



House of Commons
Defence Committee

Who guards the guardians? MoD support for former and serving personnel

Sixth Report of Session 2016–17

*Report, together with formal minutes relating
to the report*

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The Defence Committee

The Defence Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Ministry of Defence and its associated public bodies.

Current membership

[Dr Julian Lewis MP](#) (*Conservative, New Forest East*) (Chair)

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The following were also Members of the Committee during the course of the inquiry:

Richard Benyon MP (*Conservative, Newbury*)

Jim Shannon MP (*Democratic Unionist Party, Strangford*)

The sub-Committee

For this inquiry, the Chair of the sub-Committee was Johnny Mercer MP. The Members of the sub-Committee were James Gray MP, Mrs Madeleine Moon MP and Rt Hon John Spellar MP.

Powers

The Committee is one of the departmental select committees, the powers of which are set out in the House of Commons Standing Orders, principally in SO No. 152. These are available on the internet via www.parliament.uk.

Publications

Committee reports are published on the [Committee's website](#) and in print by Order of the House. Evidence relating to this report is published on the relevant [inquiry page](#) of the Committee's website.

Committee staff

The current staff of the Committee are James Davies (Clerk), Dr Adam Evans (Second Clerk), John Curtis, David Nicholas, Eleanor Scarnell, and Ian Thomson (Committee Specialists), David Gardner (Senior Committee Assistant) and Carolyn Bowes (Committee Assistant).

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Summary

The UK's military must be equally subject to the law as any civilian, whether in barracks or on operations. The UK military rightly demands that those who fall short of these standards should pay the full penalty for doing so. However, just as in civilian life, investigations into wrongdoing must be fair and be seen to be fair.

The Iraq Historic Allegations Team (IHAT) was set up in 2010 to investigate allegations of abuse by Iraqi civilians against UK armed forces personnel that were said to have occurred between 2003 and 2009. It was expected, to take two years to complete its work. Exploited by two law firms in particular, IHAT's caseload rose from 165 to over 3,000 over subsequent years. It is now expected to complete its work in 2019 and will cost the taxpayer nearly £60 million.

A large number of those claims were taken up by IHAT despite a lack of credible evidence and the investigations have taken years to complete. As a result, those under investigation have suffered unacceptable stress, have had their lives put on hold and their careers damaged. They have been, and in some cases continue to be, treated in an unacceptable manner as a result of serving the United Kingdom.

The catalogue of serious failings in the conduct of IHAT's investigations points to a loss of control in its management. Service personnel and veterans have been contacted unannounced—sometimes years after service—despite assurances that this would not happen. Covert surveillance appears to have been used on serving and retired members of the armed forces. IHAT investigators have impersonated police officers in order to gain access to military establishments or threaten arrest. Investigations which had previously been closed down were re-opened on the back of dubious evidence.

Perhaps the most telling failure of IHAT is the absence of a single prosecution against the UK military. It has been an unmitigated failure for both 'victims' and military personnel alike. Of the total number of cases investigated by IHAT (more than 3,500), most have or will shortly be, dismissed. The Secretary of State for Defence told us that he hoped that the number would be reduced to 60 by summer 2017. Once the number of cases outstanding reaches that target, it is our view that IHAT must be closed down, with remaining cases passed to the service police, with support from civilian police.

Throughout this process there has been an almost total disregard of the welfare of current and former service personnel and their families. Soldiers have had to fund their own defence and have been left in the dark by a chain of command which has appeared to be unable or unwilling to interfere with the process.

IHAT has operated without any regard to its impact on the UK military which has directly harmed their reputation across the world, and negatively affected the way this country conducts military operations and defends itself.

The MoD must take its share of responsibility for this. Both the MoD and IHAT have focused too much on satisfying the accusers and too little on defending those under investigation. Ministers must take the lead in ensuring that this rectified.

The MoD is now reforming its package of support for servicemen and women. In October 2016, it announced that it would now cover the legal costs for all of those under investigation by IHAT. It has also started work on how the UK can derogate from the European Convention on Human Rights so that claims through the European Court of Human Rights cannot be made for future conflicts.

The manner in which the armed forces are investigated requires fundamental reform. The focus has been on satisfying perceived international obligations and outside bodies, with far too little regard for those who have fought under the UK's flag. Our report contains a set of principles to which the MoD and any future investigatory body should adhere. The armed forces deserve to be held in the highest esteem and a repeat of IHAT must never be allowed to happen again.

1 The sub-Committee

1. On 28 April 2016, the Defence Committee announced that a sub-Committee would hold an inquiry into the question of Ministry of Defence (MoD) support for former and serving personnel subject to judicial processes, in particular the work of the Iraq Historic Allegations Team (IHAT). IHAT was established in the last days of the Gordon Brown Government of 2010 to assess claims of abuse by Iraqi civilians against members of the UK's armed forces who served there.
2. For the inquiry, the Chair of the sub-Committee was **Johnny Mercer MP**. The members of the sub-Committee were **James Gray MP**, **Mrs Madeleine Moon MP** and **Rt Hon John Spellar MP**. Additionally, **Rt Hon Julian Lewis MP**, Chair of the Committee and **Douglas Chapman MP** also attended one of evidence sessions.
3. We took oral evidence from Hilary Meredith, Solicitor; Lewis Cherry, Solicitor; Reverend Nicholas Mercer, a former army lawyer; Martin Jerrold, Group Managing Director, Red Snapper Group; Sir David Calvert-Smith; Rt Hon Jeremy Wright QC MP, Attorney General; Professor Richard Ekins, Project Director, Judicial Power Project; Mark Warwick, Director; and Commander Jack Hawkins RN, Deputy Head, Iraq Historic Allegations Team (IHAT).
4. Our last session was with Rt Hon Sir Michael Fallon MP, Secretary of State for Defence; Air Marshal Sir Stuart Peach GBE KCB ADC DL, Chief of Defence Staff; and Peter Ryan, Director, Judicial Engagement Policy MoD. Initially we requested that the Minister for the Armed Forces represent the MoD. During the course of our inquiry, we decided that the Secretary of State would be better placed to represent the Ministry of Defence. We particularly thank the Secretary of State for appearing before the sub-Committee and taking a keen personal interest in our inquiry.
5. While the Report is published as the Report of the Defence Committee, it is primarily the work of the sub-Committee and reflects their views. It has not been amended by the main Committee.

2 Introduction

The inquiry

6. The eyes of the world follow the UK's armed forces wherever they are deployed and their actions are subject to extensive scrutiny. The UK's armed forces are rightly held in the highest esteem. The UK's armed forces accept that the rule of the Law of Armed Conflict under which UK armed forces operate is clear and unambiguous. The rule of law is clear; the British military work hard to instil it in their people, and any failures to abide by the law must be prosecuted.

7. Scrutiny of the actions of armed forces is correct, and not uncommon. However the Attorney General told us that he was "not aware of anything comparable to IHAT" happening in other countries.¹

8. There has for some time been increasing concern about the expanding series of legal inquiries into the conduct of British armed forces across several theatres of war. Of particular concern is the manner in which those inquiries have been conducted. The evidence we have received, and representations to Committee members by individuals, have raised serious concerns about both the IHAT investigations and the level support which was provided by the MoD.

9. **As a nation we expect our servicemen and women to conduct themselves at the highest levels of professionalism on operations. Where the rule of law is broken, justice must be done in military as in civilian life. Our inquiry has sought to test whether the professionalism demanded of the armed forces has been matched by the duty of care for them demanded of the Ministry of Defence during the IHAT investigations.**

3 Iraq Historic Allegations Team

Background

10. The actions of British service personnel in Iraq between 2003 and 2009 gave rise to a number of legal claims.² In response to those claims, two public inquiries were established to consider the matter, the Baha Mousa Inquiry in May 2008³ and the Al-Sweady Inquiry in November 2009.⁴ In February 2010, the law firm Public Interest Lawyers (PIL) began a series of claims for judicial review seeking investigation of further cases of death or alleged ill treatment of Iraqi citizens by British service personnel.

11. In March 2010, in response to those claims, the then Labour Government established the Iraq Historic Allegations Team (IHAT) under the direction of the Royal Military Police, to review and investigate allegations of abuse by Iraqi civilians by UK armed forces personnel in Iraq. The intention was for IHAT to sift through the new allegations, investigate those deemed credible, and decide which cases should then be referred for prosecution.⁵ After the 2010 General Election, the Coalition Government renewed the commitment to the IHAT investigations which were expected to last for around two years.⁶ In 2011, the European Court of Human Rights ruled that the UK Government had a duty under the European Convention on Human Rights to investigate allegations of deaths and ill treatment involving British service personnel in Iraq.⁷ IHAT became the vehicle for the delivery of that ruling. We also note that since 2014, the International Criminal Court has taken an interest in alleged abuse cases in Iraq. We consider both of these issues later in our Report.

12. On 1 April 2012, following a Court of Appeal ruling, responsibility for IHAT was transferred from the Royal Military Police (RMP) to the Provost Marshal (Navy) due to potential conflicts of interest resulting from the RMP's involvement in Iraq. New investigators for IHAT were drawn subsequently from Royal Navy Police personnel and retired officers from civilian police forces.⁸

IHAT caseload

13. IHAT had an initial caseload of 165 cases and a target to complete its investigations by 1 November 2012. That target was not met and between November 2014 and April 2015 IHAT experienced a huge increase in its caseload. By October 2015, it stood at 1,515 with a further 665 allegations to be screened. As a result, the target date for completion was extended first to December 2016 and then to December 2019.⁹ When it was established, IHAT was expected to cost £7.5 million. As at the end of September 2016 the work of IHAT has cost £34.7 million. In total the MoD has approved £59.7 million of funding up to 2019.¹⁰

2 House of Commons Library Briefing Paper, [Iraq Historic Allegations Team](#), January 2016

3 Sir William Gage, [The Report of the Baha Mousa Inquiry](#), September 2011, HC 1452 of Session 2010–12

4 Sir Thayne Forbes, [The Report of the Al-Sweady Inquiry](#), December 2014

5 House of Commons Library Briefing Paper, [Iraq Historic Allegations Team](#), January 2016

6 House of Commons Library Briefing Paper, [Iraq Historic Allegations Team](#), January 2016

7 [Al Skeini and others v United Kingdom](#) (2011) 53 EHRR 18

8 [Review of the Iraq Historic Allegations Team](#), Sir David Calvert-Smith, September 2016, page 5

9 [Review of the Iraq Historic Allegations Team](#), Sir David Calvert-Smith, September 2016, page 5

10 Ministry of Defence ([PSJ0009](#))

14. The most recent Quarterly Update¹¹ from IHAT shows that it has now received a total of 3,368 allegations of potentially criminal behaviour. 1,555 cases were sifted out following an initial assessment and were not pursued. A further 127 still require an initial assessment. 1,686 are still being considered of which 325 relate to allegations of unlawful killing and 1,361 relate to other forms of alleged ill treatment—ranging from serious sexual assault to common assault. A full breakdown of the IHAT caseload will be found as Appendix 2.

15. In oral evidence, both the Secretary of State and Mark Warwick asserted that the approximately 1,800 cases left to investigate would be reduced to “hundreds” by the end of January 2017 and to “around 60” by summer 2017.¹² In relation to the time it was taking to resolve cases, the Secretary of State told us that the Armed Forces Act 2006 established an obligation to investigate potential criminal offences.¹³ However, it did not prescribe the manner of the investigation which was decided on by IHAT and ultimately the MoD.

16. When pressed on the speed with which these cases could be resolved, the Secretary of State explained that while 2019 had been set as a target, he cautioned that the remaining 60 outstanding cases could be “some of the more complex and difficult cases and not simply yet another raft of spurious allegations that can be dismissed quickly”.¹⁴ He further argued that the process was “not something that Ministers can or should interfere with” as it was a “court-directed process” and therefore MoD Ministers did not have the power to wind down IHAT.¹⁵

17. Both the Secretary of State and Mark Warwick, the Director of IHAT, assured us that the IHAT’s caseload will be reduced to the hundreds by the end of January 2017 and to around 60 cases by the summer of 2017. We ask the MoD to provide us with monthly updates on the number of outstanding cases until the process is concluded.

The role of legal firms: Public Interest Lawyers and Leigh Day

18. The vast majority of the IHAT caseload was generated by two law firms, Public Interest Lawyers and Leigh Day. Mark Warwick, the Director of IHAT, told us that 2,470 originated from the work of Public Interest Lawyers¹⁶ and 718 from Leigh Day.¹⁷ In written evidence Leigh Day clarified to us that they only directly referred 15 cases to the IHAT team,¹⁸ the remainder being referred by the MoD to IHAT in response to civil claims brought by the law firm.¹⁹ In his Review of IHAT (commissioned by the Attorney General) and published on 15 September 2016,²⁰ Sir David Calvert-Smith, a former High Court Judge, criticised the quality of the evidence supplied by Public Interest Lawyers in the following terms:

11 [Quarterly Update](#)

12 Q399 and Q516

13 Q615

14 Q551

15 Q551

16 Q462

17 Q466

18 Leigh Day ([PJS0016](#))

19 Q5, Leigh Day ([PSJ0011](#))

20 [Review of the Iraq Historic Allegations Team](#), Sir David Calvert-Smith, September 2016

[It] has often been very poor, sparse, often inaccurate as to identities, dates, times etc, and set out simply as a short unsigned narrative more or less accurately translated from the original Arabic.²¹

19. Asked why, therefore, the IHAT team had not been more discriminating and dismissed claims based on such poor evidence, Sir David replied that until recently “the mood music from the courts [...] induced a mind-set, I suspect, of saying, ‘Hang on. We can’t do this; we can’t do that. We had better be careful about what we do’”.²² More recently Mr Justice Leggatt—the newly appointed Designated Judge for all cases relating to alleged Iraqi abuses—ruled that, as originally suggested by the Director of Service Prosecutions, IHAT should:

Ask at an early stage whether there is a realistic prospect of obtaining sufficient evidence to charge an identifiable individual with a service offence. If it is clear that the answer to this question is “no”, there can be no obligation on IHAT to make any further enquiries.²³

20. Sir David Calvert-Smith said this would allow IHAT to dismiss allegations which were not properly justified by signed statements. He further argued that IHAT should have had the confidence to do that before.²⁴

21. The Government has laid the blame for the vast proliferation of legal claims against British armed forces at the door of the two legal firms. In January 2016, Penny Mordaunt MP, then Minister for the armed forces, described the “parasitic” behaviour of those law firms “churning out spurious claims against our armed forces on an industrial scale” as being the enemy of justice.²⁵

22. In written evidence the MoD told us that, as of the November 2016, it had paid out £21.833 million in settlements to Iraqi complainants, the majority of which were in response to the European Court of Human Rights ruling on detention.²⁶ As at September 2016, the cost of defending such claims was £13.1million.²⁷ In addition, the MoD, through IHAT, paid out approximately £208,000 in expenses to Public Interest Lawyers, excluding the costs of flights and accommodation for which they were unable to provide broken-down figures.²⁸ Explaining why the MoD paid out these sums while at the same time decrying the work of PIL, the Secretary of State for Defence replied that:

We saw the abuse of the system, and we became aware of that [...] when we had the Al-Sweady report in December 2014. We then began to see the scale of the misrepresentation and the abuse involved, but obviously there were payments that were previously contracted and we were still obliged to pay those.²⁹

21 [Review of the Iraq Historic Allegations Team](#), Sir David Calvert-Smith, September 2016, pages 12–13

22 Q279

23 [Review of the Iraq Historic Allegations Team](#), Sir David Calvert-Smith, September 2016, page 7

24 Q278

25 HC Deb, 27 January 2016, Col [203WH](#)

26 Ministry of Defence ([PSJ0009](#))

27 Ministry of Defence ([PSJ0009](#))

28 Ministry of Defence ([PSJ0013](#))

29 Q528

23. The Secretary of State told us that, as a result, it compiled a “dossier” on the work of these law firms which it passed on to the Solicitors Regulation Authority.³⁰

24. The Solicitors Regulation Authority has since referred the MoD’s allegations against PIL and Leigh Day to the Solicitors Disciplinary Tribunal. Both firms strongly denied the claims.³¹ However, in December 2016, before his hearing at the Solicitors Disciplinary Tribunal, Phil Shiner, the founder of PIL, admitted to nine of the 24 charges against him, and partly accepted another nine.³² One of the charges he admitted to included paying £25,000 in referral fees to find clients. On 2 February 2017, Mr Shiner was found guilty of professional misconduct charges and was struck off as a solicitor.³³ Leigh Day continue to deny all of the allegations. On 31 August 2016, Public Interest Lawyers ceased trading.³⁴ The Secretary of State asserted that the firm would not have been “dismantled” in the way that it was without the intervention of the MoD.³⁵

25. Mr Warwick told us that despite the allegations and proceedings against the two law firms, IHAT could not dismiss out of hand the claims brought by them. However, it had sought information from the Legal Aid Agency and the Solicitors Regulation Authority on “anything that would undermine the credibility of any of these allegations or these witnesses”.³⁶ He said that any such information would be of material use in assessing the “provenance and credibility” of allegations.³⁷

26. It is clear to us that legal firms were empowered by the MoD’s approach to IHAT to generate cases against service personnel at an industrial level. The MoD cannot claim that it has been a victim of the industry; nor can it claim that it had no way of foreseeing the creation of this industry. The activities of two law firms in particular, are now subject to investigations by relevant authorities which must remain a matter for them. The MoD must take responsibility for creating an environment in which the generation of cases—with little or no supporting evidence—was able to occur. They must identify remedies to ensure such a situation could never happen again.

27. While IHAT operated within constraints of the legal judgements set down by the courts, it failed to discriminate sufficiently between cases which were credible and cases which were not. The tools to do so are available to the MoD; IHAT must now use the rulings from Mr Justice Leggatt to dismiss claims based on poor evidence in an expeditious manner.

The impact of IHAT on service and ex-service personnel

28. The IHAT process, the conduct of investigations and the support available to service and ex-service personnel—which we consider later in this Report—have had a serious impact on many members of the armed forces. Hilary Meredith, a Solicitor who represents service personnel, told us that her clients felt that they had been “hung out to dry [...] by the military for the lack of support”, and that their lives had been “literally

30 Q524

31 Law Society Gazette [5 January 2016](#) and [7 April 2016](#)

32 [The Daily Telegraph](#), 8 December 2016

33 [Solicitors Regulation Authority](#), 2 February 2017

34 [Public Interest Lawyers website](#)

35 Q524

36 Q482

37 Q482

put on hold”.³⁸ She explained that she had been contacted by soldiers and those acting for them who complained that there was “no framework of support in place” for serving or former members of the armed forces who were facing proceedings.³⁹ Ms Meredith also highlighted the case of an individual who now “refuses to leave his house” because he has “lost all faith in anybody outside the walls of his home” as a result of a lack of support from the MoD.⁴⁰

29. Lewis Cherry, another solicitor with 20 years’ experience of representing servicemen and women and their families, said that the IHAT process had reopened cases which had previously been resolved. He argued that this had undermined confidence and morale in the armed forces. He gave the example of a client who was investigated for murder relating to an incident in Iraq. Although charges were dropped after a formal preliminary inquiry, IHAT took the decision to reopen it. Mr Cherry argued that this decision had left a murder charge “hanging over his head” for over 12 years and this had “made his life very difficult and it makes his ongoing career difficult”.⁴¹

30. Reverend Nicholas Mercer, a former military lawyer, gave a description of his own experience of the IHAT process:

The IHAT came to see me in 2011 and I gave them a whole series of allegations I had made, and I thought that was that. Then I was rung up again and told, “you haven’t said this,” and I said it should all be in their notes. I was then contacted again, so over a five-year period I had three visits from the IHAT before my complaints were formally recorded in a statement.⁴²

He argued that “justice delayed is justice denied”, and that this had been the effect of the IHAT investigations.⁴³

Access to members of the armed forces by the sub-Committee

31. We also received anecdotal evidence of the detrimental impact of IHAT investigations on members of the armed forces and several serving soldiers offered to give evidence to us on their experience of IHAT investigations. Unfortunately, the MoD would not sanction their appearance before the Committee, either in public or in private. Explaining this decision, the Secretary of State said that service personnel were “servants of the Crown” and therefore “they cannot appear in front of Parliamentary Committees in any kind of personal capacity”.⁴⁴ When pressed on the fact that the Committee wanted to have the benefit of their personal experience, he replied:

I am not prepared to change the long-standing practice. As I said, service personnel are servants of the Crown. They cannot appear in front of Committees in a personal capacity and talk about their personal experiences.⁴⁵

38 Q3
39 Q2
40 Q3
41 Q7
42 Q10
43 Q10
44 Q558
45 Q559

32. We accept that—under normal circumstances—the MoD will decide on which members of the military should come before the Committee on matters of policy. However, we do not understand why this should apply to individuals who wish to share their personal or individual experiences on matters of welfare and duty of care. Indeed, previous committees have been granted such access. ***The Secretary of State should explain why this change of policy has been introduced.***

33. In inquiries into matters of welfare, previous House of Commons Defence Committees have taken evidence from service personnel. In its Eleventh Report of 2005–06, *Educating Service Children*⁴⁶ our predecessor Committee hosted a web forum which received 61 postings from service families. On 4 March 2013, a serving Company Sergeant Major gave oral evidence, on the extent to which service education was being delivered through the Armed Forces Covenant.⁴⁷ On another occasion, a member of the educational staff in the RAF and a Phase 2 soldier at Deepcut submitted anonymised evidence to the Committee’s inquiry into Duty of Care.⁴⁸

34. In addition, during its inquiry into Educating Service Children, our predecessor Committee sought to canvass the views of MoD-employed teachers. Although they are MoD employees, the MoD accepted that there was no reason why they could not contribute to the Committee’s inquiries if their purpose was to relay personal information rather than comment on Government policy.⁴⁹

35. It is disappointing that we were unable to hear the testimony of individual service personnel during this inquiry. Our predecessor Committees have benefited from personal experience of members of the armed forces, service families and MoD employees through written evidence, oral evidence and through an on-line survey.

36. We invite the Secretary of State to discuss with us how the distinction between individual welfare matters and policy matters can be managed so that we can benefit from the personal perspective of soldiers without undermining the MoD’s legitimate concerns over who may give evidence on Government policy. The MoD will be aware that its refusal could appear to be an attempt to suppress criticism of its failures of duty of care by serving personnel.

Complaints to the MoD about IHAT

37. In addition to the formal evidence we received, individual members of the Committee have received anecdotal evidence of members of the armed forces airing serious concerns about the IHAT process. Despite this, the Secretary of State asserted that the MoD had received only two complaints and that IHAT had received only seven complaints.⁵⁰ Commander Hawkins, Deputy Head, IHAT, said that he had no knowledge of the nature or volume of the complaints seen by members of the Committee, but that of “the hundreds of people we have spoken to, six complaints have come to me to deal with”.⁵¹ Those complaints included:

46 Defence Committee, Eleventh Report of 2005–06, *Education Service Children*, [HC 1054](#)

47 Oral evidence, 4 March 2013, HC 941-ii

48 Defence Committee, Third Report of 2003–04, *Duty of Care*, [HC 63-II](#)

49 Defence Committee, Eleventh Report of 2005–06, *Education Service Children*, [HC 1054](#)

50 Q534

51 Q367

- an unannounced visit by an investigator;
- the receipt of a letter concerning an investigation with no official letterhead or markings;
- IHAT officers “loitering” outside a suspect’s home; and
- wider knowledge within the chain of command of an individual’s IHAT interview.⁵²

However, we have had sight, on a confidential basis, of communications through the chain of command which indicate that the number of complaints actually is far higher than this.

38. There is clear disparity here. The evidence shows that the IHAT process has been subject to a number of official complaints to both the MoD and IHAT by serving personnel and veterans. The MoD insists that these complaints have been smaller in volume and different in character from those described by our witnesses and other individuals. The disparity between the two is deeply concerning; either complaints have not been passed up the chain of command or they were given insufficient status and attention. The evidence we received points to an absence of any formal recording of complaints within the MoD. Where complaints were raised, MoD advice was to direct them to IHAT.

39. *We recommend that the MoD establish an independent body within the MoD—with active Ministerial oversight—to investigate the level and nature of complaints of individuals subject to IHAT. That body should seek to engage with all those who have been involved in the IHAT process, either as a witness or as a suspect. Furthermore, we will expect the MoD to publish the results of such review.*

Conclusion

40. The IHAT process has now been running for seven years. By the time it has finished the cost to the taxpayer will be in the region of £60 million. A significant number of cases have still to be resolved and as yet, not a single conviction has been made. While the cost to the taxpayer is significant, the psychological and actual cost to individual soldiers is arguably greater. Their lives have been put on hold and their careers damaged, sometimes for years, because of allegations made against them—in many cases without any credible supporting evidence. The effects of this on the British military are profound and enduring.

41. The UK military is clear that anyone from within its ranks who breaks the law must be prosecuted. A failure to do so would undermine the UK’s ability to conduct operations whilst at the same time upholding the rule of law. But despite massive expenditure, over seven years now, IHAT has failed to achieve even this. This is the greatest indictment of the organisation in its present form.

42. *IHAT has lost the confidence of service personnel, this Committee and the wider public. Furthermore, it is continually eroding the bonds of trust between those who serve, and their civilian masters. The MoD must direct that IHAT expedites its assessment of the remaining cases. As soon as the number of outstanding cases is reduced to the Secretary of State’s target of 60, IHAT must be closed with the cases transferred to the service police with the support of civilian police.*

4 The conduct of IHAT investigations

Introduction

43. On its website, IHAT set out the way in which its investigations would be conducted. It undertook to:

- treat everyone, whether claimant, witness, suspect or legal representative fairly and with respect;
- act with confidence and integrity;
- have pride in delivering a high quality investigation;
- engage, listen and respond; and
- learn from our experiences and strive for continual improvement.⁵³

44. During the course of our inquiry, it became clear that IHAT has fallen short of these values. This chapter highlights a number of disturbing allegations about the conduct of IHAT, the role of civilian investigators supplied to it by the Red Snapper recruitment agency, and the controversial tactics they have employed. It also considers the extent to which armed forces' training before the Iraq conflict gave rise to misleading impressions about how to deal with Iraqi prisoners.

IHAT staff and outside contractors

45. IHAT employs approximately 147 members of staff, comprising 12 members of the Royal Navy police, 127 external contractors and a number of civil servants as support staff.⁵⁴ The MoD told us that the two principal reasons the IHAT used civilian investigators were the volume of the complaints, and insufficient experience investigating serious crimes such as murder, within the Royal Navy Police.⁵⁵

46. IHAT use contractors supplied by the Red Snapper Group, a law enforcement professional services business which provides specialist recruitment and staffing services.⁵⁶ Martin Jerrold, Managing Director of Red Snapper told us that once specialist staff were contracted to IHAT they worked “under the control and supervision” of IHAT,⁵⁷ and are managed by “MoD appointed staff”.⁵⁸ Although the contractors are “embedded with the Royal Navy Police,”⁵⁹ Martin Jerrold confirmed that they were given “no designated powers”⁶⁰ and they were employed to support Royal Navy Police in their work.⁶¹

53 Iraq Historic Allegations Team, [MoD website](#)

54 Q323

55 Q588

56 Q60

57 Q61

58 Q65

59 Q78

60 Q78

61 Q79

Service personnel being contacted by the IHAT Team without prior notice

47. One of the undertakings given by IHAT was that it would always contact witnesses in writing before turning up to speak to them. In the case of suspects, first contact would be through the chain of command.⁶² Hilary Meredith asserted that this was something investigators had failed to do. She told us that she knew of “at least four” occasions where this had failed to happen but believed that there were “probably a lot more in the background”.⁶³ As an example, she highlighted an occasion when investigators appeared at the house of a soldier’s ex-girlfriend and “started interviewing her about whether he had tattoos; was he abusive; did he talk in his sleep?”⁶⁴

48. Hillary Meredith also said that the failure to issue prior warning was of particular concern to former service personnel:

Sometimes they have left the forces; they have settled in civilian life, and there is a knock on the door 10 years down the line to say “We are going to arrest you for an unlawful killing 10 years ago”.⁶⁵ They don’t know what to do. There is no chain of command, because they are ex-service. They are unsure whether to contact a civilian solicitor, because they don’t know whether they are breaching the Official Secrets Act.⁶⁶

Again, she argued that there was “no procedure for them to find help and assistance”.⁶⁷ There are chilling echoes here of the Police Service of Northern Ireland’s current enquiries into alleged crimes during the Troubles. It is reported that they have arrived unannounced at the homes of former serving personnel.

49. Hilary Meredith gave another example of a serviceman who had contacted her:

Ten years down the line he was suddenly arrested at the barracks gates for something he had been acquitted of 10 years previously. The other person who phoned me was a witness who was threatened with arrest. I don’t know why, but after I gave him legal advice, they went away.⁶⁸

50. Lewis Cherry said that he did not believe such actions were lawful but argued that the likelihood was that the vast majority of people approached probably did not pursue complaints because they didn’t want to “raise internally some of the issues that they probably tried to put long behind them”.⁶⁹

51. Mark Warwick said that IHAT policy was to write or phone first. However, he said that there could have been occasions where an IHAT representative in an interview was told “Well, actually, someone else knows something. They can tell you, and they live around the corner.” Mr Warwick argued that on such occasions “it would be a waste of public time and resource not to go and knock on that person’s door and at least make

62 Q417

63 Q15

64 Q15

65 Q13

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67 Q13

68 Q25

69 Q24

initial contact”.⁷⁰ Speaking specifically about suspects, Mr Warwick asserted that for “all the interviews that we have done after caution—we have done only 27 interviews after caution—all the suspects will be approached via the chain of command”.⁷¹ However, this does not include any first approach to a suspect by IHAT investigators.

52. In January 2016, Penny Mordaunt MP, the then Minister for the Armed Forces, gave the following assurance to Members during a Westminster Hall debate:

I can reassure hon. Members that we do all we can to support our armed forces through such investigations, and that support is also embedded in the practices of IHAT. It does give notice of investigations, and hon. Members must flag it up if they have heard of instances in which that has not been the case.⁷²

53. In written evidence submitted in December 2016, however, the MoD set out the number of occasions that this had happened to both witnesses and those under investigation. It acknowledged that although IHAT had introduced “a system to capture this information” it was not in the past, recorded separately. Therefore the MoD was unable to provide accurate information without conducting “a full review of all the circumstances in which they have spoken to witnesses”.⁷³

54. The estimate provided by the MoD was that “between 300 and 350” potential witnesses had been contacted “without prior written notification, via telephone, or approached in person with the bulk falling into the former category”. The reasons for this were linked to “a lack of confirmed contact details or because it is the most efficient and cost effective means to expedite a particular line of enquiry”.⁷⁴

55. In respect of those under investigation, of the 28 individuals who have been interviewed after caution, 21 interviews took place “after prior arrangements were made”. The remaining seven were not informed before arrest.⁷⁵

56. Despite assurances from Ministers in early 2016, the MoD has now acknowledged that between 300 and 350 potential witnesses and seven individuals under investigation, had been contacted without prior written notification. That it has happened at all indicates a lack of sufficient care for the individuals concerned. The first point of contact for a serviceman or woman, or a veteran should never be an unannounced approach by an IHAT employee, regardless of whether they are being treated as a witness or a suspect. We feel it is incumbent upon the MoD under its duty of care to ensure that in future, the first time serving personnel hear of their involvement with IHAT, either as a witness or as a suspect, it should be through their Commanding Officer.

Conduct of contractors

57. Despite the assertions made by Mr Jerrold that contractors do not have designated powers, we were given examples of contractors acting outside of their clear areas of

70 Q405

71 Q417

72 HC Deb, 27 January 2016, [Col 205WH](#) HC Deb, 27 January 2016, [Col 204WH](#)

73 Ministry of Defence ([PSJ0013](#))

74 Ministry of Defence ([PSJ0013](#))

75 Ministry of Defence ([PSJ0013](#))

authority. Earlier in this Report, we highlighted an example of a Red Snapper employee who had impersonated a police officer in order to try and gain access to a military base.⁷⁶ The Secretary of State was aware of one incident which had subsequently been investigated and had resulted in the conviction of the individual concerned.⁷⁷

58. When questioned on this, Mr Jerrold stressed that for a contractor to misrepresent their position or authority in a policing context was, if not illegal, “clearly hugely inappropriate”.⁷⁸ In addition, he made clear that they had no powers of arrest and no powers to arrive on a base uninvited.⁷⁹ He also said that he would be “very unhappy” if contractors were using the Red Snapper name while working for IHAT because they were contracted to IHAT.⁸⁰

59. Mr Jerrold was challenged on other examples including allegations of “investigators turning up, saying, ‘I’m a retired detective-inspector’, threatening arrest, trying to get on to bases, turning up at ex-girlfriend’s houses”.⁸¹ Although he asserted that these had not been brought to his attention,⁸² he acknowledged that “it must be happening”, because there was “too much of a pattern”.⁸³

60. It is deeply disturbing that instances of malpractice by contractors working for IHAT have emerged. The use of intimidatory tactics including an example of a contractor falsely claiming to be a policeman, and the contacting of family members of service personnel without prior notice or explanation, are completely unacceptable. The actions of contractors are the responsibility of IHAT management. We conclude that they have failed in this duty.

Training for contractors

61. In his Report on IHAT, Sir David Calvert-Smith said that despite the IHAT investigation being “one of the largest ever mounted” it was being conducted by investigators who had “no experience of policing the Army” and who were “unfamiliar with the concept of a ‘war crime’”.⁸⁴

62. Mark Warwick, argued that IHAT was alert to this risk and had asked Red Snapper to target “the most professional and the most efficient investigators,” in particular those with a relevant background, for example, in counter-terrorism in the UK or in the Middle East.⁸⁵ He acknowledged that it was not possible to “truly mirror” the military experience but said that the best alternative was to employ investigators who understood:

76 Q13
 77 Q534
 78 Q115
 79 Q79
 80 Q66
 81 Q90
 82 Q90
 83 Q95
 84 [Review of the Iraq Historic Allegations Team](#), Sir David Calvert-Smith, September 2016, page 3
 85 Q334

The nature of the work that military personnel can be involved in—the most horrendous situations they were working in—and apply that in the professional context of being some of the best investigators available in this country to do the investigation work.⁸⁶

63. That said, Mr Warwick conceded that the complex nature of the investigations were “unique and different” from anything civilian contractors would have dealt with before.⁸⁷ Therefore, to bridge that gap, IHAT ran a three-day “induction process” which sought to “blend” contractors’ skills with the knowledge and skills of the military.⁸⁸ That induction process specifically covered:

The complexity of the operations, the way the military was structured, the rules of engagement and the law of armed conflict.⁸⁹

64. Mr Warwick also told us that IHAT had run a “training day” about two years ago on post-traumatic stress disorder and how it could impact on memory and interpretation of the actions of service personnel; and their capacity to provide accurate information or to defend themselves.⁹⁰ An “awareness” of this had also been included in staff induction training.⁹¹

65. *We believe that the actions of the IHAT investigators, and the way some have approached inquiries demonstrates a ‘civilian mind-set’ which lacks a sufficient appreciation of the environment of operations. A detailed understanding of the scenarios in post-conflict Iraq, for example, would have been of far more use to IHAT investigations. We believe that service police officers have a unique understanding of the operational environment for investigations of historic allegations. To ensure wider confidence of such investigations, we recommend that the IHAT caseload be transferred to the service police, with the support of civilian police, as soon as possible.*

66. *Civilian contractors should only be used in exceptional circumstances. Where they are required, their numbers should be kept to a minimum. Any such employment must be preceded by extensive training on the unique circumstances of military operations and their impact on servicemen and women. The MoD must address this as a matter of urgency.*

Use of covert surveillance

67. When considering Sir David Calvert-Smith’s review of IHAT, we were surprised to find the following passage:

I was informed that investigators who need to use Regulation of Investigatory Powers Act 2000 (RIPA) powers frequently have to wait for long periods for the police forces who will actually conduct the surveillance necessary to do so, or that limitations on the number of applications which a given force will accede to, are imposed as part of a contract.⁹²

86 Q328

87 Q328

88 Q334

89 Q335

90 Q341

91 Q384

92 [Review of the Iraq Historic Allegations Team](#), Sir David Calvert-Smith, September 2016, page 22

68. When we asked the IHAT Command Team to account for the use of covert surveillance, they refused to elaborate. Mark Warwick's response was:

I would not confirm or deny that we are using surveillance methods because that is an appropriate police tactic to use if it is necessary in serious criminal investigations. What I will say is that with the nature of our investigative caseload, it would be rare that we would use those tactics, if we did use those tactics.⁹³

In a similar vein, Peter Ryan, Director, Directorate of Judicial Engagement Policy merely confirmed that covert surveillance and other tactics were “used in various circumstances, quite legitimately, by police and other agencies as part of the rule of law in this country”.⁹⁴

69. When questioned on the use of RIPA powers, the Secretary of State first said that he was “unaware” of its use.⁹⁵ Upon reflection, he asserted that it was an acceptable tool “if it is properly authorised and properly supervised”.⁹⁶ Air Chief Marshal Sir Stuart Peach, Chief of Defence Staff, added that covert surveillance was part of the law and was a proper practice “as long as the investigation is carried out in accordance with the law”.⁹⁷ In supplementary evidence the MoD stated that:

Any work of this nature would only be considered in the most serious of cases and always in strict accordance with the Regulation of Investigatory Powers Act (RIPA) 2000. The exercise of such powers by any public body, including IHAT, is subject to audit by the Office of the Surveillance Commissioner, a non-departmental public body responsible for the monitoring of surveillance activity. If individuals believe they may be subject to such activity and wish to complain, it is open to them to complain to the Surveillance Commissioner.⁹⁸

The MoD further stated that “IHAT only uses lawful investigation methods. Any RIPA activity would be authorised, and supervised, by the Royal Navy Police. It is well-established police practice to neither confirm nor deny the use of surveillance methods.”⁹⁹

70. We are deeply concerned about the use of covert surveillance by IHAT. Notwithstanding the assurances given that it would be used only in the most serious of cases, the questionable conduct of some external investigators means that this is a cause for serious concern. The Department cannot interfere in the direction of investigations, but it must provide detailed scrutiny of the exercise of these powers, and their use should be justified directly to MoD Ministers. That Ministers appeared either unaware or unwilling to address this aspect of IHAT's investigation is unacceptable.

93 Q442

94 Q541

95 Q538

96 Q542

97 Q548

98 Ministry of Defence ([PSJ0013](#))

99 Ministry of Defence ([PSJ0015](#))

Payments to Abu Jamal

71. Public Interest Lawyers employed Abu Jamal, an Iraqi ‘middleman’ to liaise with Iraqi complainants seeking to bring claims against alleged human rights abuses. A recent *Independent* newspaper article alleged that Public Interest Lawyers employed Mr Jamal to make “unsolicited direct approaches” to potential clients on its behalf. The newspaper went on to argue that Mr Jamal was paid “thousands of pounds for referrals, which is prohibited”.¹⁰⁰

72. It later emerged that Abu Jamal was, at the same time, employed by the IHAT team. In written evidence, the MoD told us that it made payments to Abu Jamal totalling £110,829 over three and half years for activities including:

- Iraqi witness tracing;
- preparation for interviews under Operation Mensa¹⁰¹ (for example, helping witnesses obtain appropriate travel documentation);
- escorting Iraqi victims/witnesses to, from and within a third country; and
- carrying out other ad hoc tasks (e.g. delivering letters, collecting medical reports or accompanying witnesses to video conferencing facilities in Basra).¹⁰²

73. When asked about Abu Jamal’s work for IHAT, Mark Warwick said he was employed because he was “the most efficient and effective point of contact with the witnesses”. He stressed that Abu Jamal had “no involvement in any investigative activity identifying lines of inquiry or getting information” and that he acted solely as the “conduit” between IHAT and witnesses.¹⁰³

74. It is clear that Abu Jamal had a significant conflict of interest in working both for the law firm generating claims and for IHAT which would then investigate those claims. When we pressed the MoD on this, Peter Ryan explained it in the following terms:

Look, decisions were made by the IHAT against an extraordinary background. This is the most scrutinised investigation in the history of the world—by the Court, by Ministers, by the ICC, by the senior ranks in the armed forces. At the time that decisions were made we were faced with having to advise the then Secretary of State that unless we got on with investigations, the Court would impose a public inquiry, which would have been ruinously expensive. Decisions were made by the IHAT to try to kick-start these investigations.¹⁰⁴

The Secretary of State agreed it was “quite wrong” for Abu Jamal to be paid by both sides and stressed that “As soon as we were made aware of that we stopped it”.¹⁰⁵

100 [The Independent](#), 9 December 2016

101 Operation Mensa is the means by which IHAT interviews Iraqi complainants in a third country, see the following section for a full explanation.

102 Ministry of Defence ([PJS0013](#))

103 Q492

104 Q523

105 Q521

75. **For three years the MoD paid an individual to work for IHAT while he was in the employment of Public Interest Lawyers. Although the MoD told us that it had stopped payments when it became aware of this, the fact that it continued for such a lengthy period of time represents a serious failing for which the MoD must take responsibility. We ask the MoD for a detailed explanation of what pre-employment checks were made on the individual and how this conflict of interest was able to continue unnoticed for so long.**

Operation MENSA

76. Operation MENSA was established to facilitate the interviewing of Iraqi witnesses in a third country.¹⁰⁶ Mark Warwick explained this was necessary following a Court Order from Mr Justice Leggatt who directed IHAT on how the interviews should be conducted.¹⁰⁷ When asked whether the court order directed face to face interviews Mr Warwick explained:

There was an expectation from the court that we would speak to witnesses. We identified the most serious witnesses—and the court was well aware of this and it was the expectation of the UK to meet its responsibilities to conduct effective investigations that we would interview witnesses.¹⁰⁸

However, Commander Hawkins made clear that “there wasn’t a court order to say that we must do interviews in a third country”,¹⁰⁹ and that the “operational decision to do those face-to-face interviews in a third country, due to the severity of the allegations that were being made, was ours”.¹¹⁰

77. In written evidence, the MoD confirmed that, as of 30 November 2016, IHAT conducted 291 face-to-face interviews abroad with Iraqis (245 with alleged victims and 46 with potential witnesses) and 82 video conference interviews (the majority of which were with witnesses).¹¹¹

78. IHAT had, to a lesser extent used video conferencing. However, the MoD said that, in light of Sir David Calvert-Smith’s report, “IHAT intends to utilise VTC in a greater number of its future interviews”.¹¹²

79. Two Operation MENSA deployments took place in 2011. It was then suspended until 2013. Operation MENSA re-started on 28 March 2013 and according to the MoD there have been 31 deployments since that date. The total cost of the deployments since March 2013 has been approximately £3,795,000, of which approximately £1,400,000 was for the travel and accommodation of all those deployed (including IHAT personnel, Iraqi witnesses and escorts, interpreters and PIL representatives). The remaining £2,395,000 comprised interpretation and translation services; medical examination of alleged Iraqi victims; clinical psychological support services; witness expenses; witness interview supporters (excluding PIL); PIL costs; witness tracing and escorting; and, in country transportation.¹¹³

106 Q452

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108 Q454

109 Q455

110 Q455

111 Ministry of Defence ([PSJ0013](#))

112 Ministry of Defence ([PSJ0013](#))

113 Ministry of Defence ([PSJ0013](#))

The MoD said it was not possible to break down the travel and accommodation costs between IHAT staff and other individuals because block-bookings were made for this expenditure and therefore information was not recorded separately.¹¹⁴

80. The interviewing of alleged victims and witnesses in third countries was not prescribed by the court. Rather it was the result of IHAT's interpretation of the court ruling. To date it has cost nearly £4 million, which included payment of the costs of PIL representatives. However, the MoD was unable quantify the total amount paid to PIL. We are deeply concerned that the MoD has used public funds to cover the costs of those who were bringing spurious and unassessed cases against former and serving personnel.

Compensation payments

81. A further area of concern was the fact that the MoD has made payments for claims against the UK armed forces without first discussing the case with the individual or individuals concerned. When we challenged on this policy, Peter Ryan said that where the MoD resisted claims it was "important to call on soldiers".¹¹⁵ That said, he argued that the MoD had made "a whole range of judgements" on how to proceed and that legal advice resulted in the MoD concluding that:

To take certain cases to court would be extraordinarily expensive and would probably result in a worse outcome for the Ministry of Defence and would incur all sorts of problems for soldiers and others.¹¹⁶

82. We appreciate that, on occasion, the MoD may be advised to settle some cases without interviewing relevant individuals. However, the practice has gone too far. This approach can imply that someone is culpable without that person having had the opportunity to respond to the charge. We recommend that, before such payments are authorised, the individuals concerned are fully appraised of the claims and the reasons for the MoD's course of action.

Pre-combat training and MoD corporate responsibility

83. It is not disputed that there were incidents of abuse of Iraqi prisoners by British armed forces service personnel.¹¹⁷ However, it appears that this may have been at least partly because the training given to military interrogators was inaccurate and may have placed them, unwittingly, at risk of breaking the Geneva Conventions in their work.¹¹⁸

84. In response to this assertion, Peter Ryan, MoD Director of Judicial Engagement, replied:

[It] has been acknowledged by the Secretary of State's predecessor, Dr Fox, in accepting 72 of the 73 recommendations of the Baha Mousa report by Sir

114 Ministry of Defence ([PSJ0013](#))

115 Q520

116 Q519

117 Qq27–29

118 Q30

William Gage, that there were a number of serious defects and deficiencies in the way in which the Ministry of Defence prepared people for the Iraq campaign.¹¹⁹

85. Peter Ryan admitted that the MoD had “lost the fact” that certain techniques had been banned and that it was lost somewhere “between 1970-something and 2003”.¹²⁰ However, Air Marshal Sir Stuart Peach told us that the MoD had now reviewed all of its training material and it was now “absolutely within the boundaries of international humanitarian law”.¹²¹

86. The admission that training material for interrogations contained information which could have placed service personnel outside of domestic or international law represents a failing of the highest order. We expect the MoD to confirm that no cases under consideration by IHAT are based on the actions of individuals who were following that flawed guidance. If there are, we ask the MoD to set out how it will support individuals who are subject to claims arising from actions which their training advised was lawful.

119 Q600

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121 Q600

5 The way forward

Introduction

87. In addition to the specific failings we set out in the previous chapter, several former senior military offices have highlighted what they consider to be a more systemic problem in the MoD. The former Chief of Defence Staff, General Lord Richards, believed that IHAT was able to grow into a “many headed Hydra” because of an “instinct somewhere in Whitehall, within the Establishment, that basically soldiers aren’t good and freedom fighters, we call them terrorists, [...] are somehow quite good”.¹²² In a recent House of Lords debate former Chief of the General Staff, Lord Dannatt, a former Chief of the General Staff, expressed his belief that at the heart of the issue of IHAT was “a willingness from government Ministers and officials to believe the fallacious allegations of many accusers,” rather than to have “confidence in the armed forces’ chain of command and the tried and tested processes of investigation and judicial disposal”.¹²³ It is clear that significant change is needed. Indeed, the Secretary of State voiced his frustration with the current processes during our inquiry.

88. The MoD has said that it is developing a package of reforms to ensure that an investigation similar to IHAT could never happen again. We would like to contribute to that thinking. In Annex 1, we set out the principles to which we believe any future investigation should adhere. They are informed by the conclusions and recommendations contained in this Report.

MoD support package

89. In its original written submission, the MoD set out the support it provides to armed services personnel and veterans subject to judicial processes.¹²⁴ That support includes legal, pastoral, access to information and security support.¹²⁵

Legal costs for other judicial processes

90. Legal Support offered by the MoD included the provision of legal counsel and support to service and ex-service personnel, and extends to civil and criminal proceedings in both the civil and military courts. Where the interests of service personnel or veterans “diverge or could diverge” from the responsibilities of the MoD, “independent legal representation” may be arranged”.¹²⁶ Where an individual member of the armed forces is subject to civilian legal proceedings against him or her personally the MoD stated it had “discretion to fund separate and independent legal advice or representation”. Any decision to do so would rest with the chain of command.¹²⁷ As an example of this, the MoD highlighted the Al-Sweady Public Inquiry where a service person or veteran contacted to provide a witness statement was informed that the MoD would pay for independent legal advice.¹²⁸

122 [Daily Mail](#), 11 October 2016

123 HL Deb, 24 November 2016, [col 2061](#)

124 Ministry of Defence ([PJS0005](#))

125 Ministry of Defence ([PJS0005](#))

126 Ministry of Defence ([PJS0005](#))

127 Ministry of Defence ([PJS0005](#))

128 Ministry of Defence ([PJS0005](#))

Pastoral Care

91. The MoD also stated that, where appropriate and practicable, Commanding Officers would be informed so that they could take “any necessary action to support service personnel”.¹²⁹ Commanding Officers are encouraged to discuss the situation with the individual concerned, to try and establish the level of anxiety of the individual and to remind them of the general support from MoD and service welfare.¹³⁰ MoD guidance also highlights the need for awareness of heightened levels of anxiety, and possible mental health problems which could be exacerbated by the prospect of legal proceedings. In addition, The Single Service Operational Stress Management Teams (TRiM) are available to support service personnel while the Veterans Welfare Service can offer similar support for former service personnel.¹³¹

92. The MoD gave the example of the Al-Sweady Public Inquiry where this support had been given. It included:

- the provision of military psychiatrists and medical charities to brief inquiry personnel;
- specific briefing on PTSD and its symptoms;
- support in relation to possible mental health problems and other types of disorder which could affect a witness’ ability to engage with the Inquiry; and
- financial assistance in support of applications to be excused from giving evidence on health grounds.¹³²

93. While it is clear that the MoD does have in place policies and guidance on the support to be provided to service personnel, Lewis Cherry argued that they were confusing and gave “contradictory advice”.¹³³ As an example he argued that while one Defence Instruction Notice (DIN)¹³⁴ stated that support should be given from the outset e.g. from police station interviews, the Joint Service Publication stated that the chain of command should offer support after an individual is charged. Furthermore, he argued that knowledge of the support packages was not extensive:

If the commanding officers don’t know, they are never going to tell their soldiers, sailors, airmen and families, and of course it falls to people like me to tell people.¹³⁵

To back up his point, Mr Cherry claimed that of the 13 clients he was currently representing, “not one of them knew or had been told about the DIN”.¹³⁶ Ms Meredith also argued that there was “nothing written” down as a framework for men and women which sets out the support that they can expect to receive.¹³⁷

129 Ministry of Defence ([PJS0005](#))

130 Ministry of Defence ([PJS0005](#))

131 Ministry of Defence ([PJS0005](#))

132 Ministry of Defence ([PJS0005](#))

133 Qq11–12

134 Defence Instructions and Notices (DIN) are MoD internal guidance notes which set out their regulations and policies.

135 Q12

136 Q32

137 Q31

94. The problems with communication were exacerbated when it came to veterans. Ms Meredith said that in the absence of the chain of command, veterans were “out on their own, on a limb”.¹³⁸ While she acknowledged that support was available from the Veterans Agency in respect of pensions and the Armed Forces Compensation Scheme, it had little accessible information for those facing legal proceedings: “it just says what will happen to you; it doesn’t actually say, ‘if you need legal advice, come to us,’ or, ‘we will provide a solicitor for you’”.¹³⁹

95. We are deeply concerned that the MoD’s package of support for service personnel appears to be fragmented, inaccessible and largely unknown. The MoD must, as a priority, devise and publish a single, accessible framework which sets out the MoD’s responsibilities and the support soldiers and veterans can expect to receive. That framework must be widely publicised and understood throughout the chain of command.

Financial support

96. Several of our witnesses also questioned the provision of financial support for service personnel subject to the IHAT process. Lewis Cherry, told us that when an offence occurred “on duty” legal aid should be made available under the DIN but in his experience it was not, and declared “I have never known it to happen”.¹⁴⁰ As an example of failings in legal support he highlighted the case of an army range officer and senior range planning officer who were both court martialled following an accident on a range in Afghanistan. Both officers were acquitted but Mr Cherry’s client was not supported by the MoD and had to pay £7,000 to fund his own defence.¹⁴¹

97. Mr Cherry also highlighted the fact that that under the current system, contributions to cover legal aid are taken from wages before the start of the trial. Although those contributions are returned with 2% interest if the individual is acquitted, he claimed that those contributions could be larger than the legal costs of representation—which were fixed—as contributions were based on earnings rather than on the costs of trial. He described this as “iniquitous” and “absolutely wrong”.¹⁴² Hilary Meredith contrasted the position of soldiers with that of Iraqi civilians who were “privy to the British legal aid fund” when they brought cases against UK service personnel.¹⁴³

98. On 23 September 2016, during our inquiry, the Secretary of State for Defence, announced a new policy for meeting the legal costs of armed services personnel under investigation for alleged offences committed in Iraq and Afghanistan. In remarks to the *Daily Telegraph* the Secretary of State said the decision was in reaction to:

The high risk of false allegations about conduct in Iraq and Afghanistan and the length of time since these incidents may have taken place.¹⁴⁴

He also confirmed that the MoD would “provide legal support without subsequent recovery of costs in all these cases”.¹⁴⁵

138 Q31

139 Q33

140 Lewis Cherry ([PJS002](#))

141 Q32

142 Q32

143 Q54

144 [Daily Telegraph](#), 23 September 2016

145 [Daily Telegraph](#), 23 September 2016

99. In written evidence, the MoD stated that it was not aware of any serving armed forces personnel or veterans having had to pay for legal advice or assistance either at a service police station interview, or for legal aid in respect of representation at Court Martial as a result of IHAT investigations.¹⁴⁶

100. *We welcome the Secretary of State’s announcement that the MoD will now meet the legal costs of soldiers being investigated by IHAT. If it comes to light that soldiers and veterans have already paid out legal expenses we recommend that the MoD commits to reimburse them.*

101. *At present, the MoD’s decision to grant legal aid rests on whether or not an individual was “on duty” or not at the time of the alleged offence. We believe that this distinction requires greater clarity. We recommend that any alleged offence committed on a named and defined operation—for example Op TELIC—should come within the definition of ‘on duty’.*

102. *Furthermore, we recommend that the MoD’s policy on legal aid be modified to ensure that no member of the armed forces has to pay out more for their legal aid than the cost of that representation.*

Experienced service lawyers

103. In addition to problems faced by soldiers trying to access financial support, we were told that service personnel also faced difficulties in accessing legal representation with an acceptable knowledge of service law. Lewis Cherry argued that:

The duty solicitor in England and Wales [...] would not have a clue. They would not have an inkling about how to deal with an allegation of some abuse or whatever in Iraq in 2004. Some of us are more specialist than others. I know how to advise people and what to tell them, but that is not available to the general public, effectively, unless they know to ring.¹⁴⁷

104. According to Hilary Meredith, access to experienced legal representatives was not only important for ensuring soldiers and veterans had an appropriate level of support, but it also would have assisted a speedier resolution to the allegations of misconduct by British troops in Iraq:

If there was a framework of legal support in place for the individual, the case would be driven by their lawyers as well, so you would not be waiting for something to happen from an IHAT team or an investigator [...] I am sure that times would be reduced if there was either somebody driving it or a framework within the MoD that is pushing the case forward as well.¹⁴⁸

105. *We recommend that the MoD’s package of support should include an assurance that all service personnel should have access to, and representation by, legal professionals who are experienced in service law for either retrospective or future on-going investigations.*

146 Ministry of Defence ([PJS0015](#))

147 Q23

148 Q28

Conclusion

106. The IHAT experience has highlighted too many flaws in the manner in which investigations into historic allegations are conducted in the United Kingdom today. In the Annex to this Report we set out what we believe to be the key principles which should be adhered to in any future investigations. We look to the MoD to engage with these proposals when it considers future inquiries into the armed forces' involvement in military conflicts.

6 European Convention on Human Rights and the International Criminal Court

European Convention on Human Rights

107. Earlier in our report we highlighted the fact that IHAT—or a similar investigatory body—was a requirement of a 2011 ECHR ruling. On 4 October 2016, the Prime Minister and Secretary of State for Defence, in a joint statement laid out plans to derogate from the European Convention on Human Rights, using the process set out in Article 15 of the Convention.¹⁴⁹ The Secretary of State said that such a derogation would “help to protect our troops from vexatious claims, ensuring they can confidently take difficult decisions on the battlefield,”¹⁵⁰ and on 10 October 2016, he set out the Government’s intentions in a Written Ministerial Statement:

Before embarking on significant future military operations, this government intends derogating from the European Convention on Human Rights, where this is appropriate in the precise circumstances of the operation in question. Any derogation would need to be justified and could only be made from certain Articles of the Convention.¹⁵¹

108. According to Air Chief Marshal Sir Stuart Peach, Chief of the Defence Staff, any derogation would not undermine the efficacy of the UK’s armed forces, and they would continue to be “held to the very highest standards” and would remain “subject to the Law of Armed Conflict—which includes the Geneva Conventions—and to UK service law, which includes the criminal law of England & Wales”.¹⁵²

How would a derogation work?

109. In a letter to the Joint Committee on Human Rights, the Secretary of State said that a derogation might apply to “any significant military operation capable of falling within the concepts” used in Article 15 of the European Convention on Human Rights which referred to a “war or other public emergency threatening the life of the nation”.¹⁵³ However, there is no definition of war for the purposes of Article 15 and so we explored with the Attorney General, Mr Jeremy Wright QC MP, how the absence of a definition would be managed. He explained that Government had “started to think” about how it would work in practice but cautioned that:

A detailed rubric for how it might work, [would be] difficult to do when you are not familiar with the exact circumstances in which that derogation decision might be made.¹⁵⁴

149 Article 15 of the European Convention on Human Rights is set out in Appendix 1.

150 Ministry of Defence [Press Release](#) 4 October 2016

151 [HC WS168 \[Military Operations-European Convention on Human Rights Derogation\]](#), 10 October 2016

152 Ministry of Defence [Press Release](#) 4 October 2016

153 Joint Committee on Human Rights, [Correspondence](#)

154 Q180

110. In his written submission, Professor Ekins welcomed the Government’s announcement as “a commendable and overdue step” which could help reinstate international humanitarian law as the relevant controlling body of law”.¹⁵⁵ However, he cautioned that the exercise of Article 15 was:

Vulnerable to legal challenge, in the domestic courts and before the European Court of Human Rights, and in any case will not completely end the application of European human rights law.¹⁵⁶

During our oral evidence on a potential derogation, the following issues also came to light:

- any derogation would be prospective and not retrospective;
- a minor operation could subsequently escalate;
- troops would be covered only after a derogation was made; and
- the need to prove that the derogation was proportionate to the threat.¹⁵⁷

111. Professor Ekins said that the Government should also amend the Human Rights act to restrict its application to within the United Kingdom or to limit it by territorial jurisdiction. He argued that either option would limit the Government’s requirement “to follow European human rights law in relation to future military action”.¹⁵⁸

112. Derogating from the ECHR would have no effect on any criminal proceedings under service law or the Geneva conventions against individual soldiers. It would, however, shield the government from legal cases brought against it in the civil courts, which would prevent the need to pay out compensation. The MoD told us that of the £21.8 million the MoD has paid out in compensation claims to Iraqi civilians the “vast majority”¹⁵⁹ of settlements related to cases of ‘unlawful detention’ which would have been avoided had a derogation been in place for the conflict in Iraq.¹⁶⁰

113. We welcome the Government’s intention to derogate from the European Convention on Human Rights under Article 15 of the Convention in the event of future conflicts. For clarity, we recommend that the Secretary of State—in conjunction with the Attorney General and the Chief of the Defence Staff—set out the conditions under which the United Kingdom could and would derogate from the European Convention on Human Rights. The MoD must set out the action that has been taken by other participants in the Iraq war who are subject to the ECHR to derogate from any part of the Convention.

114. We further recommend that the Government sets out what amendments to the Human Rights Act would be necessary to ensure that any such derogation is both achievable and successful in protecting UK troops in future conflict from unnecessary widespread litigation.

155 Judicial Power Project ([PSJ0008](#))

156 Judicial Power Project ([PSJ0008](#))

157 Qq180–185; Qq297–301 and Qq309–15

158 Judicial Power Project ([PSJ0008](#))

159 Q516 Ministry of Defence ([PSJ0009](#))

160 Ministry of Defence ([PJS0015](#)) and ([PJS0013](#))

The International Criminal Court

115. The International Criminal Court (ICC) was established by the Rome Statute in 1998 to investigate the most serious crimes including war crimes, crimes against humanity, genocide and crimes of aggression. The ICC operates on the principle of complementarity which it described as:

Specifically designed to prevent governments from invoking [...] sovereignty to protect the worst offenders, whilst simultaneously guarding national jurisdiction against ‘excessive’ encroachments from an international body.¹⁶¹

Under that principle, the ICC would not seek to prosecute individuals if it is satisfied member countries are taking sufficient action to prosecute offenders themselves.¹⁶²

116. The ICC first received complaints about UK military action in Iraq in 2006. Although its subsequent inquiry found insufficient evidence to proceed further, in 2014 it reopened its investigations into alleged crimes in Iraq following submissions by Public Interest Lawyers. Since then, the ICC has been monitoring the work of IHAT. In November 2015, the ICC reported that it was “engaged in processing and analysing the vast amount of material” provided by PIL and was “conducting a thorough evaluation of the reliability of the sources and the credibility of the information received”.¹⁶³ In coming to any conclusions the ICC said that it would “take into account the findings of the relevant investigations conducted by the UK authorities as well as the outcomes of judicial review proceedings in the High Court of Justice of England and Wales”.¹⁶⁴

117. In oral evidence, the Secretary of State for Defence argued that the ICC’s monitoring of IHAT required the continuation of the IHAT investigations:

If we were unable to demonstrate that these [criminal allegations] were being properly investigated, we could have ended up [...] opening the way to the International Criminal Court. That would have got us into a far more difficult situation.¹⁶⁵

He added that the UK was “being watched very closely by the International Criminal Court”, and he had to have “regard to that”.¹⁶⁶

118. While Peter Ryan, expressed confidence that the IHAT investigations would uncover little evidence of serious criminal activity he insisted that IHAT must continue its work in order to avoid the prospect of potential ICC proceedings:

The Court has made this very plain: cases involving manslaughter, serious bodily injuries, sexual indignities, cruel, inhuman and degrading treatment, and large-scale violations of international humanitarian law. Personally, I do not believe that when the IHAT completes its investigations this by and large will be borne out, but we just do not know.¹⁶⁷

161 House of Commons Library, [The International Criminal Court: Current Cases and Contemporary Debates](#)

162 House of Commons Library, [The International Criminal Court: Current Cases and Contemporary Debates](#)

163 House of Commons Library, [The International Criminal Court: Current Cases and Contemporary Debates](#)

164 International Criminal Court, [Report on Preliminary Examination Activities \(2015\)](#)

165 Q533

166 Q571

167 Q575

119. The likelihood of the ICC intervening in respect of allegations of abuse was put to the Attorney General in oral evidence. He argued that given the huge volume of cases under consideration by IHAT, and the poor quality of evidence to support the majority of those cases, any such ICC inquiry would take “a very large amount of time” and would be “an inferior process to the one that we ran ourselves”.¹⁶⁸ However, he did not believe that assuming the ICC would not intervene was a risk worth taking.¹⁶⁹ Therefore, he also believed that IHAT had to continue its work.

120. We are not convinced that the International Criminal Court would commit to investigate such a large case load which is based, to a great extent on discredited evidence. While due process must be seen to be done, *we recommend that the MoD presents a robust case to the ICC that the remaining cases would be disposed of more quickly and with no less rigour through service law rather than IHAT.*

168 Q262

169 Q262

7 Conclusion

121. The United Kingdom ended its combat operations in Iraq in 2009. Eight years later, and some 14 years since the start of the conflict, a significant number of service personnel remain under investigation for alleged misconduct in that conflict.

122. IHAT, the MoD-created vehicle for these investigations, has proved to be unfit for purpose. It has become a seemingly unstoppable self-perpetuating machine and one which has proved to be deaf to the concerns of the armed forces, blind to their needs, and profligate with its own resources. We look to the Secretary of State to set a firm and early date for the remainder of the investigations to be concluded, and for the residue of cases to be prosecuted by a replacement body which can command the confidence of the armed forces.

123. A significant factor in this was the legal industry created around IHAT. That is now being dealt with by the SRA and Mr Shiner, the founder of PIL has now been struck off as a solicitor. The current Secretary of State is to be commended for his personal efforts in highlighting the conduct of law firms to the relevant authorities. However at the same time as it condemned those legal firms the MoD continued to authorise payments to them, including the use and payment of a middleman in Iraq who worked for both sides. Even if this was, as the MoD asserted, a contractual requirement, the failure to challenge the arrangement when those costs grew was a serious failing. Rightly or wrongly, it opened up to question the MoD's commitment to supporting servicemen and women and veterans.

124. Of equal concern is the fact that former senior military personnel have questioned the culture of Whitehall and its attitude towards the military. Again, this points to a lack of genuine understanding around the human side of military matters in Whitehall. Ministers must address this as a matter of urgency. They must show leadership and ensure that the well-worn statement of "our people are our finest asset" is reflected in the policies and decisions that are made.

125. The MoD has made progress in its support for those under investigation. We welcome its recent announcements on funding legal aid for those under investigation, and the possibility of derogating from the ECHR in times of conflict. However, they are both works in progress.

126. Our armed forces continue to strive to meet the highest standards of conduct. However, the perception of them on the International stage has undoubtedly been unfairly altered by this process, which in some respects has been self-inflicted.

127. IHAT, and the subsequent explosion of so-called 'lawfare' in the United Kingdom has directly harmed the defence of our Nation. Unless the MoD learns the lessons of IHAT, the armed forces will be hindered in their ability to defend the Nation and the national interest.

128. With the prospect of investigations into British deployments in Afghanistan and Northern Ireland, the Government must prove both in private, but especially in public that in adhering to the pursuit of justice and the rule of law, it does not lose sight of its moral responsibility and its commitment to the Armed Forces Covenant with those who have served.

129. There is a deep unfairness at the heart of the IHAT process and this is in danger of spilling over to other conflicts. Our Report offers the MoD an opportunity to reset the balance.

Conclusions and recommendations

Introduction

1. As a nation we expect our servicemen and women to conduct themselves at the highest levels of professionalism on operations. Where the rule of law is broken, justice must be done in military as in civilian life. Our inquiry has sought to test whether the professionalism demanded of the armed forces has been matched by the duty of care for them demanded of the Ministry of Defence during the IHAT investigations. (Paragraph 9)

Iraq Historic Allegations Team

2. Both the Secretary of State and Mark Warwick, the Director of IHAT, assured us that the IHAT's caseload will be reduced to the hundreds by the end of January 2017 and to around 60 cases by the summer of 2017. *We ask the MoD to provide us with monthly updates on the number of outstanding cases until the process is concluded.* (Paragraph 17)
3. It is clear to us that legal firms were empowered by the MoD's approach to IHAT to generate cases against service personnel at an industrial level. The MoD cannot claim that it has been a victim of the industry; nor can it claim that it had no way of foreseeing the creation of this industry. The activities of two law firms in particular, are now subject to investigations by relevant authorities which must remain a matter for them. *The MoD must take responsibility for creating an environment in which the generation of cases—with little or no supporting evidence—was able to occur. They must identify remedies to ensure such a situation could never happen again.* (Paragraph 26)
4. *While IHAT operated within constraints of the legal judgements set down by the courts, it failed to discriminate sufficiently between cases which were credible and cases which were not. The tools to do so are available to the MoD; IHAT must now use the rulings from Mr Justice Leggatt to dismiss claims based on poor evidence in an expeditious manner.* (Paragraph 27)
5. *The Secretary of State should explain why this change of policy has been introduced.* (Paragraph 32)
6. It is disappointing that we were unable to hear the testimony of individual service personnel during this inquiry. Our predecessor Committees have benefited from personal experience of members of the armed forces, service families and MoD employees through written evidence, oral evidence and through an on-line survey. (Paragraph 35)

7. *We invite the Secretary of State to discuss with us how the distinction between individual welfare matters and policy matters can be managed so that we can benefit from the personal perspective of soldiers without undermining the MoD's legitimate concerns over who may give evidence on Government policy. The MoD will be aware that its refusal could appear to be an attempt to suppress criticism of its failures of duty of care by serving personnel. (Paragraph 36)*
8. *We recommend that the MoD establish an independent body within the MoD—with active Ministerial oversight—to investigate the level and nature of complaints of individuals subject to IHAT. That body should seek to engage with all those who have been involved in the IHAT process, either as a witness or as a suspect. Furthermore, we will expect the MoD to publish the results of such review. (Paragraph 39)*
9. The IHAT process has now been running for seven years. By the time it has finished the cost to the taxpayer will be in the region of £60 million. A significant number of cases have still to be resolved and as yet, not a single conviction has been made. While the cost to the taxpayer is significant, the psychological and actual cost to individual soldiers is arguably greater. Their lives have been put on hold and their careers damaged, sometimes for years, because of allegations made against them—in many cases without any credible supporting evidence. The effects of this on the British military are profound and enduring. (Paragraph 40)
10. The UK military is clear that anyone from within its ranks who breaks the law must be prosecuted. A failure to do so would undermine the UK's ability to conduct operations whilst at the same time upholding the rule of law. But despite massive expenditure, over seven years now, IHAT has failed to achieve even this. This is the greatest indictment of the organisation in its present form. (Paragraph 41)
11. *IHAT has lost the confidence of service personnel, this Committee and the wider public. Furthermore, it is continually eroding the bonds of trust between those who serve, and their civilian masters. The MoD must direct that IHAT expedites its assessment of the remaining cases. As soon as the number of outstanding cases is reduced to the Secretary of State's target of 60, IHAT must be closed with the cases transferred to the service police with the support of civilian police. (Paragraph 42)*

The conduct of IHAT investigations

12. Despite assurances from Ministers in early 2016, the MoD has now acknowledged that between 300 and 350 potential witnesses and seven individuals under investigation, had been contacted without prior written notification. That it has happened at all indicates a lack of sufficient care for the individuals concerned. The first point of contact for a serviceman or woman, or a veteran should never be an unannounced approach by an IHAT employee, regardless of whether they are being treated as a witness or a suspect. *We feel it is incumbent upon the MoD under its duty of care to ensure that in future, the first time serving personnel hear of their involvement with IHAT, either as a witness or as a suspect, it should be through their Commanding Officer. (Paragraph 56)*

13. It is deeply disturbing that instances of malpractice by contractors working for IHAT have emerged. The use of intimidatory tactics including an example of a contractor falsely claiming to be a policeman, and the contacting of family members of service personnel without prior notice or explanation, are completely unacceptable. *The actions of contractors are the responsibility of IHAT management. We conclude that they have failed in this duty.* (Paragraph 60)
14. *We believe that the actions of the IHAT investigators, and the way some have approached inquiries demonstrates a 'civilian mind-set' which lacks a sufficient appreciation of the environment of operations. A detailed understanding of the scenarios in post-conflict Iraq, for example, would have been of far more use to IHAT investigations. We believe that service police officers have a unique understanding of the operational environment for investigations of historic allegations. To ensure wider confidence of such investigations, we recommend that the IHAT caseload be transferred to the service police, with the support of civilian police, as soon as possible.* (Paragraph 65)
15. *Civilian contractors should only be used in exceptional circumstances. Where they are required, their numbers should be kept to a minimum. Any such employment must be preceded by extensive training on the unique circumstances of military operations and their impact on servicemen and women. The MoD must address this as a matter of urgency.* (Paragraph 66)
16. *We are deeply concerned about the use of covert surveillance by IHAT. Notwithstanding the assurances given that it would be used only in the most serious of cases, the questionable conduct of some external investigators means that this is a cause for serious concern. The Department cannot interfere in the direction of investigations, but it must provide detailed scrutiny of the exercise of these powers, and their use should be justified directly to MoD Ministers. That Ministers appeared either unaware or unwilling to address this aspect of IHAT's investigation is unacceptable.* (Paragraph 70)
17. For three years the MoD paid an individual to work for IHAT while he was in the employment of Public Interest Lawyers. Although the MoD told us that it had stopped payments when it became aware of this, the fact that it continued for such a lengthy period of time represents a serious failing for which the MoD must take responsibility. *We ask the MoD for a detailed explanation of what pre-employment checks were made on the individual and how this conflict of interest was able to continue unnoticed for so long.* (Paragraph 75)
18. The interviewing of alleged victims and witnesses in third countries was not prescribed by the court. Rather it was the result of IHAT's interpretation of the court ruling. To date it has cost nearly £4 million, which included payment of the costs of PIL representatives. However, the MoD was unable quantify the total amount paid to PIL. *We are deeply concerned that the MoD has used public funds to cover the costs of those who were bringing spurious and unassessed cases against former and serving personnel.* (Paragraph 80)

19. *We appreciate that, on occasion, the MoD may be advised to settle some cases without interviewing relevant individuals. However, the practice has gone too far. This approach can imply that someone is culpable without that person having had the opportunity to respond to the charge. We recommend that, before such payments are authorised, the individuals concerned are fully appraised of the claims and the reasons for the MoD's course of action. (Paragraph 82)*
20. *The admission that training material for interrogations contained information which could have placed service personnel outside of domestic or international law represents a failing of the highest order. We expect the MoD to confirm that no cases under consideration by IHAT are based on the actions of individuals who were following that flawed guidance. If there are, we ask the MoD to set out how it will support individuals who are subject to claims arising from actions which their training advised was lawful. (Paragraph 86)*

The way forward

21. *We are deeply concerned that the MoD's package of support for service personnel appears to be fragmented, inaccessible and largely unknown. The MoD must, as a priority, devise and publish a single, accessible framework which sets out the MoD's responsibilities and the support soldiers and veterans can expect to receive. That framework must be widely publicised and understood throughout the chain of command. (Paragraph 95)*
22. *We welcome the Secretary of State's announcement that the MoD will now meet the legal costs of soldiers being investigated by IHAT. If it comes to light that soldiers and veterans have already paid out legal expenses we recommend that the MoD commits to reimburse them. (Paragraph 100)*
23. *At present, the MoD's decision to grant legal aid rests on whether or not an individual was "on duty" or not at the time of the alleged offence. We believe that this distinction requires greater clarity. We recommend that any alleged offence committed on a named and defined operation—for example Op TELIC—should come within the definition of 'on duty'. (Paragraph 101)*
24. *Furthermore, we recommend that the MoD's policy on legal aid be modified to ensure that no member of the armed forces has to pay out more for their legal aid than the cost of that representation. (Paragraph 102)*
25. *We recommend that the MoD's package of support should include an assurance that all service personnel should have access to, and representation by, legal professionals who are experienced in service law for either retrospective or future on-going investigations. (Paragraph 105)*
26. *The IHAT experience has highlighted too many flaws in the manner in which investigations into historic allegations are conducted in the United Kingdom today. In the Annex to this Report we set out what we believe to be the key principles which should be adhered to in any future investigations. We look to the MoD to engage with these proposals when it considers future inquiries into the armed forces' involvement in military conflicts. (Paragraph 106)*

European Convention on Human Rights and the International Criminal Court

27. *We welcome the Government's intention to derogate from the European Convention on Human Rights under Article 15 of the Convention in the event of future conflicts. For clarity, we recommend that the Secretary of State—in conjunction with the Attorney General and the Chief of the Defence Staff—set out the conditions under which the United Kingdom could and would derogate from the European Convention on Human Rights. The MoD must set out the action that has been taken by other participants in the Iraq war who are subject to the ECHR to derogate from any part of the Convention. (Paragraph 113)*
28. *We further recommend that the Government sets out what amendments to the Human Rights Act would be necessary to ensure that any such derogation is both achievable and successful in protecting UK troops in future conflict from unnecessary widespread litigation. (Paragraph 114)*
29. *We are not convinced that the International Criminal Court would commit to investigate such a large case load which is based, to a great extent on discredited evidence. While due process must be seen to be done, we recommend that the MoD presents a robust case to the ICC that the remaining cases would be disposed of more quickly and with no less rigour through service law rather than IHAT. (Paragraph 120)*

Conclusion

30. *The United Kingdom ended its combat operations in Iraq in 2009. Eight years later, and some 14 years since the start of the conflict, a significant number of service personnel remain under investigation for alleged misconduct in that conflict. (Paragraph 121)*
31. *IHAT, the MoD-created vehicle for these investigations, has proved to be unfit for purpose. It has become a seemingly unstoppable self-perpetuating machine and one which has proved to be deaf to the concerns of the armed forces, blind to their needs, and profligate with its own resources. We look to the Secretary of State to set a firm and early date for the remainder of the investigations to be concluded, and for the residue of cases to be prosecuted by a replacement body which can command the confidence of the armed forces. (Paragraph 122)*
32. *A significant factor in this was the legal industry created around IHAT. That is now being dealt with by the SRA and Mr Shiner, the founder of PIL has now been struck off as a solicitor. The current Secretary of State is to be commended for his personal efforts in highlighting the conduct of law firms to the relevant authorities. However at the same time as it condemned those legal firms the MoD continued to authorise payments to them, including the use and payment of a middleman in Iraq who worked for both sides. Even if this was, as the MoD asserted, a contractual requirement, the failure to challenge the arrangement when those costs grew was a serious failing. Rightly or wrongly, it opened up to question the MoD's commitment to supporting servicemen and women and veterans. (Paragraph 123)*

33. Of equal concern is the fact that former senior military personnel have questioned the culture of Whitehall and its attitude towards the military. Again, this points to a lack of genuine understanding around the human side of military matters in Whitehall. Ministers must address this as a matter of urgency. They must show leadership and ensure that the well-worn statement of “our people are our finest asset” is reflected in the policies and decisions that are made. (Paragraph 124)
34. The MoD has made progress in its support for those under investigation. We welcome its recent announcements on funding legal aid for those under investigation, and the possibility of derogating from the ECHR in times of conflict. However, they are both works in progress. (Paragraph 125)
35. Our armed forces continue to strive to meet the highest standards of conduct. However, the perception of them on the International stage has undoubtedly been unfairly altered by this process, which in some respects has been self-inflicted. (Paragraph 126)
36. IHAT, and the subsequent explosion of so-called ‘lawfare’ in the United Kingdom has directly harmed the defence of our Nation. Unless the MoD learns the lessons of IHAT, the armed forces will be hindered in their ability to defend the Nation and the national interest. (Paragraph 127)
37. With the prospect of investigations into British deployments in Afghanistan and Northern Ireland, the Government must prove both in private, but especially in public that in adhering to the pursuit of justice and the rule of law, it does not lose sight of its moral responsibility and its commitment to the Armed Forces Covenant with those who have served. (Paragraph 128)
38. There is a deep unfairness at the heart of the IHAT process and this is in danger of spilling over to other conflicts. Our Report offers the MoD an opportunity to reset the balance. (Paragraph 129)

Annex 1: Principles for future investigations

It is clear to us that the IHAT process has been flawed, with major shortcomings. Whilst some of the problems with IHAT were unseen, far too many were avoidable. We recommend that the following principles be followed for any future investigation of this kind:

Support for former and service personnel

- That justice delayed is justice denied and that investigations must be conducted in an expeditious manner.
- That those under investigation are kept informed about the progress of the investigation at regular intervals. This should extend to former service personnel through nominated officers in the chain of command or through veterans' organisations.
- That those service personnel under investigation are contacted first through the chain of command and not by investigators without prior notice.
- That veterans are notified by the MoD and advised of the names and contact details of specialist military lawyers.
- That a mechanism be introduced to address any detriment caused to the career of an individual who has been cleared of alleged wrong-doing by them serving personnel or veterans.

Historic Allegations

- That investigations should not be able to reopen cases which have previously been disposed of unless new, compelling evidence is brought forward.
- In response to public concern about the time elapsed since alleged events took place, cases should only be opened after ten years in exceptional circumstances.
- Where poor or illegal practices have been taught to our military, who have then simply implemented them, the MoD must assume corporate responsibility and not allow individuals incorrectly trained, to be exposed to legal actions.
- An exemption must be sought to ensure that any retrospective application of supra-judicial law is not applied to UK armed forces Operations.

Legal costs and advice

- That the MoD meets the costs of individuals' legal advice and support, unless there is a compelling reason not to do so.
- That the legal advice is provided by experienced service law experts.

- That legal firms producing large volumes of thinly evidenced claims are dealt with quickly and that mechanisms are in place to reject, en bloc, cases submitted by such firms.
- The MoD must be alive to the threat that the UK's adversaries will use legal channels to pursue conflicts and individuals.

Investigators

- That unless exceptional circumstances require it, all historic investigations must be carried out by members of the service police, with support from civilian police.
- Where civilian contractors are required, they must have received detailed training on conditions such as PTSD, and the unique circumstances of military operations. They must be used in mixed teams with service and civilian police and any such use must be reported to Parliament.

Corporate responsibility

- That the MoD places support for the armed services and those under investigation at the heart of any investigatory structure.
- The MoD has a duty of care under the armed forces Covenant to ensure military personnel are not subjected to investigation by the ECHR or the ICC because of failings in training or operational oversight. Personnel must be given access to legal support and where the investigation is as a result of MoD failures this must be acknowledged.

Appendix 1: Article 15 of the European Convention on Human Rights and the United Kingdom

Derogating from the ECHR is covered in Article 15 of the Convention which is reproduced below, High Contracting Party is taken here to be the government of a participating state:

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Appendix 2: IHAT caseload

CASELOAD	DETAILS	SOURCE	TOTAL victims/ allegations RECEIVED
Caseload 1	Original IHAT caseload registered up to 18 Nov 2014.	Various	283
Caseload 2	Criminal allegations identified within civil claims allocated to the IHAT by Provost Marshal Navy on 18 Nov 2014.	Leigh Day ¹⁷⁰	620
Caseload 3	Additional criminal allegations received by IHAT from PIL from 1 Aug 2014 to 31 Oct 2014.	PIL	799
Caseload 4	Additional criminal allegations identified by IHAT Investigation/ Interview Teams from 18 Nov 2014 and 31 Jul 2015.	IHAT	168
Caseload 5	Additional criminal allegations received by IHAT from PIL 1 Nov 2014 to 31 Dec 2014.	PIL	416
Caseload 6	Additional criminal allegations received by IHAT from PIL 1 Jan 2015 to 31 March 2015.	PIL	361
Caseload 7	Additional criminal allegations received in March 2015 relating to Al-Sweady Enquiry.	PIL	9
Caseload 8	Additional criminal allegations identified in the narratives of Claim Register Entries provided by PIL where no specific complaint has been submitted.	PIL	549
Caseload 9	Additional criminal allegations received by IHAT from PIL from 1 April 2015 to 7 Sep 2015.	PIL & DJEP ¹⁷¹	38
Caseload 10	Additional criminal allegations identified by IHAT Investigation/ Interview Teams since 10 Sep 2015.	IHAT	23

¹⁷⁰ Leigh Day maintain as per their written evidence that they passed on only 15 cases directly to the IHAT. The 620 relates to allegations arising from their civil litigation against the MoD.

¹⁷¹ DJEP is the Directorate of Judicial Engagement Policy, a unit within the Ministry of Defence.

Caseload 11	Additional criminal allegations received by IHAT from PIL since 23 Oct 2015.	PIL	118
Caseload 12	Additional criminal allegations received (June 2016) by IHAT from PIL since 23 Oct 2015.	PIL	4
Caseload 13	Additional criminal allegations identified by IHAT Investigation/ Interview Teams since 8 Sep 2015.	IHAT	4
TOTAL			3392

Sub-Committee Formal Minutes

Monday 6 February 2017

Members present:

Johnny Mercer, in the Chair

James Gray

Rt Hon John Spellar

Mrs Madeleine Moon

Draft Report (*Who guards the guardians? MoD support for former and serving personnel*), proposed by the Chair, brought up and read.

Ordered, that the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 129 read and agreed to.

Annex agreed to.

Summary agreed to.

Several papers were appended to the Report.

Resolved, That the Report be the First Report of the sub-Committee to the Committee in this session.

Ordered, that the Chair make the Report to the Committee.

[Adjourned till a date to be confirmed.]

Formal Minutes

Tuesday 7 February 2017

Members present:

Rt Hon Dr Julian Lewis, in the Chair

Douglas Chapman	Mrs Madeleine Moon
James Gray	Rt Hon John Spellar
Jack Lopresti	Bob Stewart
Johnny Mercer	Phil Wilson

Draft Report (*Who guards the guardians? MoD support for former and serving personnel*), proposed by the Chair, brought up and read.

Ordered, that the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 129 read and agreed to.

Annex agreed to.

Summary agreed to.

Several papers were appended to the Report.

Resolved, That the Report be the Sixth Report the Committee.

Ordered, that the Chair make the Report to the House.

Ordered, that the embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 28 February at 9.30 am.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 8 June 2016

Question number

Lewis Cherry, Solicitor, **Reverend Nicholas Mercer** and **Hilary Meredith**, Solicitor

[Q1–59](#)

Wednesday 14 September 2016

Martin Jerrold, Group Managing Director, Red Snapper Group

[Q60–179](#)

Wednesday 19 October 2016

Sir David Calvert-Smith and **Rt Hon Jeremy Wright QC MP**, Attorney General

[Q180–301](#)

Professor Richard Ekins, Director, Judicial Power Project, Policy Exchange

[Q302–322](#)

Tuesday 15 November 2016

Mark Warwick, Director, and **Commander Jack Hawkins RN**, Deputy Head, Iraq Historic Allegations Team

[Q323–515](#)

Wednesday 14 December 2016

Rt Hon Sir Michael Fallon MP, Secretary of State for Defence, **Air Marshal Sir Stuart Peach GBE KCB ADC DL**, Chief of Defence Staff, and **Peter Ryan**, Director, Directorate of Judicial Engagement Policy

[Q516–618](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

PSJ numbers are generated by the evidence processing system and so may not be complete.

- 1 Hilary Meredith Solicitors Ltd ([PSJ0001](#))
- 2 Judicial Power Project ([PSJ0008](#))
- 3 Leigh Day ([PSJ0011](#))
- 4 Leigh Day ([PSJ0012](#))
- 5 Leigh Day ([PSJ0016](#))
- 6 Lewis Cherry ([PSJ0002](#))
- 7 Ministry of Defence ([PSJ0005](#))
- 8 Ministry of Defence ([PSJ0009](#))
- 9 Ministry of Defence ([PSJ0013](#))
- 10 Ministry of Defence ([PSJ0015](#))
- 11 Mr Derek Keilloh ([PSJ0007](#))
- 12 Red Snapper Recruitment Ltd ([PSJ0006](#))
- 13 Reverend Nicholas Mercer ([PSJ0004](#))
- 14 Service Prosecuting Authority ([PSJ0010](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Flexible response? An SDSR checklist of potential threats and vulnerabilities	HC 493 (HC 794)
Second Report	Shifting the goalposts? Defence expenditure and the 2% pledge	HC 494
Third Report	Beyond endurance? Military exercises and the duty of care	HC 598
Fourth Report	An acceptable risk? The use of Lariam for military personnel	HC 567
First Special Report	Ministry of Defence Annual Report and Accounts 2013–14: Government response to the Committee's Eighth Report of Session 2014–15	HC 365
Second Special Report	Re-thinking defence to meet new threats: Government response to the Committee's Tenth Report of Session 2014–15	HC 366
Third Special Report	Decision-making in Defence Policy: Government response to the Committee's Eleventh Report of Session 2014–15	HC 367
Fourth Special Report	Flexible Response? An SDSR checklist of potential threats and vulnerabilities: Government Response to the Committee's First Report of Session 2015–16	HC 794

Session 2016–17

First Report	Russia: Implications for UK defence and security	HC 107 (HC 668)
Second Report	UK military operations in Syria and Iraq	HC 106
Third Report	Restoring the Fleet: Naval Procurement and the National Shipbuilding Strategy	HC 221 (HC 973)
Fourth Report	Exposing Walter Mitty: The Awards for Valour (Protection) Bill	HC 658 (HC 1000)
Fifth Report	Open Source Stupidity: The Threat to the BBC Monitoring Service	HC 748

First Special Report	Shifting the goalposts? Defence expenditure and the 2% pledge: Government Response to the Committee's Second Report of Session 2015–16	HC 465
Second Special Report	Beyond endurance? Military exercises and the duty of care: Government Response to the Committee's Third Report of Session 2015–16	HC 525
Third Special Report	An acceptable risk? The use of Lariam for military personnel: Government Response to the Committee's Fourth Report of Session 2015–16	HC 648
Fourth Special Report	Russia: Implications for UK defence and security: Government Response to the Committee's First Report of Session 2016–17	HC 668
Fifth Special Report	Restoring the Fleet: Naval Procurement and the National Shipbuilding Strategy: Government Response to the Committee's Third Report of Session 2016–17	HC 973
Sixth Special Report	Exposing Walter Mitty: The Awards for Valour (Protection) Bill: Government Response to the Committee's Fourth Report	HC 1000