Therefore, they would be expensive to produce and administer, so there must be a clear need for such a card. The Government have already made clear their position on the problems of providing public services based on ID cards. We take a different view on national ID cards from the previous Administration, and my hon. Friend the Member for Colchester takes the same view.

**Bob Russell:** I was consistently opposed to ID cards when the Conservative party supported them. *[Interruption.]* Well, I served on the Select Committee on Home Affairs, and I can assure Conservative Members that it was Conservative policy then.

We agree on the sentiment behind such an ID card, but I have two things to ask the Minister. First, although we must acknowledge that the new clause is not practical for the reasons stated, will the Department seriously consider what lies behind it? Secondly, as the former Veterans Minister, the hon. Member for North Durham

indicated, costs could be minimal if ID cards were adapted. Punching a hole in the card, as happens on the railways, would prove that it was no longer the ID card of a serving member of the armed forces.

**Mr Robathan:** I was going to come on to that, as I am quite attracted by the idea of clipping the corner off an MOD 90, for instance, as happens with passports. People could then prove that they had served, but there would be no cost or security threat.

**Mr Jones:** If the Minister is going to consider the idea, may I suggest not clipping off the corner? There is a mechanism by which something can be etched on the front of the card, which would be better than simply clipping off the corner.

**Mr Robathan:** We will not go into the technical details. I assure my hon. Friends the Members for Colchester and for Filton and Bradley Stoke, who also made the suggestion, that we will look into it.

No public service, including the NHS, specifically needs former personnel to provide ID cards. All service leavers are provided with the form F-Med 133, which provides information on their medical history while they were in the services. It is intended to be handed to GPs to ensure that civilian medical practitioners are aware of the medical history of former service personnel.

**Mr Jones:** Last year, I signed a memorandum with the Department of Health to ensure that medical records would be transferred to the NHS when people left the services. Has that continued?

**Mr Robathan:** I have been briefed on that and will continue to be briefed. One problem, as the hon. Gentleman may remember, was that the IT system the previous Government brought in for the NHS was marginally expensive and in a pretty big mess.

**Mr Jones:** Do not fall for that one.

**Mr Robathan:** It is not a question of falling for it—I go to my GP from time to time and find the IT system in a complete mess. However, in the medium term, I suspect that this will be done much more easily and without too much trouble. I do not think that we need to get into the weeds on this.

**Mr Jones** *rose*—

**Mr Robathan:** Go on then.

**Mr Jones:** I am trying to be helpful. I suggest that the Minister push back very hard on the civil servants in the Department of Health if that is their excuse. I got that excuse, and, frankly, I and the Health Minister at the time knocked it down.

**Mr Robathan:** I am always grateful for the voice of helpful experience. I seem to have heard a lot of it over the past couple of weeks.

[Mr Robathan]

The F-Med 133 also provides guidance on how GPs obtain individuals' full medical records. For those who no longer have the form, proof of status as a veteran is available through a number of documents, including discharge papers, which most people keep. Replacement service papers, service medical records and discharge papers can be obtained, if necessary, through the Service Personnel and Veterans Agency.

In addition, we have put in place special arrangements for service personnel who leave service because of injury—something particularly mentioned by the hon. Member for Stockton North. In September, the MOD, the Department of Health and others put into effect a protocol to help to ensure a transition from service to NHS care. It provides for a multidisciplinary team, consisting of MOD representatives, local service providers and veterans' welfare service representatives, to be brought together at least three months in advance of the discharge date to ensure that a care package provided by local service deliverers is in place from the moment an injured service leaver is discharged. That is important because it will go on not only for this year, but for 20, 30 or more years for the many people whose needs continue.

**Gemma Doyle:** I am somewhat concerned that the Minister has reiterated that there are no plans at the moment to introduce the veterans identity card. That was his position some months ago, when he wrote to hon. Members who had contacted him about the matter. Since then, we have had the report of the Task Force on the Military Covenant, and his Department is looking at its recommendations. Will his Department look seriously at the matter? Helpful comments have been made today about how we could proceed.

10.45 am

**Mr Robathan:** I do not think that the hon. Lady should be concerned that I have not changed policy during this debate. As I have said, we are certainly looking at the matter. There are ways in which we could proceed with it that would be helpful, take account of security and be cost-effective, without any great problems. I have never understood why people must hand in their MOD 90 when they leave the armed forces, not least because one gets quite attached to it. Indeed, I still have mine in my pocket. I know this will be difficult to believe, but it has a photograph of a rather good-looking young man, aged 22.

**Gemma Doyle:** Whose card is it?

**Mr Robathan:** That was a rather good riposte.

Professor Strachan has pointed to the possible use of veterans ID cards to gain access to military bases. We shall respond to that, but I should make the point that there are already adequate arrangements for anyone with a legitimate reason to gain access to military bases. Providing ID cards that allow all veterans access to bases would raise serious problems in relation to security and the use of such powers.

**Mr Jones:** Is the Minister aware that that is the case in Germany? I introduced the fact that the local ID card allows veterans who live in Germany to access military bases there.

**Mr Robathan:** Part of the reason for that is that one must have an ID card in Germany. That is German law. We have taken a different view from the Germans on many things, as the hon. Gentleman may know, over a number of years.

I do not think that a veterans ID card is necessary, even in relation to access to commercial discounts. I refer the hon. Member for Stockton North to the defence discount scheme, which already operates effectively without the requirement for a card. Before I came to this job, I did not know anything about it, but now that I know about the 30% discount at Nando's—wherever that may be—I shall, of course, rush there. Many discounts are available, and we are trying to publicise them more, so that serving personnel, their families and veterans can access them. The scheme is quite good for car hire and so on, so I am rather attracted to it. Some commercial schemes use their own privately produced veterans cards. They may be useful for the companies and charities involved, but that is not enough to justify a statutory duty on the Government to introduce veterans ID cards.

Although the Government still have no intention of introducing a veterans card, we are still considering the idea suggested by Professor Hew Strachan's Task Force on the Military Covenant report that a non-governmental organisation might provide a veterans privilege card, which could be used in conjunction with discounts offered by private companies. If we consider that to be useful, we would consider supporting such an initiative if it proceeded at no cost to the public purse. There is an appetite among some businesses, especially in difficult economic times, to attract business, so they give concessions. However, businesses should produce the discounts. For example, although it is not for veterans specifically, Tickets for Troops is a good scheme whereby people who wish to show their appreciation can do so without great cost, because the tickets are usually ones that might not be used otherwise.

**Bob Russell:** I am sure that what I am about say is not unique to the garrison town that I represent and that it happens wherever serving personnel are deployed on missions overseas. Currently, in Colchester, under a scheme organised by the local newspaper, the *Daily Gazette*, businesses are doing just that. Numerous businesses offer discounts and so on to military personnel and their families.

**Mr Robathan:** I welcome that. It is admirable and ties in very much with what the covenant taskforce has said about local initiatives. One could introduce an element of controversy to the Committee and say that it is part of the big society.

We have been discussing need, and I do not think that the need for a veterans ID card has been established. I should like to make a point about demand. People say, "Oh, public opinion is behind this," and some people are behind it. We have had a reasonable discussion this morning, notwithstanding the rude comment about the photograph of me at 22. Of course, we will consider the proposal and perhaps look at moving forward in one way—indeed, I have already asked my officials to ensure that we do. However, it would be a mistake to overestimate demand, because most of the 4 million or 5 million people who have served in the armed forces are not hammering on the doors of Whitehall, demanding that they have a card to prove it. We will believe them.

I return to another consensual point. The hon. Member for North Durham mentioned people from the SAS. Just down the road from me in Leicestershire—I believe, in Burbage—a fellow paraded recently wearing his SAS beret. I did not recognise him, but his medals stretched from the Korean war—possibly the Crimean war—all the way through to Afghanistan, which proved some longevity in a man who did not look much older than 50-odd. He certainly was never in the SAS.

**Alex Cunningham:** With the early consensus that seems to be breaking out, perhaps I made a mistake by suggesting that the new clause should be intended only to probe. As a new Member, I acknowledge that one has to learn their way and that perhaps the wording of clauses and so on should be tightened up. As the hon. Member for Colchester said, other issues must be considered that relate to overseas veterans and war widows, and as the hon. Member for Milton Keynes North said, we have to understand that definitions need to be clear.

Such things cost money, but it is a price worth paying. The suggestion by the hon. Member for Filton and Bradley Stoke that old ID cards could be retained is a good one, and I hope that, when discussions take place in the future, he will press that as a way to save money but still allow our veterans to have their ID cards.

The Minister mentioned the big society. Many of our veterans do not feel part of any society, yet it is so important that they feel part of something. Anything that we can do to foster that has to be good. I am reassured by the Minister's saying that he will take the proposal forward in some way—loose words, but I hope that they will lead somewhere.

**Bob Russell:** May I suggest that the subject of a future Defence Committee inquiry could be how to bring to fruition what the hon. Gentleman and other Members on both sides of the Committee wish to achieve?

**Alex Cunningham:** That is a matter for the Chairman of the Select Committee, but the idea is a good one, and I am sure that the British Legion would certainly welcome such an inquiry. I am reassured that it appears that Members could work together on this in the future. In that spirit, I beg to ask leave to withdraw the clause.

*Clause, by leave, withdrawn.*

## New Clause 2

### ENLISTMENT OF MINORS

- (1) The Armed Forces Act 2006 (c. 52) is amended as follows.
- (2) In section 328 (Enlistment) the words “without the consent of prescribed persons” are omitted.
- (3) In section 329 (Terms and conditions of enlistment and service), after subparagraph 2(c) there is inserted—
  - “(ca) enabling a person under the age of 18 to end his service with a regular force by giving not less than 14 days’ notice in writing to his commanding officer;
  - (cb) requiring that a person who was under the age of 18 at the time of enlistment and who on attaining that age wishes to continue his service with a regular force shall be required to enlist in the manner and form to be prescribed by such regulations;”.

(4) After section 329 (Terms and conditions of enlistment and service) there is inserted—

“329A Report on military service by minors

The Secretary of State shall lay before Parliament annually a report showing the numbers of persons who have been—

- (a) recruited under the age of 18; and
- (b) retained on reaching the age of 18

for each of the regular forces during the preceding 12 months.”.

—(*Alex Cunningham.*)

*Brought up, and read the First time.*

**Alex Cunningham:** I beg to move, That the clause be read a Second time.

Again, I reassure the Minister that this is very much a probing new clause at this stage. The intention is to bring armed forces recruitment policy into line with national legislation and international standards on the rights and welfare of young people. Concerns about those issues have been raised by previous Armed Forces Bill Committees, the Defence Committee and the Joint Committee on Human Rights. They have all made recommendations for much needed reform. The new clause would implement those recommendations.

Subsection (2) of the proposed new clause would raise the minimum recruitment age to 18—a fundamental question—and could be phased in incrementally over a suitable period to allow for necessary adjustments. The proposed changes in minimum entry requirements for recruitment identified by the Task Force on the Military Covenant and the large numbers of individuals now coming forward for recruitment make this the ideal opportunity to raise the recruitment age, but there are other reasons to do so, too.

Even this week, trainees and other serving members of our armed forces have been made redundant for budget reasons. Surely, it makes sense to retain trainees, such as those in the RAF who are being thrown on the scrap heap before the end of their training, and experienced officers, rather than relying on young people under 18 coming through the system.

International best practice has set the minimum recruitment age at 18. That age is adhered to by more than 130 countries and the UK is now one of fewer than 20 countries recruiting at 16. The practice isolates us amongst our allies. No other state in the EU recruits at 16, nor does any other permanent member of the Security Council. There is no demographic reason that would justify an exception for the UK.

In maintaining such a low age, we are defying the express recommendations of the UN Committee on the Rights of the Child and our own Joint Committee on Human Rights to raise the minimum age to 18 years. Following the Deepcut review, the Defence Committee called on the MOD to consider raising the minimum recruitment age. The new clause would implement those recommendations. There is substantial evidence that recruitment of under-18s puts young people at unnecessary risk and is a poor investment of resources.

The recruit trainee survey shows that under-18s are less likely to enjoy training than older recruits and are more likely to drop out. Younger recruits are more likely to commit suicide or self-harm and be bullied or harassed. They are also more likely to develop post-traumatic stress disorder. Of course, there are individual success stories of young people who thrive in the forces,



[Alex Cunningham]

but there are far too many who do not. The armed forces offer many opportunities and a fine career to the right candidates, but that does not mean that everybody who joins will benefit, and it certainly does not mean that the earlier someone joins, the better.

**Bob Russell:** Will the hon. Gentleman confirm two things? First, no one under the age of 18 is deployed to theatre. Secondly, not every young person under the age of 18 who joins Her Majesty's armed forces is engaged in activities that would put them in the front line.

**Alex Cunningham:** Indeed. I most certainly recognise that that is the position.

Many personnel say that the armed forces are a vocation, not a job. Any individual with a true vocation for such a career will not have lost interest in it if they have to wait until 18, rather than 16, to enlist. On the contrary, those who are put off will be those who would have enlisted for all the wrong reasons. Arguably, we are in danger of losing many motivated, talented and committed recruits because they sign up before they are ready, have a bad experience and leave. Those individuals could have proved valuable long-term members of the forces if they had joined at a more mature age.

We have to recognise that a forces career is a commitment that must be entered into with due solemnity by mature individuals who are prepared to shoulder the burden it places upon them. Sixteen-year-olds are barred from the police and the fire service because they are not considered to be physically or psychologically ready. It is insulting to suggest that joining the armed forces is less challenging.

**Mr Jones:** I accept what my hon. Friend says about the police force. Some of the quite senior police officers whom I know—I think that this is the case for the previous deputy chief constable of Durham—started as police cadets. That was a good entry system into the police force for people who were, in many cases, from disadvantaged backgrounds.

**Alex Cunningham:** The police cadet system is a good one, but being a member of the armed forces is very different, given the restrictions placed on people who join. I will address that later in my speech.

**Bob Russell:** I think that I am right in saying that those under 18 must receive parental support before they can join. By the same token, people can get married at 16 with parental support.

**Alex Cunningham:** Indeed. They can also do all manner of other things at 16, but they still do not have the vote. I would have them vote at 16 as well. If people can join the Army at 16, surely they should be able to vote.

We have talked a lot about the welfare of armed forces personnel in relation to the military covenant. Our service personnel of all ages deserve proper treatment. It would be hypocritical to implement changes without addressing the fact that those under 18 at the time of enlistment form an obvious category of service personnel who suffer more than most. Although we can legislate

for housing and health access, we cannot legislate for the fact that young people are inherently more vulnerable than adults. It is irrelevant that they do not go to the front line until they are 18. Armed forces life is a challenge from the day it begins.

Some believe that young people should have the opportunity to join the forces. I agree, but they should have that opportunity at a suitable age. Society and young people have changed since the recruitment age was set at 16. It used to be the case that 16 and 17-year-olds could go into combat. Nowadays, of course, that is unthinkable. The recruitment age also needs to evolve with the changing times.

11 am

**Sandra Osborne:** I agree with the general thrust of what my hon. Friend is saying, but I worry when I think of some of the young people in my constituency who come from very poor former mining areas. Some young people join the Army because they see an opportunity that they do not have at home.

I think that we have learned many lessons from the Deepcut situation. After that, some Members went to speak to trainees who were under 18. I remember one boy saying to me that he had joined to get away from horrible circumstances at home. There are two points of view. Certainly, some people are not ready, but for many young people, joining the forces is the making of them.

**Alex Cunningham:** My hon. Friend makes a good point. My problem is that young people should not run away to the Army as a way to escape difficult circumstances. I know that I might defeat my own argument by suggesting that, given the ending of the future jobs fund and other initiatives begun by our Labour Government to encourage people into education and training, even more young people will now find their way into the Army, but I still do not believe that that is the answer. We should be developing our education and training systems to deal with them.

**Mr Jones:** Does not my hon. Friend recognise that, for many individuals, joining up is not about escaping life circumstances? It gives them life and education opportunities that they might never otherwise get, because, in many cases, the education system has failed them.

**Alex Cunningham:** The failure of the education or training system is no excuse for young people finding themselves in the Army, where all sorts of complications are involved if they want to change their career path. I will address that under subsection (3) of the new clause, which relates to the right of discharge.

The Ministry of Defence, through the unhappy minors provision, recognises the desirability of granting discharge to any recruit under the age of 18 who wishes to leave the forces. If that is indeed the policy, it should be clarified and formalised as a legal right, rather than be maintained in its current weakened form. As there can be no justification for holding a minor in the armed forces against their will, there is no advantage to maintaining an element of discretion in the discharge system for young recruits. The decision whether a young recruit should remain in the armed forces should be taken by the recruit and their parents, not a third party.

Making it clear that the discharge of under-18s is a right would ensure that young recruits maintained power over and responsibility for decisions concerning their own lives, that they clearly understand the options available to them and that they were not led into drastic measures to obtain a discharge. It would ensure that current professed MOD policy was implemented consistently and with no room for doubt or favour.

Even the Minister was unclear on the matter in his reply to a written question on 10 January, highlighting the confusion at the MOD over its own policy:

“Service personnel under 18 years who have completed 28 days of service have the right to discharge at any time before their 18th birthday provided they give the required 14 days notice. A service person under the age of 18 years three months who registered before their 18th birthday, their clear unhappiness at their choice of career can request permission to leave the armed forces.”

Those are two different things: one is a right and one a request. The reply continued:

“They do not have discharge of right at this age but it is exceedingly rare for such an individual to be refused permission to leave. These safeguards help to ensure that young servicemen or women under the age of 18 years may, if they wish, leave the armed forces and that any commitment to service is both considered and voluntary.”—[*Official Report*, 10 January 2011; Vol. 521, c. 3W.]

Making the right of discharge statutory would also take an unnecessary burden of responsibility away from commanding officers, who are caught between their moral obligations towards unhappy recruits and their professional responsibility to maintain adequate staffing levels.

A further argument is that as no person under 18 can be bound by a legal contract in civilian life, they should not be bound by an enlistment contract. Given that a parent cannot withdraw consent for enlistment after three months have expired, a young recruit who has passed the period for discharge may be held in the armed forces against their parents’ will, as well as their own. That cannot be satisfactory.

Extending discharge as of right for all young recruits would not introduce any new rights to existing regulations. It would simply extend the existing right of discharge by up to 18 months to ensure that minors were dealt with in accordance with their special legal status under national law. It would not require a change of Government policy. It would be a formalisation of existing practice—the unhappy minors provision.

Twenty years ago, our predecessor Committee had already expressed concern about the implications of holding a minor to a legal contract and suggested that the six-month window for discharge as of right be extended or that recruits should re-enlist at the age of 18 if they wished to continue in the service. Proposed new sub-paragraph (cb), which would be inserted by the new clause after proposed new section 329(2)(c) of the Armed Forces Act 2006, sets it out that there should be no further delay in implementing that recommendation to amend a loophole that is entirely inconsistent with national law regulating the legal obligations of minors. Any person who believes that young people should be able to join the armed forces must also agree that they should be able to leave.

At this time, we cannot ignore the question of cost. The statistics clearly show that the youngest recruits drop out faster and in greater numbers than older recruits. We can no longer afford the millions of pounds

of wasted expenditure involved in deliberately recruiting and training large numbers of individuals who we know are much more likely to leave the forces without offering a full return on that investment. In 2009-10, 33.2% of under-18s withdrew from the armed forces during their training period. That is nearly double the drop-out rate for trainees aged 20 to 24.

The MOD should review recruitment policy to ensure that it focuses on recruiting and training those candidates who will offer the best long-term return on our investment in their training. Subsection (4) of the new clause would facilitate a more targeted recruitment strategy by keeping a record of return on investment. It makes the following proposal:

“The Secretary of State shall lay before Parliament annually a report showing the numbers of persons who have been—

- (a) recruited under the age of 18; and
- (b) retained on reaching the age of 18”.

As I said at the start of my speech, the proposed changes are intended to bring armed forces recruitment policy into line with national legislation and international standards relating to the rights and welfare of young people. Surely it is time for the Government to do that.

**Mr Jones:** I disagree with the new clause. On the question whether it is right that people should not go into combat until the age of 18, I agree that that is the correct approach, although having met, when I was a Minister, the mother of an 18-year-old who was killed in Afghanistan, I have to say that it is very difficult to deal with the fact that young people are killed in action. That mother was very proud of what her son had achieved. I am sure that the Minister has had the same experience as me: when we get the phone call saying that someone has been killed in Afghanistan and see that their age is 20 or 21, it is very difficult. I know that we are a different generation. Certainly, going back to the second world war, a visit to the war graves in northern France shows the young age of some of those individuals. It cannot be right for those who are under 18 to serve in combat.

When I was a Minister, I constantly tried to knock on the head the idea that joining the armed forces is somehow bad for someone. Joining the armed forces is a life-changing experience for many people, and it gives them opportunities that they would never otherwise have had. I say that due to two different experiences. First, I grew up in a mining village in south Yorkshire, and I saw individuals who entered the armed forces and had careers and opportunities that they would never have had without that experience.

Secondly, in my constituency, I have seen men—and women these days—join the armed forces and get opportunities. I spoke last year to one young lady whom I first spoke to when I was newly elected—that shows how old I am getting. She said then that she was entering the Royal Navy. Nine years later, she has just left the Royal Navy and now has a good job as an administrator in a school. The Navy has given her change and life experiences that she can bring to civilian life. We should not forget that point.

**Bob Russell:** The hon. Gentleman brings to the debate his experience of being a Minister. Setting aside the military combat role of a young person, does he agree

[*Bob Russell*]

that everything else—the crafts, skills and training that Her Majesty's armed forces offer to someone who is 16 or 17—is on a par with, if not better than, the training and qualifications they would get outside the military?

**Mr Jones:** Very much so, and that is the point I was moving on to. If people want to see what the armed forces do, they should go to Harrogate college, which trains those 16-year-olds. One great privilege of being a Minister was attending a passing-out parade at HMS Raleigh. I saw the young men and women involved, and the pride of their parents, who said that individuals had completely changed in a matter of 10 weeks.

If this measure went ahead, we would stop access to education as well. Another good part of the MOD is the Welbeck college system, which allows people in the sixth form to get qualifications. Those are exactly the people we want in the armed forces, in terms of technical and engineering expertise, but this provision would mean that that was closed off.

We are asking people to become professional soldiers, sailors and airmen, but we should perhaps also see the armed forces as an integral part of the education system. Harrogate college deals with individuals from a variety of backgrounds, including some from very poor backgrounds. At Catterick, adult literacy and numeracy can be studied. Again, that shows the failure of the education system in a lot of areas, especially with respect to the infantry. At Catterick, there is a link with Darlington college, and the way that people's reading ages are brought up from seven or eight to an appropriate level is remarkable. What would happen to some of those individuals if they did not get that opportunity? We must look at the armed forces not as something that does damage to individuals, but in many cases as a way to improve people's life and education chances.

I accept that there is an issue of how we treat young people, and the MOD and military would admit that we got that completely wrong a few years ago. We are now post-Deepcut, and we have had the Blake inquiry and the investigation by the Defence Committee, which I was a member of at the time, into duty of care of young people. That year-long inquiry informed the debate. To be fair to the three services and the MOD, a lot of the recommendations were taken on board, such as the Service Complaints Commissioner, the inspection regimes that are now in place within training facilities, Ofsted inspections and other things. That has raised the game, which needed to be done.

I agree with my hon. Friend the Member for Stockton North: if there is to be a duty of care for very young people, we need to ensure that they receive the best possible treatment. That is in place.

11.15 am

I want to knock on the head another myth that has been repeated. For the age group that my hon. Friend talked about, the suicide rate is lower in the armed forces than in the general population. That came out of the Manchester study, which was produced a couple of years ago. There is an issue with 21 to 25-year-olds in the armed forces, but for younger people the suicide rate is lower in the armed forces. That might be because those young people have a focus in life and support.

On discharge, as a former member of the Defence Committee and a former Minister, I never came across an individual whom the Army, RAF or Navy wanted to keep against their will, and I never came across a set of circumstances in which they would.

We need to knock that myth down. Yes, people join and later regret it. Whether it be at Catterick, HMS Raleigh or the RAF training facility, yes, some people make mistakes. People join when they should not. All three services have put a lot of effort into ensuring that the recruitment mechanism is realistic about what is expected of people.

I went to Catterick with General Rollo when he was Adjutant-General, and we met some day three or day four recruits. The general and I walked in the room and they all sat around. When their corporal walked in, they all stood up, clearly on the basis that the only important people in their lives at that time were the corporals. The general and I were quite amused by that, but it showed that a lot had been put in place for training the trainers, which came out of the Defence Committee report. Training the trainers ensures not only that trainers are sympathetic to the individuals and their circumstances, but that if people are unhappy there is an exit route. Some people make mistakes.

**Bob Russell:** I wonder whether, between us, the hon. Gentleman and I can reassure the hon. Member for Stockton North. On one of the two occasions that I did the armed forces parliamentary scheme, we went to Pirbright, where, quite quickly, it was established, on a one-to-one basis, that some young men had applied to join the Army under family pressure. It is not always the individual who wants out, and the experience of Pirbright is the ability to establish who does not want to be there and finding a way to fail them.

**Mr Jones:** There is that. People join the armed services under many different pressures. The other thing we have to be careful of is the situation that is referred to as the shock of capture. I have talked to recruits at Raleigh, and in the first week or so of training, many recruits are pretty unhappy and want to leave. Once they get into it, they are okay. If we are not careful and do not have a limit, people might make mistakes. They could be unhappy in the first week or so, because of the shock, and leave. That might be a mistake. I have talked to recruits in different places, and I know that it is some people's experience. This is a whole new world for recruits.

Allowing 28 days makes sense, but, having talked to all three services, I am not aware that they want to keep people against their will. That impression needs to be resisted at all costs. The system works. Have we improved it? Yes, we have improved the duty of care. Can we keep improving it? Yes, we should. The commitment of the three services, as shown through the establishment of the Service Complaints Commissioner, is to driving up standards, and we need to continue doing that. Do we need to stop recruitment at 16? I do not think so. It would be a retrograde step and would limit life chances for a lot of people who would benefit from being a member of the armed forces.

**Mr Tobias Ellwood (Bournemouth East) (Con):** It is a pleasure to contribute to this interesting debate. I am pleased that the new clause is probing, because, if I may say this politely, I think that the hon. Member for

Stockton North misunderstands the tailoring of training in our armed forces today. He made a comparison with other nations across Europe and in the world to say that they do not have the same approach. One could say, some aspects put aside, that we have one of the best armed forces in the world and there are reasons for that. We can be very proud of our training systems and processes.

The former Minister, the hon. Member for North Durham, spoke of his visits to various depots and so on. There is a sense of foreboding on arriving to sign up for the armed forces. I remember when I turned up at Sandhurst. My sister dropped me off and there was a sense of doom—that I was signing my life away for a number of years. That really was quite moving, but it lasted all of five minutes, because when I walked into Amiens company at Sandhurst, half my university Officer Training Corps was inside, so I was among friends and that feeling disappeared straight away. However, there was certainly apprehension: “My God, what am I doing with my life?” I felt trapped in something that I could not get out of that easily.

It is important to stress that those who join at the age of 16 have that opportunity to leave of their own accord before they sign on the dotted line. However, it should be stressed that the military is a young person’s game. The average tour of duty is only about three years. We expect a lot from our soldiers, sailors and airmen, and it is no walk in the park. We ask them to dig deep in a way that they probably would not do in any other part of society. That reflects the debate we have just had on what the nation gives back to those very soldiers, sailors, and airmen, who are doing something quite extraordinary.

We should be proud of the structure we have, which is tailored to recognise the sensitivities that individuals go through. The hon. Member for West Dunbartonshire made an important point about the footprint—where many recruits come from. Thinking back to the platoon that I had in 1st Battalion the Royal Green Jackets, about half of them probably come from very difficult backgrounds; there is no doubt that they were running away and trying to find something else in their lives. They had heard about the armed forces, visited a recruitment centre, gone through all the processes—again, this is recognised—and the platoon, the company, the regiment then became their family. That became the unit that they bonded with, in the same way, sadly, that schooling is often the escape for young children from very similar environments. I really think that we can be proud of that process, but that is not to say that we can be complacent or ever stop considering how we can improve it.

My duties as a platoon commander—others who have served will be aware of this—involved not just training or operational work, but being concerned about the welfare of individuals. It is often said that the platoon commander is the father and the platoon sergeant the mother—they are a combination. We are only as strong as our weakest link, and if one or two individuals are unsure of themselves, that brings down not only morale, but the capability of the whole platoon.

Aside from that, the nation benefits in so many ways from those who do not make it through full training or stay in the armed forces for only a short time. The armed forces create individuals who are far more confident, resilient and robust, and who also have real direction

and determination in their lives. The soldiers I had the pleasure and honour of working with came with no skill sets whatever, little direction in life and little self-control, but by the end of three years, while some would stay on and some would decide to depart, they had a real sense of purpose and pride in their country. That came about only because of the training they had received, some of which had started at the age of 16. We have a very robust system that we can be proud of. I would not accept the new clause in any shape or form and we should leave things as they are.

**Mr Robathan:** Again, we have had a relatively consensual and useful debate, teasing out a few ideas. I am grateful to the hon. Member for Stockton North for initiating the debate on the new clause, although I am not sure he has much of a consensus supporting him, even on his own side of the Committee. That is life; I find that a lot of the time.

To pick up on what was said by my hon. Friend the Member for Bournemouth East, I remember a Scots Guards Sergeant from Glasgow called Joe Farrer, a very good man, who at 17 was told by a magistrate in Glasgow, “Join up tomorrow or go to prison.” In those days, one could do that. Sadly, not now.

**Alex Cunningham:** Does the Minister think it is justice for a young man who has made a mistake in life to be forced into the armed forces, rather than take a civilian punishment?

**Mr Robathan:** I can only give the experience of the conversation that I had with Sergeant Joe Farrer, a thoroughly good man who made a life for himself in the Army. I do not know what he is doing now, or even if he is still alive. His point was that the Army gave him the opportunity to get away from the ghastly conditions in which he lived at home, where he was getting into petty crime.

I will cite another case. I do not think I am betraying a confidence, because I am sure that the person involved would not have told me this if it were confidential. I went to Frimley Park last year. I do not know whether other Members have visited it. I would recommend that they do so, and I am sure that a visit could be laid on for the all-party group or the Select Committee.

Frimley Park is the headquarters of the cadet movement, based at a rather nice, small and marginally decaying country house near Camberley. It is run by a man whose name currently escapes me, but who is probably the officer most decorated for gallantry in the British Army. He has two Queen’s Gallantry medals and, I think, an MBE—a remarkable man. The hon. Member for Dunfermline and West Fife, who is not here, might run down people from privileged backgrounds, but this man used to live in Barnsley and he spent the night before he enlisted as a boy soldier—he was under 18—in the cells of the local police station.

That man’s service has given him huge kudos, a fascinating time and a real life. I would recommend that everyone here, but particularly the hon. Member for Stockton North, talk to someone like that to see how the armed forces can be a great force for good in the lives of such individuals. I was incredibly impressed by that guy.

[Mr Robathan]

The hon. Gentleman said that his proposal is a much-needed reform, but I disagree because I support allowing keen young people to join up and gain what they may, even if it be just four years of adventure. I also disagree with his logic about under-18 recruitment. Most people say that we should have votes at 16 because we let people join the armed forces at 16. I note that the hon. Gentleman says we must have votes at 16 but not let people join the armed forces at 16. I would disagree with the former position. He also wanted to know whether we would look at recruitment policy, and I can assure him that we continue to do so.

We take pride in the fact that a career in the forces, especially for somebody under 18, provides challenging and constructive education, training and employment opportunities for young people, as the hon. Member for North Durham said. We equip them with valuable, transferrable skills. We recognise the need for special care in recruiting and training those under 18. The days of the drummer boys being beaten round the head are long gone. There are currently no plans to revisit the Government's recruitment policy for under-18s, which is fully compliant with the optional protocol to the United Nations convention on the rights of the child, on the involvement of children in armed conflict.

11.30 am

All recruitment to the UK armed forces is voluntary and no person under 18 may join unless their application is accompanied by the formal written consent of their parent or guardian. Defence policy is that no service person under the age of 18 is knowingly deployed on any operation outside the UK that would result in them becoming engaged in or exposed to hostilities. That applied to Northern Ireland, and in my experience, when 17-year-old soldiers were told that they could not go to Northern Ireland, they were gutted, because they were desperate to go out there and join their mates in doing a worthwhile job.

The armed forces take very seriously their duty of care to all recruits, in particular those aged under 18. To that end, parents or guardians of all younger personnel, as well as the applicants themselves, are given comprehensive written and face-to-face guidance on the terms and conditions of service and right to discharge during the selection process. This occurs at various times before the parent or guardian provides formal written consent for their child to enter service.

As regards ending service below 18 or continuing service after 18, the new clause is inappropriate. Under the existing terms and conditions of service, the basic position is that all new recruits, regardless of age, have a right of discharge, as we have discussed, within the first six months of service by giving not less than 14 days' notice in writing to their commanding officer if they decide that the armed forces is not a career for them. I liked the idea of—what was it?

**Mr Jones:** Shock of capture.

**Mr Robathan:** That is it. I remember the shock of capture when I joined the Royal Marines—certainly before the hon. Member for West Dunbartonshire was

born—in 1970. My hair was cut in a way that would make even the worst haircuts in the House of Commons—there are some pretty shocking ones—look really good.

**Bob Russell:** I see the Minister has kept it.

**Mr Robathan:** Thank you.

**The Vice-Chamberlain of Her Majesty's Household (Mr Mark Francois):** Did they take a photograph?

**Mr Robathan:** I do have a photograph, which I found in my late mother's house recently. I showed it to my son, who is now 14, because the resemblance is quite striking, although he has much longer hair.

Any service person who makes it clear before their 18th birthday that they are unhappy with military life can request permission to leave the armed forces up to three months after their 18th birthday. The policy is to treat all such cases with great sympathy, because nobody wants unwilling soldiers in a volunteer Army. They are actually a nuisance, because they stir up trouble. That does not give an absolute right to discharge after the first six months of service, and it has been considered that it would be wrong to give that as a right.

Like the hon. Member for Stockton North, I see an anomaly, and I understand why it is there. I will raise it with officials, and particularly with the Chief of the General Staff, next week, because I can see that it is slightly untidy that we let people go but do not give them the right to go. I will look at that matter, but I am not minded at the moment to change the policy. I want to get it clear in my head that this is the right way forward.

Pragmatically—I am a great pragmatist—anybody who wants to leave basically is allowed to leave on the unhappy minors situation. If we were to go further and provide for a right of discharge on 14 days' notice for ever under the age of 18, that might be likely to reduce the services' chances of solving the problems that a young recruit faces. As we have heard, many of them become very unhappy when they are contacted from home because something has gone wrong at home, and suddenly they want to leave. If they are given a cooling off period, they often change their mind, because young people are sometimes quite volatile.

The reporting requirement in the new clause is unnecessary, because DASA—Defence Analytical Services and Advice—annually publishes strength, intake and outflow data for regular personnel by age group.

The situation is, in practical terms, perfectly satisfactory. This is an important matter for us and I intend to look at it a bit further. For now, though, the new clause is clearly not necessary. Although we have had a useful discussion that has, unlike the first three sittings, been very consensual, I hope that the hon. Member for Stockton North will withdraw the new clause.

**Alex Cunningham:** As the Minister says, there is very little consensus about the idea, but I make no apology for proposing it to the Committee. At this stage, I would like to acknowledge the contribution that has been made by hon. Members who have served in the services. I have never done so myself, and the very thought

frightens the life out of me. I am full of admiration for people who actually go out there on the front line. I would never underestimate the armed forces and the contribution that they make to our country and to the development of our young people, as hon. Members have said.

I recognise that our services are the best. They are well-trained and extremely well-equipped, and we must continue to be proud of them. However, they are bad for many young people. One in three of them are leaving, but they can only do so with permission, which I will come to shortly. It is great to see young people benefit from training and education, but we need to make civilian training and education right and attractive to young people, so that they do not think that they need to sign up for several years in the Army instead. Joining the Army needs to be a positive choice, rather than an escape.

**Mr Robathan:** May I say how much I agree with the hon. Gentleman on that? It is important that we get training outside the armed forces right, but we do not need to damage the current situation, where training outside the armed forces is perhaps not quite so good.

**Alex Cunningham:** I understand and acknowledge that. I am grateful to the Minister for his comments about discharge. Young people know how unhappy they are; they should not have to rely on a commanding officer's opinion. I am pleased that the Minister will look at that issue. As he has already said, he expects me to withdraw the clause, so I beg to ask leave to do so.

*Clause, by leave, withdrawn.*

### New Clause 3

#### CLOSURE OR REALIGNMENT OF ARMED FORCES BASES

‘(1) Prior to commencing a programme of closure or realignment of Armed Forces bases the Secretary of State must—

- (a) prepare a base closure report;
- (b) lay a copy of the report before Parliament.

(2) The Secretary of State may not proceed with any realignment or closure of armed forces bases without the approval of both Houses of Parliament.

(3) In this section a “base closure report” is the recommendation of the Ministry of Defence for the future Armed Forces basing requirements of the United Kingdom and British overseas territories including the criteria used when reaching its recommendations and the priority given to each criterion.

(4) In this section an “Armed Forces base” is a base or series of installations consisting of facilities necessary for the support of the British Army, Royal Navy or Royal Air Force including security, communications, utilities, plants and systems, or property for which the Armed Forces have responsibility.

(5) In this section “realignment” means any action that alters the function of a base or any action for the purpose of transitioning the base to serve another branch of the Armed Forces.’—  
(*Mr Kevan Jones.*)

*Brought up, and read the First time.*

*Motion made, and Question proposed, That the clause be read a Second time.*—(*Mr Kevan Jones.*)

**The Chair:** With this it will be convenient to discuss amendment 10, title, line 2, after ‘Police’, insert

‘to provide for parliamentary control of proposals to close or realign bases for the armed forces.’

**Mr Robathan:** The new clause is unwelcome at a time when we are trying to streamline the Government and conduct operations. It would require the prior approval of both Houses for any alteration in the function and any closure of our bases, anywhere in the world—Germany, Cyprus, the Falkland Islands or Afghanistan—and that would hamstring our operations. As an aside, I used to be based in the Chelsea barracks, which has been sold, and the Duke of York's headquarters, Stirling lines in Hereford and Fallingbowl have all gone.

**Sandra Osborne:** Does the Minister have any idea of the alarm that has been caused in places in Scotland where bases are under threat of closure or, indeed, have already been announced as closing without so much as a by-your-leave? That came as a total shock to the communities, which will be effected economically and socially. In the past few days, we have talked a great deal about the military covenant and the public's role in it, and that has been abused in such circumstances by rushed and ill-considered announcements and decisions. Does the Minister not believe that it would be far better to have a considered process that was subject to scrutiny in the House?

**Mr Robathan:** First, I absolutely understand the uncertainty that has been caused in Scotland or anywhere in the United Kingdom by the regrettable measures that we have had to take in the SDSR. Do not think that Ministers or civil servants and officials in the MOD are not well aware of the impact that such a closure may have on not only members of the armed forces, but the civilian population and the surrounding communities. We take that into account.

An awful lot of work goes on to ensure that closures are done sensitively and that units can perhaps be transferred. As the hon. Lady will know, we intend to bring all troops back from Germany, which was the long-term intention of the previous Administration. Military bases may not look the same, but that does not necessarily mean that they are not still open.

On due process, I assure the hon. Lady that we are going through a tortuous, lengthy and considered process in the MOD on future basing. If we were to go down the route of the new clause, it would involve publicly revealing our plans and a lot of highly sensitive information. Even if I assume that the real intention of the new clause is to refer to bases in the United Kingdom alone, that would still be inappropriate. In practice, any major base closure or realignment would be notified to Parliament. The Department already undertakes a significant amount of consultation on estate sales with local authorities, interest groups, trade unions and local MPs. The hon. Member for North Durham knows that, because such things happened in his time.

Base closures and changes are already subject to a number of legislative requirements—for example, planning consents and the necessity for sustainability assessments. Parliament already has ample opportunity to make its views known to the Government about proposed major changes, and it does so vociferously, whether one is in opposition or in government. Parliament and, indeed, the nation will no doubt hold the Government to account for the decisions that are taken. The right approach, however, must be that the Government should take those decisions. Requiring advance approval would abandon

[Mr Robathan]

the Government's responsibility and make vital strategic decision making difficult or, indeed, impossible. Providing the detail required in a base closure report could well risk prejudicing the Department's negotiating position before obtaining a fair value for sale.

Amendment 10 seeks to amend the Bill's title in accord with new clause 3. In my view, the new clause is not wanted for the reasons that I have given, so there is no requirement for amendment 10 either. In light of my points, I hope that the new clause will be withdrawn.

**Mr Jones:** I thank the Minister, and I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn,*

**The Chair:** That concludes the formal consideration of the Bill. The formal report to the House will not happen until the Committee has considered its special report, which will be done in private.

11.42 am

*Committee adjourned.*

ISBN 978-0-215-55682-0



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