

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL ASSISTANCE) BILL [*LORDS*]

First Sitting

Tuesday 10 February 2015

(Morning)

CONTENTS

Programme motion agreed to.

Written evidence (Reporting to the House) motion agreed to.

CLAUSE 1 agreed to.

CLAUSE 2 under consideration when the Committee adjourned till this day
at Two o'clock.

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The Committee consisted of the following Members:

Chairs: †MR CHRISTOPHER CHOPE, SIR ALAN MEALE

- | | |
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| † Binley, Mr Brian (<i>Northampton South</i>) (Con) | † McGovern, Jim (<i>Dundee West</i>) (Lab) |
| † Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | † Moon, Mrs Madeleine (<i>Bridgend</i>) (Lab) |
| † Colvile, Oliver (<i>Plymouth, Sutton and Devonport</i>)
(Con) | † Morrice, Graeme (<i>Livingston</i>) (Lab) |
| † Gilbert, Stephen (<i>St Austell and Newquay</i>) (LD) | † Morris, James (<i>Halesowen and Rowley Regis</i>) (Con) |
| † Hamilton, Mr David (<i>Midlothian</i>) (Lab) | † Newmark, Mr Brooks (<i>Braintree</i>) (Con) |
| † Horwood, Martin (<i>Cheltenham</i>) (LD) | † Pawsey, Mark (<i>Rugby</i>) (Con) |
| † Howell, John (<i>Henley</i>) (Con) | † Shannon, Jim (<i>Strangford</i>) (DUP) |
| † Jones, Mr Kevan (<i>North Durham</i>) (Lab) | † Soubry, Anna (<i>Minister of State, Ministry of
Defence</i>) |
| † Lancaster, Mark (<i>Lord Commissioner of Her
Majesty's Treasury</i>) | † Twigg, Derek (<i>Halton</i>) (Lab) |
| † Lazarowicz, Mark (<i>Edinburgh North and Leith</i>)
(Lab/Co-op) | David Slater, Marek Kubala, <i>Committee Clerks</i> |
| | † attended the Committee |

Public Bill Committee

Tuesday 10 February 2015

(Morning)

[MR CHRISTOPHER CHOPE *in the Chair*]

Armed Forces (Service Complaints and Financial Assistance) Bill [Lords]

9.25 am

The Chair: Good morning everyone. Before we start, may I make a couple of announcements? First, tea and coffee are not allowed in this room during sittings of the Committee. Secondly, some of the amendments have been grouped together. As Members will know, if they wish to pick out a particular amendment on which to have a Division, it would be helpful if they advised me in advance.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25am on Tuesday 10 February) meet—

(a) at 2.00pm on Tuesday 10 February;

(b) at 11.30am on Thursday 12 February;

(2) the proceedings shall be taken in the following order: Clauses 1 to 3; the Schedule; Clauses 4 to 7; new Clauses; new Schedules; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 1.00pm on Thursday 12 February.—(*Anna Soubry.*)

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Anna Soubry.*)

Clause 1

CREATION OF OFFICE OF SERVICE COMPLAINTS OMBUDSMAN

Mrs Madeleine Moon (Bridgend) (Lab): I beg to move amendment 1, in clause 1, page 1, line 9, leave out “is”

The Chair: With this it will be convenient to discuss the following:

Amendment 22, in clause 1, page 1, line 9, leave out “is” and insert “has been”

Amendment 2, in clause 1, page 1, leave out line 10 and insert—

“(a) has been a member of the regular or reserve forces in the last five years ending with the day on which the appointment is to take effect, or”

Amendment 3, in clause 1, page 1, line 11, after “(b)”, insert “is”

Mrs Moon: It is an absolute pleasure to serve under your chairmanship, Mr Chope. I begin with a small confession: I am highly nervous about the progress of

these deliberations. I am not a barrister and am not versed in the law. I am what I call a jobbing parliamentarian, in that I feel my job is to look at where changes should and could most helpfully come, on behalf of the people I represent.

I have spent most of my working life examining the abuse of power. I looked at the abuse of children, at the abuse of adults and at abuse in its many manifest forms. I found in every case that abusers abuse because they can and because they can get away with misusing the power they have.

We are here today to look at an important Bill. Most Members in the room feel passionately about either the recommendations in the Bill or the need for the Bill to be strengthened. I am here in two guises, one of which is as a member of the Select Committee on Defence. As such, I will seek to press all of the Defence Committee’s amendments to a vote. I give that advance warning so that Members are aware of what I will be doing.

Today is, in a sense, the end of a long process. The House of Commons report in 2005 and the Deepcut review of 2006 highlighted grave concerns about the abuse of power. At that time, both the Deepcut review and the Defence Committee stressed the need for an ombudsman. We are now doing what we perhaps should have done after those reports were published. Because the chain of command was deeply worried about losing its authority, we decided instead to have a commissioner.

We should start by paying a huge acknowledgement to the work that Dr Susan Atkins has undertaken on behalf of this House and our armed forces. She has single-handedly reduced many of the anxieties and concerns that the chain of command might have about the role of an external complaints examiner. She has taken the chain of command with her and progressed to the point where there is general recognition that additional powers are needed and that an ombudsman would best exemplify those powers.

The Defence Committee feels that parts of the Bill needed strengthening. Most of the Committee are in Cyprus, so I have the job of speaking on their behalf. I apologise to members of this Committee whom we were unable to get to quickly to allow them to add their names to the amendments. The Chairman of the Defence Committee told the House of Commons that the central issues the Committee had looked at were transparency, flexibility, the scope and power of the ombudsman, and the transparency of the ombudsman’s findings. Most of those issues come down to questions of trust and of delay.

People say many things about the armed forces, but I was very interested to hear a sociologist describe the military as a closed society. A closed society is exemplified by a society with its own language, dress code, educational priorities, skills, legal system and behaviours. The armed forces also exemplify something that few of us ever demonstrate: a willingness to risk and give their life—literally, their life—in the service of their country. They are therefore set apart from the wider society they serve. Society employs the skills and values of the armed forces in order to protect itself. The country and Parliament demand loyalty of them, and it is our responsibility to pay back that loyalty. We give them limited access to employment tribunals and no contract of employment. In return, we give them a community covenant and an armed forces complaints system.

I spoke to Lieutenant Colonel Jeremy Field in the Defence Committee hearings and before them. He said that when the complaints system was set up, it was felt that there would be few complaints and many would be minor. The Minister has said previously that many of the complaints that do come in are minor, and that is correct. They involve food, transport and repairs that are not carried out quickly enough, especially to accommodation. We were told there were even complaints about the quality of the pillows provided at one point. However, there are also major complaints—involving bullying, harassment and discrimination—on which the Bill must always focus.

The Minister said in her Second Reading speech to the House that 1% of service personnel raised a grievance in the service complaints system. However, the continuous attitude survey showed that 54% of those who had a grievance did not raise it because they felt that nothing would be done. Some 53% were worried that their complaint would adversely affect their career and workplace, and 30% feared recriminations.

This first group of amendments address the nature of the person we want to fulfil this responsibility. Where there is a genuine grievance—particularly about bullying, discrimination and harassment—people need to feel confident that if they make a complaint, something will be done about it, it will not adversely affect their career and workplace and they will not face recriminations. That has to be the basis of the legislation.

In summing up on Second Reading, the Minister said she was happy to consider the Defence Committee's amendments. She felt that some were flawed, but did not specify which. We would get off to a flying start if she were to accept this first group of minor amendments, and we would proceed even faster if she could say which she feels able to accept at this point.

Jim Shannon (Strangford) (DUP): On the processes the hon. Lady is outlining, does she intend to ask about timeliness? Sometimes, it is important for the person who makes a complaint that it be dealt with in a certain time scale.

Mrs Moon: The issue of delay can be dealt with appropriately when we consider the group of amendments starting with amendment 6.

The first three amendments in this group relate to the appointment of the service complaints ombudsman, the period they serve for and whether they should or could have been a serving member of the armed forces within the previous five years. Jeremy Field, who ran the army service complaints process for many years, felt that a service complaints ombudsman should serve for “one term” of five years only. Former service personnel are barred from applying for the service complaints ombudsman post until a five-year period has elapsed. However, he felt they could play a valuable role in the ombudsman's office, providing military balance and understanding.

Sara Ogilvie from Liberty said that the appointment of recent members of the armed forces to the post would undermine confidence in the complaints process:

“If I was in their position and the person at the top of the system was someone who had previously been really involved in the armed forces, I would not have that confidence, even though they were not part of it at that time.”

The new Service Complaints Commissioner has said:

“An individual should be appointed on merit. There is an advantage to be gained from the fresh perspective that comes by recruiting someone who does not have a background in the Armed Forces. Equally there is a risk that someone who has been a senior officer in the Services for years and is most likely still connected to senior serving personnel, even if they left 5 years ago, will be perceived as ‘one of them’ and the independence of the office will be compromised.”

I totally agree with that.

Martin Horwood (Cheltenham) (LD): The commissioner continues, though, after the sentence that the hon. Lady has just read:

“However a blanket exclusion is equally undesirable; someone may have served as a reservist or left at a relatively junior level with subsequent experience outside of the Armed Forces making them a credible candidate for the role of Ombudsman.”

The evidence from the current commissioner suggests that we should not have the blanket exclusion the hon. Lady has proposed.

Mrs Moon: If the hon. Gentleman had taken breath, he would have heard me say that although the Service Complaints Commissioner made the point that is made in the Defence Committee's amendments, she went on to comment on the blanket exclusion. I will not repeat the words the hon. Gentleman quoted, but the Defence Committee disagrees with her on that last point. From the start, the House should make it clear that we want, as we have twice appointed, individuals who are not, and have not been within the previous five years, serving members of the armed forces. A clear message must go out to those who feel that they cannot make a complaint because they think that nothing will be done or that it will adversely affect their career and their workplace, or because they fear recriminations.

Later in the debate, I will refer to cases in which exactly such things have happened to individuals. I have with me a small selection of cases brought to me by serving and former members of the armed forces who feel they have faced bullying, discrimination and harassment, and recriminations that have affected their careers. I hope to refer to only one or two, so that I do not weary everyone. However, that is the reason why the service complaints ombudsman must be independent. Of course, someone who has served within the previous five years could have admirable qualities, but serving personnel must have confidence in the ombudsman. To make sure that confidence is there and to embed it in the institution of the ombudsman, such independence must be clarified and paramount, and therefore in the Bill.

The Chair: Before inviting Members to participate in the debate, I point out that it is not my intention to have a separate stand part debate because of the breadth of the hon. Lady's introduction.

Mr Kevan Jones (North Durham) (Lab): Mr Chope, may I ask for some clarification on my amendment 22, which is part of the group—may I move it?

The Chair: It is perfectly in order for the hon. Gentleman to speak to amendment 22; if he wishes to test the will of the Committee on it he will have the opportunity in due course.

Mr Jones: It is a pleasure to serve under your chairmanship, Mr Chope. I know that in previous Parliaments we have spent many Friday mornings together discussing private Members' Bills—those occasions were very enjoyable.

I will be testing the will of the Committee on amendment 22, which stands in my name and those of my hon. Friends the Members for West Dunbartonshire (Gemma Doyle), for Gedling (Vernon Coaker) and for Bridgend. This subject has haunted me—that is the word I want to use, though it is perhaps the wrong one—throughout the entire time I have been in Parliament. I was a member of the Defence Committee when the tragic events at Deepcut were discussed, as was my hon. Friend the Member for Midlothian. In 2005, we did a year-long report not just about Deepcut but more generally about the duty of care. The pressure from that report, along with that on Deepcut by Lord Justice Blake, led to the creation of the role of the Service Complaints Commissioner. We all agreed at the time that that was a major step forward in ensuring oversight of the chain of command, and in enabling those who serve in our armed forces to bring forward complaints.

9.45 am

My hon. Friend the Member for Bridgend has made an important point: members of the armed forces are unique and unlike other employees. They do not have the right to go to an employment tribunal or the right to be a member of a trade union, where they could argue their case when the system fails. I am not criticising any member of the armed forces or the chain of command, because I hold them in high esteem, but an organisation the size of our armed forces cannot have a situation in which everything on every single occasion always goes right. Sadly, Lord Justice Blake's report showed that, when it goes wrong, it goes very badly wrong. I think the chain of command and the wider military community recognise that oversight and having a Service Complaints Commissioner has been a positive thing.

I have never understood why the chain of command would see independent oversight as a threat to its decision making. The Defence Committee was clear in its 2005 report that it did not want someone from outside interfering in the individual decision making of the chain of command, because of the unique nature of what we ask our armed forces to do.

Mrs Moon: My hon. Friend will have read what the Geneva Centre for the Democratic Control of Armed Forces has said about the role of ombudsmen around the world. Its 2011 report pointed out that the UK was unique in being the only country where the ombudsman sits outside the armed forces. The complaint is administered and investigated by the armed forces, and the ombudsman only has oversight of the complaints system. In all other countries, the complaint goes directly to the ombudsman and not through the chain of command first.

Mr Jones: My hon. Friend makes a good point. That is why I do not think the chain of command has anything to fear from external oversight. Given the debate on Second Reading and the way in which the Government are approaching this now, I have a feeling of *déjà vu*. The arguments being made for why the ombudsman needs to be limited in scope—we will come

to that later—are the same as those that were made about why the Service Complaints Commissioner's role should be limited. It was argued that, if such an institution was set up, it would be the end of the world as we know it. Well, it has not been the end of the world as we know it. Dr Susan Atkins has made a very good contribution not only in providing oversight of the armed forces, but in adding to the understanding of the broader public and Parliament about how our armed forces operate. That has been an important step, so I see this as a continuation of that journey.

I am saddened that we are not giving the powers that are needed to the ombudsman. If the Bill does not do that, I wager that we will get to where we need to be within the next five years. However, we have an opportunity now to do it today.

Amendment 22 goes to the heart of what my hon. Friend the Member for Bridgend said about the independence of the person who is appointed as the ombudsman. When we set up the Service Complaints Commissioner, it was argued that the person had to have a military background. I am sorry, but I do not think that they do. Susan Atkins has proven that someone can do a very effective job without necessarily having an in-depth knowledge of the military from day one. All credit to her. She spent the early months of her appointment visiting units and getting a grounding and knowledge in how the armed forces work, but there is a danger.

Amendment 22 states that the person should not have served in the armed forces. I accept that the Defence Committee has proposed a time limit, which is a compromise. At the root of the matter is the question whether someone who has taken forward a complaint can have confidence that the individual who looks at it will not be influenced by the current chain of command or by previous associations.

Such problems occur not only in the military, but in other walks of life. We refer to the old boys' network—it is, unfortunately, a boys' network rather than a boys' and girls' network—and we have seen it recently in the appointment of the chair of the Government's inquiry into child abuse, where it was important for the victims that the chair of the inquiry had no association with any of the individuals or events involved. I am not saying that if a service complaints ombudsman had served in the military, they would necessarily know the individuals or the events that they would be investigating, but they might, through associations resulting from training or career paths, know individuals who were in a position to influence events.

I want to give the example of the Independent Police Complaints Commission. If we turn the clock back to the mid-1980s or early '90s, independent oversight of the police was seen as something dangerous and radical that would interfere with the policing of our nation. However, it would be difficult now to find many people who would argue that it has not become the norm. I hope that that will also happen with the service complaints ombudsman and that he or she will be seen as part of a process that aids the development of policy and fairness. The IPCC has recently come in for some criticism about employing ex-police officers to do investigations. We can understand that complainants may feel as though their complaints are not being taken seriously enough

or as though investigations may be prejudiced because those who investigate complaints could be influenced by associations from their previous careers.

The amendment is important to ensure not only that the process is seen to be fair, but that the person in charge of it is seen to be impartial and cannot be accused of partiality. I do not want the ombudsman to become one of those jobs that are, as I am sure the Minister knows, handed out at the end of illustrious careers as favours for things that have been done in the past. That would be totally unfair and wrong. Having spoken to the Chiefs, I do not believe that they would use the appointment in such a way, but there is a danger that a future Secretary of State could say that it would be a reward for favours past, which would be completely wrong. I will press the amendment to a vote, because the ombudsman's independence is crucial.

The fall-back position is clearly the time limit on the appointment proposed by my hon. Friend the Member for Bridgend. I put on record my thanks to the Defence Committee for its ongoing work in this area. Its report did an excellent job of getting to the nub of the outstanding issues in the development of the independent Service Complaints Commissioner. If we do not make the amendments that we are discussing now, we will have to make them within two or three years anyway. There is no danger at all that my amendments, or those tabled on behalf of the Defence Committee by my hon. Friend the Member for Bridgend, will in any way affect the fighting capability of our armed forces.

The Minister of State, Ministry of Defence (Anna Soubry): It is a pleasure to serve under your chairmanship, Mr Chope. As I rise to oppose the amendments and to explain my opposition to them, I call to mind the good debate that we had on Second Reading, in which there was much discussion about such amendments and the underlying themes.

I want to make it clear from the outset that there is much that brings this all together: the need to improve the system, and to make sure that the people who use it have confidence in it. I remind the Committee that the Bill is about a complaints system. Much of the Bill, before the ombudsman provisions, is about the nuts and bolts of the complaints system. However, it also creates the ombudsman and sets out the terms and conditions and the principles. That approach is important: there is often, in this place, a grave danger of over-prescription. I do not speak as a lawyer, although obviously that will taint many of my remarks.

Often we are over-prescriptive, as opposed to setting out good, sound principles and then allowing others to act on them to achieve what we all want. We will, in the ombudsman, have someone who will act fairly, without fear or favour. I am biased, of course, because I was at the heart of it, but after the appointment of Nicola Williams and her appearance before the Defence Committee, I am confident that the Bill will put into practice the underlying good words and principles that led to it.

These amendments would require either a gap of five years between a person's ending their service in the regular or reserve forces and becoming eligible for appointment to the post of service complaints ombudsman,

or would completely prevent any former member of the regular or reserve forces, or the civil service, from becoming an ombudsman.

Susan Atkins served with great distinction as the Service Complaints Commissioner for the Armed Forces, but if the amendments had been in force she could not have been appointed, because she was in the civil service in 1989. She served with some distinction for a number of years, but she would have been precluded from even applying for the position. That shows why the amendments—although I understand where they come from—are flawed.

The Bill requires simply that to be appointed to the post, an individual must not currently be a member of the regulars, reserves, or civil service. That is right. The service complaints process is in place to deal with a wide range of matters, as we have heard from the hon. Member for Bridgend, that can be of concern to our personnel. For those concerns to be addressed and resolved, it is essential that everyone who might want to use the process should have confidence that their complaint will be handled with impartiality and professionalism, which are the qualities that we expect from the ombudsman.

The ombudsman must also of course be demonstrably independent of those whom they hold to account for the way in which complaints have been handled. That is why they are to be outside the chain of command, with access to Ministers when they consider it necessary. I cannot emphasise that enough.

From our experience of Dr Atkins and given what we all know of the attitude of Nicola Williams, we can have great confidence in those people, who act without fear or favour. Not only will they knock on my door, or the door of whoever holds my post; without fear or favour, they will knock on the door of the Secretary of State, or the chief of any of the armed services—anyone in any position anywhere. Of course, they will have complete freedom not only to approach the Defence Committee, but to go to anyone in the press or media if they wish. Their unfettered access and ability to speak is crucial to their role; and it is a critical thing for Members to remember in considering the Bill and amendments.

The ombudsman will continue to be accommodated outside the defence estate. I have been to the offices. To reinforce their independence, they will recruit their own staff in line with prevailing civil service recruitment guidelines. The Bill includes a new provision as a further mark of the role's independence and the security of the post holder's tenure, in that the post holder will be subject to appointment by Her Majesty. Again, that is an important new feature of the position. As the ombudsman will be a post of public interest, recruitment activity will include a pre-appointment hearing by the House of Commons Select Committee on Defence, as was the case in respect of Nicola Williams.

10 am

We want the best candidate to get the job. Frankly, from my experience of considering people for appointment, if somebody has been too near the chain of command or if anything in their history might undermine their ability to do the job, whatever it might be, one does not appoint them. It is as simple as that. That is the rigorous process that we go through.

The current provision gives us flexibility during the recruitment process. Any previous experience of our armed forces can be scrutinised and fully assessed. It could well be that someone who has served at any time in the past could be seen as impartial and independent from the armed forces in whatever they have achieved since leaving service. In other words, somebody may have served as a reservist for a short time—perhaps from the age of 20 to 21—with great distinction. Why should that prevent them, many years on, from being considered for appointment as our ombudsman?

Mrs Moon: We are not asking for many years, but simply for five years. Someone who served at the age of 21 is highly unlikely, even if they served until the age of 22, to be suggested at 27 for the post.

Anna Soubry: Indeed, but the danger of such over-prescription is that if they served five years and one day before the appointment, they would be all right to be considered. That is not really the issue. We should consider the individual's experience and what they bring to the role. If we think that they have been too near, or there is any other reason why we do not think that they will do the job required, we simply will not appoint them. The five-year period would run the risk of excluding people who might make a wonderful appointment. That is the danger of over-prescription.

Of course, the independent assessors will also be involved in the process, as will the Defence Committee, which will provide the essential safeguards to ensure that we get exactly the sort of person whom we want, and whom we have already achieved in the appointment of our current Service Complaints Commissioner. For all those reasons, I must resist the amendments, and I urge my colleagues to do so as well.

Mrs Moon: I will not take any more of the Committee's time, but I would like to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 1]

AYES

Hamilton, Mr David	Moon, Mrs Madeleine
Jones, Mr Kevan	Morrice, Graeme (<i>Livingston</i>)
Lazarowicz, Mark	Twigg, Derek
McGovern, Jim	

NOES

Binley, Mr Brian	Lancaster, Mark
Bridgen, Andrew	Morris, James
Colvile, Oliver	Newmark, Mr Brooks
Horwood, Martin	Pawsey, Mark
Howell, John	Soubry, Anna

Question accordingly negated.

Amendment proposed: 22, in clause 1, page 1, line 9, leave out "is" and insert "has been".—(*Mr Jones.*)

Question put: That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 2]

AYES

Hamilton, Mr David	Moon, Mrs Madeleine
Jones, Mr Kevan	Morrice, Graeme (<i>Livingston</i>)
Lazarowicz, Mark	Twigg, Derek
McGovern, Jim	

NOES

Binley, Mr Brian	Lancaster, Mark
Bridgen, Andrew	Morris, James
Colvile, Oliver	Newmark, Mr Brooks
Horwood, Martin	Pawsey, Mark
Howell, John	Soubry, Anna

Question accordingly negated.

Mrs Moon: I beg to move amendment 4, in clause 1, page 1, line 13, at end add—

- The period for which a person is appointed shall be not less than five years and not more than seven years.
- A person who is appointed as Ombudsman may not be re-appointed to the office."

This simple amendment suggests that the service complaints ombudsman should be appointed for a non-renewable five to seven-year period. The Defence Committee was of the mind that that should be stated in the Bill. We felt that there was an issue with the transparency of the tenure and with increasing trust and confidence. Members of the armed forces have said that there is no fear that the ombudsman will try to make themselves popular with the chain of command to seek a further appointment.

On the previous group of amendments, the Minister said that she did not want to be over-prescriptive. We have not been over-prescriptive; we have said five to seven years and have given flexibility in that. We made that decision on the basis of some of the evidence that we took. The witness from Liberty said that a seven-year non-renewable term would be preferred to a five-year term that can be renewed. It is important to get this right. We do not want a situation where the ombudsman does not know when they are leaving, while people working with them do know.

The Ombudsman Association said:

"The term of office should be of sufficient duration not to undermine independence. The appointment should be for a minimum of five years."

It continued:

"This is also recognised internationally as best practice to avoid the perception...that an ombudsman's decisions might be influenced by their employment position. That fixed term should be set out in legislation."

The Rev. Nicholas Mercer, a former army legal adviser, and Lieutenant Colonel Jeremy Field, the former head of army service complaints, were concerned about the possibility of a reappointment for a further five years. The Rev. Nicholas Mercer thought that there was a danger that the Secretary of State could be tempted to reappoint an ombudsman who had a good relationship with the chain of command. Lieutenant Colonel Field told us that 10 years was too long. He advocated five years initially, and then an "option to extend it by a year or two".

We looked at all the different options put to us. The Equality and Human Rights Commission said:

“The Ombudsman’s appointment should be for a non-renewable term of at least five years and... a person should not be eligible to be appointed as Ombudsman for a period of five years after leaving the regular or reserve forces.”

The new service complaints ombudsman said:

“A standard appointment for an Ombudsman is five years and this is reflected in the Ombudsman Association criteria”.

She went on to say that it would be

“helpful for legislation to specify that the initial appointment is for a period of five years. The ability to extend for three years is sensible.”

The Defence Committee’s concern was not restricting the appointment to five years but allowing for a service of seven years. We feel that it should be clear from the beginning how long the ombudsman will remain in office. There should not be reappointments; this should be a set term of between five and seven years. We are quite happy for the term to be set at five, six or seven years because we appreciate that there can be difficulties in finding the right calibre of person, as we found when recruiting Dr Atkins. We feel that the Bill should specify how long the ombudsman will serve, as that will give confidence to all concerned.

Mr Jones: I rise in support of amendment 4. If we are appointing someone to such a post such, it is important that we know the length of time involved. As my hon. Friend the Member for Bridgend has already indicated, five years is an internationally recognised period; there needs to be flexibility for the extra two years. Regarding the renewable term, however, the important point—this goes back to our arguments about the last group of amendments—is that this issue is about the independence of the person who has been appointed. As I said then, it is important that the complainants have confidence that the individual who is the commissioner is impartial.

I am not suggesting for a minute that the present Service Complaints Commissioner, or the new one, would go native, to use the phrase, in developing relationships that are too close with the chain of command or with others, but the amendment would prevent that from happening. Clearly, the five-year term is important, because whoever is appointed needs a period, not only to bed in but to understand both the nature of the complaints and the nature of our armed services, so this amendment is practical.

People might ask, “Why should this be in the Bill?” An issue that affects a lot of the amendments tabled by members of the Defence Committee is that, if something is not in the Bill, we would be leaving it to future Ministers to decide. To be clear, regarding what we want—not only in the remit but in the type of person who becomes the ombudsman—stating it in the Bill would give some assurance that a Secretary of State in a future Government could not use any vagueness or flexibility in the Bill. I think that “flexibility” is how the Minister referred to it, and flexibility is okay if it is exercised judiciously by the right hands. However, I am sure that the Minister does not have a crystal ball to show her what will happen in May or in elections in the future, or what type of Government we will end up with. So there could be a situation whereby, if the Bill was not specific, a Minister could decide, for example, that the ombudsman could go on ad infinitum.

It is important that this measure is in the Bill—*[Interruption.]* The Minister is chuntering. If she has got great faith in future Ministers to do the right thing, that is what we are asking the Committee to do. That is why the Bill should make it quite clear to future Ministers what length of time a service complaints ombudsman can serve; it would not be left to the whims or—in the Minister’s words—“the flexibility” of future Secretaries of State.

Anna Soubry: I quite agree and I acknowledge the amendment’s aims, in terms of the type of tenure. However, the hon. Gentleman is quite right: I disagree fundamentally with the need for that to be stated in the Bill. It is important for us all to remember that if this Bill is passed and a future Government decided that the perfect term was six years, or indeed four or three, we would have to come back and pass fresh legislation. That is the danger of putting things in the Bill.

As Committee members will know, we have just appointed Nicola Williams as our new Service Complaints Commissioner. The advertisement for the post made it absolutely clear that it was for a five-year, non-renewable term, and that has since been confirmed in her letter of appointment, which is the appropriate place for these terms to be set out.

Mr Jones: Therefore, what problem has the Minister got with putting this in the Bill?

Anna Soubry: Because, as I said before, it is too prescriptive and it ties the hands in a way that is not good legislation, because the commissioner would have to come back if we wanted to appoint somebody for, say, a four-year term, or a six-year term. It would tie our hands and not give us the flexibility to ensure that we appoint the very best candidate to the position. As I say, with Ms Williams, who will be our first service complaints ombudsman, her appointment—assuming it is approved as such—will be approved by the Queen. With a new position and a new complaints system, we want to retain the flexibility to amend those terms of employment if experience suggests that it might be necessary.

10.15 am

Andrew Bridgen (North West Leicestershire) (Con): Will there be any flexibility, if the ombudsman loses the confidence of the service or the Minister, for him or her to be removed and replaced during the tenure that they have been given?

Anna Soubry: Yes, absolutely, my hon. Friend can be assured of that. Especially with a five-year appointment, we want to make sure that we have that ability if it does not work out in the way that we are all clear it must work out. Our concern is about its being in the Bill, so that if experience says that it should be a six-year term or a four-year term, we have to come back. This is all about making sure—

Mr Jones: Will the Minister give way?

Anna Soubry: No, I have given way once. The aim is absolutely to make sure that we have the flexibility to get the best person. That is why I cannot agree to this amendment and ask hon. Members not to vote for it.

Mrs Moon: I would like to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 3]

AYES

Hamilton, Mr David
Jones, Mr Kevan
Lazarowicz, Mark
McGovern, Jim

Moon, Mrs Madeleine
Morrice, Graeme (*Livingston*)
Twigg, Derek

NOES

Binley, Mr Brian
Bridgen, Andrew
Colvile, Oliver
Horwood, Martin
Howell, John

Lancaster, Mark
Morris, James
Newmark, Mr Brooks
Pawsey, Mark
Soubry, Anna

Question accordingly negated.

Clause 1 ordered to stand part of the Bill.

Clause 2

REFORM OF SYSTEM FOR REDRESS OF INDIVIDUAL GRIEVANCES

Mr Jones: I beg to move amendment 23, in clause 2, page 2, line 15, at end insert—

“(2A) If the person referred to in subsections (1) and (2) is deceased, the complaint may be made or maintained by his or her next of kin, or personal representative.”

The Minister did not allow me to intervene, but I am not sure where the process of removing an ombudsman is in the Bill. The Minister indicated that the Secretary of State could do this. Could she clarify this important point?

In clause 2, we are getting to the meat of the operations of the ombudsman. Amendment 22 would allow a third party to take over a complaint in the event of the death of the complainant. Currently, if the complainant dies the complaint will die with them, which will prevent the individual who has passed away to get any justice. Also, I think that some improvements in the system that could be argued for would not be looked into. This is very relevant if you look at Lord Justice Blake’s report on Deepcut, for example: if any of those individuals had made service complaints and then tragically committed suicide while the complaint was ongoing, the complaint would have died with them. It was clear from Lord Justice Blake’s report that there were issues around not just one but all four of those individuals that could have implications, not just for them personally, but for the wider culture and other events taking place at the time at Deepcut.

The Minister has argued that common sense would be the order of the day in terms of whether the ombudsman would be able to continue a complaint after death. The thread running through all the Government’s resistance to the amendments proposed by the Select Committee and the Opposition is that there is no need for them in the Bill, but I am of the opinion they are needed, because they give clarity for the complainant to know that their complaint will be taken seriously in the event

of a death, and for the ombudsman in relation to any doubt about being able to pursue those complaints should he or she wish to do so.

I know that the Minister argued on Second Reading that it would be unfair to the person being complained about if they could not make a proper defence against the person who had complained, but many such cases, we are not just talking about the complaint. We will come on to the meat of what the ombudsman is in the next group of amendments, but the important point is that, yes, someone will make a complaint, but often that will throw up other issues that are both relevant to their complaint and have wider policy implications for the way the armed forces operate. As we know, most complaints are about service life—for example, pay and holiday allowances—so if the complaint dies with the person, that would be unfair.

It is important that family members should be able to continue with complaints. I am thinking about the cases not only at Deepcut, but at Catterick and the death, for example, of Lynn Farr’s son, Daniel. Had he made a complaint, it would have been wrong if that had died with him, because the family would not have felt that the complaints had been dealt with in detail. Some of the broader policy issues that related, for example, to his death would also not have been brought to the attention of the ombudsman and the chain of command, and some of the changes that were subsequently made in his case would not have been made.

I turn to amendment 24 and 25. Amendment 24 relates to—

The Chair: Order. Those amendments are grouped separately.

Mr Jones: My mistake, Mr Chope.

Anna Soubry: It is not as simple as saying that this should not be in the Bill; this is actually a matter of principle. With great respect to the hon. Gentleman, I think he misses entirely the point of the complaints procedure. A service complaint is a personal grievance based on the complainant’s experience of what has taken place and their view of the redress that they want. That can be, “I did not get my allowance to which I was entitled—that is my complaint. The redress I seek is that I get my allowance.” Another example could be, “I’ve been bullied by Sergeant Bloggins. The redress I seek is that he is disciplined in some way.” That is what this is all about: a complaints system based on an individual grievance and the redress that they seek.

Mr Jones: This is where the Minister fundamentally misunderstands the role of the ombudsman. For example, if somebody had been bullied, as she suggested, and that led to the individual’s death, even if they had put a complaint in, it would die with them. There may well be issues relating not only to that individual’s complaint but to other events taking place in and around the particular establishment or unit that need addressing. Having dealt with a lot of the families from Deepcut and other instances involving bullying, I can tell her now that they will feel very aggrieved if there is a cut-off for those types of complaints.

Anna Soubry: I was going to say that I was grateful for the intervention, but if I may say so, it is further evidence that the hon. Gentleman does not understand the reality of his own amendment. If a death occurred—these things are deeply regrettable and mercifully rare—the proper place to deal with it, because it would be an unexplained, unexpected death, would be at a coroner’s inquest. [*Interruption.*] I am being passed notes, which are all very helpful, but bear with me.

If someone dies and it is believed that there may be a link between their death and a complaint that they may or may not have raised in the current or the new system as we anticipate it, it matters not, because the coroner’s court intervenes for the reason that it is an unexplained, unexpected death, and I have complete confidence and faith in the coronial system to do exactly what is required in those cases. Let us remember that the coroner is not looking at whether it was Sergeant Bloggins who particularly—

Mr Jones: Will the Minister give way?

Anna Soubry: No, I will not give way, because this is a very important point that needs to be understood by all of us on the Committee. Not only is there the coronial system, with all the rigour of the coroner, all the powers available to them and the findings that they can go on to make, but there are our own—“our” meaning within the armed forces—internal systems: the service inquiries, which are conducted with vigour and without fear or favour. Those two features, in my view, can give any family in 2015 confidence that in the event of one of their loved ones suffering in this way, the right thing will be done. I will now give way, but briefly.

Mr Jones: It is strange that although this is supposed to be a debate, the Minister seems reluctant to enter into any type of dialogue. She should read Lord Justice Blake’s report. If she thinks that the coronial system in every part of this country—I accept that it has been improved since the appointment of the Chief Coroner—is the method for dealing with this matter, she is mistaken. She says service inquiries are rigorous. I am sorry, but they were not rigorous in, for example, Deepcut and other cases. If she thinks that families will accept that they should rely on that, I can tell her now that they will not.

Anna Soubry: The Bill does not seek to preclude the pursuance of a complaint in the event of the complainant’s death. The Bill does not prevent that from happening. Indeed, it is absolutely the view of the Ministry of Defence, the armed forces and myself that in certain circumstances that should be possible, and that is what the Bill gives: flexibility, if it is in the interests of justice, for the complaint to be continued in any event. We have examples of where people have started a complaints process—it has been commenced and gone through—and unfortunately the complainant has died, but notwithstanding that, the complaint continues to resolution. It may be that the complaint is about a pension or an allowance or about bullying, and those hearing the complaint have heard all or most of the evidence that they need to and they know that continuing the complaint will not cause any disadvantage to anyone. I do not believe that the Opposition appreciate that, either.

Let us put ourselves in the position of the person against whom the complaint is made. Let us say that we are Sergeant Bloggins or a member of his family. We want to ensure that when he denies an allegation of, for example, bullying, he too has the right to have his case and all the evidence properly heard. If unfortunately the complainant is dead and there cannot be that sort of testing of what the complainant has apparently alleged, because that person is no longer with us, there is a real danger that the person against whom the complaint is made will suffer an injustice. That would not be right or fair.

Andrew Bridgen: If the member of service personnel who made a complaint to the ombudsman tragically dies, what does my hon. Friend envisage the relationship will be between the coroner and the ombudsman’s office while they investigate the complaint made?

10.30 am

Anna Soubry: When there is an unexpected, unexplained death, the coroner in any event steps in and does their brilliant work. If a complaint has got through the complaints system all the way to the ombudsman—we are talking not only about the ombudsman but about the whole of the complaints system—it will be looked at, as the Bill allows, on the basis of whether it is in the interests of justice for that particular complaint to continue. There are instances when we have no objection to a case continuing because it can improve our system, whether it is in relation to allowances, or because it is an allegation of a more serious nature. For all those reasons, I urge everyone to vote against the well intentioned, but wrong, amendment. It really is not needed and the danger is that it will create—

Mrs Moon: Will the Minister give way?

Anna Soubry: No, I am sorry; I want to complete my remarks. The danger is that it could cause great injustice to others whose voice will effectively be lost, because this is simply the wrong thing to do.

Martin Horwood: Although I support of the Bill as a whole, I am sympathetic to the aims of amendment 23. The Minister said that it raised matters of principle about the actual purpose of the Bill—by implication, saying that this was about establishing a complaints process for living service personnel—but there is a wider principle at stake, which is that the whole value of a complaints system is not only for the complainant, but for the entire organisation and the whole structure. That is the value of a complaints process in business, in government, and, indeed, in the military: it enables the organisation to do its business better to avoid such complaints arising in future. So there is a wider principle that says we should see complaints through, especially when they have been initiated, and they should not simply fall when somebody involved in the making of the complaint dies.

Anna Soubry: Does the hon. Gentleman accept that they absolutely will not fall? If the circumstances are right and it is in the interests of justice, we want such complaints to continue, but under the amendment there

[Anna Soubry]

would be no discretion involved. That is why it is wrong. This is about an individual's complaint in their service, as is common in all complaints systems. That is why it is not in the terms that he puts in.

Martin Horwood: I am not quite sure I follow the logic of that. The Minister is saying that if the complaint cannot be pursued within the internal system after the person has died, we are to rely on the coronial system or the courts to be the proper place for such complaints. That is no more desirable than pursuing the complaint internally.

The Minister's answer to the point about the fair right of reply for the people being complained against—this was the case made by her noble friend Lord Astor in the House of Lords—is also slightly curious. Again, if we rely on the coronial system to pick up the complaint, exactly the same principle would apply there and in any other court or complaints process once the person involved had died. Liberty and others make the point that the right of the surviving person who has been complained against to make their own case is not inhibited by continuing with the complaint. They can still put their own side of the argument, and they will have the right to make assertions that are less open to challenge than they would have been if the complainant had survived, so, in a sense, they are in a stronger position.

The amendment is difficult for me. A good principle has now been explored in the House of Lords, on Second Reading and now in Committee, and there comes a point when we have to look at supporting such amendments to make such changes, because it matters to the families of service personnel. I remain sympathetic to the amendment, although I am happy to once again listen to the Minister's remarks.

Mrs Moon: The new Service Complaints Commissioner has said:

“There is merit in allowing discretion for an individual's personal representative or a family member to make or continue a complaint on behalf of a complainant who is deceased or otherwise unable to act.”

I am sure that the hon. Member for Cheltenham is aware of that. The complaint on behalf of a complainant who is deceased or otherwise unable to act should be allowed to complete. The Service Complaints Commissioner is concerned about that being allowed in all circumstances. She has said that there will be circumstances where it is not appropriate for a complaint to continue and where

“fairness may be compromised in progressing a complaint in the absence of evidence from the Service person. The Services will also have to consider the entitlement of the personal representative or family member, particularly if there is disagreement between immediate family members.”

She concluded that

“some flexibility in this matter is the best approach, perhaps giving the Services (and the Ombudsman) discretion to investigate complaints made by the personal representative or a family member. The Ombudsman could play a valuable role in reviewing whether the discretion was exercised properly, reasonably and fairly.”

The amendment that my hon. Friend the Member for North Durham has tabled would allow that to happen, and it would also send the message to family members

that a complaint does not have to die with their loved one. Thinking back to the case of Anne-Marie Ellement, an examination of the service complaints system in relation to her death found no complaint from her. However, Lieutenant Colonel Jeremy Field, who was head of Army complaints at the time, told us in evidence that he did an exhaustive search, but because of the chaos in the system, a complaint may well have been lodged but he could find no evidence of it, so we do not know for certain that no complaint had been made in that situation. Families should be allowed to continue a complaint if it has been established and if there is no injustice in completing it. I believe that the amendment addresses those issues.

Mr Jones: We seem to be having a rerun of Second Reading. The Minister has a hugely inflated opinion of the coronial system, but it does not reflect my experience of the way it actually operates. If she had ever had any dealings with the Middlesbrough coroner, for example, she would have very little faith in his ability to investigate deaths in a timely manner. That is important for family members, and I think it comes down to the way in which she has looked at the Bill right from the beginning. The Bill is being seen as establishing a complaints system for the individual, but it is not. One good thing that Susan Atkins has done is to draw wider lessons from problems that originate in a complaint but which demonstrate that broader issues in a unit, or in the service as a whole, need to be addressed.

The Minister talks about injustice, but I feel that the injustice for families would be if a complaint died with an individual and the ombudsman had no opportunity look at the issues that related to them. The Minister is putting too much emphasis on future Secretaries of State, and that is why the Bill needs to be changed.

Mr Brian Binley (Northampton South) (Con): Is it not true that if the coroner service is it fault, it is necessary to reform the coroner service? That is not the point of the debate, however. The coroner is designed to be the last line of defence for all people in this country. If the coroner decides that there is a case to answer, their decision tips off other authorities to become involved. That is the role of the coroner. Having been in exactly that position as a result of some untimely deaths in a care home, we managed to get the coroner's rules changed, to my relief and to the relief of many others. We are getting two things mixed up here and we need to be a bit careful.

Mr Jones: No, I am not. I totally agree that coroner services need reform. That is why Opposition Members and I argued for the appointment of a Chief Coroner, which the hon. Gentleman and his colleagues voted against and resisted up to the last minute. I think that the Chief Coroner will make a difference over time, but we are talking about the role of the service complaints ombudsman and whether he or she—it will be a she in this case—should have the ability to investigate a complaint after someone dies. Without that, the complaint finishes at that point.

Anna Soubry: No it does not.

Mr Jones: I am sorry. The Minister is relying on the flexibility of the Minister of the day or the chain of command to continue the case. As I said earlier, I am not prepared to leave it to future Ministers of whichever political persuasion.

Anna Soubry: Will the hon. Gentleman give way?

Mr Jones: I will, actually, because I believe that Committee should be about debate. I hope that the Minister gives this courtesy in future.

Anna Soubry: That is a little harsh, because I certainly gave way to one intervention. May I make clear that, if a complaint is in process, it is not for the Minister to say yea or nay to whether it should continue? Once in the system, be it the complaint made to the commanding officer or the complaint that has failed and gone on to the ombudsman, it is for the system to decide whether to continue the complaint in the event of the death of the complainant. For some complaints we would definitely say, "Please let it continue," because we want a determination, whether on pay or allowances or an allegation of bullying. The Bill as drafted leaves discretion. The amendment would take that away, which would be very bad.

Mr Jones: No, it would not take away discretion—the Minister is talking complete nonsense. It allows the ombudsman, who is outside the chain of command and away from Ministers, to make that decision. I always get worried when people talk about "the system" because I am not sure what the system is.

Anna Soubry: The complaints system.

Mr Jones: Well, does it have an independent mind that allows it to decide whether a complaint should go forward? No, it does not. It is impacted on and influenced by the chain of command, Ministers and the Ministry of Defence. *[Interruption.]* The Ministers chuckles, but she should tell me what the system is. Does it automatically decide whether complaints should go forward? No, it involves the chain of command and Ministers may be able to influence it. The amendment would allow the ombudsman to continue with a complaint.

I accept that the ombudsman may make decisions in some cases that complaints will not go any further, but the amendment would allow her to do that. A theme runs through the Bill and what the Opposition and the Select Committee are interested in doing is giving as much power as possible for making decisions to the ombudsman rather than future Ministers or the chain of command. In the years I have been dealing with this subject, I have found that that is exactly what the families of those who die in service require and, I think, that would also lead to an improved system. We saw that with the introduction of the Service Complaints Commissioner, which the chiefs say has improved the system. That would also provide an extra spotlight to be put into parts of the system, as the Minister refers to it, and lead to improvements.

Anna Soubry: The hon. Gentleman is being a little naughty. When I say "the system" I mean the complaints system as detailed in the regulations, not the system as

he interprets it, which involves others. I think my language was accurate, because I was talking about the service complaints system as outlined in detail in the regulations.

Mr Jones: In terms of the system, people have to make a decision on whether a complaint goes forward. What I am arguing, as others have argued, is that that decision should lie with the ombudsman. That makes the decision independent and prevents the Minister or the chain of command from influencing the system.

Andrew Bridgen: I am listening with great interest to the hon. Gentleman's remarks, and he has some good points. Would he support an amendment to the effect that where a complainant unexpectedly died, in whatever circumstances, it would automatically go to the ombudsman for determination?

Mr Jones: No, because that is silly. If someone dies of a heart attack or is killed in a car crash, for example, why should the case go to the ombudsman? We are talking about complaints already initiated. It would clog up the entire ombudsman system if, for example, people died from natural causes or tragic accidents.

10.45 am

Andrew Bridgen: I meant that if a person made a complaint, it would automatically go to the ombudsman if they passed away after that.

Mr Jones: The hon. Gentleman is therefore agreeing with the point I am making. That would allow the ombudsman then to decide whether the case would go forward. If the hon. Gentleman is arguing that anyone who dies in service should automatically go before the ombudsman, I do not agree.

Anna Soubry: As the hon. Gentleman knows, if it is about pay and allowance, there are other ways for the family of the deceased to pursue the matter, and rightly and properly so. It would go to the Service Personnel and Veterans Agency, which would undoubtedly determine it to the benefit of the family.

Mr Jones: As the former Minister in charge of the SPVA, I hold it in hugely high regard, but I must say that that is not always the case; the decision sometimes ends up on the Minister's desk.

The Minister is returning to the idea, as she has on numerous occasions in this debate, that somehow the ombudsman just deals with trivia about people's pay and terms and conditions, or their mattresses being too hard or too soft. That is not the case. If she had read around the subject before this debate, she would know that we are talking about complaints that in some cases are very serious: bullying, intimidation and, in the most extreme cases, as my hon. Friend the Member for Bridgend has described on numerous occasions, sexual assaults and other incidents that have gone unreported.

I do not accept the idea that if someone is in that appalling situation, the system should decide whether their complaint should go forward. The ombudsman should consider that complaint. That would give confidence. If the Minister met some of the families—

Anna Soubry: I have.

Mr Jones: I am not suggesting she has not, but if she has met some of the families involved in Deepcut or of those who have died in service, she will know that they would not trust the system to take care of their loved ones' complaints.

Martin Horwood: The hon. Gentleman is being unfair on the Minister, who has never suggested that the issues it is intended the ombudsman will handle are not serious. I am now slightly confused. Haven't risen to speak in sympathy with the amendment, he now seems to be arguing that it should be the ombudsman who decides whether a complaint goes forward. As I understand the Minister's remarks, that is already the case. What the amendment says is that the next of kin or the personal representative of the deceased should make that decision. I would like him to clarify exactly which argument he is making. He seemed a moment ago to be saying that it should be the ombudsman's decision, but as I understand it, it already is.

Mr Jones: The fact is that in bullying, harassment and similar cases, it is important that family members have the ability to do so. Under the Minister's proposals, the system would close that down. There are two important issues: that families can ensure that a complaint goes forward, and ensuring that lessons are learned. It will not bring those individuals back—that was the tragedy of Deepcut and other cases—but that is the important point.

Oliver Colvile (Plymouth, Sutton and Devonport) (Con): What a delight it is to serve under you, Mr Chope. On a minor point, surely sexual assault is an issue for the police to take up as well.

Mr Jones: Well, it is; the hon. Gentleman is right that the service police should investigate, but I ask him to read some of the cases that have emerged where such complaints have not been referred to them, either because the immediate chain of command, though aware of the matter, did not report it, or sometimes—I think things have improved in the past few years—because the service police did not take the cases seriously. It is right that in a perfect system, what the hon. Gentleman suggests should happen. It would be good if the ombudsman could examine the chain of command in such instances. There are later amendments dealing with the service police.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 4]

AYES

Hamilton, Mr David	Moon, Mrs Madeleine
Jones, Mr Kevan	Morrice, Graeme (<i>Livingston</i>)
Lazarowicz, Mark	Twigg, Derek
McGovern, Jim	

NOES

Binley, Mr Brian	Lancaster, Mark
Bridgen, Andrew	Morris, James
Colvile, Oliver	Newmark, Mr Brooks
Gilbert, Stephen	Pawsey, Mark
Howell, John	Soubry, Anna

Question accordingly negatived.

Mrs Moon: I beg to move amendment 40, in clause 2, page 2, leave out lines 25 and 26 and insert—

“(a) for the establishment of a centralised tri-service administrative office for the processing of service complaints; and

(b) for service complaints to be submitted to that office before being passed to an officer of a specified description;”

To help the Committee, I will not press the amendment to a vote. It is a probing amendment on an issue I want the Minister to consider. Much of it comes from extensive discussions with Lieutenant Colonel Jeremy Field, now retired. He was given the job of creating and rolling out the Army's first ever Service Complaints Wing in 2010, and was given six months to do it. In evidence to the Defence Committee he said he was

“shocked at how little knowledge there was about Service Complaints, how little interest the chain of command took in Service Complaints and the fact that there was no overall oversight as each command was responsible for Service Complaints within its geographic boundaries and all had different systems.”

He set up a system in which all service complaints were sent to him at Army headquarters and he read each one, as did a lawyer. A lawyer was there in case any possible criminal act had occurred. In that case the complaint was stayed pending a Royal Military Police investigation. In several cases that led to the Service Prosecuting Authority deciding that court martial proceedings against respondents were appropriate.

Complaints were allocated to a caseworker, who would liaise with the deciding officer with process advice and maintain an overview of each case with monthly updates. The legal officers provided the necessary legal advice to the deciding officer as the service complaint progressed. In 2010 that brought a chaotic system into some sort of structure.

I mentioned on the previous amendment that Colonel Field had been asked whether a complaint had been made in relation to the late Corporal Ellement. His words may help the Minister:

“I checked our data base and found that we had no record of a complaint. However, if she had made a complaint through her chain of command, given the haphazard system that was in operation before my 2010 changes, it may not have been recorded.”

The Navy has 10% of all bullying, discrimination and harassment complaints, and the RAF 38%; it is thought that that is based on its high number of women. The Army has 43%.

The amendment indicates the need to examine the introduction, tri-service, of a centralised complaint wing, and we have seen such centralising in the Army. Best practice could then be shared, and professionalism and expertise could be built. The work load could also be shared, depending on who was carrying the most complaints. There could be greater trust, in that a single-service ethos would not influence investigations. Delays would also be reduced. Where there was the potential for conflict, or a concern that the chain of command was involved in the complaint in any way, the case could be passed to another service.

Those are my suggestions to the Minister. She can take them away and do with them as she wishes. I merely propose the amendment in the hope that it will be taken into consideration. I do not want to press it to a vote.

Anna Soubry: This is a good example of where I agree with so many of the sentiments expressed by the hon. Lady, but the question is how we achieve what she proposes. I am more than happy to discuss the issue with her, but I am not persuaded by the arguments in favour of the amendment, and I would certainly resist it.

Let me briefly set out those arguments, because I think that would be helpful. The hon. Lady is right that we need to have consistent handling of service complaints, but the independent scrutiny the ombudsman brings will help to ensure that we do, and an awful lot of work is, of course, already going on in the services to achieve that.

There are no plans at present to set up a tri-service unit. Each service will rightly retain responsibility and accountability for the welfare of its personnel in the widest sense. The nature of the complaints raised, and the efficiency with which they are handled, are a key aspect of that. It will be open to the commissioner, and then the ombudsman, to comment on how the efficiency of the process in any service at any level could be improved.

I very much like the idea of a complaint going straight to a specified officer—straight to the commanding officer—from the very beginning, so that he or she not only takes responsibility for that complaint, but knows exactly what is going on in their unit or under their command. If there are any difficulties, they can take responsibility for making sure things are done properly.

At the moment, therefore, I am not convinced by the hon. Lady's argument, although I do not disagree that there is more to be done. However, I am confident that our ombudsman will continue to look at that and make improvements.

Mrs Moon: As I said, I do not intend to push the amendment to a vote. Evidence came to me of the need to professionalise the examination of complaints in the armed forces. Far too often, junior officers with little understanding of bullying, harassment and discrimination were providing support to commanding officers. If we are to take these issues seriously, there needs to be professionalism and a concerted effort to have consistency of practice across the three services. The concept behind the amendment was to introduce the idea of a tri-service unit. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

11 am

Mr Jones: I beg to move amendment 24, in clause 2, page 2, line 33, leave out "three" and insert "six"

This probing amendment goes to the heart of the system. It is important not only that we have a system that is adjudicated on, but that it is fair to the individual. The amendment would increase the time within which someone could bring a service complaint from three to six months. It is important to have a system that is accessible. There was a lot of publicity around the most recent armed forces Act to try to ensure that all ranks understood not only their responsibilities under it, but the complaints procedure. On the question of time limits, nothing should prevent someone from bringing what they feel is a genuine complaint. I accept that

three months is standard for employment tribunals and other ombudsman services, but the reason for asking for an increased time limit is the unique nature of our armed forces. Deployment may make it difficult for an individual to bring a complaint within the time limit. They could be posted to areas overseas where the last thing on their minds is meeting a time limit to make a service complaint.

That will also allow the individual to seek the necessary legal advice and to seek alternative resolution to this system. The Service Complaints Commissioner's complaint, particularly to the Army, concerns the length of time it takes to deal with complaints. She has done a valuable job in highlighting that. The time taken to deal with complaints would be unacceptable in any other walk of life. I do not think that this would lead to any further delay, because it would be at the beginning of the process. The amendment is to probe whether there will be any flexibility. I know that employment tribunals allow for exceptional circumstances in which time limits can be extended.

Anna Soubry: I am grateful to the hon. Gentleman. This is always difficult because we want to make sure that the period of time is not so long that people begin to forget various events or that material is lost. On the other hand, we do not want to make it so short that people are precluded from making their complaint. I pray in aid of my argument that we have got the balance right that in the regulations that prop up this legislation, which I hope hon. Members have had the opportunity to look at, regulation 6, "Period for making a service complaint: further provisions", makes it clear that where a service complaint is made after the three-months, where the specified officer—in other words, the person to whom the complaint is made—takes the view that, "in all the circumstances it is just and equitable"

for it to be made outside the three-month period, that flexibility is there. In the event of the specified officer finding against a complainant, it is open to him or her to go straight to the ombudsman and say, "This is maladministration; this is not right. I am asking the ombudsman to look at that decision because he or she has not made that decision on the basis of justice and equity." So I think that all the provisions and safeguards are there.

We want three months because we think it strikes the right balance but it also sends out a message to everybody, notably to those who are dealing with complaints, that we will no longer tolerate delays of the sort that hon. Members are very much aware of. We want to make it clear that we want a fair and just system with expedition at its heart.

Mr Jones: I beg to ask leave to withdraw the amendment.
Amendment, by leave, withdrawn.

Mrs Moon: I beg to move amendment 5, in clause 2, page 3, line 12, at end insert—

'(5A) Before making regulations under this section the Defence Council must consult the Service Complaints Ombudsman.'

This is another amendment that came from the House of Commons Defence Committee. The purpose of the amendment is to secure a degree of independent scrutiny

[Mrs Moon]

of the regulations by requiring the Defence Council to consult the ombudsman. If there is resistance I will be pressing the amendment to a vote.

The Committee considered that there should be a degree of independent scrutiny and input into the content of the regulations for the procedure of making a complaint and determining the admissibility of service complaints. The Committee recommended that the Bill be amended to require that. To go back to the speech of the Committee Chairman during the Second Reading debate, this is about the scope and powers of the ombudsman.

These issues were discussed when we took evidence. Rev. Nicholas Mercer argued that the Defence Council was not sufficiently independent—either organisationally or institutionally—to make the regulations on its own. Liberty argued that civilian best practice suggested that processes for internal grievances in employment tribunals could not be defined solely by the employers, and that there should be an independent element in offering advice and views to the Defence Council on the regulations. The Royal British Legion support the amendment. The Equality and Human Rights Commission said that the Defence Council should be required to consult the ombudsman before making the regulations on the procedure for making and dealing with service complaints. The Geneva Centre, which covers the role of the ombudsman around the world, points out that

“an ombudsman institution is independent from the government and...is not part of any of the bodies”

that it oversees.

Therefore the importance of institutional independence of ombudsmen from Governments is absolutely critical. As I said earlier, the UK is unique in having the only armed forces ombudsman that oversees the armed forces’ own internal complaints system. If we are to open up that system, the least we can do is allow the ombudsman to be party to the writing of the regulations.

In relation to this matter the new service complaints ombudsman has said:

“A requirement for the Defence Council to consult the Ombudsman on the procedure for making a complaint and determining admissibility would be a helpful clarification.”

It seems to be common sense that the ombudsman looks at the regulations and is party to the writing of them, so that, again, the issue of trust, transparency and flexibility is built into this legislation from the start.

Mr Jones: I rise to support my hon. Friend on amendment 5. I know that there has been discussion in this Committee and also at Second Reading of the fact that the ombudsman should not try to interfere with the chain of command in any way. However, in this situation she would not be doing so: it is about consultation. If there is an opportunity for the ombudsman at least to look at the regulations and possibly use the knowledge she has built up to inform them, that would help the Defence Council and the Secretary of State. It is also important that, as my hon. Friend said, it would lead to the fact that these have been scrutinised by an external body, so that it is not just the system writing the regulations or putting in things that might lead to issues that need amending later on.

From the Secretary of State’s point of view and that of the Defence Council, this should be a helpful move—except that people would object to this if we were saying that the ombudsman in some way had a veto over the regulations. That is not what the amendment says; it says that the ombudsman should be consulted and have an input into that. It would raise the profile and effectiveness of the ombudsman and be helpful in developing her role and standards in the armed forces and the system as a whole.

Derek Twigg (Halton) (Lab): I do not want to repeat what has been said. My hon. Friends the Members for Bridgend and for North Durham made the points well. This is not a veto, but it is common sense to consult someone with all that experience who knows the system in detail and whether it is working well. The more they can do that within a framework, the better it is for getting regulations and changes in place. It is difficult to understand why that would not be a good thing and I look forward to hearing the Minister’s views. As my hon. Friend the Member for Bridgend said, it is about consulting people who are in the best position to provide a view. I cannot see why the ombudsman would not be in a position to do that very well.

We all know that there can be good and bad regulations. I have always found that if one consults those in a good position to provide advice, it might prevent future problems and bring about better regulations. This is a highly sensible, logical approach, clearly set out by my hon. Friend. I hope the Minister will take account of those views and agree.

Anna Soubry: Of course consultation is a good thing; that is exactly what we do. Hon. Members know that the previous Service Complaints Commissioner has been involved in the work so far on the draft regulations, as would be expected. We do not have a difficulty with the principle; it is a matter of whether it should be on the face of the Bill. We do not believe it should be, which is why I urge hon. Members not to support the amendment.

The provision does not need to be on the face of the Bill, because it is there and it is set out in principle in any event. There is another important reason why it should not be on the face of the Bill. The ombudsman will be investigating whether there has been maladministration in individual cases. It would be—and I think it is—strange and might affect his or her role and how it is seen, through a legislative requirement, that she has been formally involved in how the procedures have been formulated. She is not part and parcel, formally, legislatively, of the system and that is absolutely right, but the principle of consultation is there.

The ombudsman, as now with the Commissioner, will be able through her annual report and at any time to make comments about how the process might be improved. It is really important to assure hon. Members of the incredible power that the ombudsman has through her unfettered powers to put into her report anything she wishes. At any time she can speak to any Minister, talk to any member of the media, any Committee, any MP and so on, freely and frankly on any matter. That is what matters, but if she is put in the formal process through law, not only is it unnecessary but the danger is

that she is seen as part of the process when we want her to stand independent of it. That is why the amendment should be resisted.

Mrs Moon: I wish to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 11.

Division No. 5]

AYES

Hamilton, Mr David
Jones, Mr Kevan
Lazarowicz, Mark
McGovern, Jim

Moon, Mrs Madeleine
Morrice, Graeme (*Livingston*)
Twigg, Derek

NOES

Binley, Mr Brian
Bridgen, Andrew
Colville, Oliver
Gilbert, Stephen
Horwood, Martin
Howell, John

Lancaster, Mark
Morris, James
Newmark, Mr Brooks
Pawsey, Mark
Soubry, Anna

Question accordingly negatived.

11.15 am

Mr Jones: I beg to move amendment 25, in clause 2, page 4, line 16, leave out “six” and insert “twelve”.

I say at the outset that the amendment will not be pressed to a vote today; it is a probing amendment and shares the arguments—which I will not repeat—that were advanced for amendment 24. This amendment would increase the time limit for an appeal from six to 12 weeks; I will not reiterate the points that I made

about service life but it is to make sure that individuals are not hampered in any way in terms of putting in an appeal, should they wish to seek redress of a service complaint because of operational tempo or service life. It is a probing amendment and I will not repeat the arguments that were made for amendment 24 as they are the same. I am interested to hear the Minister’s reply.

Anna Soubry: Essentially, I would make the same arguments that I advanced when we considered extending the time period to three to six months. I am reminded that it is set out in regulation 11(2). Again, it is not an absolute; there is a process whereby, if in normal circumstances it is just and equitable that the six weeks should be extended then that power is there, as you might expect. We hope that we have struck the right balance so that things are dealt with as swiftly as they possibly can be but in a fair and just way. If for reasons of operations—a submariner often goes away under the water for some six months, out of contact with anybody—in those circumstances it would clearly not be just and equitable for it not to be heard outside the specified period, that is what the regulations allow.

My view is to resist the amendment and I hope that the hon. Gentleman understands that it is for good reason, because fairness and justice are there in the regulations.

Mr Jones: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned.
—(*Mark Lancaster.*)

11.18 am

Adjourned till this day at Two o’clock.

