

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

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

*Second Sitting*

*Tuesday 10 February 2015*

*(Afternoon)*

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CLAUSE 2 agreed to, with amendments.  
CLAUSE 3 agreed to.  
SCHEDULE agreed to, with amendments.  
CLAUSES 4 AND 5 agreed to.  
CLAUSE 6 agreed to, with amendments.  
CLAUSE 7 agreed to, with an amendment.  
New clause considered.  
Bill, as amended, to be reported.  
Written evidence reported to the House.

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**Saturday 14 February 2015**

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**The Committee consisted of the following Members:**

*Chairs:* MR CHRISTOPHER CHOPE, †SIR ALAN MEALE

- |  |  |
|--|--|
| † 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> )<br>(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<br/>Defence</i> ) |
| † Lancaster, Mark ( <i>Lord Commissioner of Her<br/>Majesty's Treasury</i> ) | † Twigg, Derek ( <i>Halton</i> ) (Lab)                               |
| † Lazarowicz, Mark ( <i>Edinburgh North and Leith</i> )<br>(Lab/Co-op)       | David Slater Marek Kubala, <i>Committee Clerk</i>                    |
|  | † <b>attended the Committee</b>                                      |

## Public Bill Committee

Tuesday 10 February 2015

(Afternoon)

[SIR ALAN MEALE *in the Chair*]

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

#### Clause 2

REFORM OF SYSTEM FOR REDRESS OF INDIVIDUAL  
GRIEVANCES

2 pm

**Mrs Madeleine Moon** (Bridgend) (Lab): I beg to move amendment 6, in clause 2, page 6, line 22, leave out subsection (1) and insert—

- ‘(1) The Service Complaints Ombudsman may investigate—
- (a) a service complaint;
  - (b) an allegation of maladministration in connection with the handling of a service complaint including an allegation that the handling of a service complaint was inappropriately delayed; and
  - (c) an allegation of inappropriate delay in relation to a person prior to that person making a formal complaint, or an allegation relating to the staying of a complaint where the complainant makes an application to the Ombudsman.’

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

Amendment 34, in clause 2, page 6, line 24, leave out from “where” to end of line 25 and insert—

- “(a) the complainant makes an application to the Ombudsman; or
- (b) where a complaint has been active without a decision for longer than one calendar year.”

Amendment 7, in clause 2, page 6, line 30, after “allegation”, insert “or service complaint”

Amendment 35, in clause 2, page 6, line 30, after “allegation”, insert—

“arising from an application made by a complainant under subsection (1)(a)”

Amendment 8, in clause 2, page 6, line 34, after “complaint”, insert “or the complaint”

Amendment 9, in clause 2, page 6, line 34, after “allegation”, insert “of maladministration”

Amendment 36, in clause 2, page 6, line 38, at end insert—

‘(3A) Service Complaints Regulations must make provision for—

- (a) procedures for the Ombudsman to be notified when a complaint has been active without a decision for longer than one calendar year; and
- (b) the Secretary of State may make regulations in this area, in consultation with the Service Complaints Ombudsman, regarding the circumstances in which the Ombudsman may start an investigation.’

Amendment 37, in clause 2, page 6, line 39, after “investigation”, insert—

“arising from an application under subsection (1)(a)”

Amendment 10, in clause 2, page 6, line 40, leave out “alleged” and insert—

“the service complaint referred to in subsection (1)(a) is well founded or any”

Amendment 38, in clause 2, page 6, line 42, at end insert—

‘(4A) The purpose of an investigation arising from subsection (1)(b) is to decide upon—

- (a) the reasons why no decision has been reached on the complaint; and
- (b) whether those reasons amount to maladministration and, if so, whether this has, or could have, resulted in injustice being sustained by the complainant.’

Amendment 39, in clause 2, page 7, line 13, at end insert—

- (a) In this section a complaint shall be considered active from the time it is made until a decision is made upon it by the Defence Council; and
- (b) the period referred to in (a) shall include any period in which the complaint is stayed or paused in any way.”

Amendment 12, in clause 2, page 8, line 35, at end insert—

“(za) the wrong complained of,”

Amendment 28, in clause 2, page 8, line 36, at end insert—

“(aa) the substance of the original complaint”

Amendment 29, in clause 2, page 8, line 38, leave out “of the maladministration” and insert “of subsections (3)(a)(aa)”

Amendment 13, in clause 2, page 8, line 38, after first “the”, insert “wrong complained of or”

**Mrs Moon:** It is a pleasure to see you in the Chair, Sir Alan.

**Mr Kevan Jones** (North Durham) (Lab): Easily pleased!

**Mrs Moon:** From a sedentary position my hon. Friend says that I am easily pleased. He clearly does not know me.

I will speak separately to the amendments in the name of the Select Committee on Defence and those in my own name. I will push all the amendments to a vote. Amendments 6, 7, 8 and 9 relate to the ombudsman having the power to investigate a service complaint, an “allegation of maladministration” in the handling of the complaint—that includes an allegation that the complaint was inappropriately delayed—as well as the power to investigate an allegation of “inappropriate delay” prior to the making of a formal complaint or an allegation relating to the “staying” of a complaint.

Amendment 10 inserts a new requirement that a service complaint where injustice could have resulted, rather than just maladministration, must be “well founded”. Amendments 12 and 13 reinforce the inclusion of “the wrong complained”. I understand that we will move amendment 6 to a vote later.

These are perhaps the most important changes to the Bill. They go to the heart of the ombudsman’s powers and responsibility, and they relate to the issues considered by the Defence Committee concerning the ombudsman’s scope. We believe that the ombudsman should be able to investigate the substance of the original complaint once the service’s internal processes have been completed. We see no reason to believe that that would undermine the chain of command.

In its evidence to us, Liberty described the limitation to maladministration as a

“fundamental omission from the proposed system.”

It was concerned that although the ombudsman might find that the complaint had been handled in a procedurally correct way, it might have been able to report in circumstances where the substantive conclusion of the investigation was in error. Liberty thought it just as important to establish that a complaint was resolved correctly as it was to establish that it had been conducted “in a fair manner”.

The previous Service Complaints Commissioner suggested that the Bill should be amended so that it is explicit that the ombudsman can investigate and report on any maladministration in the handling of a service complaint, rather than the alleged maladministration raised by the complainant. The commissioner also reported that most complaints stem from poor communication and poor management.

Service personnel are impacted by delays. In cases such as that of Corporal Neathway, which I intend to discuss in a moment, those delays can stretch into hundreds of weeks. In the 2012 armed forces continuous attitude survey, 46% of respondents reported dissatisfaction with the time taken to process a complaint. Only 39% were satisfied. By 2013, that had worsened, with 66% dissatisfied with the time taken.

The Defence Committee agreed with the commissioner that the ombudsman should be able to investigate and report on any maladministration that might take place during the handling of a service complaint, not just the maladministration alleged in the application to the ombudsman. The Committee welcomed the clarification by the Ministry of Defence and the Service Complaints Commissioner that maladministration in the handling of a service complaint would include consideration of whether an injustice had resulted or could have resulted from the way the complaint was handled. However, we still believe that the ombudsman should be able to investigate the substance of the original complaint once the service’s internal process has been completed. The commissioner told us that that was an important change.

The Royal British Legion supports the principles behind the amendments. The ombudsman should be able to investigate and report on any maladministration that might have taken place during the handling of a service complaint, not just that alleged in the application to the ombudsman. The Royal British Legion said that chronic delays in dealing with complaints are the main reason for unfairness in the system, and that such delays could give rise to a finding of maladministration by the ombudsman. It argued that if service personnel were deliberately not being allowed to make complaints about wrongs that had been done to them because they were ruled out of time when the individual’s complaints were looked at, because there was delay, or because people were not being told about their rights, it could result in a potential finding of maladministration. All those allegations have been levelled at the current system.

The Equality and Human Rights Commission argued:

“The Ombudsman should be empowered to investigate service complaints about bullying, discrimination, harassment, and of victimisation as a result of raising a service complaint”.

The new service complaints ombudsman said:

“The employment relationship is at the heart of the Service complaints process. It is particularly important that the system is designed to make the employer, the chain of command, deal with complaints promptly and effectively and hold them publically to account for doing so, rather than give them an ‘opt out’ on the basis that someone else can investigate it for them. The quickest way to resolve a complaint will be by a suitably empowered person, within the relevant Service, accepting it is a priority amongst their other responsibilities to investigate and put right.”

I would be perfectly happy if that was what I saw happening, but I have so many examples of complaints that have been stayed and have gone wrong, where people have waited extremely long times—totally inappropriate lengths of time—for justice finally to be done. The reality is that this is not at the heart of the employer relationship.

I have a copy of a letter, which the Minister has seen, from Lance Corporal Neathway to the previous Secretary of State for Defence. He talks about how he tried to raise a complaint. He was singled out for unfair treatment after being wounded in action and lost three limbs. He says,

“I was persistently harassed by phone, blocked from leave, and mocked, ‘You’re not much of a para now, are you?’”

He was then blocked from complaining by his commanding officer, who refused to accept his complaint, and tried to delay it until it was out of time. Delaying complaints until they are out of time comes up in cases that come my way over and over again. I am more than happy to keep the Committee here for a long time to go through them all, but I will focus on prime examples.

Lance Corporal Neathway’s letter continues:

“When I persisted, he blackmailed me: he threatened that if I insisted on complaining he would post me away from my friends and specially-adapted disabled equipment. When I did complain, he punished me: he removed me from my friends and specially adapted equipment, living quarters and adapted home, and actually banned me from my camp. The cover-up started immediately”

The letter goes on to say that there were lies, and the complaint was not properly investigated for a further six weeks. It says,

“only once I was forced to write to the Service Complaints Commissioner was any ‘investigation’ of the Army, by the Army, started. I was never given an assisting officer to help me understand the procedures or to help me with my complaint.”

Lance Corporal Neathway said in the letter that there were legal lines that he could take, but that he would rather prove how effective the service complaints system is than do that. He still believed in the military system. That is the other issue that comes across to me time and again—people are hugely distressed, in some respects less by the complaint than by the rejection by the military that they had served. That is when the distress really starts, and it is often when the bullying and harassment start, and when people really begin to suffer psychological harm, because they believe in the service that they joined. They believed enough to offer their life to that service. Then, they have a problem, and instead of that service helping them to solve it, they themselves are seen as the problem—who should go away.

History has shown that a small minority of cases—I say a small minority, but we know that 1,500 people were also stayed from making a complaint, or the military system came together to not allow a decision to

[Mrs Moon]

be made about those 1,500 people, who had been wronged and wrongly punished, having been subject between 2008 and 2011 to police cautions.

The Army failed to catch up with the change in the law in 2008, which said that a police caution should fall the minute it is given; so, there should be no further action in relation to a police caution. Instead of which, the military imposed double jeopardy and further punishment. Some people were forced to leave the military; some were demoted; many were fined.

In 2011—this is mainly, if not all, in the Army—people found out that they had been breaking the law since 2008. Was that then immediately put right? No, and I have to say that the only reason we know what happened next is because of a whistleblower. I know that whistleblowing is not included in this Bill. However, leaked documents from the Army Justice Board started coming into my office, which clearly showed that decisions were being made in meetings to drag out decisions about complaints for as long as possible, so that people would be out of time to make a service complaint.

Sir Alan, I do not know about you but I did not come into public service to support, enable and justify a Department of State covering up injustices to the people it is supposed to protect, employ and provide justice to, as an employer. These are the most shocking cases. In each of them, the chain of command failed to reach the high standards; they failed promptly and effectively to accept these complaints as a priority, as the Service Complaints Commissioner talks about.

When I read the Service Complaints Commissioner's comments, I felt, "Well, she may well learn over the coming five years that these high standards will not be met." It is for us today in this Committee to look at what we do—how we protect and empower those who are abused by the system. That is the nub of it.

**Jim Shannon** (Strangford) (DUP): The hon. Lady outlines a number of cases where she has been personally involved in trying to change the direction of an inquiry to ensure that the time scale is correct. In some of the cases in which I have been involved, I have found that only through intervention with Ministers at the highest level is help being put in place for individuals. Does she feel that that is unfair on people who do not resort to their Member of Parliament for help with intervening with Ministers to ensure a change in policy or direction?

2.15 pm

**Mrs Moon:** I thank the hon. Gentleman for his intervention. Members of Parliament have a role, but I probably made the Minister's life a bit—

**The Minister of State, Ministry of Defence (Anna Soubry):** Not mine.

**Mrs Moon:** I probably made not just the current Minister but previous Ministers uncomfortable with the volume of parliamentary questions that I asked. I appreciate that both the current Minister and the previous Minister have met me to talk about this. I also pay regard to the current Minister for finally coming up with a solution and being willing to move forward. In all honesty,

should it take from 2008 to 2015 to secure justice when a Department of State has acted illegally? I understand that the Department did not realise between 2008 and 2011, but when a Department finds that it has made a mistake, I do not expect it then to have meeting after meeting in which it says, "Let's keep moving on this. They'll run out of time, and they won't be able to make a complaint."

**Mr Brian Binley** (Northampton South) (Con): The hon. Lady is making a moving case for our service personnel. Would not a very simple change from "may" to "will" in the amendment's first line answer all her problems?

**Mrs Moon:** The hon. Gentleman makes an interesting intervention. However, I am speaking to amendments recommended by the Defence Committee, and it is not for me to make a collective decision on whether this Committee would have gone down a different route. The Committee will vote on the amendment before us today.

We need an ombudsman who can ensure that service personnel who want to make a complaint do not face bullying, harassment, threats of disciplinary action, posts at short notice, sanctions by the annual report and damaged reputations and careers. The service complaints ombudsman should be empowered to investigate where such things happen. It is for Parliament, following our examination of the numerous cases that come our way, to decide what safeguards are required.

**Martin Horwood** (Cheltenham) (LD): It is a pleasure to serve under your chairmanship, Sir Alan. I have some sympathy with amendment 6 and the consequent amendments, which, as I understand it, seek to replace the ombudsman's simple remit to address maladministration with a three-headed remit to address maladministration, delay and the substance of the complaint itself.

**Mrs Moon:** I rise to clarify that the extra provision in the amendments would mean that, where an individual is unaware that they have been the subject of an injustice because that injustice has been deliberately withheld from them, they should be able to make a complaint—it would not be stayed, if that makes sense.

**Martin Horwood:** I am not as clear as I was because what the amendment does is to set out three heads instead of one.

**Mr Jones:** If the hon. Gentleman waits until my amendments 28 and 29, I think that they cover the points that he refers to.

**Martin Horwood:** I am looking at amendment 6. In any case, we are debating the amendments as a group, so I will talk about the issues relating to the thrust of that, which are delay and the substance of the complaint.

On delay, I have a great deal of sympathy with this amendment. The only substantial military justice case that I have had as casework was very complicated. A fight and an alleged assault took place between a member of British military personnel and a British civilian on a British base in Germany. It was immediately unclear which disciplinary or justice system would be used—British military disciplinary processes, British military justice,

the German civilian justice system or even the British justice system. It was a complicated case and it dragged on for years. It was the subject of a Westminster Hall debate initiated by myself and another hon. Member who subsequently represented my former constituent.

Many of the delays were not due to the complexity of the case—or if they were, it was only superficially so. At stages, it was clear that the military had lost interest in the process, that things went unanswered and unlooked at for many months at a time. In some instances, the case seemed to have been lost altogether in the system and never seemed to emerge from it. The external pressure applied by Members of Parliament and others was a crucial part in getting any progress at all. Making it clear in the Bill that it does not need to be proved that the delay amounts to maladministration is an important step.

On the question whether the ombudsman should look at the substance of the complaint as opposed to simply maladministration, this is an issue which has come up at almost every stage as the Bill has progressed through the House of Lords and on Second Reading. There seems to be an emerging consensus. The Defence Committee is clearly convinced that there is a problem. It was raised in the Lords. It was raised by my hon. Friend the Member for North Devon (Sir Nick Harvey) on Second Reading. He said:

“If one looks at the definitions of ombudsmen more generally, one will see that their purpose is to address the substance of a grievance or a complaint by an individual against an institution or bureaucracy. I do not believe that simply looking at the question of maladministration is an adequate way of doing that.”—[*Official Report*, 2 February 2015; Vol. 592, c. 71.]

It is referred to in the evidence of the current commissioner, who said:

“inserting a clause which enables the Secretary of State to ask the Ombudsman to investigate the substance of individual cases as he saw fit would be a very sensible measure”.

So, there seems to be a consensus. The Government’s answer tends to be that this is outwith the remit of ombudsmen and that they are supposed to look at maladministration. While that is true to a point, and in casework I am sure we have all had experience of the processes behind the local government ombudsman, the Parliamentary ombudsman and so on, I have had experience of ombudsmen who have looked at maladministration, but who have also passed judgment on the injustice of the substantive case. That was certainly true in one major case I had relating to the Department for Work and Pensions. The ombudsman looked not only at the process but at whether that person was due compensation from the DWP and he made a very strong recommendation.

This is a slightly artificial distinction and, in any case, this is Parliament and we make the rules. We can decide to extend the remit of this particular ombudsman if we think that that is justified. The consensus seems to be that it is justified. As always, I will be listening carefully to the Minister’s comments and to further speeches from the other side. At the moment, I have a great deal of sympathy with the amendments.

**Mr Jones:** It is a pleasure to serve under your chairmanship, Sir Alan. This group of amendments goes to the nub of the Bill. The hon. Member for Cheltenham made the point that it is about what we want the ombudsman to do. Is the ombudsman simply going to look at maladministration, or will she have the

powers to investigate? In my days in local government, I dealt with the local government ombudsman, who looked at the maladministration of a process but, in many cases, went into the issues surrounding it because there might have been a pattern of similar cases.

I will address the points made by my hon. Friend the Member for Bridgend about delays. I met Lance Corporal Neathway on a number of occasions when I was a Minister. As I said at Second Reading, a braver individual you could not meet, not only his bravery in Afghanistan, but the bravery and courage he has shown in overcoming—if one could ever overcome—the horrific injuries that he suffered. I ask the Committee to think of this. If the Army can treat someone like him, who is high profile, very brave, served his country and received horrific injuries, in the way that it did, what hope is there for a junior recruit or someone lower down the ranks? Looking at the way Corporal Neathway was treated, the Army should be ashamed that it would treat not only him but any member of the armed forces in the way it did.

I do not hold out much hope for him or people like him in the future if we do not amend the Bill. As has already been described, the delays that have been outlined by my hon. Friend the Member for Bridgend will be used in an attempt to stop complaints in the first place. Without any substantial change, the ombudsman would have quite a small remit in looking at how that person’s complaint was dealt with.

It is to the credit of Dr Susan Atkins that she has pushed the boundaries of her remit by commenting on things. Later on, perhaps, the Minister will say that the ombudsman will be able to comment on things. That is fine, but it needs to be in the Bill. Having talked to Dr Susan Atkins, I think that is how she envisaged the ombudsman’s role. Otherwise, we will have a very clinical approach to maladministration, and only certain things will be looked at.

Amendments 28 and 29 are in my name and my hon. Friend’s name. Amendment 28 will allow the ombudsman to look at the substance of the original complaint. That is important because it allows the ombudsman to look at the process of dealing with the complaint, and at what lies behind it. I might sound like a broken record, but I ask people to go back and look at Lord Justice Blake’s report into Deepcut and some of the issues that arose at the training centre at Catterick. Blake was able to look in detail, not just at the four tragic deaths but at the culture and other things related to them. That was important to the inquiry. It looked in detail at the individuals and at the culture and other things that were clearly wrong at Deepcut, which led to unacceptable bullying and harassment.

To the credit of the chain of command, it acted on the report and instigated some changes. However, let us suppose for one minute that one of the individuals had come forward with a complaint because they were not happy with something that was happening to them. The ombudsman would have had a very tight remit in looking at their complaint. She would not have been able to look at the substantial bullying that took place or at the culture that existed in non-commissioned officer ranks, which affected not only individuals but a whole group. Quite clearly, a number of cases would have come forward if she had looked at those things. Without the amendment, the ombudsman would have been very limited.

2.30 pm

Amendment 29 removes “maladministration” and inserts consequential subsections relating to what actually happens in a complaint. This is very important because, without it, some of the broader lessons will not be learned. On Second Reading the Minister said—and will say again—that there is nothing to stop the ombudsman looking at wider questions and asked why we needed a provision in the Bill. The reason why we need it in the Bill is that we need the chain of command and Ministers to be quite clear about what is expected of them in the future.

If the Bill leaves Committee containing these extra powers for the ombudsman, that would do more than just strengthen the right of redress for members of our armed forces. The hon. Member for Cheltenham made a very important point: these people are our constituents, from all our constituencies, who took the decision to join the armed forces. We should be proud of that fact, but we should also be able to be proud that if people join the armed forces they get full protection, and if something goes wrong there is an independent process to look at what happened.

I am not sure what the chain of command has to fear from this, given the external outlook. The Blake report and the work that Dr Susan Atkins has already done on the broader issues surrounding some of the complaints have helped and informed the process. Without that, we will have an ombudsman who is limited in what they can do, even though there is an understanding that the ombudsman may well look at other issues.

**Mrs Moon:** These amendments would also be helpful by informing the chain of command of the consequences of not being robust in their management of complaints. There will be injustice if someone inappropriately creates delay prior to the making of a complaint, or in other words if someone withholds information so that the person does not even know that they have suffered an injustice, as happened to the 1,500 people who were not told that the actions taken against them were illegal. If someone knows that they will be investigated, they will cause these delays. The amendments remove the reasons for creating delays.

**Mr Jones:** I agree with my hon. Friend. This would also allow the ombudsman to look at an individual complaint, but there may well be patterns of behaviour that relate to one case. I come back to the case of Lance Corporal Neathway. If those involved were prepared to treat someone like him in such a way, how are they treating other people? Unless the ombudsman can look at that original complaint and those broader issues and then inform the chain of command of that, I do not hold out a great deal of hope that the chain of command will actually change things.

**Mr Binley:** Forgive me, but I am losing touch with the meaning of maladministration. Is deliberate delay not maladministration? Does the ombudsman not have the opportunity to point out a trend in his annual report anyway?

**Mr Jones:** Yes, I agree with the hon. Gentleman about maladministration in terms of delay. However, is such maladministration due to a lack of resources or activity or is it deliberate? I suspect that in some of

these cases it is deliberate, first, to make sure—*[Interruption.]* The Minister chunters from a sedentary position that it may be maladministration. It is, but if that is the only thing that the ombudsman can look at, the wider lessons that are needed will not be drawn in terms of the substance of the complaint, which is what my amendment would do, and, more importantly, the broader issues.

The hon. Member for Northampton South says that the ombudsman can put that in her report. Yes, she can, but we want to put it in the Bill, so that there is an onus on the ombudsman to look at broader issues. Those might not come out of complaints; it might be that she is doing an investigation and other things come up that she can then look at. They might relate to the individual complaint she has received, but might also lead to broader issues about the culture or about the way a certain service, or part of it, is operating. If we do not have that, we will be missing a huge opportunity for allowing the oversight that, I have to say, our constituents deserve.

The hon. Member for Cheltenham was right: people go to their Members of Parliament to raise these things. Has the system not failed if people have to go to Members of Parliament? That is no disrespect to any of us who would take them up—because we would take them up, quite rightly—but people should not have to rely on Members of Parliament. We should have a robust system that protects the individual making a complaint, and, if there are broader issues, the ombudsman should be able to make recommendations and look at the substance of those complaints. Without that, we will have a Service Complaints Commissioner by another name: we have changed the name, but not, in practice, the capabilities.

I speak to many people on this subject and have done for many years: this is what we should have put in place in 2006. A lot of us were arguing for it then.

**Anna Soubry:** You were the Government.

**Mr Jones:** I was not in the Government then, but I was arguing very vociferously for this as a member of the Defence Committee, along with my hon. Friend the Member for Midlothian; his amendment to that Committee’s report asked for an ombudsman. I am saddened that it has taken so long for us to get there. We are now in a position to do it and, as I said this morning, if we do not do it now, this will come back in two or three years and we will get what we need.

I know, and it has been happening ever since I have been dealing with this issue, the chain of command will not come out publicly and say they do not want this, as I think the Chairman of the Select Committee said on Second Reading, but they will undermine it by saying it is too radical a change. Well, we have had 10 years plus of this process; it is not radical. It is not very revolutionary and it should have taken place before now. If they do not want this full stop, as I think the Chairman of the Select Committee said on Second Reading, they should say so.

Knowing the senior military as I do, I do not think they have anything to fear from this system. It will inform better practice, certainly on things such as delays. If they find bullying and the rest, it will reinforce existing policies, which are clearly not being enforced

because of personal failure by officers dealing with situations. I think everyone in this Committee Room genuinely wants to get to a point where we can guarantee to parents whose young men and women join the armed forces that there is a duty of care for their physical safety during training and that, if things do go wrong, that will be properly investigated, someone will be held to account and lessons will be learned.

The Neathway case is important not just because of the individual, but because of the lessons learned. If the Service Complaints Commissioner had powers to investigate and provide reports, that would be the spotlight that is needed to stop people doing some of these things in the first place. Furthermore, once that spotlight had been shone, things would be put in place to improve the situation, inform us and, on occasion—let us be honest—criticise the chain of command. That is true for any ombudsman system, be it parliamentary or local government.

I have been on the receiving end of criticism from the local government ombudsman on more than one occasion. It makes people wake up and ensure that things are put in place and changes made. Without that, all we will have is a change of name. That will be a missed opportunity and we will be back to it, whether we like it or not.

**Anna Soubry:** It is a pleasure to serve under your chairmanship, Sir Alan. I am addressing my comments in a certain direction, with no disrespect to you. I feel I am wasting my breath a little, though I hope there is still some opportunity to persuade Opposition Members.

I am cognisant of the arguments made by the hon. Member for Cheltenham, and I am grateful, as ever, to my new very best friend, my hon. Friend the Member for Northampton South, for his sensible intervention. With no disrespect to the Opposition spokesman, his comments were mainly about amendment 26 and touching on amendment 27. It matters not, because I hope to convince everybody that those amendments should not be supported, for good reasons.

We need to get this absolutely clear. We all know and understand that there have been cases where, clearly, people have had totally justified and often concerning serious complaints. Unfortunately, it is not just Lance Corporal Neathway who found himself making a substantive complaint; there have been others in the past. The Government take that very seriously, which is why we introduced the Bill.

We are talking about only a part of the Bill that concerns the ombudsman. It is important to roll back and start again at the beginning. The Bill is about ensuring that we have a strong and robust complaints system, so that all our service personnel who do not have the rights available to other workers, for reasons well explained, do have a robust complaints system.

I make it clear that a strong, effective, good employer has nothing to fear. It is a mark of strength for an individual to put hands up and say, “You know what? I go that wrong,” just as it is for an employer who has a good, strong, robust system who can say, “If you have a complaint, I will take it seriously and we will deal with it.” That does not mean that the judgment will be in favour of that person. Some complaints are not made out, but such a person should have confidence in the system to come forward and make a complaint without

fear. That is what the Bill seeks and that is the substance at its heart, which is mainly in the regulations. It will streamline the system and make it more robust. In particular, it will turn the commissioner into an ombudsman.

I am disappointed that the hon. Member for North Durham takes the view that this is not a step forward. It is a significant step forward. I could comment, if his idea is so brilliant, that he was a Minister and he had 13 years to do all these things. We—it is “we”, I hope—have introduced the Bill robustly, without fear or favour, because we know that we have to get it right. We also have to put an ombudsman in place.

It is important to understand that the complaints system is there in a new form. It is more streamlined and robust. There is a process for a complaint that is not substantiated. If an individual makes a grievance, invariably against another individual, and seeks a particular form of redress, as referred to in examples in previous speeches, but the complaint is dismissed, there is a right of appeal. That process exists and it is possible to exercise the right of appeal. If the complaint is still not substantiated, people can then go to the ombudsman on the basis of maladministration.

As my hon. Friend the Member for Northampton South identified, there is no strict legal definition of maladministration, thank the Lord. That is quite right, because as soon as we start overly defining it, we will lop off all the options available and not allow something new that somebody might not have come across or thought of coming forward for. Deliberate delay to someone’s disadvantage must be about as blatant a maladministration as anybody can think of.

2.45 pm

If a woman corporal makes a complaint against a sergeant, saying that she has been sexually harassed, and she calls on six other witnesses, all of whom effectively support her complaint to the hilt, and the person against whom the complaint has been made brings forth nobody and gives a half-hearted explanation of what has gone on, it is difficult to see how one would not be able to substantiate as a basis for maladministration some bias on the part of the commanding officer investigating that complaint. We should not be overly hung up on having a narrow definition of maladministration that will not do the job that we want it to do, which is to ensure that our servicemen and women have proper justice.

**Martin Horwood:** I have to tell the Minister that, in my experience, both ombudsmen and Ministers sometimes have a clear view of what constitutes maladministration and refuse to go beyond that. That is one of the issues at stake: we want the ombudsman to be able to have a slightly more relaxed remit.

On the issue of delay, the Minister says that it would clearly be maladministration if a deliberate delaying tactic had been used. I am sure that she is right about that, but the point that I was trying to make is that that adds a burden of proof on the complainant to prove that it was deliberate. In the case that I described, there was no suggestion that it was a cover-up, to use the colourful phrase used by the hon. Member for Bridgend. I was not alleging any kind of cover-up; I was not even

[*Martin Horwood*]

saying that there was deliberate delay in the sense that people were trying to prevent justice from being done. Nevertheless, the delay was unacceptable and it was causing an ongoing injustice. In saying that delay in its own right can be considered by the ombudsman, we could make this a much fairer and more just piece of legislation.

**Anna Soubry:** Let me put it this way. Sometimes there is delay that seems strange on the face of it and that could be a difficulty. There might be a good reason for that delay. The classic is when an allegation is made against more than one person, or relies on someone else to support it, and the person is away for six months on operations. That will cause delay. The test, to be fair, is whether it creates an injustice. If there is any hint of injustice, it is maladministration, so the ombudsman can consider it. It need not be written down in the strict definition that is in grave danger of being put in the Bill, which would tie people's hands. We want their hands to be free, not constrained by over-definition. Delay can be at the heart of maladministration. I will move on to that specific point in a moment.

**Mr Jones:** Will the Minister give way?

**Anna Soubry:** I will, but I want to make some progress.

**Mr Jones:** It is nice that the Minister is accepting interventions this afternoon, unlike this morning. Can she explain how accepting the amendments, which would allow the ombudsman to consider not only the original complaint but broader thematic issues, will lead to delay and maladministration?

**Anna Soubry:** First, there was only one intervention that I did not take this morning.

**Mr Jones:** Two.

**Anna Soubry:** Well, we are not going to squabble over that; it is not important. What is important is that, if I can continue addressing the Committee, I can answer all those questions.

**Mrs Moon:** The Minister has ably set out the case. The person makes a complaint, it goes through the system, it comes out the end and they can appeal. The amendments are for those people who cannot get that far and do not know that there is an injustice. For example, an Army Justice Board briefing says:

"The longer we take no action the fewer the 'in time' complaints about other sanctions there will be. MOD policy may be not to accept out of time complaints on this issue."

Five people who knew that they had suffered an injustice made complaints that were stayed. They could not move through the process; they were in never-never land and could not move their complaints forward. Until the Minister spoke on Second Reading, those complaints remained stayed, from 2008. Many people did not know, having been dismissed from the armed forces over a wrong interpretation of the law, that they had suffered an injustice. They had therefore not made a complaint and no complaint was able to get as far as the commissioner. That is the problem.

**Anna Soubry:** I do not think anyone can have a complaints system unless an individual raises a complaint in the first instance. That is what this is about. It is about an individual making a complaint about whatever it may be—[*Interruption.*] I will now make progress in order to advance a good argument in favour of not supporting the amendments.

We have got the balance right between creating a powerful new ombudsman to hold the services to account for the handling of service complaints, and ensuring that it is ultimately up to the services to put things right for their people where they have gone wrong. Any ombudsman would like an empty in-tray: because of their work, they have ensured that those to whom they are accountable have done a better job so that there are fewer complaints coming their way. We are determined for our services, which have already made good progress, to take complaints seriously and to have the right processes so that they can get on and act expeditiously.

We thought long and hard about the right package of powers for the service complaints ombudsman and we remain convinced that the powers provided in the Bill are necessary and appropriate. The ombudsman will, for the first time, have an important role in reviewing the handling of service complaints. They will be able to get all the information they need to carry out thorough investigations into individual cases and then make strong findings and recommendations to the Defence Council to remedy failings that have occurred.

**Mr Jones:** Will the Minister give way?

**Anna Soubry:** No, I will not.

The ombudsman will also have important new powers to review the substance of decisions taken at two stages in the internal system: the admissibility and appeal stages. That will act as a further important check on how the services are handling and deciding upon their service complaints.

**Mr Jones:** Will the Minister give way?

**Anna Soubry:** Not mid-sentence. I do not think that making comments from the Front Bench advances anyone's arguments. I will take interventions when I choose to. Forgive me, as I need to make a little bit of progress.

It is right that the services are ultimately responsible for the welfare of members of the armed forces. It is for them to put things right where wrongs affect their personnel. That goes to the heart of unit cohesion and operational effectiveness.

**Derek Twigg (Halton) (Lab):** I am listening carefully to the Minister, but I have not quite been able to gather from what she said how putting this in the Bill would cause problems. How will the amendments cause a problem if they go into the Bill? Will she explain that to the Committee?

**Anna Soubry:** In short, it is because the amendments will extend the scope of the ombudsman's role to look at the merit and substance of complaints. We do not believe that that is what this role should be. We are content that the powers of the ombudsman as set out in the regulations and in the Bill will do what we want to do and will achieve what we want to achieve, which is a

much better service complaints ombudsman—  
[*Interruption.*] I am sorry, but I do not agree with the amendments. They extend the scope of the ombudsman into territory that should not be within his or her power. The hon. Gentleman asked for the reasons; he now has them.

**Mr Jones:** I am very, very, very grateful to the Minister for giving way. I accept what she is up against. The senior military want to keep the system as it is. That will not last. If the ombudsman cannot look at the substantial issues around the original complaint, how will the ombudsman be able to make changes? I am at a loss to see how she could do that.

**Anna Soubry:** I thought I had explained that the definition of maladministration is such that it will enable the ombudsman to look at a complaint that has not been successful. I take a bit of an exception to the idea that this is not a huge step forward. It is a step forward. We have streamlined the complaints system; we have knocked out some of the tiers; and we have enabled people effectively to go straight to the ombudsman if at first instance they have been told that their complaint is out of time. We have created this role and given the ombudsman the powers that she needs in order to deliver a complaints system that is robust and to ensure that the services themselves ultimately take responsibility for having a robust complaints system that takes complaints seriously, deals with them expeditiously and acts in accordance with the findings. If they do not, there is an appeal process. In the last instance, there is the ombudsman. We believe we have got the balance right.

I take exception to any suggestion that I am leant on in any way. We have given great care to this Bill. We believe that we have struck the balance absolutely right. There are those who would want to go into different territory—the territory of an armed forces complaints ombudsman. That is different. This is about individuals with grievances during the course of their employment that they cannot pursue by virtue of their service. If I may, I would like to make some progress.

The ombudsman's role in investigating maladministration under the Bill is not to conduct a general review of the handling of the case. It is intentionally focused on specific allegations of maladministration made by the complainant who is dissatisfied with the way their complaint has been handled. The service complaints system is, after all, one that is personal to the service person. It is aimed at providing redress for any wrongs that may have occurred. Under one of the amendments, if the complainant did not want something investigated, they would have no option. That is wrong. This is about individuals and their complaints.

**Mr Jones:** I do not accept that. Let us take a serious case of bullying. Is the Minister suggesting that, if the individual has put in a complaint and been dealt with and there are instances in the original complaint where other people were involved and being bullied at the same time, that one complainant should be dealt with in isolation from anything else that might come out of that inquiry? If the ombudsman had the powers to look at the substance of it, surely she would be helping the situation by addressing the problems of other people who have not come forward because they are too afraid.

**Anna Soubry:** In those words we hear what I am afraid the Opposition do not understand. If a complaint has been dealt with, it would never have got to the ombudsman. People would only go to the ombudsman if their complaint had not been dealt with. If it has been dealt with, that is the end of the matter. [*Interruption.*] Heckling me achieves nothing. We come back to this. If a complaint is found by the ombudsman to involve an act of maladministration and injustice has occurred to that complainant, and if she believes that others may have been caught up in the situation, she can specifically identify in her report all those things. She does not need to go away. Some of those people might not want to give evidence or make a complaint, but she can act without fear or favour. She can say all those things in her report. More than that, she can go to any Minister, any service chief, any unit commander, any member of the press, any member of any committee or any Member of Parliament and say, "As a result of what I have heard and what I've learnt, I believe that we have a serious problem in this unit, whatever it may be." She does not need to have her hands tied. They are not tied by the Bill. She has that freedom. That must not be forgotten.

Placing a statutory duty on the ombudsman to investigate whether any maladministration has occurred in every case may amount to a positive obligation on her to search for all possible maladministration, whether or not the complainant is concerned with it. That, in the Government's view, is undesirable and may add considerably to the time it takes each case to be concluded. We all know that we want expeditious investigations to be at the heart of the complaints system.

3 pm

There is some flexibility provided by the legislation for the ombudsman to look at specific allegations in the round, but if the allegation is, for example, about delay, the ombudsman would not be able to find that there had been bias unless it was separately alleged by the complainant. If the legislation were to permit this, as proposed by amendment 10, it would be likely to amount to a general review in every case, which has never been the policy intention. This is really important: I urge members of the Committee to look at the regulations, because draft regulation 4 specifically allows that, if it becomes apparent that the complainant does not want to raise a specific allegation of maladministration once the investigation is under way, the ombudsman will, at his or her own discretion, be able to permit an amendment to the application for that to be looked at as well. That flexibility is there in the regulations, and if I may say so, I hope that that satisfies the concerns of the hon. Member for Cheltenham.

Many other matters could be put forward as to why the amendments simply should not go into the Bill, mainly for the reasons that I have outlined, but, essentially, it is because we are confident that we have struck the right balance and that we have done so after much careful consideration. If we voted in favour of any of the amendments, far from freeing up our ombudsman, we would tie his or her hands. That is why I hope the Committee decides to vote against.

**Mrs Moon:** I beg to move.

**Mr Jones:** I want to address some of the issues that the Minister has raised. She is basically saying that we should leave this to the chain of command and that, somehow, giving those powers to the ombudsman would limit her role in being able to investigate—what nonsense. The Minister seems to be arguing in one respect that the ombudsman basically has those powers and has the flexibility to do this, but in the same argument says that the powers should not be in the Bill. I do not understand which it is.

The amendments would certainly strengthen the role of the ombudsman and would be of no threat whatever to the chain of command. They would enhance the process and get the thing that we actually need: an ombudsman with real powers to give to an individual and to improve the protection that they deserve. If we do not do that with this Bill, we will back here within a matter of years in an attempt to get to this stage.

**Mrs Moon:** I rise to speak to amendments 34, 35, 36, 37 and 38, which are around double flag investigatory powers. After a complaint has taken a year—*[Interruption.]*

**Anna Soubry:** I am so sorry, Sir Alan, but I thought that we were going to vote, but then the hon. Member for North Durham decided to speak and now we seem to have moved on to a different group of amendments—*[Interruption.]* Are we going to have another debate on those separate amendments?

**The Chair:** I should point it out to Members that when we started the arrangement the debate was included in the core of that set of amendments, but, if you would prefer, we could do the other now and then come back again, or we could do it now and finish it off altogether.

**Anna Soubry:** I think that I was confused because there had been a move to the vote.

**The Chair:** We have got to deal with this perhaps in two votes, which might be done formally. I am going to take the first set of the amendments to which the Minister and Opposition Front Benchers have thoroughly spoken to. Mrs Moon is referring to amendment 34, which was included at the outset.

**Anna Soubry:** I am sorry, Sir Alan, but I had thought that all those amendments were grouped and therefore all our speeches referred to that group. Is that not right?

**The Chair:** To be fair, Minister, at the beginning, we announced that we were going to take all these things together, but there was a formal request from an individual on behalf of the Defence Committee to move one of those amendments formally later on. With slight confusion, we agreed. If we want to take them all together now, we can, or we can do them quite separately, but I think that the person involved will move that there be a second vote. I think we will be far better if we just allow the hon. Member for Bridgend to conclude. Although I am in no way foretelling the future, I suspect that she might move her amendment formally. In that case, Minister, you will get what you want and they will all be taken in a matter of moments.

**Anna Soubry:** I am so sorry, but it is my understanding that this was a group of amendments spoken to as a group and not picked off in this way. I felt under some pressure to go through quite a long speech because I was dealing with all the amendments as one, which I thought we had agreed. We now seem to have changed that.

**The Chair:** The problem is that democracy is sometimes difficult. In a democratic institution such as this, Members can choose to speak on different amendments and have votes. That may be traumatic and worrying—at times awful—but we have to proceed along that way.

**Anna Soubry:** Let me make it clear, Sir Alan, that I do not have a problem with democracy or with debate—in fact, I rather enjoy it. I do have a problem when we have agreed something and gone down that route only to find, suddenly, that we are agreeing something else and are in a different place. That is all I am saying. I thought we were debating it all together and now we are not. That is not about democracy.

**The Chair:** To be fair to Mrs Moon, Minister, she indicated to the Chair at the beginning of business today that she wanted to do two things: first, deal with the collective amendments and, secondly, move this particular amendment formally. I said okay, as I did to other requests made by your side of the Committee.

**Anna Soubry:** I am so sorry. What is the one amendment?

**The Chair:** Amendment 34 to clause 2.

**Mrs Moon:** Sir Alan, if it will simplify things, I will move the whole cluster to a vote.

**Martin Horwood:** I was enjoying the conversation until that point. I have not heard a substantive debate on amendments 34, 35 and 36, so I would be unhappy to vote on them as a set with amendments 6, 7, 8 and so on. We have clearly debated amendments 6, 7, 8 and the associated amendments. I would not seek to negotiate with you, Sir Alan, on how this is conducted, but I would not want them all grouped.

**The Chair:** The hon. Member concerned has agreed to the solution and has proposed to the Committee that we take them all together, and that is what we intend to do, unless she wants to speak any more.

**Mrs Moon:** Sir Alan, I may cause too much distress to the Minister and her Members if I do, so I will move to amendment 6.

**The Chair:** Well, you may not cause a riot, but you may cause a kerfuffle.

*Question put.* That the amendment be made.

**The Chair:** The Ayes were 11 and the Noes were 9.

**The Lord Commissioner of Her Majesty's Treasury (Mark Lancaster):** On a point of order, Sir Alan. How can the result be 11 to nine when there are only 19 members of the Committee?

**The Chair:** You are right.

*The Committee divided: Ayes 10, Noes 9.*

**Division No. 6]**

**AYES**

Gilbert, Stephen  
Hamilton, Mr David  
Horwood, Martin  
Jones, Mr Kevan  
Lazarowicz, Mark

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

**NOES**

Binley, Mr Brian  
Bridgen, Andrew  
Colvile, Oliver  
Howell, John  
Lancaster, Mark

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

*Question accordingly agreed to.*

*Amendment 6 agreed to.*

**The Chair:** Can I just tail back, Minister, and ask for your patience for a little while longer because of the procedure that was agreed before? We dealt with all the amendments a moment ago. I want to go back to ensure that amendment 34 to clause 2 has already been debated. We have no need to talk about this again.

We now move to amendment 26 to clause 2.

**Mrs Moon** *rose*—

**Martin Horwood:** On a point of order, Sir Alan. I thought that we had just grouped this entire group, which I objected to on a point of order, but we decided to go ahead. I am now not at all clear what we are voting on. Perhaps you could clarify that for me.

**The Chair:** The debate was on amendment 6. We are now having a vote on amendment 34, which has been debated in the context of amendment 6.

*Amendment proposed:* 34, in clause 2, page 6, line 24, leave out from “where” to end of line 25 and insert—

- “(a) the complainant makes an application to the Ombudsman; or  
(b) where a complaint has been active without a decision for longer than one calendar year.”—(*Mrs Moon.*)

*Question put,* That the amendment be made.

*The Committee divided: Ayes 8, Noes 11.*

**Division No. 7]**

**AYES**

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

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

**NOES**

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

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

*Question accordingly negated.*

3.15 pm

**Mr Jones:** On a point of order, Sir Alan. I tabled amendments 28 and 29. Will we vote on them?

**The Chair:** They come later.

**Mr Jones:** Can I have clarification on exactly when, because I am getting a bit confused about where we are now?

**The Chair:** We are now going to deal with amendment 26. The amendments that you are talking about will come after amendment 11. Does that make sense? Would you like more time?

**Mr Jones:** No, I know where I am.

**The Chair:** Amendments are placed where they come in the Bill. We have just proceeded beyond amendment 34, so we will now deal with amendments 26, 27 and 21.

**Mr Binley:** Do you know where you are, Kevan?

**Mr Jones:** Yes.

I beg to move amendment 26, in clause 2, page 6, line 25, at end insert—

“(1A) The Ombudsman may, after advising the Secretary of State, investigate any matter deemed to be in the public interest on—

- (a) any aspect of the system mentioned in section 340O(2)(a);  
(b) any matter relating to the Ombudsman’s functions under this Part; and make a report to the Secretary of State.”

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

Amendment 27, in clause 2, page 8, line 28, at end insert—

“( ) The Service Complaints Ombudsman may prepare a report at any point in time if it appears to him to be in the public interest.”

Amendment 21, in clause 2, page 11, line 42, at end add—

“( ) The Ombudsman may report to the Secretary of State on any matter relating to service complaints and the procedure for the handling of service complaints as the Ombudsman considers appropriate.”

**Mr Jones:** These amendments relate to the debate that we have just had. This issue came out of the Defence Committee report. Obviously, the Minister and I disagree on what we should want from an ombudsman. Do we want someone who will look just at individual complaints, or will they be able to look at other issues in the public interest that have come forward?

Amendment 26 refers to

“any matter deemed to be in the public interest”.

This is very important, because there are such issues. I go back to the issue at Deepcut. If we had had an ombudsman then, they would have been able to look at issues that were clearly of concern not only to the

[Mr Kevan Jones]

Members of Parliament who were raising them, but to members of the public. This would not be the state allowing the ombudsman to go off on a free rein, but it would allow them to inform the Secretary of State on such issues.

Also, my hon. Friend the Member for Bridgend raised earlier the double-jeopardy cases. That was an obvious case that the ombudsman, because of the wider public interest, could have looked into. I think that if the commissioner had announced that she was going to look at the case, the Ministry of Defence might have resolved it much quicker than it did, but credit to the Minister for bringing that injustice to a resolution.

This proposal is not about giving the ombudsman a free rein, but about the broader issues that the ombudsman should be able to look at—things that are in the public interest. They would be able to do thematic reports, which, if done properly, could inform not only the debate, but the chain of command with a view to making changes. That would be of benefit to the chain of command, the duty of care and the supervision of members of our armed forces.

Amendment 21 refers to “any matter”, because these issues are broader than complaints about pay and individual grievances, which we talked about this morning, and they clearly need addressing. I have to admit that I agree with the Minister. Changes have been made in terms of the chain of command. I am talking not only about Deepcut, but other changes that have taken place. Improvements have been made—for example, by accepting the recommendation from Lord Justice Blake about having oversight of initial training establishments. That has added to the improvements that we have seen in the past few years, but clearly, within the Army in particular, things still seem to be going on if we have had the situation with the double-jeopardy cases and the Neathway case.

The Minister will say that we are changing the remit and position of the ombudsman. Well, yes, we are, but that comes down to a fundamental disagreement between the Defence Committee and Opposition Members and the Government on what the ombudsman’s role should be. I do not think that we will ever square that circle and agree on that, no matter what we discuss today. These proposals are of fundamental importance. They would allow issues that are in the public interest and that are of grave concern to the public to be investigated. As I said, this is not about the ombudsman going off at free will; it is the ombudsman informing the Secretary of State. If that is done properly and sensitively, it could improve not only the administration of justice, but what is going on at certain establishments in the armed forces.

**Anna Soubry:** Amendment 21 would widen the scope of matters on which the ombudsman can make a report beyond those already provided for in terms of the content of their annual report, including the operation of the complaints process, the execution of their role and any other matters that the ombudsman considers necessary or the Secretary of State may direct.

3.22 pm

*Sitting suspended for a Division in the House.*

3.39 pm

*On resuming—*

**The Chair:** Before we proceed, I must make an announcement. It has been agreed by the Whips and the Front-Bench spokespeople that we will push on with the Bill to try to conclude as much as we can today. That will save hon. Members having to come in on Thursday morning and perhaps later. I ask Members to bear in mind that we have a long and arduous time ahead of us today.

**Anna Soubry:** Thank you, Sir Alan. I will try to ensure that we make good progress, although I could be naughty and vindictive and keep on going so that everybody has to be here along with me on Thursday. I shall be here on Thursday, although not under your fabulous chairmanship, Sir Alan. *[Interruption.]* Shall we all settle down? *[Interruption.]* Sorry, Sir Alan, that is your job. I am being the old bossy boots schoolteacher, but we will not have any sexist stereotyping, will we, gentlemen? Let us be serious. The concern that we have about amendments—

**Mr Binley:** Before the Minister gets too involved with her notes, and recognising that delay can be considered maladministration, I shall be brief in saying that I am fearful and wonder whether the Minister agrees with me. I am fearful that the Opposition are mixing the role of ombudsman with that of a regulator. It seems to me that an ombudsman acts on complaints, whereas a regulator in parliamentary parlance acts on his own behalf on issues he feels are important enough in his area of competence. I am concerned that, if we merge ombudsmen with regulators, we run into serious difficulty. Of course, an ombudsman has the right to point out to a large audience issues and problems in the annual report, but an ombudsman and a regulator should not be merged in that respect. Does the Minister agree that doing so would make the clause especially dangerous?

**Anna Soubry:** I absolutely agree and I am grateful for my hon. Friend’s sensible comments. By unfortunately agreeing to amendment 6, the Committee has created effectively another level of appeal and that is not what the ombudsman is meant to be about. I almost said foolishly agreeing, but that would have been rude. It is not an appeal; it is a specific role that we hoped to have defined in the Bill. Should these amendments be accepted, we are in danger of creating—

**Mr Jones:** On a point of order, Sir Alan. The Committee has voted on amendment 6, and the Government lost. Obviously, the Minister did not like that. However, is it in order to have another discussion on amendment 6 when we have already voted on it? Should we not refer to the amendments being discussed now?

**Anna Soubry** *rose—*

**The Chair:** Minister, may I just point out to the Opposition spokesman that occasionally in debate things do refer backwards as well as forwards? That is a procedure we could speed up.

**Anna Soubry:** Thank you, Sir Alan.

There are many different models in this country and across the world for an ombudsman with oversight of armed forces matters. We have set out in the Bill what meets our particular need. There is no bar in the Bill to the ombudsman raising matters that concern them with anyone and whenever they wish, as I have explained on numerous occasions during our deliberations. I want to put on record as an example that the last Service Complaints Commissioner, Susan Atkins, used to go round units and talk to people and find out what was going on, such as the unfettered nature of her appointment. That is one of the points about this ombudsman's role: it will have that unfettered nature. That does not need to be set out in legislation.

The previous Service Complaints Commissioner raised a wide range of matters during her tenure with the chain of command or in her annual report. She can report at any time, knock on any door and do all the things that I have mentioned, with provisions that were the same as those in the Bill. We do not want or need the ombudsman to have the power to investigate any matter other than allegations of maladministration in how complaints have been handled. If matters are raised that need investigation, a decision will need to be made about who is best equipped and best placed to carry that out. In many cases, the ombudsman is unlikely to be that person, although they will, of course, contribute their expertise and knowledge about complaints matters to the process. For all those reasons, I ask the Committee to resist the amendments.

3.45 pm

**Mr Jones:** This comes back to the fundamental point. We are not going to agree, even though I think that amendment 6 fundamentally changes the Bill for the better by giving the ombudsman a wider brief. I cannot for the life of me understand why the Minister and the Government say that the Service Complaints Commissioner and the new ombudsman can go anywhere, look at anything and recommend things, while arguing that those things should not be part of the ombudsman's remit and should not be in the Bill. Amendment 6 is important, because it broadens the ombudsman's remit substantially and gives them the role that the Defence Committee and outside organisations feel they need. The Minister has said that the commissioner and the ombudsman have free will to do what they like and influence things, and all we are trying to do is to make that part of the ombudsman's remit. I do not understand the resistance, except that the Government have tried from the outset to take a narrow interpretation of the ombudsman's role.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 10.*

#### Division No. 8]

##### AYES

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

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

##### NOES

Binley, Mr Brian  
Bridgen, Andrew

Colville, Oliver  
Gilbert, Stephen

Horwood, Martin  
Howell, John  
Lancaster, Mark

Newmark, Mr Brooks  
Pawsey, Mark  
Soubry, Anna

*Question accordingly negated.*

*Amendments proposed:* 7, in clause 2, page 6, line 30, after "allegation", insert "or service complaint".

Amendment 8, in clause 2, page 6, line 34, after "complaint", insert "or the complaint".

Amendment 9, in clause 2, page 6, line 34, after "allegation", insert "of maladministration".

Amendment 10, in clause 2, page 6, line 40, leave out "alleged" and insert "the service complaint referred to in subsection (1)(a) is well founded or any".—(*Mrs Moon.*)

*Question put, That the amendments be made.*

*The Committee divided: Ayes 10, Noes 8.*

#### Division No. 9]

##### AYES

Gilbert, Stephen  
Hamilton, Mr David  
Horwood, Martin  
Jones, Mr Kevan  
Lazarowicz, Mark

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

##### NOES

Binley, Mr Brian  
Bridgen, Andrew  
Colville, Oliver  
Howell, John

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

*Question accordingly agreed to.*

*Amendments 7, 8, 9 and 10 agreed to.*

**Mrs Moon:** I beg to move amendment 14, in clause 2, page 7, line 17, leave out subsection (2).

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

Amendment 15, in clause 2, page 7, line 19, leave out from (3) to "the"

Amendment 16, in clause 2, page 7, line 24, leave out subsection (5).

**Mrs Moon:** I apologise, Sir Alan; I did say at the beginning that I want to press all the Defence Committee's amendments to the vote. I did not get to speak to amendment 21. Have I missed that opportunity?

**The Chair:** Unfortunately, you cannot debate that amendment because it is part of the previous debate. You can bring it back on Report.

**Mrs Moon:** I shall do so. I shall speak to the Defence Committee's amendments 14, 15 and 16. The Government's draft regulations cover areas such as the information to be provided in an application to the ombudsman, the withdrawal of the application, time limits in respect of applications, the ombudsman's power to request information, documentation and evidence, and action following the receipt of an application, the investigation procedure and the preparation and confidentiality of the ombudsman's reports on investigations. These amendments speak to the power

[Mrs Moon]

of the Secretary of State to make regulations and whether those regulations ought to be discussed with the ombudsman.

Liberty thought it appropriate for the Secretary of State to have broader powers to make provision on how the internal service complaints system operates but considered it important that there were distinctions between those powers and those in relation to the independent ombudsman. We were concerned, as a Committee, that the Bill does not make it clear that the regulations are intended to set up the parameters for the ombudsman's investigatory process, while the detailed, procedural rules will be a matter for the ombudsman. This has the potential to undermine the independence, or the perception of independence, of the ombudsman. Our amendments would clarify the position.

**Anna Soubry:** The Secretary of State is responsible to Parliament for the effective operation of the whole service complaints system, including the ombudsman stage, so it is right that certain basic matters are prescribed in those regulations. One or two matters, such as time limits, need to be in regulations so that the ombudsman can enforce them. The ombudsman is a creature of statute, if I may put it that way, and so only has the powers that Parliament provides to him or her. It is up to the ombudsman in each case to determine the procedure for carrying out any investigation.

As can be seen from our published draft Armed Forces (Service Complaints Ombudsman Investigations) Regulations, there is no intention to unduly restrict the ombudsman in how he or she investigate matters. Rather than restrict the ombudsman, we encourage him or her to set detailed procedural rules. The Secretary of State's powers through regulations are supplementing rather than limiting powers, in that they give the ombudsman the powers he or she requires to be effective. There are, however, certain details which we believe are best covered by regulation, so that the parameters for the ombudsman's investigative process are made clear. These include, for example, the ability to hold oral hearings and to provide individuals with the right to be represented at any such hearing.

As this is a new ombudsman, we want the flexibility to amend the procedures based on experience of the system as it develops. This is why we have not set out detailed procedural rules on the face of the Bill. This flexibility will enable the system to be more efficient, effective and independent. For those reasons, I ask that these amendments are resisted.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 10.*

#### Division No. 10]

##### AYES

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

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

##### NOES

Binley, Mr Brian  
Bridgen, Andrew

Colville, Oliver  
Gilbert, Stephen

Horwood, Martin  
Howell, John  
Lancaster, Mark

Newmark, Mr Brooks  
Pawsey, Mark  
Soubry, Anna

*Question accordingly negated.*

*Amendment proposed: 27, in clause 2, page 8, line 28, at end insert—*

'( ) The Service Complaints Ombudsman may prepare a report at any point in time if it appears to him to be in the public interest.'—(*Mr Jones.*)

*Question put, That the amendment be made.*

*The Committee divided: Ayes 8, Noes 10.*

#### Division No. 11]

##### AYES

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

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

##### NOES

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

Howell, John  
Lancaster, Mark  
Newmark, Mr Brooks  
Pawsey, Mark  
Soubry, Anna

*Question accordingly negated.*

**Mrs Moon:** I beg to move amendment 11, in clause 2, page 8, line 29, leave out subsection (2) and insert—

'(2) Where the Ombudsman finds—

- (a) that the service complaint is well-founded;
- (b) maladministration in connection with the handling of the service complaint to which the investigation relates;

the report must also set out the Ombudsman's recommendations (if any) as a result of that finding."

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

Amendment 18, in clause 2, page 9, line 15, at end insert—

"(aa) accept the findings and recommendations of the Service Complaints Ombudsman."

Amendment 30, in clause 2, page 9, line 15, at end insert—

"(aa) accept the findings of the Service Complaints Ombudsman,"

Amendment 19, in clause 2, page 9, line 17, leave out "(if any)"

Amendment 20, in clause 2, page 9, line 20, leave out paragraph (c).

**Mrs Moon:** This amendment provides for the Defence Council to be responsible for considering the ombudsman's recommendations and informing the ombudsman what steps will be taken in response to them. The Bill's explanatory notes state that,

"the Defence Council will not be free to ignore the Ombudsman's recommendations, but will have some leeway in deciding what to do".

I draw attention to some of the comments made by witnesses to the Select Committee on Defence. The Rev. Nicholas Mercer stated that,

“the Defence Council is not required to take account of the findings of the Ombudsman, potentially. Where does it leave the complainant if that happens...? Does it have to go to judicial review?”

The Service Complaints Commissioner for the Armed Forces understood that the ombudsman’s findings would be binding. She commented:

“By agreeing to be bound by the Ombudsman’s findings, the whole chain of command will be held to account for its treatment of its people. It is right that the chain of command retain responsibility for handling Service complaints, which for the most part are workplace grievances—but with increased transparency and accountability. Service personnel trust their commanders with their lives; they must be able to trust them with their complaints”.

That must be the case.

**Anna Soubry:** The Government have made clear in the other place our intention that the findings of the ombudsman will be binding on the Defence Council, and the services accept this. The legal effect of the ombudsman’s findings is not specified in other legislation, and the courts have had no difficulty in determining in those contexts that those findings are binding on the receiving organisations. We simply do not regard it as necessary to specify the legal effect of findings in the Bill.

Our position in relation to the ombudsman’s recommendations is slightly different. The Defence Council would not be free simply to reject the recommendations because they disagreed with them; they would need good, cogent written responses and reasons to do so, such as that the full implementation of the recommendations was unworkable, or that there might be significant resource implications. The Defence Council should be able to reach the final decision on matters covered in any recommendations by the ombudsman.

4 pm

**Mr Jones:** Again, the Government appear not to object to the effect of the amendment, but do not want it in the Bill. That has happened a few times now. Apart from the fact that, as the Minister mentioned, it has not been done in other situations, has she any objection to the amendment?

**Anna Soubry:** I have repeatedly explained that there are often very different reasons for not including something in the Bill. I have just explained the reasons in the present case.

**Mr Jones:** Why?

**Anna Soubry:** Because we do not believe it would add anything, and it is not the right way. I am sorry; I have taken an intervention and we disagree on this point. *[Interruption.]* It is not helpful to be heckled from a sedentary position and I am not taking the intervention.

The focus of the Defence Council will in most cases where the ombudsman has made recommendations be to decide precisely how they will respond. That may simply be a matter of implementing the recommendation

by, for example, making an appropriate apology to the complainant. The person or persons who made the final decision in the internal process might be asked to reconsider a particular piece of evidence, to see whether it would have affected the outcome.

One of the most important elements of what we are trying to achieve is that when the ombudsman finds maladministration, that is not the end of the matter. They make recommendations. It may be that they simply tell the people who investigated a complaint, “Right. It’s going back to you. Start again, and this time do it in this way, in accordance with my recommendations.”

**Andrew Bridgen** (North West Leicestershire) (Con): From distant memory, there are two great tomes that deal with military law: the “Manual of Military Law” and “The Queen’s Regulations for the Army”. In what way will the Bill interact with or amend those rules?

**Anna Soubry:** It is my understanding that it will not touch on them. The Bill is about a service complaints system; it is about grievances affecting an individual in the course of service life, which could extend from serious allegations of harassment or bullying, right across the piece to an allegation that an allowance or pay is not right. It is a huge mixed bag, but it is important not to lose sight of the fact that the Bill concerns an individual’s grievance, usually made against a particular person, and the identifying of redress.

**Andrew Bridgen:** In that case, how will the Minister ensure that when the Bill progresses, as we hope it will, all ranks, from the top of the service to the newest recruit, will be aware of the process?

**Anna Soubry:** My hon. Friend makes a worthwhile point. At the heart of the Bill is the Government’s determination to do the right thing by service personnel. The covenant is one example of that, although some may dismiss its power, and the Bill is another. It will establish a proper and rigorous complaints system. *[Interruption.]* I have just been handed a note saying “extensive communications”. I hope that there will be publicity. People need to understand the importance of what is being brought in.

**Oliver Colvile** (Plymouth, Sutton and Devonport) (Con): Will my hon. Friend confirm that that will apply to Reservists as well?

**Anna Soubry:** Indeed. These are not contentious issues, but it is important to say that the Bill applies to Reservists. Actually, the Bill also applies to people who have left the service—they are still able to make a complaint within the time limit unless, of course, it would be an injustice to impose that time limit. The measure marks the seriousness of our determination to ensure that we have a proper system.

**Mr Binley** *rose*—

**Anna Soubry:** I do not know whether my hon. Friend the Member for Northampton South wants to intervene, but I am happy to oblige.

**Mr Binley:** My concern lies more with the defence of the realm. Does the Minister foresee even the slightest possibility of a decision under amendment 18 affecting the defence of the realm and the work of our military forces in that respect?

**Anna Soubry:** That is an interesting point, and it goes back to what I said at the beginning. This is about striking the right balance so that we not only maintain the confidence of the former and current chiefs of staff but get the balance of power absolutely right with the Defence Council, the chain of command. I would have thought it was a given that people understand what that means, and I think the Bill gets it right. We have a chain of command, and it should not feel threatened by any of this, but must we also have a rigorous complaints system.

I have said this before, but it is important to be clear that we are determined, not just in this Bill but in the other things that we do, to make the services step up to the mark where they have been failing by not taking complaints seriously. They must get on with it and do the right thing. This measure is part of that work, and I am confident that we have the right balance.

**Mr Jones:** Will the Minister give way?

**Anna Soubry:** I will give way, but I will then make progress.

**Mr Jones:** I accept the Minister's point about the chain of command, but Corporal Neathway was let down spectacularly by the chain of command. In terms of ensuring that such cases do not happen in future, I do not know what on earth the chain of command should fear from an ombudsman.

**Anna Soubry:** I am tempted to bounce the question back and ask what the hon. Gentleman would do over and above this Bill.

**Mr Jones:** With the amendment, we've got it.

**Anna Soubry:** I did not ask to be heckled from the sideline, but the hon. Gentleman apparently cannot understand the huge step forward that the Bill represents. The Bill sets a better and more streamlined system that, in some cases, gives direct access to the ombudsman. It provides the structure so that individuals have confidence and members of our armed forces know they have not only a right but almost an expectation that, when things are being done properly, they will have a system that we want them to use and that will not let them down; and equally, at all levels in the chain of command, people will ensure that those under their command are being treated fairly, and if there is any scrap of evidence—it does not need to be a formally raised complaint or grievance—they must ensure that people under their command are looked after properly, fairly and justly. If people are not looked after, the chain of command will not have a cohesive group of people to do the job in hand. That goes without saying.

Given that starting point, the focus of the Defence Council will, in most cases where the ombudsman has made recommendations, be to decide precisely how to respond. That may simply be a matter of implementing

the recommendation by making an apology, as I have said, or there may be some other response. There may be some cases where the failings identified by the ombudsman are such that a full reconsideration—a final stage of the complaints process—is required. That may involve the appointment of a new person or panel of people to hear the complaint again or, for example, to hold an oral hearing to test crucial evidence. For those reasons, the Bill will remain silent on the legal effect of findings and recommendations, and these amendments will and must be resisted.

Amendment 11 must also be resisted for the reasons I set out earlier. The ombudsman's role does not, and should not, extend to making findings or recommendations on the substance of the original complaint.

**Martin Horwood:** This is an interesting set of amendments with which I have sympathy, because the non-binding nature of the recommendations of many other ombudsmen is one of the slight frustrations of the system. We can have very weighty reports that are not fully implemented by the Government or Departments or whoever. As I say, I am sympathetic, but it is important that as a Committee we distinguish between findings and recommendations. When the commissioner gave evidence to the Defence Committee, she said:

“Whilst it is important that the Ombudsman's findings are binding, it does not follow that the Ombudsman's recommendations should also be binding. The normal position for an Ombudsman overseeing a public sector organisation is that their recommendations will be considered ‘highly persuasive’. This enables the organisation to make the final decision about the best way to fix a problem.”

That supports the Minister's point that although the recommendations may well be implemented in most cases, there must be the ability for an organisation to look, for instance, at its resources and make a judgment call.

Although I have been in favour of extending the remit of ombudsmen and voted accordingly in this Committee, I believe making the recommendations binding steps over an important and major line, which as far as I know is not stepped over in the case of any other ombudsman. There is a major debate to be had about whether that should be possible. After all, the ombudsman is an unelected official. If they are in effect to direct the resources of a Government Department, that is quite a major step. I am interested in hearing the response from the Labour Front Bench, but on this one it seems that the Defence Committee is getting a bit ahead of itself in trying to make recommendations binding on the Defence Council.

I have one last question, which is more for the Minister than anyone else. The Defence Council is rather a strange organisation, not entirely composed of elected Ministers but including chiefs of staff as well. For Parliament in effect to delegate decision-making authority in some of the regulation making in the Bill to the Defence Council is in itself a slightly strange step. Will the Minister explain the role of the Defence Council a little more to the Committee and how accountable it is to Parliament and to the legislature? If there is not much difference, in a sense, between the Defence Council and the ombudsman taking decisions, it is a slightly more finely balanced argument. On the face of it, I am not inclined to support these amendments, on the basis that they step over an important constitutional line.

**Mrs Moon:** I wish to press the amendment.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 12]

##### AYES

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

##### NOES

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

*Question accordingly negated.*

4.15 pm

*Amendment proposed:* 12, in clause 2, page 8, line 35, at end insert—

“(za) the wrong complained of.”—(*Mrs Moon.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 13]

##### AYES

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

##### NOES

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

*Question accordingly negated.*

*Amendment proposed:* 28, in clause 2, page 8, line 36, at end insert—

“(aa) the substance of the original complaint”—(*Mr Jones.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 14]

##### AYES

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

##### NOES

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

*Question accordingly negated.*

*Amendment proposed:* 29, in clause 2, page 8, line 38, leave out “of the maladministration” and insert “of subsections (3)(a)(aa)” —(*Mr Jones.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 15]

##### AYES

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

##### NOES

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

*Question accordingly negated.*

*Amendment proposed:* 13, in clause 2, page 8, line 38, after first “the”, insert “wrong complained of or” —(*Mrs Moon.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 16]

##### AYES

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

##### NOES

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

*Question accordingly negated.*

**Mrs Moon:** I beg to move amendment 17, in clause 2, page 9, line 10, leave out paragraph (c) and insert—

“(c) provision for the imposition on those to whom reports are sent of obligations of confidentiality in the interests of—

(i) national security; or

(ii) the safety of any person.”

The clause requires the ombudsman to produce a report on completion of their investigation into possible maladministration in the handling of a service complaint. Where the ombudsman finds maladministration, the report must include the ombudsman’s recommendations, including any to remedy the maladministration and any injustice that may have been caused. The report must be sent to the Defence Council and the person who brought the complaint.

Liberty’s concerns were twofold. The first was that the provision was unnecessary to protect the privacy

[Mrs Moon]

rights of complainants, which would be effectively maintained by the Data Protection Act. Secondly, they argued that the Secretary of State could seek to impose restrictions on those to whom reports were sent, and use proposed new section 340L(7)(c) of the Armed Forces Act 2006 to prevent complainants or others from speaking out about their experience and the outcome of the ombudsman's investigation. This is, perhaps, something that could be used against those who had been falsely sacked, or who had been subject to the double jeopardy rules.

The Equality and Human Rights Commission said that the amendment would ensure that regulations made under proposed new section 340L(7) would limit the obligations of confidentiality that can be imposed by the Secretary of State on those to whom the ombudsman's report is sent to those imposed in the interests of national security and the safety of the person. As long as the issue is not national security or the safety of the person, there is no reason for the Secretary of State to impose confidentiality rules.

The Committee was concerned that, as the Bill stands, the Secretary of State could have overriding powers to withhold from the public information, comments and reports that were critical of officers and of the Ministry in its handling of complaints.

**Anna Soubry:** As we have heard, the amendment would limit the confidentiality obligations that could be imposed by the ombudsman on those to whom she sends investigation reports to issues of national security and the personal safety of individuals. It would remove the ability to reflect in regulations any wider issues about the protection of sensitive information, which is currently provided for in the Bill.

The current provision is important and should be retained; the ombudsman may need to see some sensitive information to investigate fully whether maladministration has occurred. As we have heard, the ombudsman will be expected to act in accordance with the Data Protection Act 1998 in the handling and processing of personal data. Under the Bill, the ombudsman may send an investigation report to any person she considers appropriate. We would expect the ombudsman to place confidentiality obligations on the recipient if the report contains sensitive, personal data or other information confidential to the department, or raises issues of national security.

Regulations—again we come back to the regulations and their power—may make further provision about these obligations, as specified in proposed new section 340L(7)(c). These obligations are not aimed at curtailing freedom of speech; rather, they are to ensure that sensitive information is properly protected. This amendment is therefore resisted.

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 17]

#### AYES

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

#### NOES

Binley, Mr Brian	Howell, John
Bridgen, Andrew	Lancaster, Mark
Colville, Oliver	Newmark, Mr Brooks
Gilbert, Stephen	Pawsey, Mark
Horwood, Martin	Soubry, Anna

*Question accordingly negated.*

*Amendment proposed:* 30, in clause 2, page 9, line 15, at end insert:

“(aa) accept the findings of the Service Complaints Ombudsman.”—(*Mr Kevan Jones.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 18]

#### AYES

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

#### NOES

Binley, Mr Brian	Howell, John
Bridgen, Andrew	Lancaster, Mark
Colville, Oliver	Newmark, Mr Brooks
Gilbert, Stephen	Pawsey, Mark
Horwood, Martin	Soubry, Anna

*Question accordingly negated.*

*Amendment proposed:* 20, in clause 2, page 9, line 20, leave out paragraph (c).—(*Mrs Moon.*)

*Question put,* That the amendment be made.

*The Committee divided:* Ayes 8, Noes 10.

#### Division No. 19]

#### AYES

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

#### NOES

Binley, Mr Brian	Howell, John
Bridgen, Andrew	Lancaster, Mark
Colville, Oliver	Newmark, Mr Brooks
Gilbert, Stephen	Pawsey, Mark
Horwood, Martin	Soubry, Anna

*Question accordingly negated.*

**Mr Jones:** I beg to move amendment 32, in clause 2, page 11, line 25, at end insert—

“(a) an assessment of the adequacy of the resources of the Ombudsman's office to fulfil his or her functions.”

This is a probing amendment and I will not press it to a vote. We have seen that the role of Service Complaints Commissioner has grown, and this amendment ensures that the service complaints ombudsman would have enough resources to undertake his or her role in dealing with complaints. It would lead to the MOD having to make an assessment on resources; I accept that, and will cover this again in amendment 33. The role of Service

Complaints Commissioner has changed and grown. I think everyone in the MOD and the chain of command is agreed that she has brought freshness to the issues and has brought in welcome changes.

**Mrs Moon:** My hon. Friend asks whether the ombudsman's resources will be sufficient. Does he share my concern that the new ombudsman will potentially immediately face a swath of additional complaints when the double jeopardy cases finally come forward, if people do not feel that they have been dealt with adequately, some having received no justice since 2008?

4.30 pm

**Mr Jones:** I do, and the onus will be on the Minister or whoever is in charge after May to ensure that the Service Complaints Commissioner or ombudsman has sufficient resources to deal with not just those cases but all other complaints. As I said, this is a probing amendment to raise the issue and debate how the ombudsman will be financed.

**Anna Soubry:** Given that amendment 6 was agreed to, I can say now that by effectively setting up another tier of appeal, you have already—not you, Sir Alan—the Opposition have put a huge extra need for resources on the ombudsman by that unfortunate move. There is a disconnect with the reality of the way things pan out. If a large number of people put forward a complaint based on the fact that they were subject to double jeopardy—they got a caution and the service wrongly took further action—there will not be much of an investigation into it. We know that there has been a failing. We know there is going to be a fault found. It is a bit like a class action: it will not take very long to come to the same conclusion in relation to almost each and every one, although the nature of the redress of the grievance—something a bit lost by the Opposition—might be another matter. I do not think we should fall into that broad-brush approach without understanding the details.

**Mr Jones:** I am sorry but the Minister should be careful about what she has just said. If people are not happy with the redress they get in the cases raised by my hon. Friend the Member for Bridgend, they will bring forward complaints. *[Interruption.]* Well, they are all going to be different. If people are not happy with the way that they are dealt with, even after the welcome intervention the Minister announced on Second Reading, they will increase the amount of work for the ombudsman, whether the Minister likes it or not.

**Anna Soubry:** The hon. Gentleman misses the point. They only get to the ombudsman if the complaints system fails them and they do not get the redress that they seek. I think there is every chance that they will—*[Interruption.]* Please do not shout; it is not helpful. I think they will get their redress because it is not denied that the mistake has been made.

Again, we see a good example of the Opposition not understanding the role of the ombudsman. The ombudsman is the final port of call when there has been maladministration. I am sure the complaints system will deal with each and every one of those complaints and ensure that the appropriate redress is given. The

ombudsman does not take a complaint until it has gone through the system. I think the hon. Gentleman has forgotten all that.

The current provision in the new section enables the ombudsman to include in their annual report any other aspects of how the complaints system has operated, or the exercise of their functions as they consider appropriate. The previous Service Complaints Commissioner, as we have heard, was not constrained at all in her reports by the very same provision of the Armed Forces Act 2006. She commented many times on wider issues, including whether she had sufficient resources.

**Mrs Moon:** I do thank the Minister; she has been incredibly generous and I appreciate that.

**Mr Jones:** Not to me.

**Mrs Moon:** The Minister has been incredibly generous to me. We are going to see 1,500 people, some of whom have been discharged from the service and may seek to return. People have been demoted who may well feel that they would have achieved further progress in their careers if they had not been. We will see people who have lost reputation as a result. These are complicated issues. In all honesty, although I hope that the Minister is right, I think we could well see a large number of people going back to service complaints feeling that the redress they have been offered is not appropriate.

**Anna Soubry:** We have exhausted this point. People will go through our new, improved and revised system. There is no debate about the fact that they will have a grievance, and I am confident that we will be able to sort out redress. I am sure that there will be instances of this, but the idea of more than 1,000 people flooding into the gates of the ombudsman is simply not made out. If I am allowed to complete what I was going to say, it is important that we currently know that we have a robust complaints commissioner, who is able to talk at length in her report about the adequacy of the resources. There is no reason for that to change in any way. Yet again we come back to the fact that there is accordingly no need for this to be in the Bill, because what we have at the moment is sufficient.

**Mr Jones:** I accept that the Service Complaints Commissioner has raised the issue of resources. The statement the Minister just made in response to my hon. Friend the Member for Bridgend will come back to haunt her, but if everything goes okay in May the Minister will not be here to face that. However, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 2, as amended, ordered to stand part of the Bill.*

*Clause 3 ordered to stand part of the Bill.*

## Schedule

### SERVICE COMPLAINTS: CONSEQUENTIAL AMENDMENTS

*Amendments made:* 44, in the schedule, page 14, line 2, at end insert—

*“Equal Pay Act (Northern Ireland) 1970 (c. 32 (N.I.))*

A1 The Equal Pay Act (Northern Ireland) 1970 is amended as follows.

A2 (1) Section 6A (service pay and conditions) is amended as follows.

(2) In subsection (5), for paragraph (b) substitute—

“(b) the complaint has not been withdrawn.”

(3) After subsection (5) insert—

“(5A) Where the service complaint is dealt with by a person or panel appointed by the Defence Council by virtue of section 340C(1)(a) of the Armed Forces Act 2006, it is to be treated for the purposes of subsection (5)(b) as withdrawn if—

(a) the period allowed in accordance with service complaints regulations for bringing an appeal against the person’s or panel’s decision expires, and

(b) either—

(i) the claimant does not apply to the Service Complaints Ombudsman for a review by virtue of section 340D(6) of that Act (review of decision that appeal brought out of time cannot proceed), or

(ii) the claimant does apply for such a review and the Ombudsman decides that an appeal against the person’s or panel’s decision cannot be proceeded with.”

(4) For subsection (6) substitute—

“(6A) Subsection (5) does not prevent the claimant from presenting a complaint to an industrial tribunal concerning a claim in respect of the contravention of a term of service relating to membership of, or rights under—

(a) an occupational pension scheme made under section 3 of the Naval and Marine Pay and Pensions Act 1865,

(b) the Army Pensions Warrant 1977, or

(c) an occupational pension scheme made under section 2 of the Air Force (Constitution) Act 1917.

(6B) In subsection (6A), “occupational pension scheme” has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993.”

(5) For subsection (7) substitute—

“(7) The presentation of a complaint to an industrial tribunal in reliance on subsection (5) does not affect the continuation of the procedures set out in service complaints regulations.”

(6) Omit subsection (11).

(7) In subsection (12)—

(a) in the definition of “service complaint”, for “section 334” substitute “section 340A”,

(b) after that definition, insert—

““service complaints regulations” means regulations made under section 340B(1) of that Act.”, and

(c) omit the definition “the service complaint procedures”.

A3 In section 6AB (“arrear date” in proceedings under section 6A(9)), in subsection (5), for “in accordance with regulations made under section 6A(6)” substitute “by virtue of section 6A(6A).”

*The amendments to Northern Ireland legislation made by this amendment and amendment 45 clarify how the new service complaints provisions in Part 14A of the Armed Forces Act 2006 will interact with certain complaints to an industrial tribunal in Northern Ireland. The amendments are similar in substance to those relating to the Equality Act 2010.*

Amendment 45, in the schedule, page 14, line 8, at end insert—

“*Sex Discrimination (Northern Ireland) Order 1976 (S.I. 1976/1042 (N.I. 15))*

1A The Sex Discrimination (Northern Ireland) Order 1976 is amended as follows.

1B In Article 80 (orders and regulations), in paragraph (1), omit “(except Article 82(9C))”.

1C (1) Article 82 (application to Crown etc) is amended as follows.

(2) In paragraph (9B), for sub-paragraph (b) substitute—

“(b) the complaint has not been withdrawn.”

(3) After paragraph (9B) insert—

“(9BA) Where the service complaint is dealt with by a person or panel appointed by the Defence Council by virtue of section 340C(1)(a) of the Armed Forces Act 2006, it is to be treated for the purposes of paragraph (9B)(b) as withdrawn if—

(a) the period allowed in accordance with service complaints regulations for bringing an appeal against the person’s or panel’s decision expires, and

(b) either—

(i) the complainant does not apply to the Service Complaints Ombudsman for a review by virtue of section 340D(6) of that Act (review of decision that appeal brought out of time cannot proceed), or

(ii) the complainant does apply for such a review and the Ombudsman decides that an appeal against the person’s or panel’s decision cannot be proceeded with.”

(4) Omit paragraph (9C).

(5) For paragraph (9D) substitute—

“(9D) The presentation of a complaint to an industrial tribunal in reliance on paragraph (9B) does not affect the continuation of the procedures set out in service complaints regulations.”

(6) Omit paragraph (9E).

(7) In paragraph (10)—

(a) in the definition of “service complaint”, for “section 334” substitute “section 340A”,

(b) after that definition, insert—

““service complaints regulations” means regulations made under section 340B(1) of that Act.”, and

(c) omit the definition “the service complaint procedures”.

*Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6))*

1D (1) Article 71 of the Race Relations (Northern Ireland) Order 1997 (application to Crown etc) is amended as follows.

(2) In paragraph (8), for sub-paragraph (b) substitute—

“(b) the complaint has not been withdrawn.”

(3) After paragraph (8) insert—

“(8A) Where the service complaint is dealt with by a person or panel appointed by the Defence Council by virtue of section 340C(1)(a) of the Armed Forces Act 2006, it is to be treated for the purposes of paragraph (8)(b) as withdrawn if—

(a) the period allowed in accordance with service complaints regulations for bringing an appeal against the person’s or panel’s decision expires, and

(b) either—

(i) the complainant does not apply to the Service Complaints Ombudsman for a review by virtue of section 340D(6) of that Act (review of decision that appeal brought out of time cannot proceed), or

(ii) the complainant does apply for such a review and the Ombudsman decides that an appeal against the person’s or panel’s decision cannot be proceeded with.”

(4) Omit paragraph (9).

(5) For paragraph (10) substitute—

“(10) The presentation of a complaint to an industrial tribunal in reliance on paragraph (8) does not affect the continuation of the procedures set out in service complaints regulations.”

(6) Omit paragraph (11).

(7) In paragraph (12)—

(a) in the definition of “service complaint”, for “section 334” substitute “section 340A”,

(b) after that definition, insert—

““service complaints regulations” means regulations made under section 340B(1) of that Act;”, and

- (c) omit the definition “the service complaint procedures”.”

See the explanatory statement relating to amendment 44.

Amendment 46, in the schedule, page 15, line 19, at end insert—

“Consequential revocations

10 The following instruments are revoked—

the Race Relations (Complaints to Industrial Tribunals) (Armed Forces) Regulations 1998 (S.R. (N.I.) 1998/104);

the Equal Pay (Complaints to Industrial Tribunals) (Armed Forces) Regulations 1998 (S.R. (N.I.) 1998/105);

the Sex Discrimination (Complaints to Industrial Tribunals) (Armed Forces) Regulations 1998 (S.R. (N.I.) 1998/106).”—(*Anna Soubry.*)

This amendment provides for the revocation of three sets of regulations that are made in the exercise of powers that are repealed by amendments 44 and 45.

Schedule, as amended, agreed to.

#### Clause 4

##### FINANCIAL ASSISTANCE FOR BENEFIT OF ARMED FORCES COMMUNITY

**Mr Jones:** I beg to move amendment 33, in clause 4, page 12, line 40, at end insert—

“(5A) The Secretary of State must publish an annual report on the extent to which the criteria listed in subsection (5) have been met.”

Again, this is a probing amendment, and I will not press it to a vote. [*Interruption.*] The Government Whip said “Ooh,” on hearing that, but I can certainly change my mind. I will speak for longer if that allows the Minister to find her speaking notes. If she nods at me when she wants me to sit down, I will do so.

**Anna Soubry:** I have it.

**Mr Jones:** We all know the tireless work that many organisations and individuals do on behalf of the wider armed forces community. The clause allows the Secretary of State to award financial assistance to a person for an activity for the benefit of the armed forces community. The clause is not contentious. I am sure we would all pay tribute to the army of unsung volunteers who, day in, day out, help veterans and serving members of our armed forces.

Recently we saw the LIBOR fund set up, and organisations can apply to that for funds to assist veterans and members of the forces community. My amendment—it is a probing one, as I say—suggests that a general report should be produced by the Secretary of State looking at not only where the money has gone but the objectives that have been met by its allocation. People may say that the organisations are publicly scrutinised in terms of the Secretary of State being able to scrutinise them—[*Interruption.*] Should the Minister wants me to keep going I will, if she has not found her notes yet.

**Anna Soubry:** I never lost them. They are four pages long and if the hon. Gentleman is not careful I might read out every word.

**Mr Jones:** I am quite happy to listen to the hon. Lady’s four pages of speech but her colleagues behind her will be complaining if that happens.

I look forward to hearing how we will get full transparency and accountability on that money. Those organisations do valuable work and there is a commitment from all parties that they should be supported. They do not get thanked enough, so I would like to put on the record—I am sure every hon. Member present would—my thanks to the organisations that do a fantastic job on behalf of our armed forces.

**Anna Soubry:** That is a happy note, as we come towards the end of our proceedings. We are dealing with things on which we agree. Only you will understand this, Sir Alan, but perhaps one difficulty we have had today is that the hon. Gentleman and I come from Worksop. I do not know whether that is of any significance.

**Mr Jones:** Neighbouring schools, in fact.

**Anna Soubry:** Neighbouring schools, indeed, so it is a deep-seated rivalry. [*Interruption.*] He is a lot younger than I am.

The reason why the Government are not minded to accept the hon. Gentleman’s amendment is that there is already extensive provision on these matters under the Armed Forces Act 2006, with a duty on the Secretary of State to produce the covenant report. That report lays before Parliament in great detail the work done using the various funds, whether the LIBOR funding or other moneys, including the covenant fund of £10 million a year in perpetuity. The detail required by the amendment is already there in that report.

Given the accountability to the public on how we are fulfilling our commitment to the covenant, the amendment is not required. However, I will add that, notwithstanding some of the jocularities this afternoon, there is agreement on the terrific work done by all members of our armed forces and their families, and by all those who have served in the past. They often work in the most difficult of conditions. Although I know I have repeated this theme, that is why it is so important that when things go wrong, as they inevitably will in any organisation, people have not just a system to which they can turn but a complaints system in which they have confidence. That is so important and is at the heart of the Bill.

In my team, we have worked hard to get the balance right. It is a difficult balance; if we look at some of the debates held in the other place and the contributions by former service chiefs giving their concerns about that balance, that might explain why. I thank my team for the great work they have done and the real care they have put into drafting the Bill. We look forward to further debates upon it.

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

*Clause 4 ordered to stand part of the Bill.*

*Clause 5 ordered to stand part of the Bill.*

**Clause 6**

## COMMENCEMENT

4.45 pm

*Amendments made:* 41, in clause 6, page 13, line 19, leave out paragraph (b).

*This amendment removes the power for commencement regulations to make transitional, transitory or saving provision. Power to make such provision will instead be available under the new clause inserted by amendment NCI.*

Amendment 42, in clause 6, page 13, line 20, leave out “Sections 4 and 5, this section and section 7” and insert

“The remaining provisions of this Act”. —(*Anna Soubry.*)

*This amendment ensures that the new clause inserted by amendment NCI (power to make transitional provision in connection with the coming into force of the new service complaints system) comes into force on Royal Assent (along with those clauses for which the Bill already provides for commencement on Royal Assent).*

*Clause 6, as amended, ordered to stand part of the Bill.*

**Clause 7**

## SHORT TITLE

*Amendment made:* 43, in clause 7, page 13, line 25, leave out subsection (2).—(*Anna Soubry.*)

*Subsection (2) of clause 7 was inserted by the Lords to avoid questions of privilege. Its removal by this amendment is purely procedural.*

*Clause 7, as amended, ordered to stand part of the Bill.*

**New Clause 1**

## TRANSITIONAL PROVISION

(1) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of sections 1 to 3 and the Schedule.

(2) The power under subsection (1) includes power—

- (a) to modify the operation of the old complaints provisions in relation to pre-commencement complaints;
- (b) to apply any of the new complaints provisions (with or without modifications) in relation to pre-commencement complaints.

(3) Regulations under this section—

- (a) may make different provision for different purposes;

(b) may make provision generally or in relation to cases of a description specified in the regulations.

(4) Regulations under this section are to be made by statutory instrument; and an instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section—

“the new complaints provisions” means—

(a) the provisions of, or made under, Part 14A of the Armed Forces Act 2006, and

(b) section 365B of that Act;

“the old complaints provisions” means—

(a) sections 334 to 339 of the Armed Forces Act 2006 and provision made under any of those sections, and

(b) section 366 of that Act;

“pre-commencement complaint” means a complaint under section 334 of the Armed Forces Act 2006 that is made before the coming into force of section 2(2) of this Act.” —(*Anna Soubry.*)

*The new clause inserted by this amendment confers power on the Secretary of State to make regulations containing transitional, transitory or saving provision in connection with the coming into force of clauses 1 to 3 and the Schedule.*

*Brought up, read the First and Second time, and added to the Bill.*

**Martin Horwood:** On a point of order, Sir Alan. May I add my thanks to the departmental and parliamentary staff who, I am sure, have done an enormous amount of work on the Bill? I also commend the Minister for her words in praise of our armed forces and for her command of what has been a short but sometimes quite challenging Bill Committee. She deserves praise for that.

**Jim Shannon:** On a point of order, Sir Alan. I wish to make a point for the sake of accuracy. I understand that we have had 14 votes this afternoon in a such a short period of time that we may have made history. Is that correct? [*Interruption.*]

**The Chair:** Not even close. [*Laughter.*]  
*Bill, as amended, to be reported.*

4.48 pm

*Committee rose.*

**Written evidence reported to the House**

AF01 Service Complaints Commissioner

AF02 Liberty

